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2022/0327 (NLE)

Proposal for a

COUNCIL DECISION

on the suspension in whole of the application of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver

EXPLANATORY MEMORANDUM

The Republic of Vanuatu is listed in Annex II to Regulation (EU) 2018/1806[1] among the third countries whose nationals are exempt 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.

The exemption from the visa requirement for nationals of Vanuatu is applicable since 28 May 2015, when the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver ('the Agreement') was signed and started to apply on a provisional basis in accordance with Article 8(1) of the Agreement. The Agreement entered into force on 1 April 2017.

Since 25 May 2015, Vanuatu has operated investor citizenship schemes that present public policy and security risks for the EU Member States. In particular, these schemes allow visa-required third-country nationals to easily obtain the nationality of a visa-free country, thus enabling them to bypass the Schengen visa procedure and gain visa-free access to the EU.

The Commission assessed the investor citizenship schemes operated by Vanuatu and concluded that such schemes represent an increased risk to the internal security of the Member States. The assessment also concluded that Vanuatu's investor citizenship schemes could allow third-country nationals to circumvent the Union short-stay visa procedure and the assessment of security and migratory risks it entails.

In accordance with Article 8(4) of the Agreement, Parties can suspend it in whole or in part for reasons of public policy or the protection of national security.

In light of the above, the Commission adopted, on 12 January 2022, a proposal for a Council decision to partially suspend the application of the Agreement. The decision was adopted by the Council on 3 March 2022. The suspension is limited to ordinary passports issued as of 25 May 2015, when the number of successful applicants under Vanuatu's investor citizenship schemes started to increase significantly.

Following the partial suspension of the Agreement by Council Decision (EU) 2022/366, in accordance with Article 8(2)(d), 8(3) and 8(6) of Regulation (EU) 2018/1806, the Commission concluded that the granting of citizenship by Vanuatu under its investor citizenship schemes constitutes an increased risk to the internal security and public policy of the Member States and decided that action is needed. On the basis of Article 8(6)(a) of Regulation (EU) 2018/1806, the Commission Implementing Regulation (EU) 2022/693 on the temporary suspension of the visa exemption for nationals of Vanuatu was adopted, with regard to holders of ordinary passports issued by Vanuatu as of 25 May 2015, and applicable from 4 May 2022 to 3 February 2023[2].

Following the entry into force of the suspension of the exemption from the visa requirement for nationals of Vanuatu on 4 May 2022, and in accordance with Article 8(6)(a), last sub-paragraph, of Regulation (EU) 2018/1806, the Commission has launched an enhanced dialogue with Vanuatu with a view to remedy the situation that gave rise to the temporary

[1] 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 (OJ L 303, 28.11.2018, p. 39).

[2] Commission Implementing Regulation (EU) 2022/693 of 27 April 2022 on the temporary suspension of the visa exemption for nationals of Vanuatu (OJ L 129, 3.5.2022, p. 18).

suspension of the visa exemption.

On 12 May 2022, the kick-off meeting of this dialogue was held, where both parties agreed to achieve a mutually satisfactory solution. The Commission proposed, to this end, to hold monthly technical meetings. Vanuatu agreed to appoint an interlocutor and communicate on this with the Commission, in order to proceed with the subsequent technical meetings. However, notwithstanding reminders sent by the Commission on 1 June and 23 June 2022, Vanuatu has not provided the Commission with any follow-up contacts or information.

In September 2022, the Commission's services received an update from Vanuatu's representatives on the political situation of the country, with the Parliament having been dissolved on 18 August 2022 and general elections scheduled to take place on 13 October 2022. In this context, Vanuatu's representatives explained that any decision on the continuation of the dialogue with the Commission would have to await the results of the general elections and the formation of a new government.

Vanuatu has not taken measures in view of remedying the circumstances that led to the temporary suspension of the visa exemption, and thus the increased risk to the internal security and public policy of the Member States persists. At the same time, the Commission considers that Vanuatu does not act engage in a dialogue with the Union. Thus, the Commission considers that a suspension in whole of the Agreement is required.

Therefore, Council Decision (EU) 2022/366 should be replaced by a Council Decision on the suspension in whole of the application of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver.

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver[3] ('the Agreement') was signed on and provisionally applied since 28 May 2015[4] to facilitate travel to the Union for nationals of Vanuatu and travel to Vanuatu for citizens of the Union.

(2) The Agreement is based on the Union's and Vanuatu's common desire to encourage people-to-people contacts, boost tourism and invigorate business between the Union and Vanuatu.

(3) Under Article 8(4) of the Agreement, either party may suspend in whole or in part the Agreement, in particular for reasons of public policy and the protection of national security. The decision on suspension is to be notified to the other party no later than 2 months before its planned entry into force. Should the reasons for that suspension cease to exist, the party that has suspended the Agreement is to inform the other party immediately and to lift the suspension.

(4) Vanuatu operates investor citizenship schemes, whereby it has granted Vanuatu nationality to nationals of other countries with no previous connection to Vanuatu, issuing positive decisions on the vast majority of applications. Until March 2021, it issued over 10 500 passports with an extremely low rejection rate.[5] This raises doubts as to the reliability of the security and due diligence screening carried out by the Vanuatu authorities.

(5) Furthermore, the countries of origin of successful applicants include several countries whose nationals are required to possess visas when crossing the external borders of the Union.

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3 OJ L 173, 3.7.2015, p. 48.

4 Council Decision (EU) 2015/1035 of 7 May 2015 on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver (OJ L 173, 3.7.2015, p. 46–47)

5 Information provided by Vanuatu's Passport Office on 14 June 2021.

(6) In exchanges between the Commission and Vanuatu's authorities in October 2017, November 2019, June 2020 and March 2021, the Commission expressed serious concerns regarding Vanuatu's investor citizenship schemes, in particular the granting of citizenship to persons listed in Interpol databases, the absence of physical presence or residence requirements, the schemes' short processing periods and the lack of systematic exchange of information with applicants' countries of origin or past main residence, and warned the government of Vanuatu of the possibility of the visa requirement being reinstated should the concerns not be addressed. The explanations provided by Vanuatu were not sufficient to alleviate those concerns.

(7) Consequently, the application of the Agreement was partially suspended with Council Decision (EU) 2022/366[6]. The suspension is limited to ordinary passports issued by Vanuatu as of 25 May 2015, when the number of successful applicants under Vanuatu's investor citizenship schemes started to increase significantly.

(8) Whilst Decision (EU) 2022/366 partially suspended the Agreement, it was also necessary to provide for the suspension at the level of Union law.

(9) Therefore, based on Regulation (EU) 2018/1806 of the European Parliament and of the Council[7], on 27 April 2022, the Commission adopted Implementing Regulation (EU) 2022/693[8] temporary suspending the exemption from the visa requirement for nationals of Vanuatu holding ordinary passports issued by Vanuatu as of 25 May 2015 for a period of nine months, applicable from 4 May 2022 to 3 February 2023.

(10) Following the entry into force of that suspension, in accordance with Regulation (EU) 2018/1806, the Commission has launched an enhanced dialogue with Vanuatu with a view to remedying the circumstances that gave rise to the temporary suspension of the exemption from the visa requirement.

(11) While this dialogue commenced on 12 May 2022, subsequently Vanuatu has not engaged in any meaningful way. During the nine-month period set down by Implementing Regulation (EU) 2022/693, it has thus not been possible to remedy the circumstances which gave rise to the temporary suspension of the exemption from the visa requirement.

(12) The investor citizenship schemes operated by Vanuatu continue representing an increased risk to the internal security of the Member States and a circumvention of the Union short-stay visa procedure and of the assessment of security and migratory risks it entails. In the absence of engagement of Vanuatu to remedy these circumstances, Decision (EU) 2022/366 should therefore be repealed and the application of the Agreement in whole as regards all nationals of Vanuatu should be suspended.

(13) 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/EC[9];

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6 Council Decision (EU) 2022/366 of 3 March 2022 on the partial suspension of the application of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver (OJ L 69, 4.3.2022, p. 105).

7 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 (OJ L 303, 28.11.2018, p. 39).

8 Commission Implementing Regulation (EU) 2022/693 of 27 April 2022 on the temporary suspension of the visa exemption for nationals of Vanuatu (OJ L 129, 3.5.2022, p. 18).

9 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).

Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The application of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver is suspended in whole as regards nationals of Vanuatu, as from 4 February 2023.

Article 2

Decision (EU) 2022/366 is repealed.

Article 3

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

Done at Brussels,

For the Council
The President