

DECISIONS

COUNCIL DECISION (EU) 2018/311

of 27 February 2018

establishing the position to be taken on behalf of the Union within the Joint Committee set up under the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas, with regard to the adoption of common guidelines for the implementation of that Agreement

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), in conjunction with Article 218(9) thereof,

Having regard to Council Decision 2014/242/EU of 14 April 2014 on the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas ⁽¹⁾,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 12 of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas ⁽²⁾ ('the Agreement') sets up a Joint Committee (the 'Joint Committee'). It provides, in particular, that the Joint Committee is to monitor the implementation of the Agreement.
- (2) Regulation (EC) No 810/2009 of the European Parliament and of the Council ⁽³⁾ established the procedures and conditions for issuing visas for transit through, or intended stays on, the territory of the Member States not exceeding 90 days in any 180-day period.
- (3) Common guidelines are needed to ensure fully consistent implementation of the Agreement by the diplomatic missions and consular posts of the Member States and to clarify the relationship between the provisions of the Agreement and the provisions of the legislation of the contracting Parties that continue to apply to visa issues not covered by the Agreement.
- (4) It is appropriate to establish the position to be taken on the Union's behalf within the Joint Committee as regards adopting common guidelines for the implementation of the Agreement.
- (5) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ⁽⁴⁾; the United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (6) This Decision constitutes a development of Schengen *acquis* provisions in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽⁵⁾; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (7) 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,

⁽¹⁾ OJ L 128, 30.4.2014, p. 47.

⁽²⁾ OJ L 128, 30.4.2014, p. 49.

⁽³⁾ 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).

⁽⁴⁾ 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).

⁽⁵⁾ 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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the Joint Committee set up by Article 12 of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas, with regard to the adoption of common guidelines for the implementation of that Agreement, shall be based on the draft Decision of the Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 27 February 2018.

For the Council

The President

E. ZAHARIEVA

DRAFT

**DECISION No .../201... OF THE JOINT COMMITTEE SET UP UNDER THE AGREEMENT
BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF AZERBAIJAN ON THE
FACILITATION OF THE ISSUANCE OF VISAS**

of ...

with regard to the adoption of common guidelines for the implementation of that Agreement

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas ⁽¹⁾ ('the Agreement'), and in particular Article 12 thereof,

Whereas the Agreement entered into force on 1 September 2014,

HAS ADOPTED THIS DECISION:

Article 1

The common guidelines for the implementation of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation the issuance of visas are set out in the Annex to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at ...,

For the European Union

For the Republic of Azerbaijan

⁽¹⁾ OJ EUL 128, 30.4.2014, p. 49.

ANNEX

COMMON GUIDELINES FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE EUROPEAN UNION AND
THE REPUBLIC OF AZERBAIJAN ON THE FACILITATION OF THE ISSUANCE OF VISAS

The purpose of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas (the 'Agreement'), which entered into force on 1 September 2014, is to facilitate, on the basis of reciprocity, the procedures for issuing visas for an intended stay of no more than 90 days per period of 180 days to the citizens of the Union and the Republic of Azerbaijan.

The Agreement establishes, on the basis of reciprocity, legally binding rights and obligations for the purpose of simplifying the visa issuing procedures for the citizens of the Union and the Republic of Azerbaijan.

These Guidelines, adopted by the Joint Committee set up under Article 12 of the Agreement (the 'Joint Committee'), aim at ensuring a harmonised implementation of the Agreement by the diplomatic missions and consular posts of the Member States of the Union ('Member States') and the Republic of Azerbaijan. These Guidelines are not part of the Agreement and therefore are not legally binding. However, it is highly recommended that diplomatic and consular staff consistently follow them when implementing the Agreement.

These Guidelines are intended to be updated in light of experiences gained in the implementation of the Agreement under the responsibility of the Joint Committee.

In order to ensure the continued and harmonized implementation of the Agreement and in conformity with the rules of procedure of the Joint Visa Facilitation Committee, the Parties agreed to undertake informal contacts between formal meetings of the Joint Committee, in order to deal with urgent issues. Detailed reports about these issues and the informal contacts will be submitted at the subsequent Joint Committee meeting.

I. GENERAL ISSUES

1.1. Purpose and scope of application

Article 1 of the Agreement provides that: 'The purpose of this Agreement is to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days per period of 180 days to the citizens of the Union and the Republic of Azerbaijan.'

The Agreement applies to all citizens of the Union and of the Republic of Azerbaijan who apply for a short-stay visa, whichever the country they reside in.

The Agreement does not apply to stateless persons holding a residence permit issued by any of the Member States or the Republic of Azerbaijan. The rules of the Union *visa acquis* and the national law of the Republic of Azerbaijan apply to that category of persons.

1.2. Scope of the Agreement

Article 2 of the Agreement provides that:

'1. The visa facilitations provided in this Agreement shall apply to citizens of the Union and of the Republic of Azerbaijan only insofar as they are not exempted from the visa requirement by the laws and regulations of the Republic of Azerbaijan, of the Union or the Member States, this Agreement or other international Agreements.

2. The national law of the Republic of Azerbaijan or of the Member States or Union law shall apply to issues not covered by the provisions of this Agreement, such as the refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence and the refusal of entry and expulsion measures.'

The Agreement, without prejudice to Article 10 thereof (which provides for the exemption from the visa requirement for the citizens of the Union and the Republic of Azerbaijan who are holders of valid diplomatic passports) does not affect the existing rules on visa obligations and visa exemptions. For instance, Article 4 of Council Regulation (EC) No 539/2001 ⁽¹⁾ allows the Member States to exempt from the visa requirement, among other categories of persons, civilian air and sea crews.

⁽¹⁾ 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 EU L 81, 21.3.2001, p. 1).

In that context it should be added that in accordance with Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ⁽¹⁾, all Schengen Member States must recognise long-stay visas and residence permits issued by each other as valid for short stays on each other's territories. All Schengen Member States accept residence permits, D visas and short stay visas of Schengen associated countries for entry and short stay and vice versa.

Regulation (EC) No 810/2009 of the European Parliament and of the Council ⁽²⁾ (the 'Visa Code') applies to all issues not covered by the Agreement such as the determination of the Schengen Member State responsible for processing a visa application, the motivation of a refusal to issue a visa, the right to appeal against a negative decision and the general rule of the personal interview with the visa applicant and providing all relevant information in relation to the visa application. Furthermore, Schengen rules notably Regulation (EU) 2016/399 of the European Parliament and of the Council ⁽³⁾ (i.e. the refusal of entry in the territory, proof of sufficient means of subsistence etc.) and national law, where appropriate, continue also to apply to issues which are not covered by the Agreement, such as the recognition of travel documents, proof of sufficient means of subsistence, the refusal of entry in the territory of the Member States and expulsion measures.

Even if the conditions provided for in the Agreement are met, for example, proof of documentary evidence regarding the purpose of the journey for the categories provided for in Article 4 is provided by the visa applicant, the issuance of the visa can still be refused if the conditions laid down in Article 6 of Regulation (EU) 2016/399 of the European Parliament and of the Council ('Schengen Borders Code') are not fulfilled, i.e. the person is not in possession of a valid travel document, an alert in the Schengen Information System (SIS) has been issued, the person is considered to be a threat to public policy, internal security, etc.

Other flexibilities in the issuing of visas provided for by the Visa Code continue to apply. For instance, multiple-entry visas for a long period of validity – up to five years – can be issued to categories of persons other than those mentioned in Article 5 of the Agreement, if the conditions provided for in Article 24 of the Visa Code are met. In the same way, the provisions contained in Article 16(5) and (6) of the Visa Code allowing waiver or reduction of the visa fee will continue to apply.

In terms of the Republic of Azerbaijan, the Migration Code ⁽⁴⁾ and other corresponding normative legal acts of the Republic of Azerbaijan applies to all issues not covered by the Agreement, such as the motivation of refusal to issue a visa, the right to appeal against a negative decision or the general rule of the personal interview with the applicant and providing information in relation to the visa application, recognition of travel documents, proof of sufficient means of subsistence, the refusal of entry in the territory of the Republic of Azerbaijan, expulsion measures.

Other flexibilities in the issuing of visas allowed for by the national law of the Republic of Azerbaijan continue to apply if they set a more favourable regime for the applicant. For instance, the provisions of Article 17(2) of the Law of the Republic of Azerbaijan 'On State Fees' allowing waiv of the visa fee and of Article 38 of the Migration Code of the Republic of Azerbaijan allowing issuance of the electronic visas will continue to apply.

Even if the conditions foreseen in the Agreement are met, for example, proof of documentary evidence regarding the purpose of the journey for the categories foreseen in Article 4 is provided by the visa applicant, the issuance of the visa still can be refused if the conditions laid down in Article 36 of the Migration Code of the Republic of Azerbaijan (except for paragraph 36.1.7 thereof) are not fulfilled or if there are circumstances listed in Article 16 of the Migration Code of the Republic of Azerbaijan.

1.3. Types of visas falling within the scope of the Agreement

Point (d) of Article 3 of the Agreement defines 'visa' as 'authorisation issued by a Member State or the Republic of Azerbaijan with a view to transiting through, or an intended stay of a duration of no more than 90 days in any 180-day period, in the territory of Member States or the Republic of Azerbaijan.'

⁽¹⁾ OJ EUL 239, 22.9.2000, p. 19.

⁽²⁾ 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 EUL 243, 15.9.2009, p. 1).

⁽³⁾ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ EUL 77, 23.3.2016, p. 1).

⁽⁴⁾ The Migration Code of the Republic of Azerbaijan was adopted by the Law of the Republic of Azerbaijan No 713-IVQ, on July 2, 2013 and entered into force in August 1, 2013.

The facilitations provided by the Agreement apply both to uniform visas valid for the entire territory of the Member States and to visas with limited territorial validity.

The facilitations provided by the Agreement apply to all visas determined in the Chapter 5 of the Migration Code of the Republic of Azerbaijan.

1.4. Calculation of the length of stay authorised by a visa

The Schengen Borders Code defines the notion of short-stay as follows: 'no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay'.

This definition also applies to short stay visas issued by the Republic of Azerbaijan, in line with the Agreement.

The day of entry will be calculated as the first day of stay in the territory of the Member States and the day of exit will be calculated as the last day of stay in the territory of the Member States. The notion of 'any' implies the application of a 'moving' 180-day reference period, on each day of the stay looking back to the last 180-day period, in order to verify if the 90/180-day requirement continues to be fulfilled. That means that an absence from the territory of the Member States for an uninterrupted period of 90 days allows for a new stay of up to 90 days.

A short-stay calculator, which can be used for calculating the period of allowed stay under the new rules, can be found on-line at the following address: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/index_en.htm.

Example of calculation of stay on the basis of the current definition:

A person holding a multiple-entry visa for 1 year (18 April 2014 – 18 April 2015) enters for the first time on 19 April 2014 and stays for three days. Then the same person enters again on 18 June 2014 and stays for 86 days. What is the situation on specific dates? When will that person be allowed to enter again?

On 11 September 2014: over the last 180 days (16 March 2014 – 11 September 2014) the person had stayed for three days (19-21 April 2014) plus 86 days (18 June 2014 – 11 September 2014) = 89 days = no overstay. The person may still stay for up to one day.

As of 16 October 2014: the person might enter for a stay of three additional days. On 16 October 2014 the stay on 19 April 2014 becomes irrelevant (outside the 180-day period); on 17 October 2014 the stay on 20 April 2014 becomes irrelevant (outside the 180-day period; etc.).

As of 15 December 2014: the person might enter for 86 additional days. On 15 December 2014 the stay on 18 June 2014 becomes irrelevant (outside the 180-day period); on 16 December 2014 the stay on 19 June 2014 becomes irrelevant, etc.

1.5. Situation regarding the Member States that do not yet fully apply the Schengen *acquis*, Member States that do not participate in the Union common visa policy and associated countries

Member States that joined the Union in 2004 (the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia), 2007 (Bulgaria and Romania), and 2013 (Croatia) are bound by the Agreement as from its entry into force.

Bulgaria, Croatia, Cyprus and Romania do not yet fully implement the Schengen *acquis*. They will continue issuing national visas with a validity limited to their own national territory. Once those Member States fully implement the Schengen *acquis*, they will apply the Agreement in full.

National law continues to apply to all issues not covered by the Agreement until the date of full implementation of the Schengen *acquis* by those Member States. As from that date, Schengen rules and/or national law shall apply to issues not covered by the Agreement.

Bulgaria, Croatia, Cyprus and Romania are authorised to recognise residence permits, D visas and short stay visas issued by all Schengen Member States and associated countries for short stays on their territory ⁽¹⁾.

⁽¹⁾ Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ EU L 157, 27.5.2014, p. 23). Due to the absence of diplomatic relations, Cyprus currently exempts holders of Azerbaijani passports (except from diplomatic passport) from the provisions of Decision No 565/2014/EU.

According to Article 21 of the Convention Implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders, all Parties to that Convention must recognise the long-stay visas and residence permits issued by each other as valid for short stays on each other's territories. They accept residence permits, D visas and short stay visas of associated countries for entry and short stay and vice versa.

The Agreement does not apply to Denmark, Ireland and the United Kingdom but includes joint declarations about the desirability of those Member States to conclude bilateral agreements on visa facilitation with the Republic of Azerbaijan.

Although associated to Schengen, Iceland, Liechtenstein, Norway and Switzerland are not bound by the Agreement. However, the Agreement includes a Joint Declaration about the desirability of those Schengen associated countries to conclude, without delay, bilateral agreements on the facilitation of the issuance of short-stay visas with the Republic of Azerbaijan.

The Agreement on the facilitation of the issuance of visas between the Government of the Republic of Azerbaijan and the Government of the Kingdom of Norway was signed on 3 December 2013 and entered into force on 1 June 2015. The Agreement on the facilitation of the issuance of visas between the Government of the Republic of Azerbaijan and Swiss Federal Council was signed on 10 October 2016 and entered into force on 1 April 2017. Moreover, the Agreement between the Government of the Republic of Azerbaijan and the Government of the Principality of Liechtenstein on mutual application of the rules, mentioned in the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas, entered into force on 15 February 2017.

1.6. The Agreement and bilateral agreements

Article 13 of the Agreement provides that:

'As from its entry into force, this Agreement shall take precedence over provisions of any bilateral or multilateral agreements or arrangements concluded between individual Member States and the Republic of Azerbaijan, insofar as the provisions of the latter agreements or arrangements cover issues dealt with by this Agreement.'

As from the date of entry into force of the Agreement, provisions of the bilateral agreements in force between Member States and the Republic of Azerbaijan on issues covered by the Agreement ceased to apply. In accordance with Union law, Member States have to take the necessary measures to eliminate the incompatibilities between their bilateral agreements and the Agreement.

Should a Member State have concluded a bilateral agreement or arrangement with the Republic of Azerbaijan on issues not covered by the Agreement, for instance, providing for the exemption from the visa obligation for holders of service passports, that exemption would continue to apply after the entry into force of the Agreement.

The following Member States have a bilateral agreement with the Republic of Azerbaijan providing for the exemption from the visa obligation for holders of service passports: Austria, Bulgaria, Croatia, Hungary, Italy, Portugal, Romania, Slovenia, Latvia and Slovakia ⁽¹⁾.

The visa exemption for service passport holders granted by a Member State only applies for travelling on the territory of this Member State and not for travelling to the other Schengen Member States.

II. SPECIFIC PROVISIONS

2.1. Rules that apply to all visa applicants

It is recalled that the facilitations mentioned below, with regard to the visa fee, the length of procedures for processing visa applications, departure in case of lost or stolen documents, and the extension of visa in exceptional circumstances, apply to all visa applicants and visa holders being citizens of the Republic of Azerbaijan or Member States bound by the Agreement, including tourists.

2.1.1. Fees for processing visa applications

Article 6(1) of the Agreement provides that:

'1. The fee for processing visa applications shall amount to EUR 35.'

⁽¹⁾ Exemption from the visa requirement in accordance with Article 4(1) of Regulation (EC) No 539/2001.

In accordance with Article 6(1) of the Agreement, the fee for processing a visa application is EUR 35. That fee applies to all visa applicants being citizens of the Republic of Azerbaijan or of the Union (including tourists) and concerns short-stay visas, irrespective of the number of entries.

Article 6(2) of the Agreement provides that:

‘2. Without prejudice to paragraph 3 fees for processing the visa application are waived for the following categories of persons:

- (a) for close relatives – spouses, children (including adopted), parents (including custodians), grandparents and grand-children – of citizens of the European Union legally residing in the territory of the Republic of Azerbaijan, of citizens of the Republic of Azerbaijan legally residing in the territory of the Member States, of citizens of the European Union residing in the territory of the Member State of which they are nationals, and of citizens of the Republic of Azerbaijan residing in the territory of the Republic of Azerbaijan;
- (b) for members of official delegations, including permanent members of official delegations, who, following an official invitation addressed to the Member States, the European Union or the Republic of Azerbaijan, shall participate in official meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Republic of Azerbaijan or one of the Member States by intergovernmental organisations;
- (c) pupils, students, post-graduate students and accompanying teachers who undertake trips for the purposes of study or educational training, including in the framework of exchange programmes as well as other school related activities;
- (d) persons with disabilities and the persons accompanying them, if necessary;’.

In order to benefit from the fee waiver, evidence should be provided that both visa applicants fall under this category. In cases where the disability of the visa applicant is obvious (blind persons, people missing limbs) the visual recognition at the consular post is acceptable.

In justified cases the visa application may be submitted by a representative or the guardian of the disabled person.

- ‘(e) participants in international sports events and persons accompanying them in a professional capacity; (N.B. Supporters will not be considered as accompanying persons);
- (f) persons participating in scientific, cultural and artistic activities, including university and other exchange programmes;
- (g) persons who have presented documents proving the necessity of their travel on humanitarian grounds, including to receive urgent medical treatment and the person accompanying such person, or to attend a funeral of a close relative, or to visit a seriously ill close relative;
- (h) representatives of civil society organizations when undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes;’.

In order to benefit from the fee waiver for this category, visa applicants must present proof of being members of civil society organisations or non-profit organisations registered in the Member States or the Republic of Azerbaijan – see Article 4 of the Agreement.

- ‘(i) pensioners;’.

In order to benefit from the fee waiver for this category, visa applicants must present a proof of their pensioner status. The waiver is not justified in cases where the purpose of the journey is paid activity.

- ‘(j) children below the age of 12;

- (k) journalists and technical crew accompanying them in a professional capacity;’.

In order to benefit from the fee waiver for this category, visa applicants must present proof of being members of professional journalistic or media organisations – see Article 4 of the Agreement.

As far as the Member States are concerned, the fee is waived for the abovementioned categories of persons. In addition, the fee is also waived, in accordance with Article 16(4) of the Visa Code, for the following categories of persons:

- researchers from third countries travelling within the European Union for the purpose of carrying out scientific research as defined in Recommendation 2005/761/EC of the European Parliament and of the Council ⁽¹⁾;
- representatives of non-profit organisations aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations.

Article 16(6) of the Visa Code provides that:

‘6. In individual cases, the amount of the fee to be charged may be waived or reduced when to do so serves to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons.’

Article 16(7) of the Visa Code provides that the visa fee is to be charged in euro, in the national currency of the third country or in the currency usually used in the third country where the application is lodged, and is not refundable except in the cases of an inadmissible application or if the consulate is not competent.

In order to avoid discrepancies which could lead to visa shopping, diplomatic missions and consular posts of the Member States in the Republic of Azerbaijan should endeavour to ensure similar visa fees for all Azerbaijani visa applicants when charged in foreign currencies.

Likewise, in terms of the Republic of Azerbaijan, the fee is also waived, in accordance with Article 17(2) of the Law of the Republic of Azerbaijan ‘On State Fees’, for the following categories of foreigners;

- members of the state delegation and officials;
- representatives of international humanitarian organizations in the Republic of Azerbaijan;
- persons who are studying or are engaged in pedagogical activities via state programmes;
- persons who travel for defence purposes.

Visa applicants from the Union and the Republic of Azerbaijan will be given a receipt for the visa fee paid.

Article 6(3) of the Agreement provides that:

‘3. If a Member State or the Republic of Azerbaijan 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 and the Republic of Azerbaijan shall maintain the possibility for all applicants to lodge their applications directly at their consulates.

For the Union, the external service provider shall conduct its operations in accordance with the Visa Code and in full respect of the legislation of the Republic of Azerbaijan.

For the Republic of Azerbaijan, the external service provider shall conduct its operations in accordance with the Azerbaijani legislation and of the legislation of the EU Member States.’

With regard to the arrangements of the cooperation with external services providers, Article 43 of the Visa Code provides detailed information concerning their tasks.

2.1.2. Length of procedures for processing visa applications

Article 7 of the Agreement provides that:

‘1. Diplomatic missions and consular posts of the Member States and the Republic of Azerbaijan shall take a decision on the request to issue a visa within 10 calendar days of the date of the receipt of the application and documents required for issuing the visa.

2. The period of time for taking a decision on a visa application may be extended up to 30 calendar days in individual cases, notably when further scrutiny of the application is needed.

⁽¹⁾ Recommendation 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research (OJ EU L 289, 3.11.2005, p. 23).

3. The period of time for taking a decision on a visa application may be reduced to 2 working days or less in urgent cases.’.

A decision on the visa application will be taken, in principle, within 10 calendar days of the date of the lodging of an admissible visa application.

That period may be extended up to 30 calendar days in individual cases, notably when further scrutiny of the application is needed or in cases of representation where the authorities of the represented Member State are consulted.

All those deadlines start running only when the visa application file is complete, i.e. as from the date of receipt of the visa application and supporting documents.

As a principle, for diplomatic missions and consular posts that have an appointment system, the waiting time to get an appointment is not included in the processing time. The general rules set out in Article 9 of the Visa Code and in the Migration Code of the Republic of Azerbaijan are applicable to that issue as well as to other practical arrangements for lodging a visa application.

Article 7(3) of the Agreement provides that:

‘If applicants are required to obtain an appointment for the lodging of an application the appointment shall, as a rule, take place within a period of two weeks from the date the appointment was requested.’.

‘In justified cases of urgency (where the visa application could not have been lodged earlier for reasons that could not have been foreseen by the applicant), the consulate may allow applicants to lodge their applications either without appointment, or an appointment shall be given immediately.’.

When setting the appointment, the possible urgency claimed by the visa applicant should be taken into account in view of the implementation of Article 7(3) of the Agreement. The decision on reducing the time for taking a decision on a visa application is taken by the consular officer.

2.1.3. Leaving the country in the event of the loss or theft of identity documents

Article 8 of the Agreement provides that:

‘Citizens of the European Union and the Republic of Azerbaijan who have lost their identity documents, or from whom these documents have been stolen while staying in the territory of the Republic of Azerbaijan or the Member States, may leave the territory of the Republic of Azerbaijan 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 Azerbaijan without any visa or other authorisation.’.

In the event of a loss or theft of identity documents, valid identity documents entitling visa holders to cross the border issued by diplomatic missions or consular posts will be sufficient as the basis for leaving the territory of the Republic of Azerbaijan or the Schengen area. No further documents, authorisations or formalities of any sort can be expected by the host country authorities from the visa holder or the consular post.

2.1.4. Extension of visa in exceptional circumstances

Article 9 of the Agreement provides that:

‘Citizens of the European Union and the Republic of Azerbaijan who are not able to leave the territory of the Republic of Azerbaijan or the territory of the Member States by the time stated in their visas for reasons of *force majeure* shall have the period of validity and/or the duration of stay of the issued visa extended free of charge in accordance with the legislation applied by the Republic of Azerbaijan or the receiving Member State for the period required for their return to the State of their residence.’.

With regard to extending the validity of the visa in cases of justified personal reasons, where the holder of the visa is unable to leave the territory of the Member State by the date indicated on the visa sticker, the provisions of Article 33 of the Visa Code shall apply as long as they are compatible with the Agreement. However, under the Agreement the extension of the visa is carried out free of charge in case of *force majeure* or humanitarian reasons.

In terms of the Republic of Azerbaijan the Migration Code applies to issues regarding the extension of temporary staying period of foreigners in the Republic of Azerbaijan.

The decision on extension of the temporary staying period of foreigners in the Republic of Azerbaijan is an official document authorizing foreigners to stay temporarily in the Republic of Azerbaijan.

Foreigners with the extended temporary staying period in the Republic of Azerbaijan can exit the country through state border crossing points presenting their passports or other border crossing documents and the decision on extension of temporary staying period.

2.2. Rules that apply to certain categories of visa applicants

2.2.1. Documentary evidence regarding the purpose of the journey

For the categories of persons listed in Article 4(1) of the Agreement, only the indicated documentary evidence proving the purpose of the journey will be required. As provided for in Article 4(3) of the Agreement, no other justification, invitation or validation concerning the purpose of the journey will be required.

However, this does not mean a waiver of the general requirement to appear in person in order to submit the visa application or to provide supporting documents with regard to e.g. the means of subsistence.

If in individual cases, doubts remain regarding the authenticity of the document proving the purpose of the journey, under Article 21(8) of the Visa Code and the Migration Code of the Republic of Azerbaijan, the visa applicant may be called for an additional interview to the embassy and/or the consulate where that applicant can be questioned regarding the actual purpose of the visit or the applicant's intention to return. In such individual cases, additional documents may be voluntarily provided by the visa applicant or exceptionally requested by the consular officer. That practice shall, however, not be systematic and will be closely monitored by the Joint Committee.

In principle, the original of the document required by Article 4(1) of the Agreement will be submitted with the visa application. However, the consulate can start processing the visa application based on the facsimile or copies of the document. Nevertheless, the consulate may ask for the original document in case of the first time visa application and will ask for it in individual cases where there are doubts.

For the categories of persons not mentioned in Article 4 of the Agreement (for example tourists), the general rules regarding documentation proving the purpose of the journey continue to apply. The same applies to documents regarding parental consent for travel of children under 18 years of age.

Schengen rules and national law shall apply to issues not covered by the Agreement, such as the recognition of travel documents and guarantees regarding return and sufficient means of subsistence.

Article 4(1) of the Agreement provides that:

'1. For the following categories of citizens of the Union and of the Republic of Azerbaijan, the following documents are sufficient for justifying the purpose of the journey to the other Party:

- (a) for close relatives – spouses, children (including adopted), parents (including custodians), grandparents and grand-children – visiting citizens of the European Union legally residing in the territory of the Republic of Azerbaijan or citizens of the Republic of Azerbaijan legally residing in the Member States, or citizens of the European Union residing in the territory of the Member State of which they are nationals, or citizens of the Republic of Azerbaijan residing in the territory of the Republic of Azerbaijan:

— a written request from the host person;'

The authenticity of the signature of the inviting person must be confirmed by the competent authority according to the national legislation of the country of residence. Invitation should be validated by competent authorities.

This provision also applies to relatives of staff working in diplomatic missions and consulates travelling for a family visit of up to 90 days to the territory of the Member States or of the Republic of Azerbaijan, except for the need to prove legal residence and family ties.

‘(b) without prejudice to Article 10, for members of official delegations including permanent members of such delegations who, following an official invitation addressed to the Member States, the European Union or the Republic of Azerbaijan, shall participate in official meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Republic of Azerbaijan or one of the Member States by intergovernmental organisations:

- letter issued by a competent authority of a Member State or of the Republic of Azerbaijan or by an institution of the European Union confirming that the applicant is a member of its delegation respectively or a permanent member of its delegation travelling to the territory of the other Party to participate in the aforementioned events, accompanied by a copy of the official invitation;’.

The name of the visa applicant must be indicated in the letter issued by the competent authority confirming that the person is part of the delegation travelling to the territory of the other Party to participate in the official meeting. The name of the visa applicant does not need to be indicated in the official invitation to participate in the meeting, although this might be the case when the official invitation is addressed to a specific person.

That provision applies to members of official delegations irrespective of the type of passport (service or ordinary passport) they hold.

‘(c) for business people and representatives of business organisations:

- a written request from the host legal person or company, organization or an office or a branch of such legal person or company, state, or local authorities of the Republic of Azerbaijan or the Member States or organising committees or trade and industrial exhibitions, conferences and symposia held in the territory of the Republic of Azerbaijan or one of the Member States endorsed by the competent authorities in accordance with the national legislation;’.

In addition to the above, the national business registry will issue a document confirming the existence of the business organizations.

‘(d) for drivers conducting international cargo and passenger transportation services between the territories of the Republic of Azerbaijan and the Member States in vehicles registered in the Member States or in the Republic of Azerbaijan:

- a written request from the national company or association (union) of carriers of the Republic of Azerbaijan or the national associations of carriers of the Member States providing for international road transportation, stating the purpose, itinerary, duration and frequency of the trips;’.

The association competent to issue the written request is the national association of the country of origin of the driver. Regional or other branches of national associations of the Member States can also issue the written requests.

‘(e) for pupils, students, post-graduate students and accompanying teachers who undertake trips for the purposes of study or educational training, including in the framework of exchange programmes as well as other school related activities:

- a written request or a certificate of enrolment from the host university, academy, institute, college or school or student cards or certificates of the courses to be attended;’.

A student card is only accepted as justification of the purpose of the journey if it has been issued by the host university, college or school where the studies or educational training are going to take place.

‘(f) for persons participating in scientific, academic, cultural or artistic activities, including university and other exchange programmes:

- a written request from the host organisation to participate in those activities;

(g) for journalists and technical crew accompanying them in a professional capacity:

- a certificate or other document issued by a professional organization 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 he/she is a member of technical crew accompanying the journalist in a professional capacity;’.

This category does not cover free-lance journalists and their assistants.

A certificate or document issued by a professional journalist organisation or the visa applicant's employer, proving that the visa applicant is a professional journalist or an accompanying person in a professional capacity and stating that the purpose of the journey is to carry out a journalistic work or assist in such work, must be presented.

'(h) for participants in international sports events and persons accompanying them in a professional capacity:

- a written request from the host organization, competent authorities, national sport Federations of the Member States or the Republic of Azerbaijan or National Olympic Committee of the Republic of Azerbaijan or National Olympic Committees of the Member States;'

The list of accompanying persons in case of international sports events will be limited to those accompanying the sportsperson in a professional capacity: coaches, masseurs, managers, medical staff, and head of the sports club. Supporters will thus not be considered as accompanying persons.

'(i) for participants in official exchange programmes organized by twin cities:

- a written request of the Head of Administration/Mayor of these cities;'

The Head of Administration/Mayor of the city or other locality competent to issue the written request is the Head of Administration/Mayor of the host city or other locality where the twinning activity is going to take place. That category only covers official twinning.

'(j) for persons travelling for medical reasons and necessary accompanying persons:

- an official document of the medical institution confirming necessity of medical care in this institution, the necessity of being accompanied and proof of sufficient financial means to pay for the medical treatment;'

A document issued by a medical institution confirming the three elements (the necessity of medical care in that institution, the necessity of being accompanied and the proof of sufficient financial means to pay for the medical treatment, e.g. proof of prepayment) must be submitted.

'(k) for members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events held on the territory of the Republic of Azerbaijan or Member States:

- a written request from the host organization confirming that the person concerned is participating in the event;

(l) for representatives of civil society organizations when undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes:

- a written request issued by the host organization, a confirmation that the person is representing the civil society organization and the certificate on establishment of such organization from the relevant register issued by a state authority in accordance with the national legislation;'

A document from the civil society organisation confirming that the visa applicant is representing that organisation must be presented.

Individual members of the civil society organisations are not covered by the Agreement.

'(m) relatives visiting for burial ceremonies:

- an official document confirming the fact of death as well as confirmation of the family or other relationship between the applicant and the buried;

(n) for visiting military and civil burial grounds:

- an official document confirming the existence and preservation of the grave as well as family or other relationship between the applicant and the buried;'

The Agreement does not specify whether the above-mentioned official document should be issued by the authorities of the country where the burial ground is located or those of the country in which the person who wants to visit the burial ground resides. It should be accepted that the competent authorities of either country may issue such an official document.

The above-mentioned official document confirming the existence and preservation of the grave as well as of the family or other relationship between the visa applicant and the buried must be presented.

The Agreement does not create any new liability rules for the natural or legal persons issuing the written requests. The respective Union and/or national law applies in case of false issuance of such requests.

2.2.2. Issuance of multiple-entry visas

In cases where the visa applicant needs to travel frequently to the territory of the Member States or of the Republic of Azerbaijan, short-stay visas may be issued for several visits, provided that the total length of those visits does not exceed 90 days per period of 180 days.

Article 5 of the Agreement provides that:

‘1. Diplomatic missions and consular posts of the Member States and of the Republic of Azerbaijan shall issue multiple-entry visas with a term of validity of 5 years to the following categories of citizens:

- (a) spouses, children (including adopted), who are under the age of 21 or are dependant, parents (including custodians), visiting citizens of the European Union legally residing in the territory of the Republic of Azerbaijan or citizens of the Republic of Azerbaijan 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, or citizens of the Republic of Azerbaijan residing in the territory of the Republic of Azerbaijan;
- (b) permanent members of official delegations, who following an official invitation addressed to the Member States, the European Union or the Republic of Azerbaijan, are to participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Republic of the Azerbaijan or one of the Member States by intergovernmental organisations;

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 point (a), the period of validity of the authorisation for legal residence of citizens of the Republic of Azerbaijan legally residing in one of the Member States or citizens of the Union legally residing in the Republic of Azerbaijan,
- in the case of the persons referred to in point (b), the term of the validity of the status as a permanent member of an official delegation,

is less than five years.’

Taking into account the professional status of those categories of persons, or their family relationship with a citizen of the Republic of Azerbaijan who is legally residing in the territory of the Member States, a Union citizen legally residing in the territory of the Republic of Azerbaijan, or with a Union citizen residing in a Member State whose nationality that person holds, it is justified to grant them a multiple-entry visa with a term of validity of five years, or limited to the term of office or to their legal residence if they are less than five years.

Persons falling under point (a) of Article 5(1) of the Agreement, must present proof of the legal residence of the host person.

With regard to persons falling under point (b) of Article 5(1) of the Agreement, confirmation should be given regarding their professional status and the duration of their term of office.

That provision does not apply to persons falling under point (b) of Article 5(1) of the Agreement if they are exempted from the visa requirement by the Agreement, i.e. if they are holders of a diplomatic passport.

In cases where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the validity of the multiple-entry visa will be limited to that period.

‘2. Diplomatic missions and consular posts of the Member States and of the Republic of Azerbaijan shall issue multiple-entry visas with the term of validity of one year to the following categories of citizens, 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) students, post-graduate students who regularly travel for the purposes of study or educational training, including in the framework of exchange programmes;
- (b) journalists and technical crew accompanying them in a professional capacity;
- (c) participants in official exchange programmes organised by twin cities;

- (d) drivers conducting international cargo and passenger transportation services between the territories of the Republic of Azerbaijan and the Member States in vehicles registered in the Member States or the Republic of Azerbaijan;
- (e) persons needing to visit regularly for medical reasons and necessary accompanying persons;
- (f) members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events who regularly travel to the Republic of Azerbaijan or the Member States;
- (g) representatives of civil society organizations travelling regularly to the Republic of Azerbaijan or the Member States for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes;
- (h) persons participating in scientific, cultural and artistic activities, including university and other exchange programmes, who regularly travel to the Republic of Azerbaijan or the Member States;
- (i) participants in international sports events and persons accompanying them in a professional capacity;
- (j) members of official delegations who, following an official invitation addressed to the Member State, the European Union or the Republic of Azerbaijan, shall participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Republic of Azerbaijan or of the Member States by intergovernmental organisations;
- (k) business people and representatives of business organisations who regularly travel to the Republic of Azerbaijan or the Member States.

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 principle, multiple-entry visas with the term of validity of one year will be issued to the above mentioned categories of visa applicants if during the previous year (12 months) the visa applicant has obtained at least one visa and has made use of it in accordance with the laws on entry and stay in the territory(ies) of the visited State(s) (for instance, the person has not overstayed) and if there are reasons for requesting a multiple-entry visa.

In cases where it is not justified to issue a visa valid for one year, for instance if the duration of the exchange programme is of less than one year or the person does not need to travel for a full year, the term of validity of the visa will be of less than one year, provided that the other requirements for issuing the visa are met.

‘3. Diplomatic missions and consular posts of the Member States and of the Republic of Azerbaijan shall issue multiple-entry visas with the 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 of this Article, provided that during the previous 2 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.

4. The total period of stay of persons referred to in paragraphs 1 to 3 of this Article shall not exceed 90 days per period of 180 days in the territory of the Member States or in the Republic of Azerbaijan.’.

Multiple-entry visas with the term of validity of a minimum of two years and a maximum of five years will be issued to the categories of visa applicants referred to in Article 5(2) of the Agreement, provided that during the previous two years (24 months) they have made use of the two one year multiple-entry visas in accordance with the laws on entry and stay in the territory(ies) of the visited State(s) and that the reasons for requesting a multiple-entry visa are still valid. It has to be noted that a visa with a with the term of validity of a minimum of two years and a maximum of five years, will only be issued if the visa applicant has been issued two visas valid for at least one year during the previous two years (24 months), and if that person has made use of those visas in accordance with the laws on entry and stay in the territory(ies) of the visited State(s). Diplomatic missions and consular posts will decide, on the basis of the assessment of each visa application, on the term of validity of those visas, i.e. from two to five years.

There is no obligation to issue a multiple-entry visa if the visa applicant has not made use of a previously issued visa.

2.2.3. Holders of diplomatic passports

Article 10 of the Agreement provides that:

‘1. Citizens of the European Union and the Republic of Azerbaijan who are holders of valid diplomatic passports may enter, leave and transit through the territories of the Republic of Azerbaijan or the Member States without visas.

2. Persons mentioned in paragraph 1 may stay in the territory of the Republic of Azerbaijan or the territories of Member States for a period not exceeding 90 days per period of 180 days.’

The procedures for the posting of diplomats in the Member States are not covered by the Agreement. The usual accreditation procedure applies.

III. COOPERATION ON TRAVEL DOCUMENTS

In a Joint Declaration annexed to the Agreement the Parties agreed that the Joint Committee 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 agreed 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.

IV. STATISTICS

In order to allow the Joint Committee to effectively monitor the implementation of the Agreement, diplomatic missions and consular posts of the Member States shall submit statistics to the Commission, every six months. Where possible, those statistics should include, presented in a monthly breakdown:

- the number of visa refusals;
 - the number of multiple entry visas issued;
 - the length of validity of multiple entry visas issued;
 - the number of visas issued without fees.
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