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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION on the application of an increased
visa fee with respect to The Gambia

COUNCIL IMPLEMENTING DECISION (EU) 2022/...

of ...

on the application of an increased visa fee with respect to The Gambia

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)¹, and in particular Article 25a(5), point (b) thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 243, 15.9.2009, p. 1.

Whereas:

- (1) In accordance with Article 25a(2) of Regulation (EC) No 810/2009, the Commission is to regularly assess third countries' cooperation on readmission. Based on the assessment carried out in accordance with that provision, cooperation on readmission with The Gambia was assessed as insufficient. Taking into account the steps taken to improve the level of cooperation, and the Union's overall relations with The Gambia, it was considered that The Gambia's cooperation with the Union on readmission matters was not sufficient and action by the Union was therefore necessary.
- (2) In accordance with Article 25a(5), point (a), of Regulation (EC) No 810/2009, on 7 October 2021 Council Implementing Decision (EU) 2021/1781¹ was adopted, by which the application of certain provisions of Regulation (EC) No 810/2009 was temporarily suspended with respect to certain nationals of The Gambia.

¹ Council Implementing Decision (EU) 2021/1781 of 7 October 2021 on the suspension of certain provisions of Regulation (EC) No 810/2009 of the European Parliament and of the Council with respect to The Gambia (OJ L 360, 11.10.2021, p. 124).

- (3) In accordance with Article 25a(2) of Regulation (EC) No 810/2009, the Commission has continuously assessed the cooperation on readmission with The Gambia after the entry into force of Implementing Decision (EU) 2021/1781. The assessment indicates that no significant improvements have taken place, as cooperation on identification and return remains challenging, the timeframe set by the EU-Gambia readmission arrangement was not adhered to and a moratorium on returns by charter flights – unilaterally introduced by The Gambia – remained in place until March 2022. Despite some limited developments, in particular the issuance of three landing permits for return operations that took place after the suspension of the moratorium introduced by The Gambia, cooperation on readmission remains insufficient and substantial and sustained improvements are still needed.
- (4) The assessment by the Commission is that, despite the measures adopted in Implementing Decision (EU) 2021/1781, The Gambia's cooperation with the Union on readmission matters continues to be insufficient and further action is therefore needed, without affecting Implementing Decision (EU) 2021/1781.
- (5) The application of a higher visa fee, on a gradual basis, to nationals of The Gambia should send a clear signal to the Gambian authorities on the need to undertake the necessary actions to improve cooperation on readmission.

- (6) A visa fee of EUR 120, as set out in Regulation (EC) No 810/2009, should therefore apply to nationals of The Gambia who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806 of the European Parliament and of the Council¹. In accordance with that Regulation, that fee does not concern children below the age of 12 years. Neither should it apply to applicants for whom the visa fee is waived or reduced in accordance with Regulation (EU) 810/2009.
- (7) This Decision should not affect the application of Directive 2004/38/EC of the European Parliament and of the Council², which extends the right of free movement to family members, independent of their nationality, when joining or accompanying a Union citizen. This Decision should thus neither apply to family members of a Union citizen to whom Directive 2004/38/EC applies, nor 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.

¹ 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).

² 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).

- (8) 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 application of the increased visa fee should not apply to nationals of The Gambia, applying for a visa, in so far as that is necessary for Member States to comply with their obligations as host countries of such organisations or of such conferences.
- (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 constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

¹ 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).

- (11) 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*¹ which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC².
- (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*³ 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/EC⁴.

¹ OJ L 176, 10.7.1999, p. 36.

² 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).

³ OJ L 53, 27.2.2008, p. 52.

⁴ 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).

- (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*¹ 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/EU².
- (14) 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:

¹ OJ L 160, 18.6.2011, p. 21.

² 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).

Article 1

Scope

1. This Decision shall apply to nationals of The Gambia who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806.
2. This Decision shall not apply to nationals of The Gambia who are exempt from the visa requirement under Article 4 or Article 6 of Regulation (EU) 2018/1806.
3. This Decision shall be without prejudice to the possibility to waive or reduce the amount of the visa fee to be charged in individual cases, in accordance with Article 16(6) of Regulation (EC) No 810/2009.
4. This Decision shall not apply to nationals of The Gambia 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.
5. 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; or,
- (d) pursuant to the 1929 Treaty of Conciliation (Lateran Pact) concluded by the Holy See (Vatican City State) and Italy, as last amended.

6. This Decision shall be without prejudice to the measures provided for and applied in accordance with Implementing Decision (EU) 2021/1781.

Article 2

Application of a visa fee

Nationals of The Gambia applying for a visa shall pay a visa fee of EUR 120.

Article 3

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

Article 4
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...,

For the Council
The President
