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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the 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 PROPOSAL

• **Reasons for and objectives of the proposal**

Cabo Verde and the EU have enjoyed a close and very constructive relationship for more than 35 years, based notably 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 and, subsequently, an Agreement on facilitating the issuing of short-stay visas to citizens of the Republic of Cape Verde and of the European Union¹, adopted in parallel with an Agreement on the readmission of persons residing without authorisation². Both agreements entered into force on 1 December 2014.

After almost 5 years of implementation of these Agreements and in light of the supervened changes of both the EU and Cabo Verde's domestic legislation related to visas, namely the revision of the EU's Visa Code³ and Cabo Verde decision to exempt EU citizens from the visa requirement for stays up to 30 days⁴, the Joint Committee set up by the existing agreement explored the need to amend certain rules thereby established, with a view to adapt it to the changed circumstances.

On that basis, the Commission presented on 13 September 2019, a Recommendation⁵ to the Council with a view to obtaining directives to negotiate an Agreement amending the existing Visa Facilitation Agreement with the Republic of Cabo Verde.

Following the authorisation given by the Council⁶ on 29 October 2019, the negotiations with the Republic of Cabo Verde were formally opened in Brussels on 28 November 2019. One further round of talks took place on 30 January 2020 in Praia, where the chief negotiators reached agreement of principle on the draft text. The chief negotiators initialled the text of the agreement on 24 July 2020 via exchange of emails.

Member States have been regularly informed and consulted in the relevant Council Working Groups at all stages of the negotiations. The final draft of the agreement text was shared with the Visa Working Party and generally endorsed, via silent procedure, on 27 March 2020.

The attached proposal constitutes the legal instrument for the signature of the Agreement. The Council will decide by qualified majority.

¹ OJ L 282, 24.10.2013, p. 3-12.

² OJ L 282, 24.10.2013, p. 15.

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.

⁴ Official Bulletin of the Republic of Cabo Verde I.54, 13.8.2018, p. 1350.

⁵ COM(2019) 417 final.

⁶ Ares(2019)6870996.

2. AIM AND CONTENT OF THE AGREEMENT

The 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 (hereinafter: ‘the Agreement’) aims 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.

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Agreement is acceptable to the Union.

Its final content can be summarised as follows:

- the visa fee for processing applications is reduced to 75% of the amount to be charged in accordance with the applicable domestic legislation (i.e. EUR 60 for Cabo Verdean citizens). This fee will be applied to all visa applicants. Moreover, spouses, children (including adopted children) under the age of 21 or dependent, and parents of either Cabo Verde citizens legally residing in the territory of a Member State, or Union citizens residing in the Member State of their nationality are fully waived from this requirement. In addition, for children who are at least 12 years old (but below 18 years old) the fee is further reduced by 50% of the generally applicable fee (i.e. EUR 30 for Cabo Verdean citizens);
- the documents to be presented regarding the purpose of the journey have been simplified for the following categories of applicants: members of official delegations; businesspeople; spouses, children and parents of Union citizens or Cabo Verdean citizens legally residing in the EU; school pupils, students and post-graduate students; participants in scientific, cultural, sporting and religious events; journalists and accompanying crew; persons travelling for medical reasons. For these categories of persons, only the documents listed in the agreement can be requested for justifying the purpose of the journey; applicants who have lawfully used a previous multiple-entry visa valid for at least one year are exempted from proving the proof of accommodation.
- the rules for issuing multiple-entry visas have been amended by focusing on the previous, lawful use of visas during given reference periods instead of the applicants’ purposes of travel: as a rule, a 1-year multiple-entry visa is issued to those applicants who have lawfully used one visa in the previous 18 months; a 2-year multiple-entry visa is issued to those applicants who have lawfully used a 1-year multiple-entry visa in the previous 30 months; a 3 to 5-year multiple-entry visa is issued to those applicants who have lawfully used a 2-year multiple-entry visa in the previous 42 months.
- holders of valid EU laissez-passer are exempted from the visa requirement for short-stays.
- the final clauses provide the possibility for the Parties to suspend the agreement, in whole or in part, for any reason deemed appropriate. A Joint Declaration on Article 12(5) of the Agreement concerning grounds for the suspension of the Agreement provides a non-exhaustive list of suspension grounds, such as public order, protection of national security or public health, for human rights and democracy considerations or for lack of cooperation in the field of readmission;
- the general clause of the Agreement is amended in view of ensuring that: the facilitation granted to Cabo Verdean citizens would be granted to Union citizens should the visa requirement for stays up to 30 days be re-imposed for their visit to Cabo Verde; at least the same facilitation are granted to Union citizens in case they apply for a Cabo Verde visa for stays of more than 30 days but not exceeding 90 days. A Joint Declaration on the rules for granting Cabo Verde visas to Union citizens for stays of over 30 days and not exceeding 90

days is attached to the Agreement and specifies that Union citizens may apply within the territory of Cabo Verde to the competent authorities for an extension of their stay;

- the Joint Declaration on cooperation on travel documents and regular exchange of information on travel document security is amended with a view to include a reference to Cabo Verde's internal legislation introducing biometric travel documents;
- the specific situations of Denmark and Ireland are reflected in the preamble and in Joint Declarations attached to the Agreement.

3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal is submitted to the Council in order to authorise the signing of the Agreement.

The legal basis for this proposal is point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(5) thereof.

• Subsidiarity (for non-exclusive competence)

Under Article 77(2)(a) TFEU, the negotiation and conclusion of agreements whose provisions affect the rules for the issuing of short-stay Schengen visas is within the exclusive competence of the Union.

• Proportionality

The present proposal does not go beyond what is necessary to achieve the objective pursued, namely the signature of an international agreement facilitating the issuing of visas to Cabo Verde and, on the basis of reciprocity, to Union citizens.

4. BUDGETARY IMPLICATIONS

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

5. CONCLUSION

In the light of the above-mentioned results, the Commission proposes that the Council decide that the Agreement be signed on behalf of the Union and authorise the President of the Council to appoint the person(s) duly empowered to sign on behalf of the Union.

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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), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 29 October 2019, the Council authorised the Commission to open negotiations with Cabo Verde for 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 ('the Agreement'). The negotiations were successfully concluded by the Parties on 30 January 2020 and the text was initialled via exchange of emails on 24 July 2020.
- (2) The Special Partnership between the Union and Cabo Verde was approved by the Council of the European Union on 19 November 2007⁷. One of its objectives is to enhance mobility and people-to-people contacts between Union and Cabo Verdean citizens, as well as to increase cooperation in fighting irregular immigration.
- (3) On 1 December 2014, 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 Union⁸ entered into force.
- (4) In light of the supervened changes in the Parties' domestic legislation and based on the feedback provided by the Joint Committee tasked with monitoring the implementation of the Agreement referred to in the previous recital, the purpose of the Agreement is to adjust and complement some of the provisions facilitating the issuance of visas to citizens of Cabo Verde and, on the basis of reciprocity, of the Union for an intended stay of no more than 90 days per period of 180 days.
- (5) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision

⁷ Conclusions of the Council and the representatives of the Governments of the Member States meeting within the Council on the Future of relations between the European Union and the Republic of Cape Verde (19 November 2007); Ref. doc. 15113/07.

⁸ OJ L 282, 24.10.2013, p. 3.

2002/192/EC⁹. Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

- (6) 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.
- (7) Therefore, the Agreement should be signed on behalf of the Union, subject to its conclusion at a later date, and the Joint Declarations attached to the Agreement be approved,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the 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 ('the Agreement') is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

The Joint Declarations attached to the Agreement shall be approved on behalf of the Union.

Article 3

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 4

This Decision shall enter into force on the day following that of its adoption.

Done at Brussels,

*For the Council
The President*

⁹ 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).