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Proposal for a

COUNCIL IMPLEMENTING DECISION

**on the suspension of certain provisions of Regulation (EC) 810/2009 of the European
Parliament and of the Council with respect to Iraq**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Under Article 25a(2) of the Visa Code¹, the Commission shall regularly assess third countries' cooperation on readmission and report to the Council at least once a year.

The Commission adopted its assessment on 10 February 2021, based on 2019 data and information provided by EU Member States and Schengen Associated Countries, and transmitted the report² to the Council.

Based on the above analysis, and taking into account the Union's overall relations with the third country concerned, the Commission may conclude that the given third country does not cooperate sufficiently and that action is therefore necessary. In this context, it should be noted that readmission of own nationals is an obligation under international law.

In case of insufficient cooperation, the Commission, in accordance with Article 25a(5), point (a), of the Visa Code, shall submit proposal for a Council implementing decision suspending the application of certain provisions of the Visa Code in respect of nationals of that third country. At all times, the Commission shall continue its efforts to improve cooperation with the third country concerned.

• The case of Iraq

The Commission noted in the above-mentioned report that identification processes deliver unsatisfactory or no results for Member States representing more than two-thirds of the return decisions issued to Iraqi nationals and rarely lead to the issuance of travel documents. Iraqi authorities cooperate only on voluntary returns and in very exceptional cases (Iraqi nationals convicted for a criminal offence) on forced returns. Moreover, notwithstanding the conclusion of the EU-Iraq Partnership and Cooperation Agreement in August 2018, the obligation under that agreement to readmit own nationals who are illegally present on the territory of the other Party is not respected. Four Member States have bilateral arrangements, which are also rarely respected or respected only for voluntary returns or for Iraqi nationals convicted for a criminal offence.

Since 2017 when it was established, the EU and the Member States have engaged with Iraq on migration in the framework of the EU-Iraq Informal Migration Dialogue. In the four meetings that have taken place so far in the framework of that Dialogue, return and readmission have always featured high on the agenda and the EU has consistently expressed concern about Iraq's unsatisfactory level of cooperation on readmission. In the last Migration Dialogue meeting (February 2021), Iraq reconfirmed that it will not cooperate on non-voluntary returns.

Against this background, the EU has emphasised to the Iraq authorities the increasing level of dissatisfaction among Member States and the possible consequences of failing to improve the situation, including in a meeting with the Iraq Embassy in Brussels (May 2021) and through a joint letter by the EU High Representative for Foreign Affairs and Commissioner for Migration addressed to the Iraqi Ministers of Foreign Affairs, Interior and Migration and

¹ 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.

² COM(2021 55 final (EU Restricted)).

Displaced Persons (June 2021). A copy of the letter was handed over to Prime Minister Kadhemi on 17 June 2021.

These steps have so far not led to concrete substantial results and sustained cooperation on the basis of the indicators set out in Article 25a(2), including in the timely identification of persons illegally staying on the territory of the Member States, the issuance of travel documents and the organisation of return operations. On that basis, considering the steps taken so far by the Commission to improve the level of cooperation, and taking into account the EU's overall relations with Iraq, it is considered that Iraq's cooperation with the EU on readmission matters is not sufficient and that action is needed.

- **The Union's overall relations with Iraq**

The Union's relations with Iraq are guided by the Partnership and Cooperation Agreement that entered into force in 2018. The EU strategy for Iraq (2018) reaffirms the EU's commitment to a strong EU-Iraq partnership, and to supporting the Iraqi authorities in the reconstruction phase and in tackling the underlying political, social and economic drivers of instability in the country. The EU is an important economic and security partner for Iraq. Cooperation on migration is comprehensive, focusing in particular on migration governance including border management, migration and development, irregular migration and return. These issues are discussed in the above-mentioned Informal Migration Dialogue and the last meeting in the framework of that Dialogue took place in February 2021.

In high-level discussions between the EU and Iraq in June 2021, the Iraqi side voiced readiness to engage with affected Member States on return and readmission including voluntary returns. The Commission would support those efforts as a first step.

- **The visa measures**

Scope of measures

The Council implementing decision should temporarily suspend the application of certain provisions of the Visa Code in respect of Iraqi nationals. The suspension, however, does not apply to family members of (mobile) EU citizens covered by the Directive 2004/38/EC³ and of third country nationals enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and the third countries concerned on the other.

Content of the visa measures

Iraq's failure to cooperate on readmission justifies the activation of all the measures set out in point(a) of Article 25a(5) of the Visa Code: suspension of the possibility of waiving requirements with regard to the documentary evidence to be submitted by visa applicants referred to in Article 14(6), suspension of the general 15 calendar days processing period referred to in Article 23(1) (which as a consequence also excludes the application of the rule on the extension of this period up to a maximum of 45 days in individual cases), suspension of the issuing of multiple entry visas (MEVs) in accordance with Article 24(2) and (2c) and,

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).

suspension of the optional visa fee waiver for holders of diplomatic and service passports in accordance with point (b) of Article 16(5).

Period of application of the visa measures

The Visa Code stipulates that the visa measures shall apply temporarily but there is no obligation to indicate a specific period of application of those measures in the implementing decision. However, under Article 25a(6) the Commission shall continuously assess progress in readmission cooperation on the basis of the indicators set out in Article 25a(2), including in the timely identification of persons illegally staying on the territory of the Member States, the issuance of travel documents and the organisation of return operations. The Commission shall report whether substantial and sustained improvement in the cooperation with the third country concerned on readmission can be established and, taking also account of the Union's overall relations with that third country, may submit a proposal to the Council to repeal or amend the implementing decision. If by contrast, the visa measures in accordance with the implementing decision have proven ineffective, it should be considered to trigger the second stage of the mechanism (provide for by Article 25a(5), point (b)).

In addition, pursuant to Article 25a(7), the Commission shall - at the latest six months after the entry into force of the implementing decision - report to the European Parliament and to the Council on the progress achieved in the given third country's cooperation on readmission.

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

The proposed decision is consistent with the set of harmonised rules of the common visa policy governing the procedures and conditions for issuing visas for intended stays on the territory of the Member States not exceeding 90 days in any 180-day period.

- **Consistency with other Union policies**

The EU promotes a comprehensive approach on migration and forced displacement, based on shared values and responsibilities. The New Pact on Migration and Asylum foresees developing and deepening tailor-made comprehensive and balanced partnerships to foster co-operation on all relevant aspects:

- Providing protection to those in need of protection and support to host countries and communities;
- Building economic opportunity and addressing the root causes of irregular migration and forced displacement;
- Supporting partners to strengthen migration governance and management;
- Fostering co-operation on return and readmission;
- Developing legal pathways to Europe.

The cooperation between Member States and third countries on the readmission of illegally staying third country nationals is an important element of this policy. To reinforce such comprehensive partnerships and ensure full cooperation from third countries, the EU needs to mobilise all available tools, including development co-operation, trade or visa.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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), Article 25a(5), point (a).

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

n.a.

- **Proportionality**

The proposed measures the purpose of which is to stimulate Iraq to improve its cooperation on the readmission of irregular migrants are proportionate to the objective pursued. These measures do not affect the possibility for the applicant to apply for and be granted visas, as such, but cover certain aspects of the procedure for issuing the visa or the level of the visa fee.

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

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

n.a.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The proposed measures do not affect the possibility to apply for and be granted visas and respect the fundamental rights of applicants, in particular the respect for family life.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

n.a.

- **Explanatory documents (for directives)**

n.a.

- **Detailed explanation of the specific provisions of the proposal**
n.a.

Proposal for a

COUNCIL IMPLEMENTING DECISION

on the suspension of certain provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with respect to Iraq

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 of the Council of 13 July 2009 establishing a community Code on Visas (Visa Code)⁴, and in particular Article 25a(5), point (a), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part⁵, which entered into force on 1 August 2018, reiterates the customary obligation for both Parties to readmit their own nationals who are illegally present on the territory of the other Party (Art. 105 3.). Iraq does not respect that obligation, as attested by its declared position of not cooperating on non-voluntary returns. Member States also face poor cooperation on the part of Iraq in all aspects of the return process.
- (2) The Commission has repeatedly called on Iraq to improve cooperation on the readmission of illegally staying third country nationals and to give full implementation to the provisions on readmission of own nationals of the EU-Iraq Partnership and Cooperation Agreement, in particular in the framework of the EU-Iraq Informal Migration Dialogue (established 2017), as well as in oral and written exchanges with the Iraq government representatives, specifically expressing growing concerns in this respect and advising on possible consequences of failing to improve cooperation on readmission.
- (3) Taking into account the steps taken, so far by the Commission to improve the level of cooperation and the Union's overall relations with Iraq it is considered that Iraq's cooperation with the Union on readmission matters is not sufficient and that action should be taken.
- (4) The application of certain provisions of Regulation (EC) No 810/2009 should therefore be temporarily suspended for nationals of Iraq. This is considered the most efficient action to take in view of stimulating the Iraqi authorities to undertake the necessary actions to improve cooperation on readmission matters. The temporary suspension does not apply to nationals of Iraq applying for a visa and who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of

⁴ OJ L 243, 15.9.2009, p. 1.

⁵ [OJ L 204 of 31.7.2012, p. 20](#) (text of agreement), OJ L 203, of 10.8.2018, p. 1 (Council Decision on conclusion)

a third country enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other.

- (5) The measures temporarily suspended are set out in point(a) of Article 25a(5) of the Visa Code: suspension of the possibility of waiving requirements with regard to the documentary evidence to be submitted by visa applicants referred to in Article 14(6), suspension of the general 15 calendar days processing period referred to in Article 23(1) (which as a consequence also excludes the application of the rule on the extension of this period up to a maximum of 45 days in individual cases), suspension of the issuing of multiple entry visas (MEVs) in accordance with Article 24(2) and (2c) and, suspension of the optional visa fee waiver for holders of diplomatic and service passports in accordance with point (b) of Article 16(5).
- (6) Article 21(1) of the Treaty on the Functioning of the European Union provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. Directive 2004/38/EC of the European Parliament and of the Council⁶ gives effect to those limitations and conditions. This Decision does not affect the application of that Directive, which extends the right of free movement to family members independent of their nationality when joining or accompanying the Union citizen. This Decision thus does not apply to family members of a Union citizen to whom Directive 2004/38/EC applies or 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 its Member States on the one hand and a third country on the other.
- (7) Given that Denmark decided to implement Regulation (EC) No 810/2009 which builds on the Schengen acquis in its national law, in accordance with Article 4 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is bound under international law to implement this Decision.
- (8) 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/EC⁷; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application
- (9) As regards Iceland and Norway, this Decision constitutes a development of 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* which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC⁸.

⁶ 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).

⁷ 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).

⁸ 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

- (10) 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*⁹ which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Decision 2008/146/EC¹⁰.
- (11) 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*¹¹ which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Decision 2011/350/EU¹².
- (12) This Decision constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession.

HAS ADOPTED THIS DECISION:

Article 1 *Scope*

1. This Decision shall apply to nationals of Iraq who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806 of the European Parliament and of the Council.¹³
2. It does not apply to nationals of Iraq who are exempt from the visa requirement under Article 4 or Article 6 of that Regulation.
3. This Decision does not apply to nationals of Iraq applying for a visa and who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying a right of free movement equivalent to that of

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).

⁹ OJ L 53, 27.2.2008, p. 52.

¹⁰ 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).

¹¹ OJ L 160, 18.6.2011, p. 21.

¹² 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).

¹³ 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 (codification) (OJ L 303, 28.11.2018, p. 39).

Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other.

Article 2

Temporary suspension of the application of certain provisions of Regulation (EC) No 810/2009

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

Article 3

Addressees

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 Brussels,

For the Council
The President