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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL IMPLEMENTING DECISION on the suspension of certain provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council in respect of Somalia

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COUNCIL IMPLEMENTING DECISION (EU) 2026/…

of …

on the suspension of certain provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council in respect of Somalia

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EC) No 810/2009 of the European Parliament and the of Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)[1], and in particular Article 25a(5), point (a) thereof,

Having regard to the proposal from the European Commission,

[1] OJ L 243, 15.9.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/810/oj.

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Whereas:

(1) Following an assessment pursuant to Article 25a(2) of Regulation (EC) No 810/2009, the Commission considers that cooperation with Somalia on readmission is insufficient. Significant improvements in cooperation on all the steps of the readmission process are needed, including to ensure that Somalia effectively cooperates with Member States on identification of irregular migrants, issuance of emergency travel documents and organising return operations in a timely and predictable manner, for both forced and voluntary returns.

(2) With very few exceptions, Member States face persistent challenges, due to the lack of clarity concerning the bodies which are competent to be interlocutors of the Union and the lack of responses to requests for readmission and issuance of emergency travel documents, in particular as regards forced returns.

(3) Taking into account the steps taken so far by the Commission to improve the level of cooperation with Somalia, and the Union's overall relations with Somalia, Somalia's cooperation with the Union on readmission matters is not sufficient and action is therefore needed.

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(4) The application of certain provisions of Regulation (EC) No 810/2009 should therefore be temporarily suspended for nationals of Somalia who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806 of the European Parliament and of the Council[2]. The objective is to encourage Somalia to undertake the actions necessary to improve cooperation on readmission matters.

(5) The provisions temporarily suspended should be those referred to in Article 25a(5), point (a), of Regulation (EC) No 810/2009, namely: the possibility of waiving requirements with regard to the documentary evidence to be submitted by visa applicants referred to in Article 14(6); the general processing period of 15 calendar days referred to in Article 23(1), the suspension of which would, as a consequence, also exclude the application of the rule allowing the extension of this period up to a maximum of 45 days only in individual cases, meaning that the standard processing period would be 45 days; the issuing of multiple-entry visas in accordance with Article 24(2) and (2c); and the optional visa fee waiver for holders of diplomatic and service passports in accordance with of Article 16(5), point (b).

[2] 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).

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(6) This Decision should not affect the application of Directive 2004/38/EC of the European Parliament and of the Council[3], which extends the right of free movement to family members irrespective of their nationality when accompanying or joining the Union citizen. This Decision should thus not apply to family members of a Union citizen to whom Directive 2004/38/EC applies or to family members of a national of a third country enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and a third country. This Decision should not apply to family members of UK nationals who are beneficiaries of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[4] (the 'Withdrawal Agreement'), provided that the family members concerned are entitled to join the beneficiary of the Withdrawal Agreement in the host State and apply for a visa for this purpose.

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[3] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77, ELI: http://data.europa.eu/eli/dir/2004/38/oj).

[4] OJ L 29, 31.1.2020, p. 7, ELI: http://data.europa.eu/eli/treaty/withd_2020/sign.

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(7) The measures provided for in this Decision should be without prejudice to the obligations of the Member States under international law, including as host countries of international intergovernmental organisations or of international conferences convened by the United Nations or other international intergovernmental organisations hosted by Member States. Thus, the temporary suspension should not apply to nationals of Somalia applying for a visa in so far as necessary for Member States to comply with their obligations as host countries of such organisations or of such conferences.

(8) This Decision should not affect the possibility for applicants to apply for and be granted visas in full respect of the Charter of Fundamental Rights of the European Union.

(9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.

(10) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part in accordance with Council Decision 2002/192/EC[5]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

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5 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).

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(11) As regards Iceland and Norway, this Decision 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 latters' association with the implementation, application and development of the Schengen *acquis*[6] which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC[7].

(12) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning 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*[8] which fall within the area referred to in Article 1, point B of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC[9].

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6 OJ L 176, 10.7.1999, p. 36, ELI: http://data.europa.eu/eli/agree_internation/1999/439(1)/oj.

7 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).

8 OJ L 53, 27.2.2008, p. 52, ELI: http://data.europa.eu/eli/agree_internation/2008/178(1)/oj.

9 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).

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(13) As regards Liechtenstein, this Decision 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*[10] which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[11].

(14) As regards Cyprus, this decision constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession,

HAS ADOPTED THIS DECISION:

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

11 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).

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Article 1

1. This Decision shall apply to nationals of Somalia who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806.

2. This Decision shall not apply to nationals of Somalia who are exempt from the visa requirement under Article 4(2) of Regulation (EU) 2018/1806 or for whom Member States have provided for exceptions from the visa requirement in accordance with Article 6 of Regulation (EU) 2018/1806.

3. This Decision shall not apply to nationals of Somalia who are:

   (a) family members of a Union citizen to whom Directive 2004/38/EC applies when accompanying or joining the Union citizen;

   (b) family members of a national of a third country enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and a third country; or

   (c) family members of a UK national who is a Withdrawal Agreement beneficiary, provided that the family members concerned are entitled to join the Withdrawal Agreement beneficiary in the host State and apply for a visa for this purpose.

4. This Decision shall be without prejudice to cases where a Member State is bound by an obligation of international law, namely:

   (a) as a host country of an international intergovernmental organisation;

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(b) as a host country to an international conference convened by, or under the auspices of, the United Nations or other international intergovernmental organisations hosted by a Member State;

(c) under a multilateral agreement conferring privileges and immunities; or

(d) pursuant to the 1929 Treaty of Conciliation (Lateran Pact) concluded by the Holy See (Vatican City State) and Italy, as last amended.

Article 2

The application of the following provisions of Regulation (EC) No 810/2009 shall be temporarily suspended:

(a) Article 14(6);

(b) Article 16(5), point (b);

(c) Article 23(1); and

(d) Article 24(2) and (2c).

Article 3

This Decision shall take effect on the date of its notification.

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Article 4

This Decision is addressed to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden.

Done at …, …

For the Council
The President

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