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Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

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

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

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

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

• The case of Bangladesh

- Bangladesh is an important stability provider in the region hosting 1 million Rohingya refugees. The EU strongly commends Bangladesh for this commitment and will continue to support Bangladesh to address this ongoing humanitarian crisis.

On 20 September 2017 a readmission business routine was established between the EU and Bangladesh in the form of Standard Operating Procedures for the Identification and Return of Persons without an Authorisation to Stay (SOPs). However, the Commission noted in the above-mentioned report that two-thirds of the Member States that interacted with Bangladesh on readmission were confronted with practices deviating from the provisions in the SOPs, hampering all phases of the return process. Half of the Member States concerned experience that the identification processes, including through interviews and the issuance of the travel documents, are delayed, discontinued or not performed. Seven Member States assessed the cooperation in the identification procedure as poor or very poor. Seven Member States noted that the Bangladeshi authorities mostly request interviews even in cases where sufficient evidence to establish nationality has been provided (e.g. valid or expired travel documents) which effectively delays the issuance of travel documents. The same seven Member States experienced that the travel documents are rarely issued in a timely manner. Two Member States have not received any travel document at all despite requests for it.

This assessment is further corroborated by developments after 2019 when, despite repeated contacts with the Bangladeshi authorities, the cooperation did not improve. Despite the launch in November 2020 of the electronic platform designed to support the readmission process between EU Member States and Bangladesh (Returnee Case Management System - RCMS),

¹ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, p. 1.

² COM(2021 55 final (EU Restricted)).

the Bangladeshi response to readmission requests and issuing travel documents within the agreed timeframe remain unsatisfactory.

The Commission has taken steps to improve readmission cooperation in 2020, including in meetings with the Bangladeshi Embassy in Brussels in October 2020, to stress the need to improve the response time and address the significant backlog of pending cases, and in May 2021, to present the mechanism of Article 25a of the Visa Code, describe the possible consequences in case of insufficient cooperation and present the expected actions to be taken to improve cooperation on readmission. The last Joint Working Group (JWG) established under the above-mentioned SOPs took place on 21 June 2021, during which the same issues were raised.

The EU has repeatedly emphasised to the Bangladeshi authorities the increasing level of dissatisfaction among Member States, the possible consequences of failing to improve the situation and the specific aspects of cooperation that needed improvement and expected results.

During the last meeting of the Joint Working Group of 21 June 2021, the Bangladeshi authorities reconfirmed their commitment to the Standard Operating Procedures and assured to prioritise the backlog of cases (including those submitted in the RCMS) and to improve the timing of identification and the delivery of travel documents and cooperate on return operations.

- Bangladesh has recently confirmed its commitment to implement the Standard Operating Procedures (SOPs) on the returns of irregular migrants. The 5th Joint Working Group on SOPs on 21 June 2021 recognised that Bangladesh has started to make progress in addressing the backlog of readmission cases. The Commission will monitor this progress to assess whether it is substantial and sustained.

The Bangladeshi commitments have concretely translated, over the months of May and June 2021 into an identification mission to one Member State³ and the processing of a noticeable number of backlog cases in the RCMS, some of which were finalised with issuance of travel documents⁴. These steps have not yet been consolidated in concrete substantial results and sustained cooperation according to the indicators set out in Article 25a(2), including in the timely identification of persons illegally staying on the territory of the Member States, the issuance of travel documents and the organisation of return operations.

On that basis, considering the steps taken so far by the Commission to improve the level of cooperation, and taking into account the EU's overall relations with Bangladesh (see below), it is considered that Bangladesh's cooperation with the EU on readmission matters is not yet sufficient and that action is therefore needed.

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

The Union's relations with Bangladesh are guided by the EU-Bangladesh Co-operation Agreement that was concluded in 2001. The EU is an important trading partner for

³ An identification mission to Malta took place between 10 and 15 June 2021 to determine the nationality of roughly 160 potential Bangladesh nationals, including 91 that were submitted to the RCMS.

⁴ The Bangladeshi authorities are currently addressing the backlog of cases: As of 13 July 2021, out of approximately 1500 cases submitted by Member States in the RCMS, the identification process was finalised for 195 cases and some travel documents have been issued. For another 100 cases, identification was inconclusive in Bangladesh and will require identification interviews in the Bangladeshi embassies to the EU Member States. For 200 additional cases, identification results are in the internal approval chain in Bangladesh.

Bangladesh. Cooperation on migration is comprehensive and covers support for protection-related actions in relation to the Rohingya refugees, capacity building laying the ground for improved migration management in Bangladesh, anti-migrant smuggling actions and providing sustainable reintegration. In 2017, the EU-Bangladesh Standard Operating Procedures for the Identification and Return of Persons Without an Authorization to Stay (SOPs) started to apply with regular meetings of the Joint Working Group established under this SOPs arrangement.

- **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 Bangladeshi nationals. The suspension, however, does not apply to family members of (mobile) EU citizens covered by the Directive 2004/38/EC⁵ and of third country nationals enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and the third countries concerned on the other.

Content of the visa measures

Bangladesh' failure to cooperate on readmission justifies the activation of all the measures set out in point(a) of Article 25a(5) of the Visa Code: suspension of the possibility of waiving requirements with regard to the documentary evidence to be submitted by visa applicants referred to in Article 14(6), suspension of the general 15 calendar days processing period referred to in Article 23(1) (which as a consequence also excludes the application of the rule on the extension of this period up to a maximum of 45 days in individual cases), suspension of the issuing of multiple entry visas (MEVs) in accordance with Article 24(2) and (2c) and, suspension of the optional visa fee waiver for holders of diplomatic and service passports in accordance with point (b) of Article 16(5).

Period of application of the visa measures

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

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

⁵ 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 existing policy provisions in the policy area**

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

- **Consistency with other Union policies**

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

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

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

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), Article 25a(5), point (a).

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

n.a.

- **Proportionality**

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

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

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

n.a.

- **Stakeholder consultations**

n.a.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

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

n.a.

- **Explanatory documents (for directives)**

n.a.

- **Detailed explanation of the specific provisions of the proposal**

n.a.

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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)⁶, and in particular Article 25a(5), point (a), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Member States face unpredictable cooperation hampering all phases of the return process, despite arrangements having been agreed between the Union and Bangladeshi authorities. This has led to a considerable backlog of readmission requests remaining without response.
- (2) Since 2019, the Commission has taken steps to improve Bangladesh's level of cooperation on the readmission of illegally staying third-country nationals. These steps consisted of several meetings organised by the Commission with the Bangladeshi authorities at both technical and political level to find mutually agreeable solutions, while taking into account the overall relations between the EU and Bangladesh, and to agree on further support projects to the benefit of Bangladesh. The issues were also raised as part of other meetings organised by the EEAS.
- (3) While initial progress has been made by Bangladesh, taking into account the steps taken, so far by the Commission to improve the level of cooperation and the Union's overall relations with Bangladesh, it is considered that Bangladesh's cooperation with the Union on readmission matters is not sufficient and that action should be taken.
- (4) The application of certain provisions of Regulation (EC) No 810/2009 should therefore be temporarily suspended for nationals of Bangladesh. This is considered the most efficient action to take in view of stimulating the Bangladeshi authorities to undertake the necessary actions to improve cooperation on readmission matters. The temporary suspension does not apply to nationals of Bangladesh applying for a visa and who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other.
- (5) The measures temporarily suspended are set out in point(a) of Article 25a(5) of the Visa Code: suspension of the possibility of waiving requirements with regard to the documentary evidence to be submitted by visa applicants referred to in Article 14(6),

⁶ OJ L 243, 15.9.2009, p. 1.

suspension of the general 15 calendar days processing period referred to in Article 23(1) (which as a consequence also excludes the application of the rule on the extension of this period up to a maximum of 45 days in individual cases), suspension of the issuing of multiple entry visas (MEVs) in accordance with Article 24(2) and (2c) and, suspension of the optional visa fee waiver for holders of diplomatic and service passports in accordance with point (b) of Article 16(5).

- (6) Article 21(1) of the Treaty on the Functioning of the European Union provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. Directive 2004/38/EC of the European Parliament and of the Council⁷ gives effect to those limitations and conditions. This Decision does not affect the application of that Directive, which extends the right of free movement to family members independent of their nationality when joining or accompanying the Union citizen. This Decision thus does not apply to family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other.
- (7) Given that Denmark decided to implement Regulation (EC) No 810/2009 which builds on the Schengen acquis in its national law, in accordance with Article 4 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is bound under international law to implement this Decision.
- (8) This Decision constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC⁸; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (9) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC⁹.
- (10) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of

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).

⁸ 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).

⁹ 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).

the Schengen *acquis*¹⁰ which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Decision 2008/146/EC¹¹.

- (11) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹² which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Decision 2011/350/EU¹³.
- (12) This Decision constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession.

HAS ADOPTED THIS DECISION:

Article 1
Scope

1. This Decision shall apply to nationals of Bangladesh who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806 of the European Parliament and of the Council¹⁴.
2. It does not apply to nationals of Bangladesh who are exempt from the visa requirement under Article 4 or Article 6 of that Regulation.
3. This Decision does not apply to nationals of Bangladesh applying for a visa and who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying a right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States on the one hand and a third country on the other.

¹⁰ OJ L 53, 27.2.2008, p. 52.

¹¹ 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).

¹² OJ L 160, 18.6.2011, p. 21.

¹³ 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).

¹⁴ 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).

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