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ANNEX 1

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**Proposal for a Council Decision
establishing the position to be taken on behalf of the European Union
within the Joint Committee set up under 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,
with regard
to the adoption of common guidelines for the implementation of the Agreement**

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**DRAFT
DECISION N° 1/2015 OF THE JOINT COMMITTEE
SET UP BY 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
of**

with regard to the adoption of common guidelines for the implementation of the Agreement

THE JOINT COMMITTEE,

Having regard to 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'), and in particular Article 10 thereof,

Whereas the Agreement entered into force on 1 December 2014,

HAS DECIDED THE FOLLOWING:

Article 1

The common guidelines for the implementation of 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 are established in the annex to this Decision.

Article 2

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

Done at...

For the European Union

For the Republic of Cape Verde

ANNEX
COMMON GUIDELINES
FOR THE IMPLEMENTATION OF 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 purpose of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issuing of short-stay visas to citizens of the Republic of Cape Verde and of the European Union, which entered into force on 1.12.2014., is to facilitate, on the basis of reciprocity, the procedures for issuing visas for an intended stay of no more than 90 days per period of 180 days to the citizens of Republic of Cape Verde and of the European Union.

The Agreement establishes reciprocal legally binding rights and obligations for the purpose of simplifying the procedures of issuing visas to the citizens of Republic of Cape Verde and of the European Union.

These Guidelines, adopted by the Joint Committee established by the Agreement, aim at ensuring a correct and harmonised implementation of the provisions of the Agreement by the diplomatic missions and consular posts of the Republic of Cape Verde and of the Member States. These Guidelines are not part of the Agreement and therefore are not legally binding. However, it is highly recommended that diplomatic and consular staff consistently follow them when implementing the provisions of the Agreement.

The Guidelines are conceived as a living document, to be updated in light of the experiences of the implementation of the Agreement under the responsibility of the Joint Committee set up by Article 10 of the Agreement.

I. GENERAL ISSUES.

1.1. Purpose and scope of application.

Article 1 of the Agreement stipulates that: *“The purpose of this Agreement is to facilitate, on the basis of reciprocity, the issue of visas to citizens of Cape Verde and of the Union for an intended stay of no more than 90 days per period of 180 days.”*

The Agreement applies to all citizens of the Republic of Cape Verde and of the European Union who apply for a short-stay visa, regardless of the country in which they reside.

The Agreement does not apply to stateless persons holding a residence permit issued by the Republic of Cape Verde or the Member States of the European Union. The normal rules of the EU visa acquis apply to this category of persons.

1.2. Scope of the Agreement.

Article 2 of the Agreement stipulates that:

“1. The measures to facilitate the issue of visas set out in this Agreement shall apply to citizens of Cape Verde and of the Union only in so far as they are not exempt from visa requirements under the laws and regulations of the Union or its Member States or of Cape Verde, or under the present Agreement or other international agreements.

2. The national law of Cape Verde and of the Member States or the law of the Union shall apply to matters not covered by the provisions of this Agreement, such as refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence, refusal of entry and expulsion measures.”

Without prejudice to Article 8 (which provides for the exemption from the visa requirement for holders of diplomatic or service passports issued by the Republic of Cape Verde and by the Member States), the Agreement does not affect the existing rules on visa obligations and

visa exemptions. For instance, Article 4 of Council Regulation N°539/2001 allows Member States to exempt from the visa requirement civilian air and sea crews among other categories. The Visa Code applies to all issues not covered by the Agreement such as the determination of the Schengen Member State responsible for processing a visa application, the motivation of refusal to issue a visa and the right to appeal against a negative decision. Furthermore, Schengen rules and national law continue also to apply to issues which are not covered by the Agreement, such as the recognition of travel documents, proof of documentary evidence regarding the purpose of the journey and sufficient means of subsistence, the processing times for visa applications, refusal of entry in the territory of EU Member States, expulsion measures.

Even if the conditions foreseen in the Agreement are met, the issuing of the visa still can be refused if the conditions laid down in Article 5 of the Schengen Borders Code are not fulfilled, i.e. the person is not in possession of a valid travel document, an alert in the SIS has been issued, the person is considered a threat for public policy, internal security, etc.

Other flexibilities in the issuing of visas allowed for by the Visa Code continue to apply. For instance, multiple-entry visas for a long period of validity – up to five years – can be issued to categories of persons other than those mentioned in Article 4, if the conditions foreseen in the Visa Code (Article 24) are met. In the same way, the provisions contained in the Code allowing waiver or reduction of the visa fee will continue to apply (Article 16 (5) and (6)).

The national law of Cape Verde continues to apply to all issues related to issuing the EU citizens with visas by Cape Verde and not covered by the Agreement, such as those mentioned in three preceding paragraphs.

1.3. Types of visas falling within the scope of the Agreement.

Article 3 (d) of the Agreement defines “visa” as *“an authorisation issued or a decision taken by a Member State or by Cape Verde which is required with a view to entering, for transit purposes or for an intended stay of no more than 90 days in total, the territory of that Member State or of several Member States or the territory of Cape Verde”*.

The facilitations provided by the Agreement apply both to uniform visas valid for the entire territory of the Member States, and to visas with limited territorial validity (LTV). They also apply to short-stay and transit visas issued by Cape Verde to EU citizens.

1.4. Calculation of the length of stay authorised by a visa

The current definition in the Schengen Borders Code of the notion of short stay reads as follows: “90 days in any 180 day-period, which entails considering the 180-day period preceding each day of stay”.

The day of entry will be calculated as the first day of stay in the territory of the Member States and the day of exit will be calculated as the last day of stay in the territory of the Member States. The notion of “any” implies the application of a “moving” 180-day reference period, on each day of the stay looking back to the last 180 days period, in order to verify if the 90/180 day requirement continues to be fulfilled. This means that an absence in the territory of the Member States for an uninterrupted period of 90 days allows for a new stay of up to 90 days.

A short-stay calculator, which can be used for calculating the period of allowed stay under the new rules, can be found on-line at the following address: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/index_en.htm.

Example of calculation of stay on the basis of the new definition:

A person holding a multiple entry visa for 1 year (18.4.2014 – 18.4.2015) enters for the first time on 19.4.2014 and stays for 3 days. Then the same person enters again on 18.6.2014 and stays for 86 days. What is the situation on specific dates? When will this person be allowed to enter again?

On 11.9.2014: Over the last 180 days (16.3.2014 – 11.9.2014) the person had stayed for 3 days (19. – 21.4.2014) plus 86 days (18.6.2014 – 11.9.2014) = 89 days = No overstay. The person may still stay for up to 1 day.

As of 16.10.2014: The person might enter for a stay of 3 additional days (on 16.10.2014 the stay on 19.4.2014 becomes irrelevant (outside the 180 days period); on 17.10.2014 the stay on 20.4.2014 becomes irrelevant (outside the 180 days period; etc.).

As of 15.12.2014: The person might enter for 86 additional days (on 15.12.2014, the stay on 18.6.2014 becomes irrelevant (outside the 180 days period); on 16.12.2014, the stay on 19.6.2014 becomes irrelevant, etc.).

1.5. Situation regarding the Member States that do not yet fully apply the Schengen acquis, Member States that do not participate in the EU Common Visa Policy and associated countries.

Member States that joined the EU in 2004 (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia), 2007 (Bulgaria and Romania) and 2013 (Croatia) are bound by the Agreement as from its entry into force.

Only Bulgaria, Croatia, Cyprus, and Romania do not yet fully implement the Schengen acquis. They will continue issuing national visas with a validity limited to their own national territory. Once these Member States fully implement the Schengen acquis, they will continue to apply the Agreement.

National law continues to apply to all issues not covered by the Agreement until the date of full implementation of the Schengen acquis by these Member States. As from that date, Schengen rules/national law apply to issues not regulated by the Agreement.

Bulgaria, Croatia, Cyprus, and Romania are authorised to recognise residence permits, D visas and short stay visas issued by Schengen States and associated countries for short stays on their territory.

According to Article 21 of the Convention implementing the Schengen Agreement, all Schengen States must recognise the long-stay visas and residence permits issued by each other as valid for short stays on each other's territories. Schengen Member States accept residence permits, D visas and short stay visas of associated countries for entry and short stay and vice versa.

The Agreement does not apply to the UK, Ireland and Denmark but comprises joint declarations about the desirability of concluding bilateral agreements on visa facilitation between the Republic of Cape Verde and those Member States.

Although associated with Schengen, Iceland, Norway, Switzerland, and Liechtenstein are not bound by the Agreement. However, the agreement contains a joint declaration about the desirability to conclude bilateral agreements on visa facilitation between the Republic of Cape Verde and those Schengen countries without delay.

1.6. European Union Agreement/Bilateral Agreements.

Article 11 of the Agreement stipulates that:

“From its entry into force, this Agreement shall take precedence over the provisions of any bilateral or multilateral agreements or arrangements concluded between Member States and Cape Verde, in so far as the provisions of those agreements or arrangements relate to matters that are dealt with by this Agreement.”

As from the date of entry into force of the Agreement, provisions in the bilateral Agreements in force between Member States and the Republic of Cape Verde on issues dealt with by the visa facilitation agreement cease to apply. In accordance with Union law, Member States have to take the necessary measures to eliminate the incompatibilities between their bilateral Agreements and the European Union Agreement.

Should a Member State have concluded a bilateral Agreement or arrangement with the Republic of Cape Verde on issues not covered by the European Union Agreement, this exemption would continue to apply after the entry into force of the European Union visa facilitation Agreement.

II. GUIDELINES ON SPECIFIC PROVISIONS.

2.1. Rules that apply to all visa applicants

Important: It is recalled that the facilitations mentioned below regarding the departure in case of lost or stolen documents and the extension of visa in exceptional circumstances apply to all visa holders from the Republic of Cape Verde and the Member States.

2.1.1. Extension of visa in exceptional circumstances.

Article 7 of the Agreement stipulates that:

" Citizens of Cape Verde and of the Union who are unable to leave the territory of the Member States or of Cape Verde respectively by the date indicated in their visas for reasons of force majeure shall have their visas extended free of charge in accordance with the legislation applied by the host State for the period necessary for their return to their State of residence."

Regarding the possibility of extending the validity of the visa in cases of force majeure, for instance a stay in hospital due to an accident, where the holder of the visa does not have the possibility to leave the territory of the Member State by the date indicated on the visa sticker, the provisions of Article 33(1) of the Visa Code will apply as long as they are compatible with the Agreement (for example, the extended visa will remain a uniform visa, entitling entry to the territory of all the Schengen Member States for which this visa was valid at the time of issue). However, under the Agreement the extension of the visa is carried out free of charge in case of force majeure.

2.2. Rules that apply to certain categories of visa applicants.

2.2.1. Issuing of multiple-entry visas.

In cases where the visa applicant needs to travel frequently or regularly to the territory of the Republic of Cape Verde or to the territory of the Member States, short-stay visas may be issued for several visits, provided that the total length of these visits does not exceed 90 days in any 180-day period.

Article 4 of the Agreement stipulates that:

"1. Diplomatic missions and consular posts of the Member States and of Cape Verde shall issue multiple-entry visas valid for five years to the following categories of citizen:

(a) members of national and regional governments and parliaments, constitutional courts, supreme courts or courts of auditors, if they are not exempt from visa requirements under this Agreement, in the exercise of their duties;

(b) permanent members of official delegations who, following an official invitation addressed to Cape Verde, the Member States or the Union, take part in meetings, consultations, negotiations or exchange programmes, or in events in the territory of the Member States or Cape Verde organised on the initiative of intergovernmental organisations;

(c) business people and company representatives who regularly travel to the Member States or to Cape Verde;

(d) spouses, children (including adopted children) who are under the age of 21 or are dependent, and parents visiting either:

— citizens of Cape Verde legally resident in the territory of a Member State or citizens of the Union legally resident in Cape Verde, or

— citizens of the Union resident in the Member State of their nationality, or citizens of Cape Verde resident in Cape Verde.

However, if the need or intention to travel frequently or regularly is clearly limited to a shorter stay, the validity of the multiple-entry visa shall be limited to this stay, in particular where

— the term of office, in the case of those covered by point (a) above,

— the term of office of a permanent member of an official delegation, in the case of those covered by point (b) above,

— the duration of the positions as business people and company representatives, in the case of those covered by point (c) above, or

— the duration of the residence permits issued to Cape Verde citizens residing in the territory of a Member State and Union citizens residing in Cape Verde, in the case of those covered by point (d) above,

is less than five years."

Taking into account the professional status of these categories of persons, or their family relationship with a citizen of the Republic of Cape Verde or of the Member States who is legally residing in the territory of the Republic of Cape Verde or of the Member States, as well as regarding the relatives of citizens of the Union resident in the Member State of their nationality, or citizens of Cape Verde resident in Cape Verde, it is justified to grant them a multiple-entry visa with a validity of five years, or limited to the term of office or to their legal residence if these are of less than 5 years.

As regards persons falling under Article 4(1)(a), confirmation should be given regarding their professional status and the duration of their mandate.

This provision will not apply to persons falling under Article 4(1)(a) if they are exempted from the visa requirement by the Agreement, i.e. if they are holders of a diplomatic or a service passport.

Persons falling under Article 4(1)(b), must present proof regarding their permanent status as a member of the delegation and the need to participate regularly in meetings, consultations, negotiations or exchange programs.

Persons falling under Article 4(1)(c) must present proof regarding their professional status and the duration of their activities.

Persons falling under Article 4(1)(d), must present proof regarding the legal residence of the inviting person.

In cases where the need or the intention to travel frequently or regularly is clearly limited to a shorter period, the validity of the multiple-entry visa will be limited to that period.

"2. *Diplomatic missions and consular posts of the Member States and Cape Verde shall issue multiple-entry visas valid for one year to the following categories of citizens, provided that during the previous year they have obtained at least one visa and that they have made use of it in accordance with the laws on entry and residence in the territory of the State in question:*

(a) representatives of civil society organisations travelling regularly to Member States or to Cape Verde for the purposes of educational training or to take part in seminars and conferences, including as part of exchange programmes;

(b) practitioners of a liberal profession taking part in international exhibitions, conferences, symposia, seminars or other similar events who regularly travel to the Member States or to Cape Verde;

(c) persons taking part in scientific, cultural and artistic activities, including university and other exchange programmes, who regularly travel to the Member States or to Cape Verde;

(d) participants in international sports events and persons accompanying them in a professional capacity;

(e) journalists and accredited persons accompanying them in a professional capacity;

(f) school pupils, students, post-graduate students and accompanying teachers who undertake trips for the purposes of study or educational training, including exchange programmes and other school-related activities;

(g) representatives of religious organisations recognised in Cape Verde or in the Member States who regularly travel to the Member States or to Cape Verde respectively;

(h) persons visiting regularly for medical reasons;

(i) participants in official exchange programmes organised by twinned towns or municipal authorities;

(j) members of official delegations who, following an official invitation addressed to Cape Verde, the Member States or the Union, regularly take part in meetings, consultations, negotiations or exchange programmes, and in events in the territory of the Member States or of Cape Verde organised on the initiative of intergovernmental organisations.

However, if the need or intention to travel frequently or regularly is clearly limited to a shorter stay, the validity of the multiple-entry visa shall be limited to the length of this stay."

In principle, multiple-entry visas valid for one year will be issued to the above mentioned categories if during the previous year (12 months) the visa applicant has obtained at least one visa and has made use of it in conformity with the laws on entry and stay of the State(s) visited (for instance, the person has not overstayed) and if there are reasons for requesting a multiple-entry visa.

In cases where it is not justified to issue a visa valid for one year, (for instance, if the duration of the exchange programme is of less than one year or the person does not need to travel for a full year) the validity of the visa will be of less than one year, provided that the other requirements for issuing the visa are met.

"3. Diplomatic missions and consular posts of the Member States and of Cape Verde shall issue multiple-entry visas that are valid for at least two years and at most five years to citizens in the categories referred to in paragraph 2 of this Article, provided that during the two years prior to the application they have made use of a one-year multiple-entry visa in accordance with the laws on entry and residence in the territory of the host State.

However, if the need or intention to travel frequently or regularly is clearly limited to a shorter stay, the validity of the multiple-entry visa shall be limited to the length of that stay."

"4. The total period of residence of the persons referred to in paragraphs 1 to 3 of this Article shall not exceed 90 days per period of 180 days in the territory of the Member States or of Cape Verde."

Multiple-entry visas valid from 2 years up to 5 years will be issued to the categories mentioned under Article 4(2), provided that during the previous two years (24 months) they have made use of the 1 year multi-entry visas in accordance with the laws on entry and stay in the territory (ies) of the visited State(s) and that the reasons for requesting a multi-entry visa are still valid. It has to be noted that a visa with a validity from 2 to 5 years, will only be issued if the visa applicant has been issued two visas valid for one year – and not less – during the previous two years, and if he or she has used these visas in accordance with the laws of

entry and stay in the territory(ies) of the visited State(s). Diplomatic missions and consular posts are to decide, on the basis of the assessment of each visa application, the period of validity of these visas, i.e. from 2 to 5 years.

There is no obligation to issue a multiple-entry visa if the applicant has not made use of a previously issued visa.

2.2.2. Visa processing fee.

Article 5(1) of the Agreement stipulates that:

“1. Without prejudice to the provisions of paragraph 2, the Member States or Cape Verde shall not collect visa fees from the following categories of people:

(a) members of official delegations who, following an official invitation addressed to Cape Verde, the Member States or the Union, take part in meetings, consultations, negotiations or official exchange programmes, or in events in the territory of a Member State or of Cape Verde organised by intergovernmental organisations;

(b) children under 12 years of age; (N.B. In order to benefit from the fee waiver for this category of persons, visa applicants have to present evidence proving their age.)

(c) school pupils, students, postgraduate students and accompanying teachers travelling for study or educational purposes;

(d) researchers travelling for the purposes of scientific research;

(e) participants no older than 25 years of age taking part in seminars, conferences or sports, cultural or educational events organised by non-profit organisations.”

The fee is fully waived for the abovementioned categories of persons.

As stated in Article 16(6) of the Visa Code “in individual cases, the amount of the fee to be charged may be waived or reduced when to do so serves to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy, other areas of vital public interest or for humanitarian reasons.”

Article 16(7) of the Visa Code states that “the visa fee shall be charged in euro, in the national currency of the third country or in the currency usually used in the third country where the application is lodged, and shall not be refundable except in the cases referred to in Articles 18(2) and 19(3)” - cases of an inadmissible application or cases where the consulate is not competent.

Visa applicants from Cape Verde, in line with Article 16(8) of the Visa Code, and the citizens of the European Union, in line with Décret-Loi 27/2007 “shall be given a receipt for the visa fee paid”.

Article 5(2) of the Agreement stipulates that:

“2. Where the Member States or Cape Verde cooperate with an external service provider, service charges may be collected. The service charge shall be proportionate to the costs incurred by the external service provider in the performance of the tasks, and shall not exceed EUR 30. Cape Verde and the Member State or States concerned shall maintain the possibility for all applicants to lodge their applications directly at its/their consulates.”

The visa fee exempted categories of persons are subject to a service fee in case a Member State cooperates with an external service provider.

Currently no EU MS have outsourcing arrangements with external service providers in Cape Verde.

2.2.3. Holders of diplomatic and service passports.

Article 8 of the Agreement stipulates that:

“1. Citizens of Cape Verde or of the Member States who are holders of valid diplomatic or service passports can enter, leave and transit through the territories of the Member States or of Cape Verde without visas.

2. The citizens referred to in paragraph 1 of this Article may stay in the territories of the Member States or of Cape Verde for a period not exceeding 90 days per period of 180 days.”

The procedures regarding posting of diplomats in the Member States are not covered by the Agreement. The usual accreditation procedure applies.

In a Joint Declaration annexed to the Agreement the Parties agree that any of them may invoke a partial suspension of the Agreement, and in particular of Article 8, if its implementation leads to abuse by the other Party or to a threat to public security. The partial suspension of the Agreement must be conducted in accordance with the procedure set out in Article 12(5).

If the implementation of Article 8 is suspended, the two Parties will initiate consultations in the framework of the Joint Committee set up by the Agreement with a view to solving the problems that led to the suspension.

As a priority, both Parties agreed to undertake to ensure a high level of security for diplomatic and service passports, in particular by integrating biometric identifiers. For the Union, this will be ensured in accordance with the requirements set out in Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States.

III. COOPERATION ON DOCUMENT SECURITY

In a Joint Declaration annexed to the Agreement the Parties agree that the Joint Committee established under Article 10 of the Agreement should evaluate the impact of the level of security of the respective travel documents on the functioning of the Agreement. To that end, the Parties took the commitment to regularly inform each other about the measures taken for avoiding the proliferation of travel documents, to develop the technical aspects of travel document security as well as regarding the personalisation process in the issue of travel documents.

IV. STATISTICS

In order to allow the Joint Committee set up by the Agreement to monitor effectively the Agreement, diplomatic missions and consular posts of the Republic of Cape Verde and of the Member States must submit statistics to the Commission, every 6 months, regarding in particular, where possible, and specifying by month:

- the number of multiple entry visas issued;
- the length of validity of multiple entry visas issued;
- the number of visas issued without fees to the different categories covered by the Agreement.