



Brussels, 27.9.2023  
COM(2023) 568 final

2023/0344 (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 Ethiopia**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

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

In accordance with Article 25a(2) of the Visa Code<sup>1</sup>, 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 necessary. 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 Ethiopia**

In February 2018 the EU concluded a non-binding readmission arrangement with Ethiopia ("Admission procedure for the return of Ethiopians from European Union Member States"). Since then, two Joint Working Group meetings to monitor the implementation of the arrangement took place on 13 May 2019 and on 28 November 2019. Engagement on readmission, including on the outcome of the yearly assessment under article 25a of the Visa Code, continued at local level, including during the nation-wide state of emergency that was declared in November 2021 following the conflict in northern Ethiopia, and that ended in February 2022.

Despite the existing readmission arrangement, the efforts to intensify engagement on readmission and the provision of technical assistance by the EU, cooperation on readmission with Ethiopia has not improved. The EU conveyed to Ethiopia clear messages about the need for Ethiopia to improve cooperation in readmitting its nationals who have no right to stay in the EU Member States and to fully implement the readmission arrangement, including through the swift identification of Ethiopians with no right to stay in the EU and the issuance of emergency travel documents for all returns, including forced ones. These messages, delivered at technical meetings, during bilateral meetings with Member States and to the Ethiopian Ambassador to the EU in April 2023, and engagement with Ethiopia's authorities have not produced the expected results and have not led to an improvement in cooperation.

Cooperation with Ethiopia on the readmission of its nationals found illegally staying on the territory of the EU Member States remains insufficient, as substantiated by the low return rate (the number of return decisions enforced in comparison with the number of return decisions issued), which was 10% in 2021 and in 2022, and by the overall decreasing issuance rate (i.e. the number of travel document issued by third countries in comparison to the number of readmission requests submitted by Member States). Member States face persistent challenges in establishing a meaningful dialogue and engagement on readmission with Ethiopia, in particular as regards forced returns.

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<sup>1</sup> 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.

In the framework of continuous assessments carried out by the Commission based on data and information provided by Member States, discussions in the relevant Council Working Groups and expert 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 the identification of Ethiopian nationals, the issuance of travel documents and the organisation of return operations. The lack of responses of the Ethiopian authorities to Member States' requests for identification results in practice in the impossibility to return undocumented persons. The issuance of travel documents to persons whose Ethiopian nationality has been confirmed, for example through identification missions carried out in the past years, remains problematic. In 2022 a very limited number of returns took place, with no returns via charter flight.

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

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

Ethiopia is a key country for stability in the Horn of Africa. It is the second most populated country in Africa (110 million inhabitants) and a host of nearly 900,000 refugees from the region. There has been internal conflict in Ethiopia since November 2020, which led to the signing of the Permanent Cessation of Hostilities Agreement in Ethiopia. The situation remains fragile and internal tensions continue. Transitional justice and rehabilitation processes are being monitored. Normalisation of relations with Ethiopia and the restart of a meaningful political dialogue with authorities are in progress. During the critical stage of the conflict in Sudan, the Ethiopian authorities provided substantial assistance with visa issuance and facilities at the border during the evacuation of the EU nationals from Sudan.

The country enjoys duty-free and quota-free access to the European market under the "Everything but Arms" scheme.

Ethiopia is a member of the Intergovernmental Authority on Development and a member of the Steering Committee of the Khartoum Process. Ethiopia is a party to the Cotonou Agreement. Ethiopia has been an important partner for the European Union, with a long-standing partnership dating back over 40 years. In 2016, the EU and Ethiopia signed a "Strategic Engagement", committing both sides to close cooperation in areas ranging from regional peace and security, to trade and investment, and including migration and forced displacement. The EU proposes to assist Ethiopia through the NDICI-GE with a National Multiannual Indicative programme for the period 2024-2027 (adoption foreseen end of September). It will cover 3 priority areas: Green Deal, Human Development (including migration and forced displacement) and Governance/ Peacebuilding.

- **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 Ethiopian nationals. The suspension, however, should not apply to Ethiopian family members of (mobile) EU citizens covered by the

Directive 2004/38/EC<sup>2</sup> and to Ethiopian 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.

#### *Content of the visa measures*

Ethiopia'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 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 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.

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<sup>2</sup> 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).

- **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 it 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 European Council has called for the EU to mobilise all available tools, including development co-operation, trade or visa measures<sup>3</sup>.

## **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 improve Ethiopia'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.

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<sup>3</sup> EUCO 22/21 (17)

- **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 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 Ethiopia 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 a third country, on the other.

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

*Article 2* sets out that that the application of the following provisions of the Visa Code shall be temporarily suspended for nationals of Ethiopia 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 80 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* 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 Ethiopia**

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)<sup>4</sup>, and in particular Article 25a(5), point (a) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Cooperation on readmission with Ethiopia was assessed as insufficient under Article 25a(2) of Regulation (EC) No 810/2009. Significant improvements in the cooperation on all the steps of the readmission process are needed, including to ensure that Ethiopia effectively cooperates on identification and issuance of travel documents, as well as on return operations, with all Member States in a timely and predictable manner.
- (2) There are persistent challenges in the identification of Ethiopian nationals illegally staying on the territory of the Member States, due to the lack of responses from the Ethiopian authorities to the readmission requests, difficulties with the issuance of emergency travel documents that are not provided even when the nationality has been previously confirmed, and the organisation of return operations for voluntary and forced returns on scheduled and charter flights.
- (3) Taking into account the various steps taken so far by the Commission to improve the level of cooperation and the Union's overall relations with Ethiopia, Ethiopia's cooperation with the Union on readmission matters is not sufficient and that action is therefore needed.
- (4) The application of certain provisions of Regulation (EC) No 810/2009 should therefore be temporarily suspended for nationals of Ethiopia who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806 of the European Parliament and of the Council<sup>5</sup>. The objective is to encourage Ethiopia to undertake the necessary actions to improve cooperation on readmission matters.

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<sup>4</sup> OJ L 243, 15.9.2009, p. 1.

<sup>5</sup> 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).

- (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 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 of the European Parliament and of the Council<sup>6</sup>, 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.
- (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 Ethiopia 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) 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.
- (9) 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<sup>7</sup>; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (10) 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 latter's association with the implementation, application and

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<sup>6</sup> 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 OJ L 158, 30.4.2004, p. 77).

<sup>7</sup> 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<sup>8</sup> which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC<sup>9</sup>.

- (11) 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<sup>10</sup> 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<sup>11</sup>.
- (12) 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<sup>12</sup> 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<sup>13</sup>.
- (13) 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, and Article 4(2) of the 2005 Act of Accession,

HAS ADOPTED THIS DECISION:

#### *Article 1*

##### *Scope*

1. This Decision shall apply to nationals of Ethiopia who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806.
2. This Decision shall not apply to nationals of Ethiopia who are exempt from the visa requirement under Article 4 or Article 6 of Regulation (EU) 2018/1806.

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<sup>8</sup> OJ L 176, 10.7.1999, p. 36.

<sup>9</sup> 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).

<sup>10</sup> OJ L 53, 27.2.2008, p. 52.

<sup>11</sup> 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).

<sup>12</sup> OJ L 160, 18.6.2011, p. 21.

<sup>13</sup> 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 Ethiopia applying for a visa and who are family members of a Union citizen to whom Directive 2004/38/EC applies or 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.
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*

#### *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*