



Council of the
European Union

Brussels, 23 July 2024
(OR. en)

Interinstitutional File:
2024/0188(NLE)

12536/1/24
REV 1

MIGR 323
VISA 125
RELEX 1033
COAFR 289
COMIX 340

PROPOSAL

No. Cion doc.:	COM(2024) 324 final/2 DOWNGRADED on 23.7.2024
Subject:	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 Somalia

Delegations will find attached document COM(2024) 324 final/2 DOWNGRADED on 23.7.2024.

Encl.: COM(2024) 324 final/2 DOWNGRADED on 23.7.2024



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2024/0188 (NLE)

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 Somalia

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

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

Based on these assessments and taking into account the steps taken by the Commission to improve the level of cooperation in the field of readmission and 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 needed. If this is so, the Commission, in accordance with Article 25a(5), point (a) of the Visa Code, shall submit a 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 Somalia**

Somalia's cooperation on the readmission of its nationals who are illegally staying on the territory of the EU Member States remains insufficient, as reported by Member States and substantiated by the low return rate (i.e. the number of returns enforced in comparison with the number of return decisions issued to nationals of the third country², 4% in 2023) and the decreasing issuance rate (i.e. the number of travel documents issued by third countries in comparison to the number of readmission requests submitted by Member States).

Almost all Member States face persistent challenges in establishing a meaningful dialogue and engagement with Somalia on readmission, in particular as regards forced returns.

In the framework of the continuous assessments carried out by the Commission based on data and information provided by Member States, discussions in the relevant Council Working Groups and experts groups meetings, as well as by Union institutions, bodies, offices and agencies, Member States reported a number of issues that hamper the different steps of the readmission process, including related to the identification of Somali nationals, the issuance of emergency travel documents and the organisation of return operations. Long delays in Somalia's responses to Member States' readmission requests, or the lack of responses, make the identification process very cumbersome, meaning it very rarely results in the issuance of travel documents or in the organisation of return operations. In 2023, a low number of return operations were attempted by Member States due to Somalia's lack of cooperation throughout the whole process.

As a follow up to the previous assessments under Article 25a of the Visa Code, the EU sought a strengthened engagement with Somalia to address obstacles in the cooperation on readmission. The EU has repeatedly conveyed the need to improve cooperation on readmission to the relevant authorities, both orally and in writing and at political and technical

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 According to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

levels in Brussels and in Mogadishu. This engagement, however, has not led to the necessary improvement in cooperation.

On the basis of the above, the lack of improvement, despite the steps taken so far by the EU and its Member States to improve readmission cooperation and taking into account the EU's overall relations with Somalia, it is considered that Somalia's cooperation with the EU on readmission is not sufficient and that action is needed.

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

Somalia is an important partner for the EU in the Horn of Africa region. The EU's integrated partnership with Somalia is framed within the EU's Horn of Africa Strategy³, which is based on social and human development, trade, regional integration, peace and security. According to UNHCR, Somalia hosts 30 000 refugees and nearly 3 million internally displaced persons.

The EU has invested heavily and comprehensively in the stability of Somalia with more than EUR 3.5 billion of support for the period 2014-2022. The Government has agreed to a Joint Operational Roadmap⁴ in May 2023, which lays down the priority areas and serves as the foundation for engagement between Somalia and the EU. It consists of three pillars, namely, Inclusive Politics and Democratisation, Security and Stabilisation, and Socio-Economic Growth.

The budget support programme Somalia State and Resilience Building Contract (SRBC) has been instrumental for Somalia to reach the Heavily Indebted Poor Countries (HIPC) Completion Point in December 2023, by addressing the implementation of key reforms, such as improved cash management, public financial management (PFM), modernisation of customs and tax administration, and facilitating the clearance of Somalia's arrears with the international financial institutions (IFIs).

The country enjoys duty-free and quota-free access to the European market under the Everything But Arms scheme⁵.

The Multiannual Indicative Programme (MIP) for Somalia under the Neighbourhood, Development and International Cooperation Instrument⁶ (NDICI) for the period 2021-2024 amounts to EUR 257 million and is designed to address the root causes of instability and fragility and advance the state building processes, support inclusive and sustainable economic development and mitigate the impact of natural disasters and displacement on the most vulnerable groups.

Somalia is a member of the Intergovernmental Authority on Development (IGAD) and is currently replacing Sudan in the Steering Committee of the Khartoum Process. On 6 June 2023, Somalia was elected as a non-permanent member of the United Nations Security Council for the period 2025-2026.

- **The visa measures**

Scope of measures

³ [The Horn of Africa: a geo-strategic priority for the EU, Council conclusions](#)

⁴ Priorities for EU-Somalia cooperation (Joint Operational Roadmap), May 2023.

⁵ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008.

⁶ [Multi-annual Indicative Programme \(2021-2027\), Federal Republic of Somalia.](#)

The Council Implementing Decision should temporarily suspend the application of certain provisions of the Visa Code in respect of Somali nationals. The suspension, however, should not apply to Somali family members of (mobile) EU citizens covered by Directive 2004/38/EC⁷ and to Somali family members 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 country concerned on the other. In the same vein, the suspension should not apply to family members of UK nationals who are Withdrawal Agreement beneficiaries, provided the family members are entitled to make a visa application under the Withdrawal Agreement for joining the beneficiary in the Withdrawal Agreement host State.

There is no Member State present or represented in Somalia for the purpose of issuing visas. Currently six Member States do not recognise any travel document issued by Somalia, and a further seven only recognise diplomatic or service passports. A visa cannot be affixed to non-recognised passports for travel to the respective Member State(s). If a Member State affixes a visa to a Somali travel document that it recognises, that visa is valid only for the territory of the Member States recognising the travel document and not for the entire Schengen area. Somali nationals holding non-recognised travel documents would therefore need to obtain travel documents issued by another country if they plan to travel to (a) non-recognising Member State(s). Non-recognising Member States may also affix a visa with limited territorial validity to a separate sheet, but this solution is rarely used in practice as visa applications based on a non-recognised travel document are usually considered inadmissible, unless there are exceptional circumstances justifying travel (e.g., humanitarian reasons).

In 2022, Somali nationals lodged 1600 visa applications and 2600 in 2023, resulting in 1000 and 1600 visas being issued in the two years, respectively.

Content of the visa measures

Somalia's failure to cooperate sufficiently on readmission justifies the temporary suspension of all the articles referred to in point (a) of Article 25a(5) of the Visa Code: suspension of the possibility of waiving the 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 allowing the extension of this period up to a maximum of 45 days only in individual cases, hence 45 days becomes the standard processing period); 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).

Period of application of the visa measures

The Visa Code provides 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, in accordance with Article 25a(6) of the Visa Code, the Commission

⁷ 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).

should continuously assess progress in readmission cooperation on the basis of the indicators set out in Article 25a(2) of the Visa Code, including in the assistance provided for the identification of persons illegally staying on the territory of the Member States, the timely issuance of travel documents and the organisation of return operations. The Commission will 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, as provided for by Article 25a(5), point (b) of the Visa Code.

Pursuant to Article 25a(7) of the Visa Code, the Commission will - 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 Visa Code setting the 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, ensuring respect of all fundamental rights and obligations in line with the EU Charter of Fundamental Rights. One of the pillars of the Pact on Migration and Asylum adopted in May 2024, offering a comprehensive approach that aims at strengthening and integrating key EU policies on migration, asylum, border management and integration, is embedding migration in international partnerships to prevent irregular departures, fight migrant smuggling, cooperate on readmission and promote legal pathways.

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 European Council has called for the EU to mobilise all available tools, including development co-operation, trade, or visa measures⁸.

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

⁸ EUCO 22/21 (17).

- **Proportionality**

The proposed measures, the purpose of which is to improve Somalia's cooperation on the readmission of illegally staying third country nationals, are proportionate to the objective pursued. These measures do not affect the possibility for applicants to apply for and be granted visas as such but cover certain aspects of the procedure for issuing the visa. Additionally, certain categories of persons are excluded from the scope of this decision.

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 all fundamental rights of applicants, in particular the respect of 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**

Article 1 defines the scope of the proposed implementing decision.

Paragraphs 1 and 2 specify that it only applies to nationals of Somalia who are subject to the visa requirement, and not to those that are exempt on the basis of Articles 4 or 6 of Regulation (EU) 2018/1806.

Paragraph 3 exempts from the scope of the proposed decision visa applicants who are family members of a Union citizen to whom Directive 2004/38/EC applies, and 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 its Member States, on the one hand, and the relevant third country, on the other. Family members of UK nationals who are Withdrawal Agreement beneficiaries are also exempted from the scope of the proposed decision, provided the family members are entitled to make a visa application under the Withdrawal Agreement for joining the beneficiary in the Withdrawal Agreement host.

Paragraph 4 specifies that the proposed decision is without prejudice to Member States' international obligations.

Article 2 sets out that the application of the following provisions of the Visa Code shall be temporarily suspended for nationals of Somalia falling within the scope of the proposed decision:

- The possibility for Member States to waive the requirement to present a full set of supporting documents. This means that a full set of supporting documents proving fulfilment of the entry conditions as set out in the Schengen Borders Code will have to be submitted at every application by all applicants.
- The possibility for Member States to waive the visa fee for holders of diplomatic and service passports. The standard visa fee of 90 EUR will apply to this category of applicants.
- The standard processing time of 15 days for taking a decision on an application. This means that Member States will have 45 days to decide on applications.
- The rules on issuing multiple-entry visa. This means that, in principle, only single-entry visas will be issued.

Article 3 specifies that the measures enter into force on the date of notification of the Decision to Member States.

Article 4 contains the list of addressees of the proposed decision, i.e. the relevant Member States.

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 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)⁹, and in particular Article 25a(5), point (a) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Cooperation on readmission with Somalia was assessed as insufficient under Article 25a(2) of Regulation (EC) No 810/2009. Significant improvements are needed in the cooperation on all the steps of the readmission process, including to ensure that Somalia effectively cooperates on identification, issuance of emergency travel documents and return operations in a timely and predicable manner, for both forced and voluntary returns.
- (2) With very few exceptions, Member States face persistent challenges, due to the lack of clear interlocutors 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, 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.
- (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 Council¹⁰. 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: 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

⁹ OJ L 243, 15.9.2009, p. 1.

¹⁰ 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).

the application of the rule allowing the extension of this period up to a maximum of 45 days only in individual cases, meaning that 45 days becomes the standard processing period), suspension of the issuing of multiple-entry visas 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 of Article 16(5), point (b).

- (6) This Decision should not affect the application of Directive 2004/38/EC, which extends the right of free movement to family members independent of their nationality when joining or accompanying 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. The same applies with regard 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 Community¹¹ (Withdrawal Agreement), provided the family member is entitled to join the Withdrawal Agreement beneficiary in the host State and applies for a visa for this purpose.
- (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 of 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 does not constitute a development of provisions of the Schengen *acquis* in which Ireland takes part in accordance with Council Decision 2002/192/EC¹²; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (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 letters' association with the implementation, application and

¹¹ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7).

¹² 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).

development of the Schengen *acquis*¹³ which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC¹⁴.

- (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*¹⁵ 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/EC¹⁶.
- (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*¹⁷ 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/EU¹⁸.
- (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:

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.

¹³ OJ L 176, 10.7.1999, p. 36.

¹⁴ 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).

¹⁵ OJ L 53, 27.2.2008, p. 52.

¹⁶ 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).

¹⁷ OJ L 160, 18.6.2011, p. 21.

¹⁸ 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).

3. This Decision shall not apply to nationals of Somalia and who are:
 - (a) family members of a Union citizen to whom Directive 2004/38/EC applies when accompanying or joining the Union citizen or
 - (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 the family members are entitled to join the Withdrawal Agreement beneficiary in the host State and applies for a visa for this purpose.
4. This Decision shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:
 - (a) as a host country of an international intergovernmental organisation;
 - (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;
 - (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);
- (d) Article 24(2) and (2c).

Article 3

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

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 Brussels,

*For the Council
The President*