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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION 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

COUNCIL IMPLEMENTING DECISION (EU) 2021/...

of ...

**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**

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 (a), thereof,

Having regard to the proposal from the European Commission,

¹ OJ L 243, 15.9.2009, p. 1.

Whereas:

- (1) At the end of February 2019, the Gambian authorities unilaterally decided to impose a moratorium on all forced return operations, which prevented effective returns for most of 2019. After the lifting of the moratorium in January 2020, Member States have been confronted with recurring obstacles imposed by The Gambia to the organisation and implementation of return operations. Fluctuating levels of Gambian cooperation have also hampered all phases of the return process, including when applying the existing good practices and other operational arrangements previously agreed between the Union and The Gambia. On 6 April 2021, the Gambian authorities indicated that the country was not in a position to receive returnees until further notice, and in June 2021, they confirmed the existence of “a moratorium on forced return or repatriation until after the elections in December”.
- (2) Since 2019, the Commission has taken steps to improve The Gambia’s level of cooperation in the readmission of illegally staying third-country nationals. Those steps consisted of several meetings with the Gambian authorities, at both technical and political levels, to find mutually agreeable solutions, and to agree on further support projects to the benefit of The Gambia. In parallel, high-level exchanges between the Commission and The Gambia have taken place. Readmission matters were also raised with The Gambia in other meetings organised by the EEAS.

- (3) Taking into account the steps taken so far by the Commission to improve the level of cooperation, and the Union's overall relations with The Gambia, it is considered that The Gambia's cooperation with the Union on readmission matters is not sufficient and action by the Union is therefore necessary.
- (4) The application of certain provisions of Regulation (EC) No 810/2009 should therefore be temporarily suspended for 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. This ought to encourage the Gambian authorities to undertake the necessary actions to improve cooperation on readmission matters.
- (5) The provisions temporarily suspended are those set out in Article 25a(5), point (a), 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 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 Article 16(5), point (b).

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 (OJ L 303, 28.11.2018, p. 39).

- (6) Article 21(1) of the Treaty on the Functioning of the European Union (TFEU) 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 Council¹ 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 irrespective of their nationality when accompanying or joining the Union citizen. This Decision thus does 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 its Member States, on the one hand, and a third country, on the other.
- (7) The measures provided for in this Decision should be without prejudice to the obligations of the Member States of international law as host countries of international intergovernmental organisations or of international conferences convened by international intergovernmental organisations hosted by Member States. Thus, the temporary suspension should not apply to nationals of The Gambia 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.

¹ 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) 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 the 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).

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

- (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*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.
- (13) This Decision constitutes an act building upon, or otherwise related to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, of Article 4(2) of the 2005 Act of Accession and of 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. It does not apply to nationals of The Gambia who are exempt from the visa requirement under Articles 4 or 6 of Regulation (EU) 2018/1806.
3. This Decision does 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 its Member States, on the one hand, and a third country, on the other.
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; or
- (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 ...

For the Council
The President
