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2025/0228 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

suspending the application of certain provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with respect to Guinea

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In accordance with Article 25a(2) of the Visa Code[1], the Commission must at least once a year, assess third countries' cooperation on readmission and report to the Council.

Based on these assessments and taking into account the steps taken by the Commission to improve the level of cooperation in the field of readmission and the EU's overall relations with the third country concerned, including in the field of migration, the Commission may conclude that the given third country does not cooperate sufficiently, and that action is therefore needed. If this is so, the Commission, in accordance with Article 25a(5), point (a), of the Visa Code, is to submit a proposal for a Council implementing decision temporarily suspending the application of certain provisions of the Visa Code in respect of nationals of that third country. At all times, the Commission is to continue its efforts to improve cooperation with the third country concerned.

• The case of Guinea

In July 2017, the EU concluded a readmission arrangement with Guinea ("Good practices for the efficient operation of the return procedure"). Since then, seven Joint Working Group meetings took place to monitor the implementation of the arrangement, the last one on 19 December 2024. Due to the political situation in the country, engagement was put on hold in September 2021 and resumed in December 2023. Even though the Guinean authorities reaffirmed their intention to cooperate on readmission, they were not ready to commit to most of the concrete actions proposed by the EU to address the challenges in the operational cooperation. The issue of readmission cooperation was addressed at political level in Conakry during a meeting between the EU Ambassador in Guinea and the Minister of Foreign Affairs, the Minister of the Interior and the Prime Minister on 15 October 2024 as well as in Brussels during several high-level meetings, like the visit of the Guinean Minister of Foreign Affairs on 23 October 2023, Commission/ EEAS meetings with the Guinean Ambassador and the Minister of Foreign Affairs on 31 May and 26 June 2024, respectively.

Despite the existing readmission arrangement and the efforts to intensify engagement on readmission, cooperation has remained insufficient for most Member States and significantly deteriorated from the end of 2023 and throughout the 2024 assessment period. At the 6th and 7th Joint Working Group Meetings in July and December 2024, the European Union conveyed to Guinea clear messages about the need to improve cooperation and to fully implement the readmission arrangement, to effectively implement the agreed procedures for the identification of Guineans with no right to stay in the EU and to swiftly issue emergency travel documents upon positive identification for both voluntary and forced returns within the deadlines of the readmission arrangement. A list of pending readmission requests from 13 Member States and one Schengen-associated country was handed over to the Guinean authorities. These steps did not lead to an improvement in cooperation during the reporting period.

[1] 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.

Guinea's cooperation on readmission of its nationals found to be illegally staying on the territory of the Member States is insufficient, as substantiated by a return rate[2] of 3% in 2024 which is a decrease from 5% in 2023, by the significantly decreasing quality of cooperation in the identification procedure, by a decline in the issuance rate of emergency travel documents[3] and by the clear deterioration of cooperation regarding return operations. During the reporting period, Member States faced persistent and increasing challenges in effectively implementing the readmission arrangement with Guinea, in particular as regards undocumented cases. The insufficient level of cooperation of Guinea often also infringes upon the readmission-related provisions of the Samoa Agreement[4], provisionally applicable as of 1 January 2024, including to Guinea, notably regarding the timeframe for issuance of emergency travel documents following the presentation of a request for identification.

In the framework of continuous assessments carried out by the Commission since 2020 and based on data and information provided by Member States, discussions in the relevant Council Working Groups and expert group meetings, as well as assessments by other EU institutions, bodies, offices and agencies, Member States reported a number of persistent issues that hamper the different steps of the readmission process, including the identification of Guinean nationals, the issuance of travel documents and return operations. This has led to a very considerable backlog of cases for Member States.

On the basis of the above, the lack of improvement, despite the steps taken so far by the EU and its Member States to improve readmission cooperation, it is considered that Guinea's cooperation with the EU on readmission is not sufficient.

- **The Union's overall relations with Guinea**

Guinea is one of the major countries of departure of irregular migrants to the EU. Despite a considerable decrease in irregular arrivals to the EU compared to 2023, in 2024 Guineans were still the eigth-largest identified nationality among the assessed countries, with 8 388 irregular arrivals.

The EU and Guinea maintain relations in the political, economic, trade and cooperation fields. These relations are now based on the Samoa Agreement between the European Union and its Member States and the Organisation of African, Caribbean and Pacific States.

The EU is Guinea's largest market and supplier and remains a major economic partner.

In the area of trade, cooperation between Guinea and the EU is governed by the EU's Generalised Scheme of Preference (GSP)[5]. To note that the Economic Partnership Agreement (EPA), adopted with countries in West Africa in July 2014, has not yet entered into force.

[2] The return rate is the number of third-country nationals effectively returned following an order to leave the Union, as a percentage of the nunber of third-country nationas issued a return decision.

[3] The issuance rate of emergency travel documents is the number of travel document issued by third countries, as a percentage of the number of readmission requests submitted by Member States.

[4] Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organization of the African, Caribbean and Pacific States, of the other part, OJ L, 2023/2862, 28.12.2023.

[5] Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303, 31.10.2012, p. 1.

The geopolitical orientations of Guinea should also be considered with a view to a possible impact on migration issues.

On the basis of the above, given the lack of improvement despite continuous steps taken by the Commission to improve cooperation, and taking into account the EU's overall relations with Guinea, it is considered that Guinea's cooperation with the EU on readmission is not sufficient and that action is needed.

- **The visa measures**

Scope of measures

The Council Implementing Decision should temporarily suspend the application of certain provisions of the Visa Code in respect of Guinean nationals. The suspension, however, should not apply to Guinean family members of (mobile) EU citizens covered by Directive 2004/38/EC[6] and to Guinean family members of third country nationals enjoying a right of free movement equivalent to that of EU citizens under an agreement between the European Union and its Member States, on the one hand, and the third country concerned, on the other.

Content of the visa measures

Guinea's failure to cooperate sufficiently on readmission justifies the temporary suspension of all the articles referred to in point (a) of Article 25a(5) of the Visa Code: suspension of the possibility of waiving the requirements with regard to the documentary evidence to be submitted by visa applicants referred to in Article 14(6); suspension of the general 15-calendar days processing period referred to in Article 23(1) (which, as a consequence, also excludes the application of the rule allowing the extension of this period up to a maximum of 45 days only in individual cases, hence 45 days becomes the standard processing period); suspension of the issuing of multiple entry visas in accordance with Article 24(2) and (2c); and suspension of the optional visa fee waiver for holders of diplomatic and service passports in accordance with point (b) of Article 16(5).

Period of application of the visa measures

The Visa Code provides that the visa measures shall apply temporarily but there is no obligation to indicate a specific period of application of those measures in the implementing decision. However, in accordance with Article 25a(6) of the Visa Code, the Commission must continuously assess progress in readmission cooperation on the basis of the indicators set out in Article 25a(2) of the Visa Code, including in the assistance provided for the identification of persons illegally staying on the territory of the Member States, the timely issuance of travel documents and the organisation of return operations. The Commission will report whether there has been a substantial and sustained improvement in the cooperation with the third country concerned on readmission and, taking also account of the EU's overall relations with that third country, may either withdraw proposals not adopted by the Council or submit a proposal to the Council to repeal or amend the implementing decision. If, by contrast,

[6] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

readmission cooperation remains insufficient, the Commission will consider triggering the second stage of the mechanism, as provided for by Article 25a(5), point (b), of the Visa Code.

Pursuant to Article 25a(7) of the Visa Code, the Commission will - at the latest six months after the entry into force of the implementing decision - report to the European Parliament and to the Council on the progress achieved in the given third country's cooperation on readmission.

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

The proposed decision is consistent with the Visa Code setting the harmonised rules of the common visa policy governing the procedures and conditions for issuing visas for intended stays on the territory of the Member States not exceeding 90 days in any 180-day period.

The EU promotes a comprehensive approach on migration and forced displacement, based on shared values and responsibilities. The Pact on Migration and Asylum of May 2024 offers a comprehensive approach that aims at strengthening and integrating key EU policies on migration, asylum, border management and integration, and one of its pillars is embedding migration in international partnerships to prevent irregular departures, fight migrant smuggling, cooperate on readmission and promote legal pathways.

- **Consistency with other Union policies**

The cooperation between Member States and third countries on the readmission of illegally staying third country nationals is an important element of the EU's external relations. To reinforce such comprehensive partnerships and ensure full cooperation from third countries, the European Council has consistently called for the EU to mobilise all available tools, including development co-operation, trade or visa measures[7]. In considering possible restrictive visa measures, Article 25a of the Visa Code requires the Commission to take into account the EU's overall relations with the third country concerned, including in the field of migration.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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), Article 25a(5), point (a).

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

n.a

- **Proportionality**

The proposed measures, the purpose of which is to improve Guinea's cooperation on the readmission of illegally staying third-country nationals, are proportionate to the objective pursued. These measures do not affect the possibility for applicants to apply for and be granted visas, as such, but cover certain aspects of the procedure for issuing the visa. Additionally, certain categories of persons are excluded from the scope of this decision.

[7] EUCO 22/21 (17)

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

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

n.a.

- **Stakeholder consultations**

n.a.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The proposed measures do not affect the possibility to apply for and be granted visas and respect the fundamental rights of applicants, in particular the respect of family life.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

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

n.a.

- **Explanatory documents (for directives)**

n.a.

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

Article 1 defines the scope of the proposed implementing decision.

Paragraphs 1 and 2 specify that it only applies to nationals of Guinea who are subject to the visa requirement, and not to those that are exempt on the basis of Articles 4 or 6 of Regulation (EU) 2018/1806.

Paragraph 3 exempts from the scope of the proposed decision visa applicants who are family members of a Union citizen to whom Directive 2004/38/EC applies, and family members of a national of a third country enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States, on the one hand, and a third country, on the other.

Paragraph 4 specifies that the proposed decision is without prejudice to Member States' international obligations.

Article 2 sets out that that the application of the following provisions of the Visa Code shall be temporarily suspended for nationals of Guinea falling within the scope of the proposed decision:

- The possibility for Member States to waive the requirement to present a full set of supporting documents. This means that a full set of supporting documents proving fulfilment of the entry conditions as set out in the Schengen Borders Code will have to be submitted at every application by all applicants.
- The possibility for Member States to waive the visa fee for holders of diplomatic and service passports. The standard visa fee of 90 EUR will apply to this category of applicants.
- The standard processing time of 15 days for taking a decision on an application. This means that Member States will have 45 days to decide on applications.
- The rules on issuing multiple-entry visa. This means that, in principle, only single-entry visas will be issued.

Article 3 contains the list of addressees of the proposed decision, i.e. the relevant Member States.

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Proposal for a

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suspending the application of certain provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with respect to Guinea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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)[8], and in particular Article 25a(5), point (a), thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The level of cooperation of Guinea with Member States on the readmission of irregular migrants was assessed under Article 25a(2) of Regulation (EC) No 810/2009, and Guinea was considered not cooperating sufficiently. Significant improvements are needed in the cooperation on all the steps of the readmission process, including to ensure that Guinea effectively cooperates on identification, issuance of emergency travel documents and return operations in a timely and predictable manner, in line with the readmission arrangement.

(2) Persistent challenges are present as regards the identification and return of Guinean nationals illegally staying on the territory of Member States, due to a lack of response and follow up from the Guinean authorities to readmission requests for documented and undocumented cases as well as difficulties with the issuance of emergency travel documents that are often not provided even in cases where the nationality has been previously confirmed and with the organisation of return operations on scheduled and charter flights. With regard to those challenges, it should also be considered that Guineans are the eigth-largest identified nationality in terms of irregular arrivals to the Union among the countries assessed under Article 25a(2) of Regulation (EC) No 810/2009, and a considerable backlog of readmission cases has been formed.

(3) Taking into account the various steps taken so far by the Commission to improve the level of cooperation of Guinea in the field of readmission and the Union's overall relations with that third country, the Commission considers that Guinea is not cooperating sufficiently and that action is therefore needed.

(4) The application of certain provisions of Regulation (EC) No 810/2009 should therefore be suspended for nationals of Guinea who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806 of the European Parliament and of the

[8] OJ L 243, 15.9.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/810/oj.

Council[9]. The objective is to encourage Guinea to undertake the actions necessary to improve cooperation on readmission matters.

(5) In accordance with Article 25a(5), point (a), of Regulation (EC) No 810/2009, it is appropriate to lay down a suspension of the possibility of waiving the requirements regarding the documentary evidence to be submitted by visa applicants referred to in Article 14(6), of the general 15 calendar days processing period referred to in Article 23(1) (which, as a consequence, also excludes the application of the rule allowing an extension of that period up to a maximum of 45 days only in individual cases, meaning that 45 days should become the standard processing period), of the issuing of multiple-entry visas in accordance with Article 24(2) and (2c), and of the optional visa fee waiver for holders of diplomatic and service passports in accordance with Article 16(5), point (b).

(6) This Decision should not affect the application of Directive 2004/38/EC of the European Parliament and of the Council[10], which extends the right of free movement to family members irrespective of their nationality when joining or accompanying the Union citizen. This Decision should thus not apply to family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and a third country.

(7) The measures provided for in this Decision should be without prejudice to the obligations of the Member States under international law, including as host countries of international intergovernmental organisations or of international conferences convened by the United Nations or other international intergovernmental organisations hosted by Member States. Thus, the suspension should not apply to nationals of Guinea applying for a visa in so far as necessary for Member States to comply with their obligations as host countries of such organisations or of such conferences.

(8) 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. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.

(9) 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[11];

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9 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), ELI: http://data.europa.eu/eli/reg/2018/1806/oj.

10 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L OJ L 158, 30.4.2004, p. 77, ELI: http://data.europa.eu/eli/dir/2004/38/oj).

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

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

(10) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*[12] which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC[13].

(11) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[14] which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[15] .

(12) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[16] which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[17].

(13) As regards Cyprus, this decision constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession,

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12 OJ L 176, 10.7.1999, p. 36, ELI: http://data.europa.eu/eli/agree_internation/1999/439(1)/oj.

13 Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31, ELI: http://data.europa.eu/eli/dec/1999/437/oj).

14 OJ L 53, 27.2.2008, p. 52.

15 Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1, ELI: http://data.europa.eu/eli/dec/2008/146/oj).

16 OJ L 160, 18.6.2011, p. 21.

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

HAS ADOPTED THIS DECISION:

Article 1

1. This Decision shall apply to nationals of Guinea who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806.

2. This Decision shall not apply to nationals of Guinea who are exempt from the visa requirement under Article 4 or Article 6 of Regulation (EU) 2018/1806.

3. This Decision shall not apply to nationals of Guinea applying for a visa and who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and a third country.

4. This Decision shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:

   (a) as a host country of an international intergovernmental organisation;

   (b) as a host country to an international conference convened by, or under the auspices of, the United Nations or other international intergovernmental organisations hosted by a Member State;

   (c) under a multilateral agreement conferring privileges and immunities;

   (d) pursuant to the 1929 Treaty of Conciliation (Lateran Pact) concluded by the Holy See (Vatican City State) and Italy, as last amended.

Article 2

The application of the following provisions of Regulation (EC) No 810/2009 shall be temporarily suspended:

(a) Article 14(6);

(b) Article 16(5), point (b);

(c) Article 23(1);

(d) Article 24(2) and (2c).

Article 3

This Decision is addressed to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden.

Done at Brussels,

For the Council
The President