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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

(Georgia)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The EU-Georgia Visa Liberalisation Dialogue was launched in June 2012. In February 2013, the European Commission presented the Georgian Government with an action plan on visa liberalisation (VLAP). The Commission committed itself to proposing visa-free travel for short stays in the European Union to Georgian nationals holding biometric passports as soon as all the benchmarks set in the VLAP have been met by the Georgian Government.

Before the start of the Visa Liberalisation Dialogue, the EU and Georgia had concluded in parallel a Visa Facilitation Agreement and a Readmission Agreement, which entered into force on 1 March 2011. Their full and effective implementation has been an underlying condition for the launch and the continuation of the visa dialogue.

The VLAP is structured around four 'blocks': document security, including biometrics (block I), migration and integrated border management, including asylum (block II), public order and security (block III), and external relations and fundamental rights (block IV). The VLAP sets out a series of precise benchmarks for each of these four 'blocks' of technically relevant issues with a view to adopting a legislative, policy and institutional framework (phase 1) and ensuring its effective and sustainable implementation (phase 2).

Since the launch of the EU-Georgia Visa Liberalisation Dialogue, the Commission has reported to the European Parliament and the Council on Georgia's progress towards fulfilling the benchmarks identified under the four blocks of the VLAP's first and second phases. Progress has been assessed on the basis of on-site evaluations by experts from EU Member States and detailed information provided by Georgia.

On 15 November 2013 the Commission adopted its first progress report¹ on Georgia's implementation of the VLAP and made several recommendations for completing the first (legislative and planning) phase.

The Commission's second progress report² of 29 October 2014 concluded that Georgia had fulfilled the first-phase benchmarks of the VLAP and was ready to be assessed on the second-phase benchmarks. In its conclusions of 17 November 2014, the Council agreed with the Commission's assessment. The report was accompanied by an assessment of the potential migratory and security impacts of future visa liberalisation for Georgian citizens travelling to the EU.

The Commission adopted the third progress report³ on Georgia's implementation of the VLAP on 8 May 2015. The report confirmed that Georgia was broadly in line with all the benchmarks set in the four blocks of the VLAP and identified actions that, if taken, would ensure that Georgia fulfills all benchmarks for the second phase of the VLAP.

In its fourth and final progress report⁴, adopted on 18 December 2015, the Commission considered that Georgia had made the necessary progress and had undertaken all the required reforms to ensure the effective and sustainable achievement of the remaining benchmarks. Based on this assessment, and given the outcome of the continuous monitoring and reporting that had been carried out since the launch of the EU-Georgia Visa Liberalisation Dialogue, the

¹ COM(2013) 808 final

² COM(2014) 681 final

³ COM(2015) 199 final

⁴ COM(2015) 684 final

Commission confirmed that Georgia had met all the benchmarks set for each of the four blocks of the VLAP's second phase and that it would present, in early 2016, a legislative proposal to amend Regulation (EC) No 539/2001, transferring Georgia to the list of visa-free countries (Annex II).

In addition to reporting on the VLAP, the Commission continued to monitor the implementation of the Visa Facilitation and Readmission Agreements, notably through the Joint Committees established under those agreements. The last meeting to date of both committees was held in Brussels on 13 October 2015. In this context, the Commission noted that implementation of the two agreements was very satisfactory overall.

- **Consistency with existing policy provisions in the policy area and other Union policies**

Council Regulation (EC) No 539/2001⁵ lists the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement. Regulation (EC) No 539/2001 is applied by all Member States – with the exception of Ireland and the United Kingdom – and also by Iceland, Liechtenstein, Norway and Switzerland. The Regulation is part of the EU's common visa policy for short stays of 90 days in any 180-day period.

Georgia is currently listed in Annex I of Regulation (EC) No 539/2001, i.e. among those countries whose nationals are required to hold a visa when travelling to the territory of EU Member States.

Regulation (EC) No 539/2001 was last amended by Regulation (EU) No 259/2014⁶ when Moldova was transferred to the visa-free list after successfully implementing its VLAP; and by Regulation (EU) No 509/2014⁷ when five Caribbean⁸ and eleven Pacific countries⁹, as well as Colombia, Peru and the United Arab Emirates were exempted from the visa requirement – subject to the conclusion of visa waiver agreements between the EU and the respective third countries – following a periodical review of the visa lists.

The criteria which should be taken into account when determining – based on a case-by-case assessment – the third countries whose nationals are subject to, or exempt from, the visa requirement are laid down in Article -1 of Regulation (EC) No 539/2001 (as introduced by Regulation (EU) No 509/2014). They include “illegal immigration, public policy and security, economic benefit, in particular in terms of tourism and foreign trade, and the Union’s external relations with the relevant third countries, including in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and

⁵ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 81, 21.03.2001, p. 1

⁶ Regulation (EU) No 259/2014 of the European Parliament and of the Council of 3 April 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 105, 8.4.2014, p. 9

⁷ Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 149, 20.5.2014, p. 67

⁸ Dominica, Grenada, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago.

⁹ Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, Vanuatu.

reciprocity»¹⁰. Particular attention should be paid to the security of travel documents issued by the third countries concerned.

There is no reason to condition the implementation of the visa exemption for Georgian citizens on the conclusion of a visa waiver agreement with the EU, as Georgia has already exempted all EU citizens from the visa requirement for stays of 90 days (within a 180-day period). Should this decision be revoked or should the visa-free regime be abused, the existing reciprocity and suspension mechanisms of Regulation (EC) No 539/2001 would provide sufficient remedies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

As the proposal will amend the EU's common visa policy, the legal basis for the proposal is point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation will constitute a development of the Schengen *acquis*.

• Subsidiarity

As Regulation (EC) No 539/2001 is a legal act of the EU, it can only be amended by way of an equivalent legal act. Member States cannot act individually.

• Proportionality

See above – no other options to achieve the policy objective are available.

• Choice of the instrument

See above.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

n/a

• Stakeholder consultations

Regular discussions with Member States in the Council Working Party on Eastern Europe and Central Asia (COEST) and several presentations of the visa liberalisation process to the European Parliament have taken place.

• Collection and use of expertise

The Commission collected comprehensive data on Georgia's implementation of all VLAP benchmarks. Its final progress report on Georgia, as was the case for the two preceding reports, was accompanied by a Commission staff working document¹¹ which provided more detailed background information on the developments under each benchmark.

¹⁰ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

¹¹ SWD(2015) 299 final

- **Impact assessment**

In the annex to the staff working document, the Commission provided an updated factual analysis and statistics-based information on the possible migratory and security impacts of visa liberalisation for Georgian citizens travelling to the EU, based on inputs from relevant EU agencies and stakeholders. No further impact assessment is necessary.

- **Regulatory fitness and simplification**

n/a

- **Fundamental rights**

The proposal has no negative consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

n/a

5. OTHER ASPECTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The amended Regulation will be directly applicable from its entry into force and will be implemented immediately by Member States. No implementation plan is necessary.

The Commission will continue to actively monitor Georgia's continuous implementation of all benchmarks under the four blocks of the VLAP through the existing association structures and dialogues, and, if necessary, through *ad hoc* follow-up mechanisms.

- **Explanatory documents (for directives)**

n/a

- **Detailed explanation of the specific provisions of the proposal**

Regulation (EC) No 539/2001 will be amended, transferring Georgia from Annex I (list of visa-required countries) to Annex II (list of visa-free countries). A footnote will be added specifying that the visa waiver will be limited to holders of biometric passports issued in line with standards of the International Civil Aviation Organisation (ICAO).

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(Georgia)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 539/2001¹² lists the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement. The composition of the lists of third countries in Annexes I and II should be, and should remain, consistent with the criteria set out therein. References to third countries in respect of which the situation has changed as regards those criteria should be transferred from one annex to the other, as appropriate.
- (2) It is considered that Georgia has met all the benchmarks set out in the Visa Liberalisation Action Plan presented to the Georgian Government in February 2013, and therefore fulfils the relevant criteria for its citizens to be exempted from the visa requirement when travelling to the territory of EU Member States.
- (3) Georgia should thus be transferred from Annex I to Regulation (EC) No 539/2001 to Annex II thereof. This visa waiver should apply only to holders of biometric passports issued in line with the standards of the International Civil Aviation Organisation (ICAO).
- (4) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision

¹² Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 81, 21.03.2001, p. 1

2000/365/EC¹³. The United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

- (5) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹⁴. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (6) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in point B of Article 1, of Council Decision 1999/437/EC¹⁵.
- (7) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in point B of Article 1, of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁶.
- (8) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in point B of Article 1, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁷,

¹³ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*, OJ L 131, 1.6.2000, p. 43

¹⁴ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*, OJ L 64, 7.3.2002, p. 20

¹⁵ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*, OJ L 176, 10.7.1999, p. 31

¹⁶ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, OJ L 53, 27.2.2008, p. 1

¹⁷ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons, OJ L 160, 18.6.2011, p. 19

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 539/2001 is amended as follows:

- (a) in Annex I, Part 1 ("STATES"), the reference to Georgia is deleted.
- (b) in Annex II, Part 1 ("STATES"), the following reference is inserted:
"Georgia"*

* The visa waiver is limited to the holders of biometric passports issued in line with standards of the International Civil Aviation Organisation (ICAO).

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President