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NOTE

From:	Presidency
To:	Visa Working Party/Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein)
Subject:	Suspension of visa-free movement of the holders of Georgian diplomatic passports - mapping scenarios

The Visa Facilitation Agreement (VFA) with Georgia was partially suspended on 29 January 2025, a day following publication of the relevant Council decision, adopted on 27 January 2025. The decision on suspension was notified to Georgia by the Commission. The Foreign Affairs Council confirmed the readiness to halt the visa-free regime to the holders of Georgian diplomatic passports already on 16 December 2024. The Council also agreed that it will continue to stand with the Georgian people.

The suspension of the VFA enables (re)instating the obligation for holders of Georgian diplomatic passports and requires a follow-up. Coherent, coordinated action is crucial. Although all citizens of Georgia can enter the EU visa-free on an ordinary passport, the effective introduction of measures targeted at holders of diplomatic passports is important both on the practical and symbolic level. The Presidency has listened to the voices of the delegations and wishes to discuss the possible options available under the current legal framework, which are set out hereafter.

Option 1. – Suspension of VFA, reinstating visa obligation at national level, coordination of national positions at EU level

Once the suspension of the VFA is enacted, Member States are urged to act with a view to suspending or terminating the visa-free regime for holders of diplomatic (and service) passports. This means introducing exceptions from the visa-free movement, as foreseen by Art. 6(1)(a) of Regulation 2018/1806. In order to apply the decision in practice, Member States would have to apply their national procedures as soon as possible. Binding bilateral agreements predating the VFA might have to be suspended or terminated where they contain relevant provisions. Effective termination of an agreement will depend on its terms and deadlines. Where no previous agreements are in force, Member States would need to proceed with reintroducing the visa obligation based on relevant (national) regulations.

Exceptions from the visa-free regime have to be notified in accordance with Art. 12 of Regulation 2018/1806. So far, only a couple of Member States have notified any such exceptions. No third country listed in Annex II is subject to such national exception by all Member States.

Matters to consider:

- This option, preferred by the Commission, requires Member States to act individually, based on their national legal framework. Results would not be immediate and harmonization might be deferred - delegations' contributions might help visualize the timeframe.
- The privilege of visa free movement would be restricted gradually. If the response at Union level is not perceived as unified, this might dilute the message that the EU wanted to send to the members of the Georgian establishment.
- Fragmented response will result in, *inter alia*, a need for guidelines and updated comprehensive information on visa requirements for the authorities and the public.

Option 2. – Suspension of VFA and triggering the visa suspension mechanism (VSM)

Triggering the VSM would not result in a specific need for coordinated efforts at a national level. Below are remarks on the process.

- It is the prerogative of the Commission to trigger the mechanism for a reason other than those listed in Art. 8(2). The next periodic report, monitoring the continuous compliance with the specific requirements based on Art. 1, is to be expected in the second half of the year.
- The Commission may also produce a targeted report if it considers it necessary, or at the request of the European Parliament or of the Council. Where such report shows that one or more of the specific requirements is no longer complied with, the Commission can consider whether to trigger the mechanism.
- The VSM is a two-step mechanism, and primarily a tool to counteract negative phenomena resulting from visa-free travel. The two-step approach gives the EU a chance to first target a limited category of travellers through an implementing act, during which time the third country can remedy the circumstances that led to the suspension. If there is no improvement, as a second step a delegated act is adopted, covering all nationals of the third country. Under their right of scrutiny, the Council and the Parliament remain competent to assess the opportunity of the delegated act, which will enter into application only in the absence of an objection by the Council or the Parliament.
- While some delegations signalled openness, others expressed concerns that presently a full suspension might be difficult to reconcile with the declared support to the Georgian people.
- Without prejudging any outcome in this case, an objection to a delegated act does not seem to preclude a new assessment by the Commission of compliance with the visa liberalization conditions. If the outcome of the new assessment is negative, the Commission could adopt a new implementing act for certain categories, taking into account circumstances and the principle of proportionality.
- It is to be noted that under the current mechanism, the Commission shall establish an enhanced dialogue with the third country during the first phase.

Matters to consider:

- The Council may only request the Commission to issue a report on the situation of Georgia regarding compliance with the liberalization benchmarks. The Commission remains fully competent for analysis and conclusions.
- Only the Commission can trigger the mechanism in this situation. It is obliged to take into account the consequences of a suspension of liberalization for the external relations of the Union and its Member States with the third country concerned.

- While triggering the mechanism targeting a limited category of third-country citizens would be a strong EU message, it is politically sensitive and raises further questions. Analysis is also needed on whether the duty of enhanced dialogue can be accomplished in this situation.

Option 3. – Suspension of VFA and triggering the amendment to the Annex II

The Commission remains entirely competent to submit a proposal to amend the Annexes to Regulation 2018/1806, regardless of the use of VSM. If this happens regarding a third country for which the VSM is running, the period of suspension of the liberalization provided for in the delegated act is extended by six months (Art. 8(6)).

The VSM is not the only tool to halt the visa-free regime and legislative revision of the Annexes could be considered. Moreover, in certain cases liberalization has been limited to holders of some categories of travel documents, e.g. biometric passports or passports of Special Administrative Regions of China. In this scenario, an exception to the visa-free travel could be introduced at the EU level for the holders of Georgian diplomatic passports, which would not affect other categories and be binding in all Member States.

Matters to consider:

- It is an exclusive competence of the Commission to put forward a proposal.
- The ordinary legislative procedure is an intensive process, with no predetermined timelines or outcome.
- A proposal to introduce visa obligation at EU level exclusively for holders of diplomatic passports by revision of Annexes to Regulation 2018/1806 would be unprecedented.
- There might be complex consequences in terms of external and internal competence of the Union vs. that of the Member States, and the respective roles of the Council and the Commission. These would need to be fully explored, defined and understood.

Each option for reintroducing a visa obligation to a category of travellers entails other effects, also at the national level, such as (but not limited to) the need for evaluation of the situation at national/EU level, pathways for possible termination of national measures, practical burden, effects on bilateral relations, potential adaptations of national legal framework.

Questions to delegations

- 1) With due consideration to the competences of the institutions, what is your assessment of the feasibility and opportunity of the above-mentioned options?
 - 2) What steps should be taken under Option 1 to ensure that the Union successfully sends a message to Georgian authorities and fully achieves the intended outcome?
 - 3) Next to the above-mentioned options, do you see a need in the context of the ongoing revision of the visa suspension mechanism to reflect on the current situation in order to future-proof the visa suspension mechanism? Which aspects (e.g. scope of the delegated act, extending validity of the implementing act, duty of dialogue) and under which circumstances (e.g. certain premises for triggering the VSM, like political or hybrid threats), do you think should be given thought?
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