Council of the European Union

Brussels, 29 September 2021
(OR. en)

12357/21

Interinstitutional File:
2021/0311(NLE)

VISA 204
MIGR 210
COEST 225

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	29 September 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 612 final
Subject:	Proposal for a COUNCIL DECISION on the partial suspension of the application of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas

Delegations will find attached document COM(2021) 612 final.

Encl.: COM(2021) 612 final

EUROPEAN
COMMISSION

Brussels, 29.9.2021
COM(2021) 612 final

2021/0311 (NLE)

Proposal for a

COUNCIL DECISION

on the partial suspension of the application of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Agreement between the EU and the Republic of Belarus on the facilitation of the issuance of visas (hereafter "Visa Facilitation Agreement") entered into force on 1 July 2020[1], in parallel with the Readmission Agreement.[2] The purpose of the Visa Facilitation Agreement is to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days in any 180-day period to the citizens of the Union and Belarus.

The Visa Facilitation Agreement contributes to enhancing people-to-people contacts and sharing of values, including human rights and EU democratic values. The importance of the fundamental principles governing the cooperation between the EU and Belarus as well as the obligations and responsibilities, including the respect of human rights and democratic principles, stemming from the relevant international instruments to which they are bound, is underlined in the preamble to the Visa Facilitation Agreement.

On 12 October 2020, the Council adopted conclusions on the EU's response to the developments in Belarus.[3] In its conclusions, the Council reiterated that the 9 August 2020 presidential elections were neither free nor fair and that the Belarusian regime lacked democratic legitimacy. The Council reiterated its full support for Belarus's sovereignty and independence and underlined the democratic right of the Belarusian people to elect their president through free and fair elections, without external interference. The conclusions further recalled the restrictive measures, consisting of travel ban and asset freeze, imposed on 40 individuals responsible for the fraudulent nature of the presidential elections and the violent crackdown on peaceful protests, and stated the EU's readiness to take further restrictive measures against entities and high-ranking officials, including Aleksandr Lukashenko.[4]

The EU scaled down bilateral cooperation with the Belarusian authorities at central level, increased its support for the Belarusian people and civil society, and recalibrated its bilateral financial assistance accordingly. In line with these measures, the EU immediately made additional financial resources available for victims of violence, civil society organisations and independent media.

---

1 Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas (OJ L 180, 9.6.2020).

2 Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation (OJ L 181, 9.6.2020).

3 Council Conclusions on Belarus, 12 October 2020, 11661/20.

4 A second package of sanctions was adopted on 6.11.2020 (Council Implementing Regulation (EU) 2020/1648 of 6 November 2020 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus; Council Implementing Decision (CFSP) 2020/1650 of 6 November 2020 implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus (OJ L 370I)). A third package of sanctions was adopted on 17.12.2020 (Council Implementing Regulation (EU) 2020/2129 of 17 December 2020 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus; Council Implementing Decision (CFSP) 2020/2130 of 17 December 2020 implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus (OJ L 426I)). The restrictive measures in both packages include a travel ban and an asset freeze which concern the individuals and entities listed in the above-mentioned acts.

The crackdown on opposition activists, civil society organisations, human rights defenders and independent media continues. There were more than 670 political prisoners by mid-September 2021 and their number is growing every week. Politically motivated trials are taking place against them, often conducted behind closed doors in a hasty manner and ending with shameful verdicts of many years of imprisonment.

The application of the Visa Facilitation Agreement has continued while the setting up of the Joint Visa Facilitation Committee, meant to monitor the implementation of the Agreement, has been postponed.

In reaction to the continued, brutal repression against all segments of the Belarus society, and in particular to the hijacking of a passenger flight on 23 May 2021, the EU banned Belarusian carriers from overflying EU airspace and accessing EU airports[5], adopted a fourth package of sanctions listing individuals and entities[6] and targeted economic sanctions[7].

Following those measures, the Belarus authorities retaliated by announcing the suspension of their participation in the Eastern Partnership and by announcing the suspension of the Readmission Agreement with the EU on 28 June 2021. In addition, Belarus recalled its ambassador to the EU for consultations, requested the recall of the EU ambassador to Brussels for consultations and announced that representatives of European institutions and individuals from the EU who contributed to preparing the sanctions would be denied entry to Belarus. The Belarus authorities demanded that the activities of the Member States' cultural institutes be suspended. Belarus also stated it would consider further possible counter-measures. Moreover, on 8 September 2021, a bill on the suspension of the Readmission Agreement with the EU was submitted to the Belarus Parliament.

While the **situation at the external EU borders with Belarus has stabilised** in terms of arrivals, including due to the suspension of direct flights from Baghdad to Minsk it remains tense and migratory pressure persists as the **number of prevented attempts to cross the border irregularly remains high.** As of 19 September 2021, the Lithuanian-Belarusian border was irregularly crossed by 4145 persons; this number is 56 times higher than 2020. More than half of the third country nationals who crossed the Lithuanian border with Belarus came from Iraq (2805), followed by nationals of Congo Brazzaville, Cameroon and a small

---

5 Council Regulation (EU) 2021/907 of 4 June 2021 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus and Council Decision (CFSP) 2021/908 of 4 June 2021 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ L 197I).

6 Council Regulation (EU) 2021/996 of 21 June 2021 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus; Council Implementing Regulation (EU) 2021/997 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus; Council Implementing Regulation (EU) 2021/999 of 21 June 2021 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus; Council Decision (CFSP) 2021/1001 of 21 June 2021 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus; Council Implementing Decision (CFSP) 2021/1002 of 21 June 2021 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ L 219I) . The individuals and entities listed in the above-mentioned acts are subject to an asset freeze and EU citizens and companies are forbidden from making funds available to those listed. The restrictive measures also include a travel ban for listed individuals.

7 Council Regulation (EU) 2021/1030 of 24 June 2021 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus; Council Decision (CFSP) 2021/1031 of 24 June 2021 amending Council Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ L 224I).

percentage of nationals from Syria, Iran and Afghanistan. With regards to Poland, in the same period, 1 493 third-country nationals have crossed the border with Belarus. This number is 23 higher compared to 2020. Similarly the main nationalities are Iraqi, but with a higher presence of Afghan nationals. In relative terms, however, Latvia experienced the highest increase passing from 3 detections of irregular border crossing in 2020 to 377 in 2021. The same trend applies to the asylum applications. Compared to the same period last year, Lithuania has recorded 14 times more asylum applications so far in 2021 (2 399), mostly from nationals of Iraq (50%). Poland has registered 131% more asylum applications (4109) and Afghans are the most frequent applicants (33%), followed by Belarusians (29%) and Russian (18%). Similarly, Latvia received 465 asylum applications, almost 6 times higher than 2020.

This sudden rise suggests that the regime is encouraging irregular migration for political purposes, and in particular in retaliation against Lithuania, Poland and Latvia for their stance on Belarus. The Belarusian action against EU Member States requires a united response.

2. PROPOSED MEASURES

The Visa Facilitation Agreement was concluded on a premise that the respect for human rights and democratic principles is one of the fundamental principles governing the cooperation between the Union and Belarus as well as their obligations and responsibilities.[8] Both the Union and Belarus recognised that the Visa Facilitation Agreement should not lead to irregular migration while paying special attention to security and readmission.[9]

In view of the context described above, these principles are being violated by Belarus. Belarus is not only endangering mutual relations between the Union and its Member States but also escalated the violations of human rights that are contrary to its international obligations.[10]

Therefore, an appropriate measure is to suspend the application of certain articles of the Visa Facilitation Agreement, which provide facilitations for certain specific categories of applicants, namely:

(i) members of Belarus official delegations including permanent members of such delegations who, following an official invitation addressed to Belarus, should participate in official meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations;

(ii) members of Belarus national and regional Governments and Parliaments, Belarus Constitutional Court and Belarus Supreme Court, in the exercise of their duties;

The application of the following Articles of the Visa Facilitation Agreement should therefore be suspended: Article 4(1), point (a), on) "Documentary evidence regarding the purpose of the journey", Article 5(1), points (a) and (b), Article 5(2), point (a), on) "Issuing of multiple-entry visas" and Article 6(3), points (a) and (b), on) "Fees for processing visa applications".

---

8 Recital 3 of the preambule of Visa Facilitation Agreement.

9 Recital 2 of the preambule of Visa Facilitation Agreement.

10 As presented in the Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, A/HRC/47/49, 4 May 2021.

Once the Council Decision enters into force, the application of specific rules provided for by these provisions will be suspended. Consequently, the general rules of the Visa Code will apply instead.[11]

The application of other provisions of the Visa Facilitation Agreement is not suspended and the facilitations they provide in respect of the ordinary citizens of Belarus will continue to apply. This will allow to maintain "people-to-people contacts". The non-suspended provisions of the Visa Facilitation Agreement should not, however, be used to circumvent the object of the Council decision on the partial suspension of the Visa Facilitation Agreement. Member States should report to the Commission on attempts to circumvent or alleged circumvention of the partial suspension of the Visa Facilitation Agreement.

3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The procedural legal basis for this proposal is Article 218(9) of the Treaty on the Functioning of the European Union (TFEU). The substantive legal basis is Article 77(2)(a) of the Treaty on the Functioning of the European Union (TFEU).

In addition, Article 14(5) of the Visa Facilitation Agreement stipulates that *"each Party may suspend in whole or in part this Agreement. The decision on suspension shall be notified to the other Party not later than 48 hours before its entry into force. The Party that has suspended the application of this Agreement shall immediately inform the other Party once the reasons for the suspension no longer apply."*

• Subsidiarity (for non-exclusive competence)

n.a

• Proportionality

The present proposal does not go beyond what is necessary to achieve the objective pursued, namely to suspend certain existing facilitations for officials of Belarus while at the same time continuing to support the ordinary citizens of Belarus, by facilitating visa procedures.

4. BUDGETARY IMPLICATIONS

This proposal does not entail additional costs for the EU budget.

[11] Regulation (EC) 810/2009 of the European Parliament and the Council of 13 July 2009 establishing a Community Code on Visas, OJ L 243, 15.9.2009, p.1.

2021/0311 (NLE)

Proposal for a

COUNCIL DECISION

on the partial suspension of the application of the Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas

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), and Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas[1] ("the Agreement") entered into force on 1 July 2020, in parallel with the Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation[2] ("the Readmission Agreement").

(2) The purpose of the Agreement is to facilitate, on the basis of reciprocity, the issuance of visas for an intended stay of no more than 90 days in any 180-day period to the citizens of the Union and Belarus. The Agreement contributes to enhance people-to-people contacts and sharing of values, including human rights and democratic principles.

(3) Under Article 14(5) of the Agreement, either party may suspend in whole or in part the Agreement. The decision on suspension is to be notified to the other party not later than 48 hours before its entry into force. The Party that has suspended the application of the Agreement is to immediately inform the other party once the reasons for the suspension no longer apply.

(4) In reaction to the continued, brutal repression against all segments of society in Belarus, and in particular to the hijacking of a passenger flight on 23 May 2021, the Union banned Belarusian carriers from overflying the territory of the Union and accessing Union airports, introduced a fourth package of sanctions listing individuals

[1] Agreement between the European Union and the Republic of Belarus on the facilitation of the issuance of visas (OJ L 180, 9.6.2020).

[2] Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorisation (OJ L 181, 9.6.2020).

and entities and targeted economic sanctions by Regulation (EC) No 765/2006[3] and Decision 2012/642/CFSP[4].

(5) Following those measures, Belarus retaliated by announcing the suspension of their participation in the Eastern Partnership and by announcing the suspension of the Readmission Agreement on 28 June 2021. On 8 September 2021, a bill on the suspension of the Readmission Agreement with the European Union was submitted to the Belarus Parliament.

(6) At the same time Lithuania and more recently Poland and Latvia have been experiencing an unprecedented increase of irregular migration flows from Belarus. This sudden increase suggests that the regime is encouraging irregular migration for political purposes, and in particular retaliating against Lithuania, Poland and Latvia for their stance on Belarus.

(7) The above actions by Belarus breach the fundamental principles on which the Agreement was concluded and go against the interests of the Union and its Member States. In particular, Belarus' actions do not respect human rights and the democratic principles as well as they provoke irregular migration from the territory of Belarus into the Union.

(8) Therefore, the application of certain provisions of the Agreement providing for facilitations for certain categories of applicants for a short-stay visa, namely members of Belarus official delegations, members of Belarus national and regional Governments and Parliaments, members of the Belarus Constitutional Court and Belarus Supreme Court, in the exercise of their duties should be suspended.

HAS ADOPTED THIS DECISION:

Article 1

The application of the following provisions of the Agreement shall be suspended:

(a) Article 4(1), point (a) with regards to any visa applicant who is a member of a Belarus official delegation, including a permanent member of such delegation who, following an official invitation addressed to Belarus, is to participate in official meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations;

---

[3] Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ L 134, 20.5.2006, p. 1), as amended by Council Regulation (EU) 2021/907 (OJ L 197I, 4.6.2021), Council Regulation (EU) 2021/996 (OJ L 219I , 21.6.2021, p. 1), Council Implementing Regulation (EU) 2021/997 (OJ L 219I , 21.6.2021, p. 3), Council Implementing Regulation (EU) 2021/999 (OJ L 219I , 21.6.2021, p. 55) and Council Regulation (EU) 2021/1030 (OJ L 224I , 24.6.2021, p. 1).

[4] Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus (OJ L 285, 17.10.2012, p. 1) as amended by Council Decision (CFSP) 2021/908 (OJ L 197I, 4.6.2021, p. 3), Council Decision (CFSP) 2021/1001 (OJ L 219I , 21.6.2021, p. 67), Council Implementing Decision (CFSP) 2021/1002 (OJ L 219I , 21.6.2021, p. 70) and Council Decision (CFSP) 2021/1031 (OJ L 224I, 24.6.2021).

(b) Article 5(1), points (a) and (b) with regards to any visa applicant who, in the exercise of his duties, is a member of Belarus national or regional Government or Parliament of Belarus Constitutional Court or of Belarus Supreme Court, as well as to any visa applicant who is a permanent member of Belarus official delegation who, following an official invitation addressed to Belarus, is to participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations;

(c) Article 5(2), point (a) with regards to any visa applicant who is a member of a Belarus official delegation who, following an official invitation addressed to Belarus, is to participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations;

(d) Article 6(3), points (a) and (b) with regards to any visa applicant who is a member of Belarus national or regional Government or Parliament or of Belarus Constitutional Court or of Belarus Supreme Court, as well as to any visa applicant who is a member of a Belarus official delegation who, following an official invitation addressed to Belarus, is to participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations.

Article 2

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

Done at Brussels,

For the Council
The President