EUROPEAN COMMISSION

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2012/0140 (NLE)

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas

EXPLANATORY MEMORANDUM

I. POLITICAL AND LEGAL FRAMEWORK

The Visa Facilitation Agreement between the European Community and the Republic of Moldova[1] has been in force since 1 January 2008.

Article 12 of the Visa Facilitation Agreement establishes a Joint Committee tasked *inter alia* with monitoring the implementation of the Agreement and suggesting amendments and additions thereto. At its 5th meeting on 27 May 2010, the Joint Committee made a number of suggestions for amendments and additions to the Agreement.

On that basis the Commission presented on 29 October 2010 a recommendation to the Council in order to authorise the Commission to open negotiations with the Republic of Moldova on an Agreement amending the Visa Facilitation Agreement.

Following the authorisation given by the Council on 11 April 2011, the negotiations with the Republic of Moldova on an Agreement amending the Visa Facilitation Agreement were opened on 13 May 2011 in Brussels. Three further negotiation rounds took place on 29 August 2011 in Chisinau and on 16 November 2011 and 14 December 2011 in Brussels.

The draft amending Agreement foresees inter alia a visa waiver for Moldovan citizens who are holders of biometric service passports. The negotiators expressed their common understanding that this visa waiver will be used in good faith. Given the importance of this for the European Union, a letter has been sent on behalf of the European Union to the Republic of Moldova on 28 February 2012 confirming that the European Union may invoke a partial suspension of the amended Agreement and in particular the provision providing the visa waiver for holders of biometric service passports, in accordance with the suspension clause of the amended Agreement, if this visa waiver would be misused by the Republic of Moldova or would lead to a threat to public security. The letter (without annex) is attached to this explanatory memorandum. This approach was endorsed by Member States at the Visa Working Party on 10 January 2012. The Republic of Moldova agreed to this approach by email of 13 February 2012.

The final text of the amending Agreement was initialled on 22 March 2012 by the chief negotiators.

Member States have been regularly informed and consulted in the relevant Council Working Groups at all stages of the negotiations.

On the part of the Union, the legal basis for the amending Agreement is Article 77(2)(a), in conjunction with Article 218 of the TFEU.

The Commission signed the amending Agreement on ... In accordance with Art. 218(6)(a) of the TFEU the European Parliament's consent for the conclusion of the amending Agreement was given on …

[1] Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, OJ L 334/169, 19.12.2007.

II. OUTCOME OF THE NEGOTIATIONS

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft amending Agreement is acceptable to the Union.

The final content of it can be summarised as follows:

- simplified requirements for documents to be presented regarding the purpose of the journey for the following categories of applicants:

(a) drivers conducting international cargo and passenger transportation services and journalists: have been reviewed.

(b) members of the technical crew accompanying journalists, close relatives of EU citizens residing in the territory of the Member State of which they are nationals, and participants in official EU cross-border cooperation programmes: have been introduced;

- clarification of the provisions on the period of validity of multiple-entry visas for the following categories of applicants:

(a) the categories listed in Article 5(1) of the Visa Facilitation Agreement as well as spouses, children and parents visiting citizens of the European Union residing in the territory of the Member State of which they are nationals, and the technical crew accompanying journalists in a professional capacity:

in principle, multiple-entry visas valid for five years shall be issued. Multiple-entry visas with a shorter period of validity shall only be issued where the expiry date of the travel document requires this or where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period;

(b) the categories listed in Article 5(2) of the Visa Facilitation Agreement and participants in official EU cross-border cooperation programmes:

in principle, multiple-entry visas valid for one year shall be issued. Multiple-entry visas with a shorter period of validity shall only be issued where the expiry date of the travel document requires this or where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period;

- a full waiving of the visa fee for the following additional categories of applicants: close relatives of citizens of the European Union residing in the territory of the Member State of which they are nationals, the technical crew accompanying journalists in a professional capacity, participants aged 25 years or less in seminars, conferences, sports, cultural or educational events, organised by non-profit organisations, representatives of civil society organisations undertaking trips for the purposes of educational training, seminars, conferences, participants in official EU cross-border cooperation programmes;

- the possibility for an external service provider, with whom a Member State cooperates in view of issuing a visa, to charge a service fee of up to EUR 30, while maintaining the possibility of all applicants to lodge their applications directly at a consulate; on the specific request of the Republic of Moldova, a European Union Declaration is attached to the amending Agreement on the European Union's commitment to outsource the reception of visa applications only as a last resort;

- the possibility to waive the requirement to appear in person when lodging an application;

- the exemption from the visa requirement for short stays for the citizens of the Republic of Moldova who are holders of biometric service passports. The amending Agreement clarifies that this does not affect the applicability of provisions of existing bilateral Agreements or arrangements between individual Member States and the Republic of Moldova on the exemption of the holders of non-biometric service passports from the visa requirement for short stays;

- a Joint Declaration is attached to the amending Agreement on the cooperation on travel documents and regular exchange of information on document security;

- replying to a specific request formulated by the Republic of Moldova, a European Union Declaration is attached to the amending Agreement on documents to be submitted when applying for short-stay;

- replying to a specific request formulated by the Republic of Moldova, a European Union Declaration is attached to the amending Agreement on facilitations for family members not covered by the legally binging provisions of the Agreement;

- the specific situations of Denmark, Ireland and the United Kingdom are reflected in the preamble;

- the association of Switzerland and Liechtenstein to the implementation, application and development of the Schengen *acquis* is reflected in a Joint Declaration to the amending Agreement.

III. CONCLUSIONS

In light of the above-mentioned results, the Commission proposes that the Council

- approve, after having received consent from the European Parliament, the attached Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2a), in conjunction with Article 218 (6)(a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[2],

Whereas:

(1) In accordance with Council Decision 2012/XXX of [...][3], the Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas was signed by the Commission on [ ], subject to its conclusion at a later date.

(2) The Agreement should be concluded.

(3) In accordance with the Protocol on the Schengen *acquis* integrated into the framework of the European Union and the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and confirming that the provisions of this Agreement do not apply to the United Kingdom and Ireland,

(4) In accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and confirming that the provisions of this Agreement do not apply to Denmark,

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2 OJ C […], […], p. […].
3 OJ C […], […], p. […].

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas is hereby concluded.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the notification provided for in Article 2 of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption. It shall be published in the *Official Journal of the European Union*.

The date of entry into force of the Agreement shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

ANNEX

AGREEMENT

between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas

THE EUROPEAN UNION,

of the one part, and

THE REPUBLIC OF MOLDOVA,

of the other part,

hereinafter referred to as 'the Parties',

HAVING REGARD to the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, which entered into force on 1 January 2008,

DESIRING to further facilitate people to people contacts,

RECOGNISING the importance of the introduction of a visa free travel regime for the citizens of the Republic of Moldova in due course, provided that the conditions for well-managed and secure mobility are in place,

TAKING INTO ACCOUNT the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice and the Protocol on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and confirming that the provisions of this Agreement do not apply to the United Kingdom and Ireland,

TAKING INTO ACCOUNT the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and confirming that the provisions of this Agreement do not apply to Denmark,

HAVE AGREED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, hereinafter referred to as 'the Agreement', shall be amended in accordance with the provisions of this Article:

[Title of the Agreement]

(1) In the title, the word "Community" shall be replaced by the words "European Union".

[Article 3 of the Agreement

Definitions]

(2) In Article 3 point (e), the word "Community" shall be replaced by the words "European Union".

[Article 4 of the Agreement

Documentary evidence regarding the purpose of the journey]

(3) Article 4 paragraph 1 shall be amended as follows:

(a) point (d) shall be replaced by the following:

"(d) for drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in the Republic of Moldova:

— a written request from the national association of carriers of the Republic of Moldova providing for international road transportation, stating the purpose, itinerary, duration and frequency of the trips;"

(b) point (f) shall be replaced by the following:

"(f) for journalists and the technical crew accompanying them in a professional capacity:

— certificate or other document issued by a professional organisation or the applicant's employer proving that the person concerned is a qualified journalist and stating that the purpose of the journey is to carry out journalistic work or proving that the person is a member of the technical crew accompanying the journalist in a professional capacity;"

(c) point (k) shall be replaced by the following:

"(k) for close relatives – spouse, children (including adopted), parents (including custodians), grandparents and grandchildren – visiting citizens of the Republic of Moldova legally residing in the territory of the Member States or citizens of the European Union residing in the territory of the Member State of which they are nationals:

— a written request from the host person;"

(d) the following point (p) shall be inserted:

"(p) for participants in official EU cross-border cooperation programmes, such as under the European Neighbourhood and Partnership Instrument (ENPI):

— a written request by the host organisation."

[Article 5 of the Agreement

Issuance of multiple-entry visas]

(4) Article 5 paragraphs 1 to 3 shall be replaced by the following:

"1. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with a term of validity of five years to the following categories of persons:

(a) members of national and regional Governments and Parliaments, Constitutional Court and Supreme Court if they are not exempted from the visa requirement by this Agreement, in the exercise of their duties;

(b) permanent members of official delegations who, following an official invitation addressed to the Republic of Moldova, are to participate regularly in meetings, consultations, negotiations or exchange programs, as well as in events held in the territory of the Member States by intergovernmental programmes;

(c) spouses and children (including adopted), who are under the age of 21 or are dependent, and parents (including custodians) visiting citizens of the Republic of Moldova legally residing in the territory of the Member States or citizens of the European Union residing in the territory of the Member State of which they are nationals;

(d) business people and representatives of business organisations who regularly travel to the Member States;

(e) journalists and the technical crew accompanying them in a professional capacity.

By way of derogation from the first sentence, where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the term of validity of the multiple-entry visa shall be limited to that period, in particular where

- in the case of the persons referred to in lit. a, the term of office,

- in the case of the persons referred to in lit. b, the term of the validity of the status as a permanent member of an official delegation,

- in the case of the persons referred to in lit. c, the period of validity of the authorisation for legal residence of citizens of the Republic of Moldova legally residing in the European Union,

- in the case of the persons referred to in lit. d, the term of validity of the status as a representative of the business organisation or the work contract, or

- in the case of the persons referred to in lit. e, the work contract

is less than five years.

2. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with a term of validity of one year to the following categories of persons, provided that during the previous year they have obtained at least one visa, have made use of it in accordance with the laws on entry and stay of the visited State:

(a) members of official delegations who, following an official invitation addressed to the Republic of Moldova, are to participate regularly in meetings, consultations, negotiations or exchange programs, as well as in events held in the territory of the Member States by intergovernmental organisations;

(b) representatives of civil society organisations travelling regularly to Member States for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes;

(c) members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events who regularly travel to the Member States;

(d) drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in the Republic of Moldova;

(e) members of train, refrigerator and locomotive crews in international trains travelling to the territories of the Member States;

(f) persons participating in scientific, cultural and artistic activities, including university and other exchange programs, who regularly travel to the Member States;

(g) students and post-graduate students who regularly travel for the purposes of study or educational training, including in the framework of exchange programmes;

(h) participants in international sports events and persons accompanying them in a professional capacity;

(i) participants in official exchange programmes organised by twin cities or other localities;

(j) participants in official EU cross-border cooperation programmes, such as under the European Neighbourhood and Partnership Instrument (ENPI).

By way of derogation from the first sentence, where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the term of validity of the multiple-entry visa shall be limited to that period.

3. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with a term of validity of a minimum of 2 years and a maximum of 5 years to the categories of persons referred to in paragraph 2, provided that during the previous two years they have made use of the one year multiple-entry visas in accordance with the laws on entry and stay of the visited State unless the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, in which case the term of validity of the multiple-entry visa shall be limited to that period."

[Article 6 of the Agreement

Fees for processing visa applications]

(5) Article 6 shall be amended as follows:

(a) paragraph 2 shall be amended as follows:

(i) in the first sentence, the opening words shall be replaced by the following:

"4. Without prejudice to paragraph 4 fees for processing the visa application are waived for the following categories of persons:"

(ii) in point (a), the following words shall be inserted:

"or citizens of the European Union residing in the territory of the Member State of which they are nationals"

(iii) in point (j), the following words shall be inserted:

"and the technical crew accompanying them in a professional capacity"

(iv) the following points (p) to (r) shall be inserted:

"(p) participants aged 25 years or less in seminars, conferences, sports, cultural or educational events, organised by non profit organisations;

(q) representatives of civil society organisations undertaking trips for purposes of educational training, seminars, conferences, including in the framework of exchange programmes;

(r) participants in official EU cross-border cooperation programmes, such as under the European Neighbourhood and Partnership Instrument (ENPI)."

(v) the following sentence shall be inserted:

"The first sentence shall apply also where the purpose of the journey is transit."

(c) the following paragraph shall be inserted:

"4. If a Member State cooperates with an external service provider in view of issuing a visa the external service provider may charge a service fee. This fee shall be proportionate to the costs incurred by the external service provider while performing its tasks and shall not exceed EUR 30. The Member States shall maintain the possibility for all applicants to lodge their applications directly at their consulates. The external service provider shall conduct its operations in accordance with the Visa Code and in full respect of Moldovan legislation."

[Article 6 *bis*

Lodging of an application without the presence of the applicant]

(6) The following Article 6 *bis* shall be inserted:

"Article 6 *bis*

Lodging of an application without the presence of the applicant

Member States consulates may waive the requirement to appear in person, when the applicant is known to them for his integrity and reliability, unless the applicant is required to appear in person for the collection of biometric identifiers."

[Article 8 of the Agreement

Departure in the case of lost or stolen documents]

(7) Article 8 shall be replaced by the following:

"Article 8

Departure in the case of lost or stolen documents

Citizens of the European Union and of the Republic of Moldova who have lost their identity documents, or from whom these documents have been stolen while staying in the territory of the Republic of Moldova or the Member States, may leave the territory of the Republic of Moldova or the Member States on the basis of valid identity documents entitling them to cross the border issued by diplomatic missions or consular posts of the Member States or of the Republic of Moldova without any visa or other authorisation."

[Article 10 of the Agreement

Diplomatic passports]

(8) Article 10 shall be amended as follows:

(a) the title shall be replaced by the following:

" Diplomatic and service passports"

(b) paragraph 2 shall be renumbered 3 and shall be replaced by the following:

"3. Persons mentioned in paragraphs 1 and 2 may stay in the territories of the Member States for a period not exceeding 90 days per period of 180 days."

(c) the following new paragraph 2 shall be inserted:

"2. Citizens of the Republic of Moldova, holders of valid biometric service passports can enter, leave and transit through the territories of the Member States without visas."

[Article 12

Joint Committee for management of the Agreement]

(9) In Article 12 paragraph 1, the word "Community" shall be replaced by the words "European Union".

[Article 13 of the Agreement

Relation of this Agreement with bilateral Agreements between Member States and the Republic of Moldova]

(10) Article 13 shall be amended as follows:

(a) the existing paragraph shall be numbered as paragraph 1;

(b) the following paragraph shall be inserted:

"2. The provisions of bilateral Agreements or arrangements between individual Member States and the Republic of Moldova concluded before the entry into force of this Agreement providing for the exemption of the holders of non-biometric service passports from the visa requirement shall continue to apply without prejudice to the right of the Member States concerned or the Republic of Moldova to denounce or suspend these bilateral agreements or arrangements."

[Article 14

Reciprocity clause]

(11) In Article 14, the following first sentence shall be inserted:

"The Republic of Moldova may only reintroduce the visa requirement for citizens or certain categories of citizens of all EU Member States and not for citizens or certain categories of citizens of individual Member States."

Article 2

This Agreement shall be ratified or approved by the Parties in accordance with their respective procedures and shall enter into force on the first day of the second month following the date on which the last Party notifies the other that the procedures referred to above have been completed.

Done at XXX, on XXX 2012 in duplicate in the official languages of the Parties, each of these texts being equally authentic.

For the European Union

For the Republic of Moldova

JOINT DECLARATION ON COOPERATION ON TRAVEL DOCUMENTS

The Parties agree that the Joint Committee established pursuant to Article 12 of the Agreement, when monitoring the implementation of the Agreement, should evaluate the impact of the level of security of the respective travel documents on the functioning of the Agreement. To that end, the Parties agree to regularly inform each other about the measures taken for avoiding the proliferation of travel documents, developing the technical aspects of travel document security as well as regarding the personalisation process of the issuance of travel documents.

EUROPEAN UNION DECLARATION ON DOCUMENTS TO BE SUBMITTED WHEN APPLYING FOR SHORT-STAY VISAS

The European Union will establish a harmonised list of supporting documents, in accordance with Article 48 paragraph 1 lit. a of the Visa Code, in order to ensure that applicants from the Republic of Moldova are required to submit, in principle, the same supporting documents. The European Union will inform the Republic of Moldova in the Committee, when such a list has been established. The European Union will also inform the citizens of the Republic of Moldova in accordance with Article 47 paragraph 1 lit. a of the Visa Code.

EUROPEAN UNION DECLARATION ON COOPERATION WITH EXTERNAL SERVICE PROVIDERS

The European Union commits itself to outsource the reception of visa applications only as a last resort, when there are particular circumstances or reasons relating to the local situation, such as where the high number of applicants does not allow the collection of applications and of data to be organised in a timely manner and in decent conditions; or it is not possible to

ensure a good territorial coverage of the third country concerned in any other way; and where other forms of cooperation prove not to be appropriate for the Member State concerned.

EUROPEAN UNION DECLARATION ON FACILITATIONS FOR FAMILY MEMBERS

The European Union takes note of the suggestion of the Republic of Moldova to give a wider definition to the notion of family members that should benefit from visa facilitation as well as of the importance that the Republic of Moldova attaches to the simplification of movement of this category of persons.

In order to ease the mobility of an extended number of persons which have family links (in particular sisters and brothers and their children) with citizens of the Republic of Moldova legally residing in the territories of Member States or with citizens of the European Union residing in the territory of the Member State of which they are nationals, the European Union invites the Member States' consular offices to make full use of the existing possibilities in the Visa Code for facilitating the issuance of visas to this category of persons, including in particular, the simplification of documentary evidence requested for the applicants, exemptions from handling fees and, where appropriate, the issuing of multiple-entry visas.

JOINT DECLARATION CONCERNING SWITZERLAND AND LIECHTENSTEIN

The Parties take note of the close relationship between the Union and Switzerland and Liechtenstein, particularly by virtue of the Agreement of 26 October 2004 concerning the association of these countries with the implementation, application and development of the Schengen acquis.

In such circumstances, it is desirable that the authorities of Switzerland and Liechtenstein and the Republic of Moldova conclude, without delay, bilateral agreements on the facilitation of the issuance of short-stay visas in similar terms as the amended Agreement.