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2024/0329 (NLE)

Proposal for a

COUNCIL DECISION

on the partial suspension of the application of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Agreement between the European Union and Georgia on the facilitation of the issuance of visas ('the Facilitation Agreement')¹ entered into force on 1 March 2011. The purpose of the Facilitation Agreement is to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days in any 180-day period to the citizens of the Union and Georgia. The desire to facilitate people-to-people contacts as an important condition for a steady development of economic, humanitarian, cultural, scientific and other ties between the European Union and Georgia is underlined in the preamble to the Facilitation Agreement.

Article 14(5) of the Facilitation Agreement stipulates that "Each Party may suspend in whole or in part this Agreement for reasons of public order, protection of national security or protection of public health. The decision on suspension shall be notified to the other Party not later than 48 hours before its entry into force. The Party that has suspended the application of this Agreement shall immediately inform the other Party once the reasons for the suspension no longer apply."

The preamble to the Facilitation Agreement reaffirmed the intention to establish a visa-free travel regime for the citizens of Georgia and the Union as a long-term goal, provided that all the conditions for well-managed and secure mobility are fulfilled. On that basis, 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 VLAP was 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 set 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).

After the launch of the EU-Georgia Visa Liberalisation Dialogue, the Commission adopted four Reports² 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. In its fourth and final progress report, 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, on 9 March 2016, the Commission presented a proposal for a Regulation of the European Parliament and of the Council to amend Regulation (EC) No 539/2001 to grant a visa exemption to nationals of Georgia. The proposal was adopted and Regulation (EU) 2017/372 of the European Parliament and of the Council of 1 March 2017³

¹ OJ L 52, 25.2.2011, p. 34.

² COM(2013) 808 final, COM(2014) 681 final, COM(2015) 199 final, COM(2015) 684 final.

³ Regulation (EU) 2017/372 of the European Parliament and of the Council of 1 March 2017 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), OJ L 61, 8.3.2017, p. 7–8.

transferred Georgia from Annex I of Regulation (EC) No 539/2001⁴ to Annex II of that Regulation, granting an exemption from the requirement to be in possession of a visa when crossing the external borders of the Member States for stays of no more than 90 days in any 180-day period to all Georgian nationals who are holders of biometric passports issued in line with the standards of the International Civil Aviation Organisation (ICAO).

Pursuant to Article 8(4) of Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018⁵, which replaced Regulation (EC) No 539/2001, the Commission has monitored the continuous compliance by Georgia with the visa liberalisation requirements and presented the relevant assessment and recommendations in its annual Report under the Visa Suspension Mechanism.

As set out in the Commission's 7th Report under the Visa Suspension Mechanism⁶, in 2024 Georgia adopted legislation the implementation of which undermines human rights and fundamental freedoms. This concerns the 'Law on transparency of foreign influence' adopted in May 2024, and the legislative package on 'family values and protection of minors' adopted in September 2024. The 'Law on transparency of foreign influence' was adopted despite a critical opinion of the Venice Commission⁷ and the EU's repeated calls to repeal the law. The law undermines the freedom of association and expression, the right to privacy, the right to participate in public affairs as well as the prohibition of discrimination. Cumbersome reporting requirements and extensive powers given to the Ministry of Justice in controlling civil society and media organisations increase the risk of selective and arbitrary application.

The European Council underlined in its conclusions of 27 June 2024 that the law represented backsliding on at least three out of the nine steps set out in the Commission's recommendation for candidate status (namely on disinformation, on polarisation, on fundamental rights and involvement of civil society organisations). The European Council concluded that the Georgian authorities' course of action jeopardised Georgia's EU path, de facto leading to a halt of the accession process.

The 'Law on family values and protection of minors' and eighteen amendments to existing laws were adopted without prior public consultations and a thorough analysis of the compliance with European and international standards. This legislative package, signed into law on 3 October, undermines the fundamental rights of the Georgian people and increases stigmatisation and discrimination. As a result of the legislative activities and the continued prevalence of homophobic hate speech, lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) people in Georgia are facing an increasing hostility and stigmatisation.

Georgia's 2024-2026 action plan for the implementation of the human rights strategy was adopted following a limited consultation process and does not include provisions concerning LGBTIQ people and the protection of privacy. The action plan partially addresses freedom of

⁴ 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, 21.3.2001, p. 1–7.

⁵ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 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 (codification), (OJ L 303, 28.11.2018, p. 39.)

⁶ COM/2024/571 final.

⁷ Urgent opinion on the Law on Transparency of Foreign influence issued by the Venice Commission on 21 May 2024.

religion or belief. Significant gaps in the strategic framework as regards the protection of minority rights including representation of minorities remain to be addressed. The implementation of the action plan has not yet begun, and modalities for the monitoring of implementation has not been clearly defined.

The European Council conclusions of 17 October 2024 reaffirmed that Georgia's accession process was halted and called on the Georgian authorities to adopt democratic, comprehensive and sustainable reforms, in line with the core principles of European integration.

In the conclusions of the 2024 Communication on the EU Enlargement Policy⁸ issued on 30 October 2024, the European Commission assessed Georgia's progress on the implementation of the nine steps set by the 2023 Enlargement Communication as insignificant, with backsliding in the judiciary and fundamental rights, including freedom of expression.

Following the announcement on 28 November of the Georgian authorities' intention not to pursue the opening of negotiations with the EU until 2028 (next parliamentary elections year), and to refuse any budgetary grants until then, mass protests erupted in many Georgian cities. Numerous reports, including those of the Public Defender of Georgia, refer to intentional use of disproportionate force and violent methods by the authorities as well as arbitrary arrests that could constitute acts of torture and other forms of ill-treatment. Reportedly, the authorities resorted to severe violence, arbitrary arrests and ill-treatment of protesters, politicians and journalists to curb the protests. So far, no police officers or members of informal violent groups have been held accountable for their acts.

The repression of peaceful protests was condemned by a statement of the High Representative/Vice-President and the Commissioner for Enlargement on 1 December 2024. The United Nations High Commissioner for Human Rights and the Council of Europe also called on the Georgian authorities to respect international human rights standards. In their statements, they recalled States' obligations to promote an enabling environment for the exercise of the right of peaceful assembly without discrimination and that any use of force by security personnel must remain an exception and comply with the principles of legality, necessity, proportionality, precaution and non-discrimination.

Therefore, the actions undertaken by the Georgian authorities are in contradiction with EU values and undermine good relations between the EU and Georgia.

The Commission's 7th Report under the Visa Suspension Mechanism highlighted the steps to be taken urgently by Georgia to address the Commission's concerns and noted that there are ongoing reflections on the possible activation of the visa suspension mechanism in relation to certain categories of persons.

In order to protect the public order of the Member States and of the Union, it is appropriate and proportionate that Member States require a visa from Georgian citizens holding valid diplomatic passports who travel to the European Union, as these persons represent interests which are contrary to those that led the Union to conclude the Facilitation Agreement in the first place.

In this context, the Commission considers that the most appropriate and proportionate step is to suspend certain articles of the Visa Facilitation Agreement which provide facilitations for

⁸ COM(2024) 690 final.

certain specific categories of applicants, without activating at this stage the suspension mechanism set out in Article 8 of Regulation (EU) 2018/1806.

The categories of applicants for which the relevant provisions of the Visa Facilitation Agreement should be suspended are:

- members of Georgia’s official delegations who, following an official invitation addressed to Georgia, should participate in official meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations;
- members of Georgia’s national and regional Governments and Parliaments, Georgia’s Constitutional Court and Supreme Court;
- citizens of Georgia holding valid diplomatic passports issued by Georgia.

The application of the following Articles of the Visa Facilitation Agreement should therefore be suspended only in relation to those categories of applicants: Article 4(1), point (b) on “Documentary evidence regarding the purpose of the journey”, Article 5(1), points (b) and (c), Article 5(2), point (a), and Article 5(3) on “Issuance of multiple-entry visas”, Article 6(1) and Article 6(3), points (c) and (f) on “Fees for processing visa applications”, Article 7 on “Duration of the visa application procedure” and Article 10(1) on “Diplomatic passports”.

Once the Council Decision enters into force, the specific rules provided for by these provisions will cease to apply. The other Articles of the Agreement are not suspended.

As Georgia is listed in Annex II to Regulation (EU) 2018/1806 and therefore all Georgian nationals benefit from the visa exemption deriving from EU secondary legislation, to be effective, the partial suspension of the Visa Facilitation Agreement should be accompanied by measures to be taken by the Member States pursuant to Article 6(1), point (a) of that Regulation.

Article 6(1), point (a) of Regulation (EU) 2018/1806 establishes that Member States may provide for exceptions from the exemption from the visa requirement as regards holders of diplomatic passports, service/official passports or special passports. Therefore, once the Council Decision enters into force, Member States should, in accordance with the principle of sincere cooperation, take the necessary measures in their internal order to apply a visa requirement for holders of diplomatic, service/official passports and special passports issued by Georgia and notify those measures to the other Member States and the Commission pursuant to Article 12(1) of Regulation (EU) 2018/1806. The Commission will issue Guidelines inviting the Member States to take those measures.

Following the measures taken by Member States pursuant to Article 6(1), point (a) of Regulation (EU) 2018/1806, the general rules of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)⁹ will apply to the persons concerned.

⁹ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), (OJ L 243, 15.9.2009, p. 1).

This Decision would not have a negative impact on people-to-people contacts, as Georgian nationals who are holders of ordinary passports will continue to benefit from the visa exemption when travelling to the EU for short stays.

- **Consistency with existing policy provisions in the policy area**

The proposal is consistent and complementary with Regulation (EU) 2018/1806, which lists Georgia among the countries whose nationals are exempt from the visa requirement but allows Member States to provide for exceptions from that exemption as regards holders of diplomatic passports, service/official passports or special passports.

- **Consistency with other Union policies**

This initiative is consistent with the EU's external relations (including considerations of human rights and fundamental freedoms) and with the EU's enlargement policy as regards visa-free third countries with accession prospects.

This initiative is consistent with the EU migration, border management and security policies, as it aims to address security and irregular migration risks for the Schengen area.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The procedural legal basis for this proposal is Article 218(9) of the Treaty on the Functioning of the European Union (TFEU). The substantive legal basis is Article 77(2)(a) of the Treaty on the Functioning of the European Union (TFEU).

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. The main objective and content of the envisaged act relate to the partial suspension of application of some of the provisions of the Facilitation Agreement and, therefore, fall within the scope of common policy on visas.

Therefore, the substantive legal basis of the proposed decision is Article 77(2)(a) TFEU.

- **Subsidiarity (for non-exclusive competence)**

n.a.

- **Proportionality**

The present proposal does not go beyond what is necessary to achieve the objective pursued, namely to suspend the obligation for the EU and its Member States to grant certain facilitations for officials of Georgia and holders of diplomatic passports issued by Georgia, and allow the Member States to make use of the possibility to reinstate a visa requirement for holders of diplomatic passports issued by Georgia.

- **Choice of the instrument**

The objectives of this proposal can only be achieved by an act that suspends the application of the Visa Facilitation Agreement. Therefore, a Council decision suspending the Visa Facilitation Agreement is needed.

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

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

Georgia's democratic backsliding, including the adoption of the 'Law on transparency of foreign influence' in May 2024 and the adoption of the legislative package on family values and protection of minors in September 2024, as well as the conduct of the parliamentary elections in October 2024 and the violent suppression of the protests in December 2024, has been discussed several times in the Political and Security Committee and in the Foreign Affairs Council. The Foreign Affairs Council on 16 December 2024 exchanged views on the EU's response to the recent developments in Georgia, including the announcement by the government of its intention not to seek the opening of accession negotiations until 2028, the subsequent mass protests, and the increasing acts of violence against protestors, the media, and the political opposition. The High Representative stressed that the EU has downgraded political contacts and cut assistance directly benefiting the Georgian authorities, and announced that there was an agreement to invite the Commission to put forward a proposal to reintroduce visa requirements for Georgian diplomatic passport holders.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

This proposal has no negative consequences for the protection of fundamental rights in the European Union.

4. BUDGETARY IMPLICATIONS

This proposal has no budgetary implications.

5. OTHER ELEMENTS

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

In accordance with the Treaties, it is for the Commission to ensure that the notification provided for in Article 14(5) of the Facilitation Agreement be made on behalf of the Union, in order to express its consent to partially suspend the Facilitation Agreement.

- **Explanatory documents (for directives)**

n.a.

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

Article 1 of the proposal provides that the application of certain provisions of the Agreement providing for facilitations for certain categories of citizens of Georgia applying for a short-stay visa, namely members of Georgian official delegations, members of national and regional Governments and Parliaments of Georgia, the Constitutional and Supreme Court of Georgia, in the exercise of their duties, and citizens of Georgia holding valid diplomatic passports, should be suspended. These provisions concern: Article 4(1), point (b) on “Documentary evidence regarding the purpose of the journey”, Article 5(1), points (b) and (c), Article 5(2), point (a), and Article 5(3) on “Issuance of multiple-entry visas”, Article 6(1) and Article 6(3), points (c) and (f) on “Fees for processing visa applications”, Article 7 on “Duration of the visa application procedure”, and Article 10(1) on “Diplomatic passports”.

Once adopted, the Commission will adopt guidelines for the implementation of this Decision and for the complementary measures that Member States should take pursuant to Article 6(1), point (a) of Regulation (EU) 2018/1806.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2), point (a), and Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Union and Georgia on the facilitation of the issuance of visas (“the Facilitation Agreement”) entered into force on 1 March 2011.
- (2) The purpose of the Facilitation Agreement is to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days in any 180-day period to the citizens of the Union and Georgia. The Facilitation Agreement contributes to the enhancement of people-to-people contacts and the sharing of values, including respect for human rights and democratic principles.
- (3) Under Article 14(5) of the Facilitation Agreement, each Party is entitled to suspend the Facilitation Agreement in whole or in part for reasons of public order, protection of national security or protection of public health. The decision on suspension is to be notified to the other Party not later than 48 hours before its entry into force. The Party that has suspended the application of the Facilitation Agreement is to immediately inform the other Party once the reasons for the suspension no longer apply.
- (4) In 2024, Georgia adopted the ‘Law on transparency of foreign influence’ and the legislative package on ‘family values and protection of minors’. This legislation undermines the fundamental rights of the Georgian people, including the freedom of association and expression, the right to privacy, the right to participate in public affairs, and increases stigmatisation and discrimination.
- (5) The European Council underlined in its conclusions of 27 June 2024 that the ‘Law on transparency of foreign influence’ represents backsliding on the steps set out in the Commission’s recommendation for candidate status and called on Georgia’s authorities to clarify their intentions by reversing a course of action which jeopardises Georgia’s path towards the European Union, de facto leading to a halt of the accession process. In its conclusions of 17 October 2024, the European Council reaffirmed that such a course of action jeopardises Georgia’s European path and de facto halts the accession process, and called on Georgia to adopt democratic, comprehensive and sustainable reforms, in line with the core principles of European integration.
- (6) On 28 November 2024, the Georgian authorities announced the intention not to seek the opening of accession negotiations with the European Union until 2028. This announcement provoked mass protests in numerous Georgian cities, to which the Georgian authorities responded with the use of disproportionate force and violent

methods as well as arbitrary arrests and ill-treatment of protesters, politicians and journalists.

- (7) The actions taken by Georgia breach the fundamental principles on which the Facilitation Agreement was concluded and go against the interests of the Union and its Member States. In particular, these actions do not respect human rights and democratic principles and thereby are in contradiction with Union values and hamper the steady development of economic, humanitarian, cultural, scientific and other ties between the Union and Georgia.
- (8) Against this background, the Commission's 7th Report under the Visa Suspension Mechanism¹⁰ highlighted the steps to be taken urgently by Georgia to address the Commission's concerns and noted that there are ongoing reflections on the activation of the visa suspension mechanism in relation to certain categories of persons.
- (9) In order to protect the public order of the Member States and of the Union, it is appropriate and proportionate that Member States require a visa from Georgian citizens holding valid diplomatic passports who travel to the European Union, as these persons represent interests which are contrary to those that led the Union to conclude the Facilitation Agreement in the first place. The application of certain provisions of the Facilitation Agreement providing for exemptions for citizens of Georgia holding valid diplomatic passports and for facilitations for certain categories of citizens of Georgia applying for a short-stay visa, namely members of Georgian official delegations, members of national and regional Governments and Parliaments of Georgia, the Constitutional and Supreme Court of Georgia, in the exercise of their duties, should therefore be suspended.
- (10) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹¹; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (11) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (12) In view of the gravity of the situation in Georgia, this Decision should enter into force as soon as possible,

HAS ADOPTED THIS DECISION:

Article 1

The application of the following provisions of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas is suspended:

- (a) Article 4(1), point (b), as regards members of Georgia's official delegations who, following an official invitation addressed to Georgia, are to participate in official

¹⁰ COM/2024/571 final.

¹¹ 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* (OL L 64, 7.3.2002, p. 20, ELI: <http://data.europa.eu/eli/dec/2002/192/oj>).

meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;

- (b) Article 5(1), point (b), as regards members of Georgia's national and regional governments, Georgia's Constitutional Court and Georgia's Supreme Court;
- (c) Article 5(1), point (c), as regards permanent members of Georgia's official delegations who, following an official invitation addressed to Georgia, are to participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;
- (d) Article 5(2), point (a), as regards members of Georgia's official delegations who, following an official invitation, are to participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;
- (e) Article 5(3), as regards the categories referred to in Article 5(2), point (a);
- (f) Article 6(3), points (c) and (f), as regards members of Georgia's national and regional governments and of Georgia's Constitutional and Supreme courts, and members of Georgia's official delegations who, following an official invitation addressed to Georgia, are to participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;
- (g) Article 10(1), as regards citizens of Georgia who are holders of valid diplomatic passports issued by Georgia.
- (h) Article 6(1), as regards fees for processing visa applications for the categories of citizens and persons referred to Article 6(3) points (c) and (f) and Article 10(1).
- (i) Article 7, as regards the categories of citizens and persons referred to in Article 6(3) points (c) and (f) and Article 10(1).

Article 2

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

Done at Brussels,

For the Council
The President