



Brussels, 1.12.2022
C(2022) 8691 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 1.12.2022

on the temporary suspension of the visa exemption for all nationals of Vanuatu

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Republic of Vanuatu is listed in Annex II to Regulation (EU) 2018/1806¹ 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')² 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 been operating investor citizenship schemes allowing 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.

It has derived from reliable and concrete information and data, reports and statistics³ that the citizenship-by-investment schemes of Vanuatu, in their current form and operation, go against the objectives of the Union's visa policy, which provides for a screening of nationals from visa-required third countries against the criteria set out in Article 21 of Regulation (EC) No 810/2009⁴ and in equivalent national legislation of those Member States where Regulation (EC) No 810/2009 does not yet apply in full. The manner in which the said schemes are being implemented constitutes a circumvention of the Union short-stay visa procedure and the assessment of security and migratory risks.

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.

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

In light of the foregoing, the Commission adopted, on 12 January 2022, a proposal for a Council decision⁵ 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. The decision was adopted by the Council on 3 March 2022⁶. The suspension of the Agreement is limited to

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 Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver (OJ L173, 3.7.2015, p. 48).

³ 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), Recitals 5-12.

⁴ 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).

⁵ Proposal for a Council Decision 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 - COM(2022) 6 final)

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).

ordinary passports issued as of 25 May 2015, when the number of successful applicants under Vanuatu's investor citizenship schemes started to increase significantly.

Whilst Council Decision (EU) 2022/366 suspended the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver, it was also necessary to amend Annex II of Regulation (EU) 2018/1806. Therefore, the Commission adopted Implementing Regulation (EU) 2022/693 on the temporary suspension of the visa exemption for nationals of Vanuatu holding ordinary passports issued as of 25 May 2015 for a period of nine months, applicable from 4 May 2022 to 3 February 2023.

Following the entry into force of the suspension of the visa exemption for the aforementioned category of 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 launched an enhanced dialogue with Vanuatu's with a view to remedying the circumstances which gave rise to the temporary suspension of the visa exemption.

On 12 May 2022, the kick-off meeting of the enhanced dialogue was held, where both parties agreed to find a solution. The Commission proposed, to this end, to hold monthly technical meetings. Vanuatu agreed to appoint an interlocutor and communicate it to the Commission, in order to proceed with the subsequent technical meetings. Vanuatu informed the Commission of the decision of the Government of Vanuatu to set up a Task Force to review the investor citizenship schemes. It was agreed that the authorities of Vanuatu would transmit to the Commission a progress report prepared by the Task Force. However, notwithstanding reminders sent by the Commission on 1 June and 23 June 2022, Vanuatu failed to provide to the Commission 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.

Given that the increased risk to the internal security and public policy of the Member States has not been remedied during the nine-month period laid down by Implementing Regulation (EU) 2022/693, a delegated act temporarily suspending the application of Annex II of Regulation (EU) 2018/1806 for a period of 18 months for all nationals of Vanuatu should be adopted, in accordance with Article 8(6)(b) of Regulation (EU) 2018/1806.

The delegated act is to take effect from the date of expiry of the implementing act⁷ adopted pursuant to point (a) of Article 8(6) of Regulation (EU) 2018/1806 and will amend Annex II accordingly, by inserting a footnote next to the name of the third country in question, indicating that the exemption from the visa requirement is suspended with regard to Vanuatu and specifying the period of the suspension.

⁷ Article 3 of Commission Implementing Regulation (EU) 2022/693.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission organised an ad hoc meeting with experts from the Member States on 11 October 2022 to discuss the draft delegated regulation.⁸ The experts supported the objectives and text of the Commission's draft.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 of the delegated regulation amends Annex II of Regulation (EU) 2018/1806, providing that the exemption from the visa requirement is temporarily suspended for a period of 18 months, from 4 February 2023 to 3 August 2024, for all nationals of Vanuatu. That amendment should be made by inserting a footnote next to the name of Vanuatu, indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension. The delegated act should take effect from the date of expiry of Commission Implementing Regulation (EU) 2022/693.

Article 2 of the delegated regulation provides the date of its entry into force and the period of application.

⁸ In line with the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1–14.

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on the temporary suspension of the visa exemption for all nationals of Vanuatu

THE EUROPEAN COMMISSION,

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

Having regard to 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 requirement⁹, and in particular Article 8(6), point (b) thereof,

Whereas:

- (1) The Republic of Vanuatu is listed in Annex II to Regulation (EU) 2018/1806 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 waiver¹⁰ ('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.
- (2) Since 25 May 2015, Vanuatu has been operating investor citizenship schemes by means of which third-country nationals who are otherwise visa-required have the possibility to obtain the citizenship of Vanuatu in exchange for investment, therefore obtaining visa-free access to the Union.
- (3) It has derived from relevant data, reports and statistics, and on the basis of concrete and reliable information¹¹ that the citizenship-by-investment schemes of Vanuatu, in their current form and operation, go against the objectives of the Union's visa policy, which provides for a screening of nationals from visa-required third countries against the criteria set out in Article 21 of Regulation (EC) No 810/2009¹² and in equivalent national legislation of those Member States where Regulation (EC) No 810/2009 does not yet apply in full. The manner in which the said schemes are being implemented constitutes a circumvention of the Union short-stay visa procedure and the assessment of security and migratory risks it entails.
- (4) In accordance with Article 8(2)(d), 8(3) and 8(6) of Regulation (EU) 2018/1806, the Commission has concluded that the granting of citizenship by Vanuatu under its

⁹ OJ L 303, 28.11.2018, p. 39.

¹⁰ OJ L 173, 3.7.2015, p. 48.

¹¹ Proposal for a Council Decision 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 (COM/2022/6 final), recitals 5-12.

¹² 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).

investor citizenship schemes constitutes an increased risk to the internal security and public policy of the Member States.

- (5) On 3 March 2022, the Council adopted Decision (EU) 2022/366 on the partial suspension of the application of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver¹³, in accordance with Article 8(4) of the Agreement. The suspension of the application of the Agreement 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.
- (6) On 27 April 2022, the Commission adopted Implementing Regulation (EU) 2022/693 on the temporary suspension of the visa exemption for nationals of Vanuatu¹⁴, in accordance with Article 8(6), point (a) of Regulation (EU) 2018/1806. The suspension applies from 4 May 2022 to 3 February 2023.
- (7) Following the entry into force of the temporary suspension of the visa exemption for the aforementioned category of nationals of Vanuatu on 4 May 2022, and in accordance with Article 8(6), point (a), third sub-paragraph of Regulation (EU) 2018/1806, on 12 May 2022 the Commission established an enhanced dialogue with Vanuatu, with a view to remedying the circumstances having led to the temporary suspension of the visa exemption.
- (8) In the first meeting organised in the context of the enhanced dialogue, on 12 May 2022, the Commission expressed its willingness to find a solution and, to this end, proposed to hold monthly technical meetings. The parties agreed that the authorities of Vanuatu would appoint an interlocutor and communicate it to the Commission, in order to proceed with the subsequent technical meetings. Vanuatu informed the Commission of the decision of the Government of Vanuatu to set up a Task Force to review the investor citizenship schemes. It was agreed that the authorities of Vanuatu would transmit to the Commission a progress report prepared by the Task Force.
- (9) However, Vanuatu has not subsequently engaged in a meaningful way. To date, Vanuatu's investor citizenship schemes remain in operation. The Commission has not received any information from the authorities of Vanuatu with regard to possible legislative and non-legislative actions aiming at remedying the circumstances having led to the temporary suspension.
- (10) Thus, the circumstances referred to in Article 8(2), point (d) of Regulation (EU) 2018/1806, namely the increased risk to the public policy or internal security of Member States, persist.
- (11) Due to the persistence of the aforementioned circumstances and the absence of engagement of Vanuatu to remedy them, the application of the Agreement was suspended in whole by Council Decision (EU) 2022/2198, repealing Council Decision

¹³ 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).

¹⁴ 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).

(EU) 2022/366 and suspending the application of the Agreement for all nationals of Vanuatu¹⁵.

- (12) In accordance with Article 8(6), point (b) of Regulation (EU) 2018/1806, given the persistence of the situation, it is necessary to adopt a delegated act temporarily suspending the visa exemption for a period of 18 months for all nationals of Vanuatu.
- (13) As regards Iceland and Norway, this Regulation 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 latter's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in point B of Article 1 of Council Decision 1999/437/EC¹⁶.
- (14) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed 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*, which fall within the area referred to in points B and C of Article 1 of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁷.
- (15) As regards Liechtenstein, this Regulation 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*, which fall within the area referred to in points B and C of Article 1 of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁸.
- (16) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹⁹; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

¹⁵ Council Decision (EU) 2022/2198 of 8 November 2022 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 (OJ L 292, 11.11.2022, p. 47).

¹⁶ Council Decision 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).

¹⁷ Council Decision 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).

¹⁸ Council Decision 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).

¹⁹ 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).

(17) This Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

Temporary suspension of the exemption from the visa requirement

In Annex II to Regulation (EU) 2018/1806, in point 1 (“States”), the reference to ‘Vanuatu’ is replaced by the following:

“Vanuatu (*)

(*) The exemption from the visa requirement for all nationals of Vanuatu is suspended from 4 February 2023 to 3 August 2024”

Article 2

Entry into force and period of application

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

It shall apply from 4 February 2023 to 3 August 2024.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 1.12.2022

For the Commission
The President
Ursula VON DER LEYEN