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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	12 January 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 6 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 Vanuatu on the short-stay visa waiver

Delegations will find attached document COM(2022) 6 final.

Encl.: COM(2022) 6 final

EUROPEAN
COMMISSION

Brussels, 12.1.2022
COM(2022) 6 final

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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

EXPLANATORY MEMORANDUM

The Commission's report on investor citizenship and residence schemes in the European Union of January 2019[1] highlighted concerns about such schemes, in particular as regards security, infiltration of organised crime, money laundering, the financing of terrorism, tax evasion and corruption. It also warned that, when run by countries enjoying visa-free access to the Union, investor citizenship schemes could be used to circumvent the regular Schengen visa procedure and the in-depth risk assessment it entails[2].

A Visa Waiver Agreement between the EU and Vanuatu[3] applies since 2015. Before 2015, Vanuatu ran only one investor citizenship scheme, under which a limited number of passports were issued[4]. However, since 2015, Vanuatu has established additional investor citizenship schemes and the number of successful applicants has increased significantly. According to the authorities of Vanuatu, two schemes are currently operational: the Vanuatu Contribution Program and the Development Support Program. By March 2021, Vanuatu had issued over 10 500 passports under its investor citizenships schemes[5]. In April 2021, the Parliament of Vanuatu approved a new citizenship scheme which is not yet operational[6].

In 2017, the Commission started investigating the Vanuatu schemes, since these raised serious doubts, in particular on account of their security failures. The Commission also warned the Vanuatu authorities about the suspension possibilities contained in the Agreement. Also in 2017, the Commission requested information from the Vanuatu authorities on the management of the schemes, in particular as regards the security screening of applicants. In 2018, the Commission received assurances from the Government of Vanuatu regarding the security screening procedures, stating that these procedures included checks against Interpol databases.

At the fifth Enhanced Political Dialogue between the EU and Vanuatu of 15 April 2019, the EU reiterated its concerns with regard to Vanuatu's citizen by investment schemes, noting that it could have an impact on the Visa Waiver Agreement. The EU clarified that, while naturalisation procedures are Vanuatu's sovereign decision, very strict security background checks are essential to prevent any abuse.

In July 2019, it came to the Commission's attention that applicants had been granted citizenship under Vanuatu's investor citizenship schemes despite being listed in Interpol's databases and that some applicants had presented forged documents (in particular forged clean criminal records) that the authorities of Vanuatu failed to detect.

The Commission sent letters to the authorities of Vanuatu asking for further information on the schemes, the security screening and the granting of nationality to applicants listed in Interpol watch lists, again warning of the possibility of suspension of the visa exemption[7].

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1 COM(2019) 12 final.

2 p. 22-24.

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

4 According to the information provided by Vanuatu's authorities, 93 passports were issued between 2014 and 2015 under the Capital Investment Immigration Program (CIIP).

5 Information provided by Vanuatu's Passport Office on 14 June 2021.

6 Information provided by the EU Delegation on 17 June 2021.

7 Letters sent from the Commission to Vanuatu on 15 November 2019 and on 18 June 2020.

At the sixth Enhanced Political Dialogue between the EU and Vanuatu on 21 April 2021, the EU referred again to the potential impact of Vanuatu's investor citizenship schemes on the Visa Waiver Agreement and strongly recommended that Vanuatu immediately address possible risks of infiltration of organised crime, money laundering, tax evasion and corruption associated with such schemes. At this Political Dialogue, Vanuatu expressed its commitment to implementing reforms in order to address these concerns, such as close cooperation with various stakeholders - in particular its Financial Intelligence Unit – or the amendment of the Passport Act. However, in April 2021 the Government of Vanuatu took further steps to set up a new citizenship program.

Based on the information received from Vanuatu, the Commission concluded that its investor schemes present serious deficiencies and security failures that have the potential to create a risk to the internal security of the EU and its Member States. In particular, the average time taken to process the applications is too short to allow for a thorough screening and there is no systematic exchange of information with the applicants' country of origin or main past residence before citizenship is granted. In addition, there are no requirements for physical residence or presence in Vanuatu. The absence of a physical interview requirement raises additional doubts as to the reliability of the security screening, as it reduces the opportunities for the authorities to corroborate the information provided in the application, including its veracity and credibility.

The available data also raise concerns in terms of the extent of the schemes, the rejection rate and the nationalities of origin:

First, the number of successful applicants (more than 10 500 citizenships granted in exchange for investment between 2013 and 2021, according to Vanuatu’s Passport Office) is very high.

Secondly, the rejection rate is extremely low. Based on the available information, only one application had been rejected until 2020[8]. This raises further doubts as to the reliability of the security and due diligence screening.

Thirdly, the countries of origin of successful applicants include some that are typically excluded from other citizenship schemes, such as Iran and Afghanistan, and other countries whose nationals require a visa for short stays in the EU, including Nigeria, Yemen, Syria, Pakistan and Libya.

As a result, the schemes that Vanuatu has established since 2015 allow visa-required nationals to bypass the regular Schengen visa procedure and the in-depth assessment of individual migratory and security risks it entails. Vanuatu's investor citizenship schemes do not ensure the high level of security referred to in the Commission's 2019 report on investor citizenship and residence schemes[9].

Finally, the schemes established since 2015 have been promoted commercially as providing visa-free access to the EU, although the Visa Waiver Agreement is not aimed at enabling third-country nationals who are required to be in possession of a visa to travel to the EU to circumvent such requirement by acquiring citizenship of Vanuatu. While the EU respects the right of sovereign countries to decide on their own naturalisation procedures, visa-free access

[8] Information provided by Vanuatu's Passport Office on 22 September 2020.
[9] COM(2019) 12 final.

to the Union should not be used as a tool for leveraging individual investment in return for citizenship.

The Agreement can be suspended in whole or in part for reasons of public policy or the protection of national security[10].

In this context, the Commission considers that the investor schemes in place in Vanuatu go against the objectives of the EU visa policy and of the distinction that is made, in Regulation 2018/1806[11], between third countries whose nationals are subject to the visa requirement and third countries whose nationals are not subject to such a requirement, which is determined by the EU on the basis of a case by case assessment of a variety of criteria relating inter alia to security. Such schemes give to third-country nationals, who would be visa-required if they had not obtained Vanuatu's citizenship, the possibility to travel to the EU visa-free, without going through the security vetting before their arrival at the external borders required by the Schengen visa procedure.

In light of the above, a partial and proportionate suspension of the Visa Waiver Agreement is justified in order to mitigate the impact of the investor citizenship schemes on the visa-free regime between the EU and Vanuatu. Considering that it will not be possible in practice for Member States' border guards to determine whether an ordinary passport has been issued through an investor scheme, the suspension of the Agreement should cover all ordinary passports issued since 25 May 2015, when Vanuatu started issuing a substantial number of passports in exchange for investment.

[10] Article 8(4) of the Visa Waiver Agreement between the European Union and Vanuatu, cited above.

[11] 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).*

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(a) thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(9) thereof,

Whereas:

(1) The Agreement between the European Union and the Republic of Vanuatu ('the parties') on the short-stay visa waiver[1] ('the Agreement') was concluded on 28 May 2015[2] to facilitate travel to the Union for citizens of Vanuatu and the travel of citizens of the Union to Vanuatu.

(2) The Agreement is based on the parties' common desire to encourage people-to-people contacts, boost tourism and invigorate business between the Union and Vanuatu.

(3) Under Article 8(4) of the Agreement, either party may suspend in whole or in part the Agreement, in particular for reasons of public policy and the protection of national security. The decision on suspension is to be notified to the other party no later than 2 months before its planned entry into force. Should the reasons for that suspension cease to exist, the party that has suspended the Agreement is to inform the other party immediately and to lift the suspension.

(4) Vanuatu operates investor citizenship schemes, whereby it has granted Vanuatu nationality to nationals of other countries with no previous connection to Vanuatu, issuing positive decisions on the vast majority of applications. Until March 2021, it issued over 10 500 passports with an extremely low rejection rate.[3] This raises doubts as to the reliability of the security and due diligence screening carried out by the Vanuatu authorities.

(5) In exchanges in October 2017, November 2019, June 2020 and March 2021, the Commission expressed serious concerns and warned the government of Vanuatu of the

[1] OJ L 173, 3.7.2015, p. 48.

[2] Council Decision (EU) 2016/272 of 12 February 2016 on the conclusion, on behalf of the European Union, of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver (OJ L 52, 27.2.2016, p. 11).

[3] Information provided by Vanuatu's Passport Office on 14 June 2021.

possibility of the visa requirement being reinstated. The explanations provided by Vanuatu were not sufficient to mitigate those concerns.

(6) The granting of citizenship to applicants listed in Interpol databases contradicts previous assurances by the Vanuatu authorities regarding security screening and raises further concerns as to the reliability of the schemes' security screening procedures.

(7) The successful applicants' nationalities of origin who have been granted Vanuatu nationality include several countries whose nationals must be in possession of visas when crossing the external borders of the Union. Furthermore, the Commission has raised concerns regarding the absence of physical presence or residence requirements, the schemes' short processing periods and the lack of systematic exchange of information with applicants' countries of origin or main past residence of applicants. The Commission came to the conclusion that the screening of applications for the investor citizenship schemes in Vanuatu does not guarantee a high level of security.

(8) The suspension of the Agreement should be 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.

(9) Therefore, the application of the Agreement with regard to all citizens of Vanuatu holding an ordinary passport issued by Vanuatu as of 25 May 2015 should be suspended.

(10) 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[4]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver is suspended for citizens of Vanuatu holding ordinary passports issued by Vanuatu as of 25 May 2015.

Article 2

This Decision shall enter into force on [two months after the publication – OP please insert a specific date].

Done at Brussels,

For the Council
The President

[4] 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).