



Council of the
European Union

Brussels, 13 June 2024
(OR. en)

10955/24

LIMITE

VISA 99
MIGR 275
COASI 85
COMIX 282
CODEC 1494

**Interinstitutional File:
2024/0128(COD)**

'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	10618/24
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1806 as regards Vanuatu – Mandate for negotiations with the European Parliament

1. On 31 May 2024, the Commission submitted a proposal¹ for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1806 as regards Vanuatu.
2. The purpose of the proposal is to transfer the reference to Vanuatu from Annex II (list of 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) to Annex I (list of third countries whose nationals are required to be in possession of a visa when crossing the external borders of the Member States).
3. The JHA Counsellors (Visa) examined the proposal at their meeting on 10 June 2024, at which a very broad majority of Member States could support the Commission proposal without further amendments.

¹ 10618/24.

4. In the European Parliament, the final decision on the referral to a committee is pending.
 5. 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/EC². Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
 6. In view of the above, the Permanent Representatives Committee is invited to agree on the mandate for negotiations with the European Parliament, as set out in the Annex to this note.
-

² 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* (OL L 64, 7.3.2002, p. 20).

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**amending Regulation (EU) 2018/1806 as regards Vanuatu**

THE EUROPEAN PARLIAMENT AND 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), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) 2018/1806 of the European Parliament and of the Council¹ lists the third countries whose nationals are to be in possession of visas when crossing the external borders of the Member States and those whose nationals are exempt from that requirement for stays of no more than 90 days in any 180-day period.
- (2) 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 waiver² ('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.
- (3) 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.

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

² OJ L 173, 3.7.2015, p. 48, ELI: http://data.europa.eu/eli/agree_internation/2015/1035/oj.

- (4) As the granting of citizenship by Vanuatu under its investor citizenship schemes was deemed to constitute a circumvention of the Union short-stay visa procedure and the assessment of security and migratory risks it entails, as well as an increased risk to the internal security and public policy of the Member States, the Council adopted, on 3 March 2022, Decision (EU) 2022/366³ partially suspending the application of the Agreement, in accordance with Article 8(4) of that Agreement. The suspension of the application of the Agreement was 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.
- (5) On 27 April 2022, the Commission adopted Implementing Regulation (EU) 2022/693⁴ temporarily suspending the visa exemption for nationals of Vanuatu from 4 May 2022 to 3 February 2023, in accordance with Article 8(6), point (a), of Regulation (EU) 2018/1806.
- (6) Following the start of application of the temporary suspension of the visa exemption on 4 May 2022, and in accordance with Article 8(6), point (a), third subparagraph, of Regulation (EU) 2018/1806, the Commission started an enhanced dialogue with Vanuatu, with a view to remedying the circumstances having led to the temporary suspension of the visa exemption. However, Vanuatu did not engage in a meaningful way during this phase of the dialogue.
- (7) Due to the persistence of those circumstances and the absence of engagement of Vanuatu to remedy them, the Council as of 4 February 2023 repealed Decision (EU) 2022/366 and suspended in whole the application of the Agreement by Decision (EU) 2022/2198.⁵
- (8) In accordance with Article 8(6), point (b), of Regulation (EU) 2018/1806, on 1 December 2022, the Commission adopted Delegated Regulation (EU) 2023/222 temporarily suspending the exemption from the visa requirement from 4 February 2023 to 3 August 2024.⁶

³ 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, ELI: <http://data.europa.eu/eli/dec/2022/366/oj>).

⁴ 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, ELI: http://data.europa.eu/eli/reg_impl/2022/693/oj).

⁵ 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, ELI: <http://data.europa.eu/eli/dec/2022/2198/oj>).

⁶ Commission Delegated Regulation (EU) 2023/222 of 1 December 2022 on the temporary suspension of the visa exemption for all nationals of Vanuatu (OJ L 32, 3.2.2023, p. 1, ELI: http://data.europa.eu/eli/reg_del/2023/222/oj).

- (9) Following the start of application of that Delegated Regulation, the Commission continued the dialogue with Vanuatu, with four meetings held between February 2023 and April 2024, and numerous information exchanges in writing.
- (10) Most of the concerns related to the investor citizenship schemes operated by Vanuatu that were presented by the Commission in Implementing Regulation (EU) 2022/693 persist. While Vanuatu adopted a number of legislative changes in 2023 aimed to address those concerns, it has failed to provide satisfactory proof that these changes are being implemented and are sufficient to mitigate the security risks of its investor citizenship schemes.
- (11) The investor citizenship schemes operated by Vanuatu still do not contain any requirement of effective residence or physical presence in Vanuatu for the applicants. The application process continues to be managed by specialised agencies located outside Vanuatu whereby the applicant does not need to have any direct contact with Vanuatu's authorities. No interviews with the applicant are held during the application process. The absence of a requirement for a physical interview reduces the opportunities for the authorities of Vanuatu to properly assess the applicant or to corroborate the information provided in the application, including its veracity and credibility.
- (12) The applications continue to be processed within very short deadlines. In particular, the screening and due diligence process of an application takes maximum 14 days, extendable to 30. The rejection rate has continued to be extremely low, thus corroborating the Commission's assessment concerning the low reliability of the screening process. According to information provided by Vanuatu, in 2022 and 2023, Vanuatu has received 1988 applications for citizenship in exchange of investment, out of which only 27 have been rejected.
- (13) In March 2023, Vanuatu amended its Citizenship Act by replacing the institutions and procedures for the screening and due diligence checks of the applications. In particular, the previous Internal Screening Committee appointed by the Prime Minister has been replaced by three institutions: the Vanuatu Police Force, the Financial Intelligence Unit and the Vanuatu Immigration Services. Those institutions carry out the checks, including on Interpol databases, and report to the Secretary General of the Citizenship Commission. While on the one hand this new procedure appears to mitigate the risk of granting the citizenship to persons who are listed in Interpol databases, on the other hand it does not include other necessary elements to properly assess the absence of security risks of the applicants. In particular, there is no adequate means for the authorities of Vanuatu to verify the veracity of the documents issued by the applicant's country of origin or residence, including identity documents and criminal records, since those authorities do not exchange information with the applicants' country of origin or residence.

- (14) The countries of origin of successful applicants in 2022 and 2023 include mostly countries whose nationals need a visa for short stays in the Union. In 2023, most applications were from nationals of China (519) and Russia (237). Contrary to other third countries operating investor citizenship schemes, Vanuatu has continued accepting and processing applications from Russian nationals following Russia's aggression against Ukraine.
- (15) Before 2021, persons who acquired the citizenship of Vanuatu through an investor citizenship programme could also subsequently apply for a name change in Vanuatu. During the dialogue, Vanuatu informed the Commission that in 2021 the relevant legislation was amended providing that persons holding dual citizenship could not have a change of name registered in Vanuatu. However, Vanuatu also informed the Commission that it does not hold any records of name changes since 2019, so it could not provide any information on the number of persons who acquired the citizenship through investment and subsequently changed their name, or on any follow-up checks on those persons.
- (16) While Vanuatu informed the Commission that, based on its case law, it is possible to revoke the citizenship where this has been obtained with fraud or against the law, it has not provided information on actual cases of revocation of citizenship acquired through the investor schemes. Furthermore, Vanuatu has not implemented any structural *ex-post* monitoring mechanism to address the potential security loopholes of the more than 10 000 passports issued before the change of legislation and allegedly more robust screening procedure. In February 2023, Vanuatu established a Commission of enquiry tasked with investigating any alleged wrongdoings committed during the operation of the schemes since their establishment. In April 2024, Vanuatu informed that the Commission of enquiry's investigation were still ongoing and that it could not provide a certain date on the delivery of its findings.
- (17) In accordance with Article 8(7) of Regulation (EU) 2018/1806, before the end of the period of validity of Delegated Regulation (EU) 2023/222, the Commission has submitted a report to the European Parliament and to the Council⁷, describing in detail the dialogue with Vanuatu and concluding that Vanuatu has not remedied the circumstances that led to the suspension.
- (18) Regulation (EU) 2018/1806 should therefore be amended by transferring the reference to Vanuatu from Annex II to Annex I and reintroducing permanently the visa requirement for nationals of Vanuatu.

⁷ Report from the Commission to the European Parliament and the Council on the suspension of the visa exemption for nationals of Vanuatu, COM(2024)366.

- (19) 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*⁸, which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC⁹.
- (20) 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*¹⁰, which fall within the area referred to in Article 1, points B and C, of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC¹¹.
- (21) 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*¹², which fall within the area referred to in Article 1, points B and C, of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2011/350/EU¹³.

⁸ OJ L 176, 10.7.1999, p. 36, ELI: [http://data.europa.eu/eli/agree_international/1999/439\(1\)/oj](http://data.europa.eu/eli/agree_international/1999/439(1)/oj).

⁹ 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>).

¹⁰ OJ L 53, 27.2.2008, p. 52, ELI: [http://data.europa.eu/eli/agree_international/2008/178\(1\)/oj](http://data.europa.eu/eli/agree_international/2008/178(1)/oj).

¹¹ 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>).

¹² OJ L 160, 18.6.2011, p. 21, ELI: <http://data.europa.eu/eli/prot/2011/350/oj>.

¹³ 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>).

- (22) This Regulation does not constitute a development of the provisions of the Schengen *acquis* in which Ireland takes part in accordance with Council Decision 2002/192/EC¹⁴. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (23) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(1) of the 2003 Act of Accession,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2018/1806 is amended as follows:

- (1) in Annex I, part 1, the following entry is inserted after the entry ‘Uzbekistan’:
‘Vanuatu’
- (2) in Annex II, part 1, the following entry is deleted:
‘Vanuatu (*)’

* The exemption from the visa requirement for all nationals of Vanuatu is suspended from 4 February 2023 to 3 February 2025.’

Article 2

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹⁴ 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>).