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Delegations will find attached document C(2024) 3650 final.

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EUROPEAN
COMMISSION

Brussels, 31.5.2024
C(2024) 3650 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 31.5.2024

**amending Regulation (EU) 2018/1806 as regards the extension of the temporary
suspension of the visa exemption for nationals of Vanuatu**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Republic of Vanuatu is listed in Annex II to Regulation (EU) 2018/1806¹ 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 waiver ('the Agreement')² 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.

Since 25 May 2015, Vanuatu has been operating investor citizenship schemes allowing visa-required third-country nationals to easily obtain the nationality of a visa-free country, thus enabling them to bypass the Schengen visa procedure and gain visa-free access to the EU.

The Commission has concluded, based on concrete information and data, reports and statistics, and its contacts with the authorities of Vanuatu, that the investor citizenship schemes of Vanuatu, in their current form and operation, undermine the objectives of the Union's visa policy. Union's visa policy provides for a screening of nationals from visa-required third countries against the criteria set out in Article 21 of Regulation (EC) No 810/2009³ and in equivalent national legislation of those Member States where Regulation (EC) No 810/2009 does not yet apply in full. The manner in which the said schemes are being implemented risks the circumvention of the Union short-stay visa procedure and the assessment of security and migratory risks it entails.

Pursuant to Article 8(4) of the Agreement, the Parties can suspend it in whole or in part, in particular, for reasons of public policy or the protection of national security. On that basis, the Commission adopted, on 12 January 2022, a proposal for a Council decision⁴ 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. The decision was adopted by the Council on 3 March 2022⁵. The suspension of the Agreement was limited to ordinary passports issued as of 25 May 2015, when Vanuatu began operating its investor citizenship schemes.

Whilst Council Decision (EU) 2022/366 suspended the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver, it was also necessary for the Commission to trigger the suspension mechanism set out in Article 8 of Regulation (EU) 2018/1806.

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).

² Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver (OJ L173, 3.7.2015, p. 48).

³ 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).

⁴ 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, COM(2022) 6 final.

⁵ 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).

Therefore, in accordance with Articles 8(2)(d), 8(3) and 8(6)(a) of Regulation (EU) 2018/1806, based on the Commission's assessment that the granting of citizenship by Vanuatu under its investor citizenship schemes constitutes an increased risk to the internal security and public policy of the Member States, the Commission adopted Implementing Regulation (EU) 2022/693⁶ on the temporary suspension of the visa exemption for nationals of Vanuatu holding ordinary passports issued as of 25 May 2015 for a period of nine months, applicable from 4 May 2022 to 3 February 2023.

Following the entry into force of the suspension, and in accordance with Article 8(6)(a), last sub-paragraph, of Regulation (EU) 2018/1806, the Commission launched an enhanced dialogue with Vanuatu with a view to remedying the circumstances which gave rise to the temporary suspension of the visa exemption.

During the first nine-month suspension period, the parties had only one meeting of the dialogue, on 12 May 2022. The Commission proposed to Vanuatu to appoint an interlocutor and to hold monthly technical meetings. During that period, Vanuatu did not provide any follow-up contacts or information to the Commission.

Given that the increased risk to the internal security and public policy of the Member States had not been remedied during the nine-month period laid down by Implementing Regulation (EU) 2022/693 and in accordance with Article 8(6)(b) of Regulation (EU) 2018/1806, on 1 December 2022 the Commission adopted Delegated Regulation (EU) 2023/222⁷ extending the temporary suspension of the visa exemption for 18 months and expanding its scope to cover all nationals of Vanuatu.

The Delegated Regulation amended Annex II of Regulation (EU) 2018/1806 accordingly, by inserting a footnote next to the mention of Vanuatu, indicating that the exemption from the visa requirement is suspended for all nationals of Vanuatu from 4 February 2023 to 3 August 2024.

In parallel, following a proposal of the Commission⁸, the Council adopted a Decision on the suspension in whole of the application of the Agreement⁹.

During this second suspension phase, the Commission continued the dialogue with Vanuatu, with four meetings held between February 2023 and April 2024, and numerous information exchanges in writing. However, most of the concerns related to the investor citizenship schemes operated by Vanuatu that were highlighted by the Commission in Implementing Regulation (EU) 2022/693 persist to date. 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 duly implemented and are sufficient to mitigate the security risks deriving from the operation of its investor citizenship schemes.

In accordance with Article 8(7) of Regulation (EU) 2018/1806, the Commission has submitted a report to the European Parliament and to the Council¹⁰, describing in detail the

⁶ 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).

⁷ 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. 1–4).

⁸ Proposal for a Council Decision 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, COM/2022/531 final.

⁹ 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. 47–49).

dialogue with Vanuatu and concluding that Vanuatu has not remedied the circumstances that led to the suspension. Consequently, pursuant to Article 8(7) of Regulation (EU) 2018/1806, the Commission has also presented a legislative proposal¹¹ to amend Regulation (EU) 2018/1806 in order to transfer the reference to Vanuatu from Annex II to Annex I, therefore reintroducing permanently the visa requirement for nationals of Vanuatu.

In accordance with Article 8(6), second sub-paragraph of Regulation (EU) 2018/1806, where the Commission has submitted such a legislative proposal, the period of suspension of the exemption from the visa requirement concerning Vanuatu should be extended by six months, and the footnote should be amended accordingly. This extension is necessary to maintain the suspension while allowing the necessary time for the European Parliament and the Council to examine and adopt the Commission proposal.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission organised an ad hoc meeting with experts from the Member States on 2 May 2024 to discuss the draft delegated regulation.¹² The experts supported the objectives and text of the Commission's draft.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 of the delegated regulation amends Annex II of Regulation (EU) 2018/1806, providing that the exemption from the visa requirement is temporarily suspended for a period of 6 months, from 4 August 2024 to 3 February 2025, for all nationals of Vanuatu. That amendment should be made by inserting a footnote next to the name of Vanuatu, indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension. The delegated act should take effect from the date of expiry of Commission Delegated Regulation (EU) 2023/222.

Article 2 of the delegated regulation provides the date of its entry into force and the period of application.

¹⁰ 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.

¹¹ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1806 as regards Vanuatu, COM(2024)365.

¹² In line with the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1–14.

COMMISSION DELEGATED REGULATION (EU) .../...

of 31.5.2024

amending Regulation (EU) 2018/1806 as regards the extension of the temporary suspension of the visa exemption for nationals of Vanuatu

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 requirement¹³, and in particular Article 8(6), point (b), thereof,

Whereas:

- (1) 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 waiver¹⁴ ('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.
- (2) 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.
- (3) In accordance with Article 8(2)(d), 8(3) and 8(6) point (a) of Regulation (EU) 2018/1806, the Commission concluded that the granting of citizenship by Vanuatu under its investor citizenship schemes constitutes an increased risk to the internal security and public policy of the Member States and adopted Implementing Regulation (EU) 2022/693 on the temporary suspension of the visa exemption for nationals of Vanuatu¹⁵. The suspension applied from 4 May 2022 to 3 February 2023.
- (4) Following the start of application of that Implementing Regulation, in accordance with Article 8(6), point (a), third sub-paragraph of Regulation (EU) 2018/1806, the Commission established 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. Therefore, as the circumstances that led to the suspension persisted, in

¹³ OJ L 303, 28.11.2018, p. 39, ELI: <http://data.europa.eu/eli/reg/2018/1806/oj>.

¹⁴ OJ L 173, 3.7.2015, p. 48, ELI: http://data.europa.eu/eli/agree_internation/2015/1035/oj.

¹⁵ 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).

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 application of Annex II for a period of 18 months for all nationals of Vanuatu¹⁶. The suspension applies from 4 February 2023 to 3 August 2024.

- (5) Following the entry into force 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.
- (6) 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 aiming 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.
- (7) 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.
- (8) 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.
- (9) 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.

¹⁶ 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. 1–4, ELI: http://data.europa.eu/eli/reg_del/2023/222/oj).

- (10) 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 the start of Russia's war of aggression against Ukraine.
- (11) 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.
- (12) While Vanuatu informed the Commission that, based on its case law, it is possible to revoke the citizenship where this has been obtained through 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.
- (13) 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 Council¹⁷, describing in detail the dialogue with Vanuatu and concluding that Vanuatu has not remedied the circumstances that led to the suspension. That report is accompanied by a legislative proposal to amend Regulation (EU) 2018/1806 in order to transfer the reference to Vanuatu from Annex II to Annex I to Regulation (EU) 2018/1806¹⁸ and therefore reintroduce permanently the visa requirement for nationals of Vanuatu.
- (14) In accordance with Article 8(6), second subparagraph, of Regulation (EU) 2018/1806, where the Commission has submitted such a legislative proposal, the period of suspension of the exemption from the visa requirement concerning Vanuatu is to be extended by six months, and the footnote is to be amended accordingly.
- (15) 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

¹⁷ 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.

¹⁸ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1806 as regards Vanuatu, COM(2024)365.

development of the Schengen *acquis*¹⁹, which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC²⁰.

- (16) 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*²¹, 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/EC²².
- (17) 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*²³, 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/EU²⁴.
- (18) 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/EC²⁵. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (19) 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,

¹⁹ 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).

²⁰ 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>).

²¹ 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).

²² 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>).

²³ OJ L 160, 18.6.2011, p. 21, ELI: <http://data.europa.eu/eli/prot/2011/350/oj>.

²⁴ 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>).

²⁵ 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>).

HAS ADOPTED THIS REGULATION:

Article 1

Temporary suspension of the exemption from the visa requirement

In Annex II to Regulation (EU) 2018/1806, part 1, the entry concerning Vanuatu is replaced by the following:

‘Vanuatu (*)

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

Article 2

Entry into force and application

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

It shall apply from 4 August 2024 to 3 February 2025.

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

Done at Brussels, 31.5.2024

For the Commission
The President
Ursula VON DER LEYEN