



Brussels, 13.9.2019
COM(2019) 417 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on an Agreement between the European Union and the Republic of Cabo Verde amending the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

Cabo Verde and the EU have enjoyed a close and very constructive relationship for more than 35 years, based first of all on significant and continuing development cooperation. Since November 2007, relations between the EU and Cabo Verde are governed by the EU-Cabo Verde Special Partnership, which represents an ambitious tool in reinforcing of the bilateral relations, and constitutes a unique case among the African, Caribbean and Pacific Group of States (ACP). One of the objectives of the Special Partnership is to enhance mobility and people-to-people contacts between EU and Cabo Verdean citizens, as well as to increase cooperation in fighting irregular immigration. In the framework of this partnership, in 2008 Cabo Verde, as a first African country, concluded a Mobility Partnership with the EU. The objectives of the Mobility Partnership aim at strengthening cooperation with the EU in the area of migration, border management, fight against irregular migration and trafficking in human beings.

The Special Partnership paved the way for the negotiation and conclusion of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issuing of short-stay visas to citizens of the Republic of Cape Verde and of the European Union¹ (hereinafter ‘the Agreement’), adopted in parallel with an Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation². Both agreements entered into force on 1 December 2014.

On 2 February 2020, Regulation (EU) 2019/1155 of 20 June 2019 amending the Visa Code will become applicable³. In case of contradiction between them, the Agreement, as an international agreement of the Union, would prevail over secondary Union legislation and would thus continue to apply. However, the Visa Code will also apply to matters that are not dealt with by the Agreement. Therefore, some of the provisions of the revised Visa Code will affect the procedures for the issuing of visas to Cabo Verdean citizens.

For instance, the revised Visa Code introduces a harmonised approach to the issuing of multiple entry visas to regular travellers with a positive visa history for a period that increases gradually from 1 to 5 years, and it will provide for the possibility to waive the visa fee to children from the age of six years and below the age of 18 years. It also increases the general level of the visa fee from EUR 60 to EUR 80, and introduces the possibility to suspend – by means of a Council implementing decision – some of the facilitations applicable to nationals of a third country (and/or certain categories of travellers of that country), such as visa fee waivers, length of validity of multiple-entry visas, reduced supporting documents to be provided – in case that country’s level of cooperation on readmission is assessed as insufficient.

Contrary to similar visa facilitation agreements concluded by the EU with other third countries, the Agreement with Cabo Verde does not include a provision reducing the visa fee level, nor does it provide for a harmonised list of supporting documents to be presented by the

¹ OJ L 282, 24.10.2013, p. 3-12.

² OJ L 282, 24.10.2013, p. 15-34.

³ Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code). OJ L 188, 12.7.2019, p. 25–54.

applicant for justifying the purpose of travel. Moreover, the Agreement does not allow for suspension, of all or some of its provisions, in case of insufficient cooperation on readmission.

In light of these developments, the European Commission considers it opportune to adapt the Agreement concluded with Cabo Verde.

Cabo Verde's visa policy towards EU citizens

As of 1 January 2019, Cabo Verde exempted EU citizens from the visa requirement (for stays up to 30 days) when travelling to its territory.

The EU citizens can benefit from the Agreement's facilitations for stays longer than 30 days and up to 90 days per period of 180 days.

If Cabo Verde were to reintroduce the visa requirement for EU citizens, the provisions of the Agreement would fully apply, on the basis of reciprocity, to EU citizens.

- **Consistency with existing policy provisions in the policy area**

As explained in the previous section, the primary objective to be achieved through the negotiation and conclusion of an amended agreement is to align the facilitations granted to Cabo Verdean nationals with revised provisions of the Visa Code.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this recommendation is Article 218 (3) and (4) TFEU.

The subject matter of the amended agreement would be part of the Union's common visa policy for short stays of up to 90 days in any 180-day period. It can therefore be anticipated that the substantive legal basis of the decisions on the signature and the conclusion of the agreement will be Article 77(2) (a) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

The Union has already exercised its competence in this field and has established rules in this respect by adopting the Visa Code, which defines the procedures and conditions for issuing short-stay visas that are binding for all the Member States of the European Union implementing the Schengen acquis.

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

The Joint Committee established to monitor the implementation of the Agreement was convened three times (5 October 2015, 19 October 2016 and 27 November 2017) and acknowledged the overall positive implementation, while identifying possible room for improvement in certain aspects of the visa processing procedure. In particular, the Joint Committee recommended that enhanced reach-out efforts be put in place by both sides in order to properly and comprehensively inform visa applicants of the requirements and scope for lodging and receiving a Schengen visa.

The number of visa applications lodged at the Member States' consulates in Cabo Verde has increased steadily since the entry into force of the Agreement. In 2014, 14,694 visa

applications were lodged. This number increased to 20,158 in 2018 (+37.2 %). Although at a lower rate, the number of visas issued has also increased from 11,370 in 2014 to 13,343 in 2018 (+17.3%). The visa refusal rate amounted to 33.5% in 2018.

The Member States issuing visas in Cabo Verde (i.e. Spain and Portugal, with the latter representing 19 Member States at the Common Visa Centre in Praia) regularly gather in the format of the local Schengen cooperation (LSC) group in Praia. The EU Delegation to Cabo Verde chairs those meetings.

The LSC group concurred in ascertaining the overall good implementation of the Agreement, as well as of the applicable provisions of the Visa Code. At the same time, a number of difficulties were observed in the processing of visa applications lodged by Cabo Verdean nationals, notably as regards the documentary evidence justifying the purpose of travel and/or the fact of belonging to one of the facilitated categories of applicants, identified by the current Agreement.

The Council **Visa Working Party** discussed the state of play of the Agreement's implementation five times (on 26 October 2015, 27 October 2016, 11 December 2017, 20 May 2019 and 10 July 2019). At the latter meeting, the Commission informed Member States on the exploratory talks that it had undertaken with the Cabo Verdean authorities regarding a possible amendment to the Agreement and its scope.

4. BUDGETARY IMPLICATIONS

The envisaged amended agreement will have no implications for the EU budget.

5. OTHER ELEMENTS

- **Negotiating Directives**

Visa fee and visa fee waivers

In other visa facilitation agreements concluded by the EU with third countries, the general visa fee is set at EUR 35. This amount was included in previous negotiating directives, while taking into account the EUR 60 visa fee in the Visa Code. The Agreement with Cabo Verde does not contain a provision setting a reduction of the general visa fee.

Since in the revised Visa Code the visa fee will increase from EUR 60 to EUR 80, this increased fee will also apply to Cabo Verdean applicants.

It is thus proposed that the visa fee be reduced for Cabo Verdean applicants as it has been done for the nationals of all other third countries which have concluded a visa facilitation agreement with the EU. However, the level of the reduced fee should be proportionate to the revised visa fee. It is therefore proposed to set the reduced fee at half of the amount set by the Parties' domestic legislation (for the EU, the Visa Code). This approach would enable the EU to adapt the level of the fee in light of changing circumstances.

The inclusion of additional categories of applicants, whose visa fee should be waived, should be considered in the course of the negotiations.

Multiple-entry visas with long validity

The amending agreement will have to take into account the changes introduced by the revised Visa Code regarding the issuing of multiple-entry visas with long-validity.

The Agreement currently in force grants access to five-year multiple-entry visas to a limited number of categories of regular travellers (e.g. members of national and regional governments, permanent members of official delegations, business people, close family members), while it provides for a "cascade" of multiple-entry visas with progressively increasing validity for other categories of regular travellers.

However, the revised Visa Code (Article 24(2)) provides for a different "cascade" system for obtaining multiple-entry visas, that is not limited to specific categories.

It is thus proposed that the amended agreement follows a similar approach, i.e. a "cascade" approach that would apply to all applicants other than those pertaining to the categories to which five-year multiple-entry visas shall already be granted in accordance with article 5(1) of the current Agreement.

In addition, the amending Agreement should reduce the number of visas the lawful use of which is a pre-condition for obtaining a multiple-entry visa, and/or enlarge the reference periods during which the defined number of visas should be obtained and lawfully used.

List of supporting documents for purpose of travel / proof of accomodation

The existing visa facilitation agreements concluded by the EU with other third countries provide facilitations by reducing the number of supporting documents required to prove the purpose of travel to generally one single document for each category of applicants. The Agreement with Cabo Verde, on the contrary, does not include such a provision.

The amending Agreement should establish a list of supporting documents to be submitted by applicants for proving their purpose of travel. Documentary evidence should be reduced to generally one supporting document per category. This would have the objectives to simplify the application procedure and facilitate the identification of the applicants belonging to one of the categories established by the Agreement.

Moreover, the Visa Code provides for certain horizontal facilitations in terms of supporting documents to be provided by regular travellers. According to Article 14(6), the requirement of certain supporting documents 'may be waived in the case of an applicant known to them for his integrity and reliability, in particular the lawful use of previous visas, if there is no doubt that he will fulfil the requirements of Article 6(1) of the Schengen Borders Code at the time of the crossing of the external borders of the Member States.'

In light of this principle, the amended agreement should contain a provision according to which once a person has obtained the first long-validity multiple-entry visas (of one, two or three years), i.e. reached the second step in the "cascade", s/he should in principle be exempted from presenting documents to prove the accommodation and/or the means for paying for such accommodation.

Visa waiver for holders of EU Laissez-passer

The amended agreement should exempt from the visa requirement the holders of EU Laissez-passer issued to certain servants of the institutions of the Union in accordance with Council Regulation (EU) No 1417/2013.

Suspension ground for lack of implementation of the Readmission Agreement

The Agreement provides for the possibility to suspend it for an exhaustive list of grounds, i.e. for reasons of public order, protection of national security, protection of public health.

In consistency with the revised Visa Code approach of linking cooperation on readmission with visa facilitations, the amending agreement should enlarge the suspension grounds to include the possibility for the EU to suspend it, in whole or in part, in case of lack of

implementation of the Readmission Agreement concluded between the EU and Cabo Verde or insufficient level of cooperation in combating irregular migration.

6. CONCLUSIONS

In light of the above-mentioned, the Commission recommends the Council to authorise the opening of negotiations on an Agreement between the EU and the Republic of Cabo Verde amending the Agreement between the EU and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union currently in force.

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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 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas negotiations should be opened with a view to concluding an Agreement with the Republic of Cabo Verde amending the Agreement between EU and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, an international agreement with the Republic of Cabo Verde amending the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union.

Article 2

The negotiating directives are set out in the annex to this decision.

Article 3

The negotiations shall be conducted in consultation with the **Visa Working Party** of the Council.

Done at Brussels,

For the Council
The President



Brussels, 13.9.2019
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ANNEX

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to the

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ANNEX

Negotiating directives

The Commission should, in the course of the negotiations, aim to achieve the objectives which are set out in detail below.

1. PURPOSE AND SCOPE OF THE AGREEMENT

The purpose of the Agreement is to amend the existing Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union¹ (hereinafter ‘current Agreement’). The latter, which entered into force on 1 December 2014, applies to the issuing of visas to citizens of the Republic of Cape Verde (hereinafter ‘Cabo Verde’) for an intended stay in the Schengen area of no more than 90 days per any period of 180 days.

Since 1 January 2019, Cabo Verde exempts EU citizens travelling to Cabo Verde for stays up to 30 days from the visa requirement. In principle, the EU citizens can benefit from the Agreement facilitations for stays longer than 30 days and up to 90 days per any period of 180 days.

The amending Agreement would also fully apply, on a reciprocal basis, should Cabo Verde decide to re-impose the visa requirement on EU citizens.

The amending Agreement should lay down clear, unambiguous and legally binding rights and obligations to facilitate visa application and issuing procedures for nationals of Cabo Verde, while taking into account the rules of the revised Visa Code².

2. SPECIFIC ISSUES

The amending Agreement should take into account the current Agreement, previous visa facilitation agreements concluded by the Union with other third countries, as well as the particular situation of Cabo Verde, which was the first third country not located in the EU’s neighbourhood with which the EU concluded a Visa Facilitation Agreement, in parallel with a Readmission Agreement.

Moreover, the amendment of the Visa Code, which has entered into force on 2 August 2019 and will be applicable as of 2 February 2020, provides for a number of changes in the general rules for the visa issuing procedures. The revised rules should be also taken into consideration in order to ensure that the facilitations offered to Cabo Verde in the amending agreement continue to go beyond the general rules as set out in the revised Visa Code.

2.1. Visa fee

The amending Agreement should set the fee for processing visa applications at half of the amount that is provided for by the Parties’ domestic legislation.

In addition to the categories defined by article 5(1) of the current Agreement, the fee should be waived for applicants below the age 18 years. The inclusion of other categories of applicants, such as close relatives of EU citizens, could also be considered.

¹ OJ L 282, 24.10.2013, p.3.

² Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code). OJ L 188, 12.7.2019, p.25.

2.2. Multiple-entry visas with long validity

The rules for granting five-year multiple-entry visas (MEV) to certain categories of applicants, established by article 4(1) of the current Agreement, should remain applicable.

In addition, the amending Agreement should define the rules for the issuing of MEV to all other applicants, taking as a basis the provisions of article 24 of the revised Visa Code.

Article 24 (2) of the revised Visa Code establishes a general ‘cascade’ issuing system for all applicants irrespective of their travel purpose. A similar approach should be established in the amending Agreement.

The amending Agreement should facilitate the issuing of MEV by reducing the number of previously obtained and lawfully used visas and/or by enlarging the reference periods during which the defined number of visas should be obtained and lawfully used. Such a “cascade” system could, for instance, be the following:

- following one or two visas obtained and lawfully used in the previous 24 months, applicants should obtain, when applying for the next visa, a MEV with a validity of one year;
- after having lawfully used one 1-year MEV within the previous 30 or 36 months, the applicant should be granted a MEV with a longer validity (for instance, two or three years);
- after having lawfully used one 2- or 3-year MEV within the previous 42 or 48 months, the applicant should be granted a MEV with a longer validity (for instance, three or maximum five years).

2.3. Supporting documents

The amended agreement should provide for facilitations concerning the supporting documents to be submitted when applying for a visa.

The documentary evidence to be submitted for proving the applicant’s purpose of travel should be reduced to generally one supporting document per category of applicant covered by the amending Agreement.

Applicants who have already obtained and lawfully used a MEV (valid for at least one year) should in principle be exempted from presenting supporting documents in relation to accommodation, or proof of sufficient means to cover the accommodation.

2.4. Visa exemption for holders of EU Laissez-passer

The amending Agreement should exempt from the visa requirement the holders of EU Laissez-passer issued to certain servants of the institutions of the Union in accordance with Council Regulation (EU) No 1417/2013.

2.5. Suspension clause

The amending Agreement should modify the final clauses of the current Agreement, by providing for the possibility for the Parties to suspend it, in whole or in part, for any reason

and, explicitly, in case Cabo Verde were to be considered not to cooperate sufficiently in the field of readmission.