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2022/0375 (NLE)

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**on the suspension of certain provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with respect to Senegal**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

In accordance with Article 25a(2) of the Visa Code<sup>1</sup>, the Commission should regularly assess third countries' cooperation on readmission and report to the Council at least once a year.

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

- **The case of Senegal**

Cooperation with Senegal on the readmission of its nationals found illegally staying on the territory of the EU remains insufficient as substantiated by the return rate (the number of return decisions enforced in comparison with the number of return decisions issued), one of the lowest worldwide, which has dropped to 3,2% in 2020 from 7,3% in 2019 with numbers of those ordered to leave still high (8 485 persons in 2020). While the return rate in 2021 was 8%, Member States have reported to the Commission that cooperation on identification and issuance of travel documents has considerably worsened, with a constant decrease in the issuance rate (the number of travel documents issued by third countries in comparison to the number of readmission requests submitted by Member States).

The cooperation between Member States and Senegal, if any, is uneven. The majority of Member States face persistent challenges in establishing a meaningful dialogue with Senegal on readmission.

In the framework of continuous assessments carried out by the Commission based on reliable data provided by Member States, discussions in the relevant Council Working Groups and experts groups meetings, as well as by Union institutions, bodies, offices and agencies, Member States reported on several hurdles that are hampering every step of the readmission and return process, from identification of Senegalese nationals to the issuance of travel documents, and the organisation of return operations. No or very slow responses of the Senegalese authorities to Member States' requests for identification and additional ad hoc requests make the identification process very cumbersome and rarely resulting in the issuance of travel documents. The issuance of travel documents to persons whose Senegalese nationality has been confirmed is also problematic. In 2022 no return via charter flight took place and, compared to other third countries with a similar caseload, a very low number of returns took place between January and mid- September 2022.

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<sup>1</sup> 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.

Since 2015, the EU's attempts to formalise cooperation at EU level have not been successful, despite several high-level political and technical contacts. The EU clearly conveyed to Senegal, at political and technical level, including during the joint Commissioners' mission led by the President of the Commission to Senegal in February 2022 and the Commission services' technical mission in June 2022, the need to improve cooperation in readmitting own nationals who have no right to stay in the EU. This has not produced however until now the expected progress.

On the basis of the above, the lack of improvement despite steps taken so far by the Commission at political (joint Commissioners' mission led by the President of the Commission to Senegal in February 2022) and technical level (the Commission services' technical mission in June 2022) to improve readmission cooperation, and the EU's overall relations with Senegal, it is considered that Senegal's cooperation with the EU on readmission matters is not sufficient and that action is needed.

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

Senegal is a key partner in Western Africa, being a stable democracy in a volatile region and playing a pivotal role both in terms of security and migration. There has been an openness to develop cooperation with EU support to fight against migrant smuggling and to address the significant numbers of departures from Senegal to the Canary Islands (as of September 2022, Senegalese nationals are the second largest nationality migrating irregularly to the Canary Islands). Senegal currently ensures the Chairmanship of the African Union.

The Multiannual Indicative Programme for Senegal for 2021-2023<sup>2</sup> amounts to EUR 222 million.

A Sustainable Fisheries Partnership Agreement<sup>3</sup> with the EU was signed in 2019.

As a member of Economic Community of West African States - ECOWAS, Senegal is a party to the EPA (Economic Partnership Agreement)<sup>4</sup> with the EU. It is a Party to the Cotonou Agreement<sup>5</sup>, which, like the new agreement which the EU has negotiated with the Cotonou countries and is destined to replace it soon, states the commitment of each state to accept the return and readmission of any of its nationals who have no right to stay on the territory of a Member State.

- **The visa measures**

*Scope of measures*

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<sup>2</sup> [mip-2021-c2021-9362-senegal-annex\\_fr.pdf \(europa.eu\)](#)

<sup>3</sup> Council Decision (EU) 2019/1925 of 14 November 2019 on the signing, on behalf of the Union, and provisional application of the Protocol on the implementation of the Agreement on a Sustainable Fisheries Partnership between the European Union and the Republic of Senegal ( OJ L 299, 20.11.2019, p. 11–12).

<sup>4</sup> Proposal for a Council Decision on the conclusion of the Economic Partnership Agreement (EPA) between the West African States, ECOWAS and the UEMOA, of the one part, and the European Union and its Member States, of the other part (COM/2014/0578 final)

<sup>5</sup> Council decision of 21 June 2005 concerning the signing, on behalf of the European Community, of the Agreement amending the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, (2005/599/EC), OJ L 209, 11.8.2005, p. 26–26.

The Council Implementing Decision should temporarily suspend the application of certain provisions of the Visa Code in respect of Senegalese nationals. The suspension, however, should not apply to family members of (mobile) EU citizens covered by the Directive 2004/38/EC<sup>6</sup> and of third country nationals 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 the third country concerned on the other.

#### *Content of the visa measures*

Senegal'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 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, meaning that 45 days becomes the standard processing period), suspension of the issuing of multiple entry visas (MEVs) 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) the Commission should continuously assess progress in readmission cooperation on the basis of the indicators set out in Article 25a(2), 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 substantial and sustained improvement in the cooperation with the third country concerned on readmission can be established and, taking also account of the Union's overall relations with that third country, may submit a proposal to the Council to repeal or amend the implementing decision. If by contrast, the visa measures in accordance with the implementing decision have proven ineffective, it should be considered to trigger the second stage of the mechanism (provided for by Article 25a(5), point (b)).

In addition, pursuant to Article 25a(7), 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.

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<sup>6</sup> 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).

- **Consistency with other Union policies**

The EU promotes a comprehensive approach on migration and forced displacement, based on shared values and responsibilities. The New Pact on Migration and Asylum foresees developing and deepening tailor-made comprehensive and balanced partnerships to foster co-operation on all relevant aspects:

- Providing protection to those in need of it and support to host countries and communities;
- Building economic opportunity and addressing the root causes of irregular migration and forced displacement;
- Supporting partners to strengthen migration governance and management;
- Fostering co-operation on return and readmission;
- Developing legal pathways to Europe.

The cooperation between Member States and third countries on the readmission of illegally staying third country nationals is an important element of this policy. To reinforce such comprehensive partnerships and ensure full cooperation from third countries, the European Council has called for the EU to mobilise all available tools, including development co-operation, trade or visa measures<sup>7</sup>.

## **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 stimulate Senegal to improve its 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 or the level of the visa fee. Additionally, certain categories of persons are excluded from the scope of this decision.

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

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

n.a.

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<sup>7</sup> EUCO 22/21 (17)

- **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* clarifies the scope of the proposed implementing decision. Paragraphs 1 and 2 specify that it only applies to nationals of Senegal that 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 Senegal 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 80 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.

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**on the suspension of certain provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with respect to Senegal**

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 the of Council of 13 July 2009 establishing a community Code on Visas (Visa Code)<sup>8</sup>, and in particular Article 25a(5), point (a) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Cooperation on readmission with Senegal was assessed as insufficient under Article 25a(2) of Regulation (EC) No 810/2009. Significant improvements are needed on all the steps of readmission and return cooperation, including to ensure that Senegal effectively cooperates on identification and issuance of travel documents with all Member States in a timely and predictable manner, and that return operations via charter flights are allowed to take place.
- (2) Senegal's cooperation, if it exists, is very uneven, and results are not sufficient. There are persistent challenges in identification and issuance of travel documents, and returns via charter flights are not possible.
- (3) Taking into account the various steps taken so far by the Commission at political and technical level to improve the level of cooperation and the Union's overall relations with Senegal, it is considered that Senegal's cooperation with the Union on readmission matters is not sufficient and that action is therefore needed.
- (4) The application of certain provisions of Regulation (EC) No 810/2009 should therefore be temporarily suspended for nationals of Senegal who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806 of the European Parliament and of the Council<sup>9</sup>. This ought to encourage the Senegalese authorities to undertake the necessary actions to improve cooperation on readmission matters.
- (5) The provisions temporarily suspended should be those referred to in Article 25a(5), point (a), of Regulation (EC) No 810/2009: suspension of the possibility of waiving 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

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<sup>8</sup> OJ L 243, 15.9.2009, p. 1.

<sup>9</sup> 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).

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, meaning that 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 of Article 16(5), point (b).

- (6) This Decision should not affect the application of Directive 2004/38/EC, which extends the right of free movement to family members independent 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 temporary suspension should not apply to nationals of Senegal 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 provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC<sup>10</sup>; 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<sup>11</sup> which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC<sup>12</sup>.
- (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

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<sup>10</sup> 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).

<sup>11</sup> OJ L 176, 10.7.1999, p. 36.

<sup>12</sup> 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).

Confederation's association with the implementation, application and development of the Schengen acquis<sup>13</sup> 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<sup>14</sup>.

- (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<sup>15</sup> 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<sup>16</sup>.
- (13) This Decision constitutes an act building upon, or otherwise relating to, the Schengen acquis within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession,

HAS ADOPTED THIS DECISION:

#### *Article 1*

##### *Scope*

- (1) This Decision shall apply to nationals of Senegal who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806.
- (2) This Decision shall not apply to nationals of Senegal 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 Senegal applying for a visa and who are family members of a Union citizen to whom Directive 2004/38/EC applies or 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 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;

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<sup>13</sup> OJ L 53, 27.2.2008, p. 52.

<sup>14</sup> 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).

<sup>15</sup> OJ L 160, 18.6.2011, p. 21.

<sup>16</sup> 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).

- (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*

#### *Temporary suspension of the application of certain provisions of Regulation (EC) No 810/2009*

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*

#### *Addressees*

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*