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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	9 November 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2022) 632 final.

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Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In accordance with Article 25a(2) of the Visa Code[1], the Commission shall regularly assess third countries' cooperation on readmission and report to the Council at least once a year.

Based on this assessment, and taking into account the steps taken by the Commission to improve the level of cooperation of the third country concerned in the field of readmission and the Union's overall relations with the third country concerned, the Commission concluded that The Gambia did not cooperate sufficiently and that action was therefore necessary. Therefore, on 15 July 2021, the Commission, in accordance with point (a) of Article 25a(5) of the Visa Code, adopted a proposal for a Council implementing decision suspending the application of certain provisions of the Visa Code referred to below in respect of nationals of The Gambia. The Council adopted the Implementing Decision (EU) 2021/1781 on 7 October 2021[2].

The Visa Code states that where the measures applied in accordance with such implementing decision are considered to be ineffective, following an assessment by the Commission and in accordance with point (b) of Article 25a(5) of the Visa Code, the Commission should submit a proposal for applying, on a gradual basis, one of the increased visa fees of EUR 120 or EUR 160. This visa fee would apply instead of the standard visa fee of EUR 80.

• The case of The Gambia

After the adoption of the Council Implementing Decision (EU) 2021/1781, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy/Vice President continued the dialogue with the authorities of The Gambia requesting the latter to improve without further delay its cooperation on readmission. The Commission and the Member States engaged with representatives of The Gambia's authorities both at technical and political level. On multiple occasions, the EU side has emphasised its serious concern with the lack of progress and the possible consequences of failing to improve the situation.

Readmission cooperation with The Gambia remains challenging. Member States have been confronted with uneven cooperation in all phases of the readmission and return process. In the framework of continuous assessments carried out by the Commission based on the use of reliable data provided by Member States, discussions in the relevant Council Working Groups and experts groups meetings, as well as by Union institutions, bodies, offices and agencies, Member States reported insufficient cooperation on all steps of the readmission process, including when applying the Good Practices on identification and return procedure, agreed between the EU and The Gambia.

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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 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

For most of 2019 and 2020, and between March 2021 and March 2022, The Gambia unilaterally suspended EU Member States' possibility to return Gambian irregular migrants by charter flights.

There has not yet been substantial and sustained progress on the readmission and return process, although The Gambian authorities started to engage on readmission in 2022. Cooperation on readmission is hindered by the lack of response of the Gambian authorities to identification requests made by the Member States, by slow and ineffective identification practices, such as the rejection of readmission applications or requests for additional interviews when proof of nationality is presented, and the refusal to perform identification interviews. Challenges persist in the timely issuance of travel documents, even for confirmed cases, which in turn affects the organisation of return operations.

In March 2022, The Gambia lifted the unilateral moratorium on charter flights. However, cooperation on return operations remains difficult: landing permits for the first return operations were issued by the Gambian authorities later than the agreed timeframe of one week before the flight, leading to organisational challenges and cancellations. Subsequently, only three return operations have taken place in June, July and September 2022. Return operations need to continue and the frequency of flights needs to increase.

Despite the adoption of the restrictive visa measures by the Council Implementing Decision and the continuous Commission's engagement to improve the level of cooperation with The Gambia, there has not yet been any substantial and sustained progress regarding the indicators set out in Article 25a(2) of the Visa Code.

On the basis of the above, and considering the overall relations and the steps taken so far by the Commission to improve the level of cooperation, it is considered that The Gambia's cooperation with the EU on readmission matters remains insufficient and that further action is needed.

- **The report on progress achieved in The Gambia's cooperation on readmission**

Article 25a(7) of the Visa Code tasks the Commission with reporting to the European Parliament and to the Council on progress achieved in The Gambia's cooperation on readmission after the entry into force of the measures pursuant to Council Implementing Decision (EU) 2021/1781.

As reported above, Member States were confronted with uneven cooperation hampering all phases of the readmission and return process.

The situation after the entry into force of the suspended Visa Code provisions provided for in Council Implementing Decision (EU) 2021/1781 shows that the latter have proved to be ineffective, on their own, to elicit action on the part of The Gambia to achieve substantial and sustained progress on readmission cooperation. Therefore, while maintaining the application of the existing measures, the Commission proposes to go further, in accordance with point (b) of Article 25a(5) of the Visa Code, i.e. to apply an increased visa fee to nationals of The Gambia. The objective is to foster necessary actions by the Gambian authorities to improve cooperation on readmission.

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

Since the democratic transition in 2017, the EU has provided consistent political and financial support to The Gambia.

The Gambia has taken positive steps in recent years to progressively consolidate its democracy and recently completed successful presidential (January 2022) and parliamentary (April 2022) elections. As a result, the EU has worked to enhance political engagement, lending support to a positive example in West Africa, in particular through more high-level contacts.

The national Multiannual Indicative Programme for the period 2021-2027[3] has an envelope of EUR 119 million.

The Gambia enjoys duty-free and quota-free access to the European market under the Everything But Arms arrangement (EBA)[4]. The 6-years Fisheries Partnership Agreement[5] was signed in 2019. The country is a party to the Cotonou Agreement[6].

- **Council Implementing Decision (EU) 2021/1781**

In its assessment of cooperation in 2019, the Commission concluded that The Gambia did not cooperate sufficiently on readmission. On the basis of a Commission proposal under point (a) of Article 25a(5) of the Visa Code, on 7 October 2021 the Council adopted Implementing Decision (EU) 2021/1781, which temporarily suspends the application of certain provisions of the Visa Code with respect to nationals of The Gambia. The suspended provisions are:

– the possibility of waiving, in individual cases, some of the requirements with regard to the documentary evidence to be submitted by visa applicants. This means that irrespective of a given applicant's 'visa history' and correct use of previously granted visas, a full set of supporting documents proving fulfilment of the entry conditions as set out in the Schengen Borders Code has to be submitted with every application.

– the possibility for individual Member States to waive the visa fee for holders of diplomatic and service passports in accordance with point (b) of Article 16(5) of the Visa Code. This category of applicants has to pay the standard visa fee.

– the general 15 calendar days processing period referred to in Article 23(1) of the Visa Code. Consequently, the standard processing time is now 45 days in all cases falling within the scope of the measures.

– the issuing of multiple entry visas (MEVs) in accordance with Article 24(2) and (2c) of the Visa Code. This means that only single entry visas are issued to applicants covered by the measures.

These measures have been applied by Member States since November 2021 and they will continue to be in force until the Council adopts a decision to amend or repeal them.

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3 https://international-partnerships.ec.europa.eu/system/files/2019-09/nip-gambia-edf11-2016_en.pdf

4 Regulated by Regulation (EU) No 978/2012

5 OJ L 208, 8.8.2019

6 OJ L 317, 15.12.2000

- **The proposed additional visa measures**

Scope of measures

The increased visa fee would only apply to Gambian nationals who are subject to the visa requirement. It would not apply to children below the age of 12, nor to applicants who benefit from a waiver of the visa fee. Furthermore, the increase in the visa fee would be without prejudice to the possibility provided for under Article 16(6) of the Visa Code to waive or reduce the visa fee in individual cases.

In addition, the increase of the visa fee does not apply to family members of (mobile) EU citizens covered by Directive 2004/38/EC[7] 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. It is also without prejudice to the obligations of Member States under international law.

Content of the visa measures

Article 16(2a) of the Visa Code allows for an application of a visa fee of EUR 120 or EUR 160 to be charged, instead of the standard visa fee of EUR 80. Given that the increased visa fee should be applied "on a gradual basis", as provided for in Article 25a(5)(b) of the Visa Code, the Commission considers it appropriate to propose, at this stage, the application of a visa fee of EUR 120 to Gambian nationals that fall within the scope of the new measure.

Period of application of the increased visa fee

Point (b) of Article 25a(5) of the Visa Code does not provide for a specific period of application of the increased visa fee. It will therefore remain in effect until the Council decides to amend or repeal it.

Pursuant to 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), including the assistance provided in 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 should 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.

In addition, pursuant to Article 25a(7), the Commission should – 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.

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[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).

- **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. The proposed decision builds upon the measures that have already been applied since late 2021 with respect to The Gambia under Council Implementing Decision (EU) 2021/1781 and is therefore consistent with it.

- **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 cooperation 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 cooperation, trade or visa measures[8].

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 (b).

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

n.a

- **Proportionality**

The purpose of the proposed measures is to convince The Gambia to improve its cooperation on the readmission of illegally staying third country nationals. They are proportionate to the

[8] EUCO 22/21 (17)

objective pursued. The proposed measures do not affect the possibility for nationals of The Gambia to apply for and be granted visas, but only increase the fee to be charged to applicants. 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.

- **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 hence 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**

Article 1 clarifies the scope of the proposed implementing decision. Paragraphs 1 and 2 specify that it only applies to nationals of The Gambia that 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 sets out that the decision does not apply to children under the age of 12, as provided for in Article 16(2a) of the Visa Code.

Paragraph 4 makes it clear that the decision does not apply to applicants for whom the visa fee is waived in accordance with Article 16(4) or points (a) or (c) of Article 16(5) of the Visa Code. However, visa fees cannot be waived for holders of diplomatic and service passports of The Gambia, since the application of point (b) of Article 16(5) of the Visa Code has been suspended by Council Implementing Decision 2021/1781. Holders of such passports who are nationals of The Gambia are therefore subject to the proposed implementing decision and the increased visa fee.

Furthermore, paragraph 5 specifies that the decision is without prejudice to the possibility provided for in Article 16(6) of the Visa Code to reduce or waive the visa fee in individual cases.

Paragraph 6 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 7 specifies that the proposed decision is without prejudice to Member States' international obligations, while paragraph 8 recalls that the proposed implementing decision does not affect the application of the visa measures already in force with respect to The Gambia in accordance with Council Implementing Decision (EU) 2021/1781.

Article 2 sets out that a visa fee of EUR 120 shall apply to nationals of The Gambia falling within the scope of the proposed decision.

Article 3 contains the list of addressees of the proposed decision, i.e. the relevant Member States.

2022/0376 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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 the of Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)[9], and in particular Article 25a(5), point (b) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Cooperation on readmission with The Gambia was assessed as insufficient under Article 25a(2) of Regulation (EC) No 810/2009. 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) 2021/1781[10] has been adopted, with which the application of Article 14(6), Article 16(5) point (b), Article 23(1) and Article 24(2) and (2c) of Regulation (EC) No 810/2009 have been temporarily suspended with respect to certain nationals of The Gambia.

(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 Council 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 readmission arrangement was not respected and a moratorium on returns by charter flights – unilaterally introduced by The Gambia – remained in place until March 2022. Despite some limited developments, notably the issuance of three landing permits for return operations that took place after the suspension of the moratorium introduced by The

[9] OJ L 243, 15.9.2009, p. 1.

[10] 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)

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 Council 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. Council Implementing Decision (EU) 2021/1781 should remain in force.

(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 Article 16(2a) of 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 Council[11]. That fee does not apply to children below the age of 12 years. It should also not apply to applicants for whom the visa fee is waived in accordance with Article 16(4) or of Article 16(5), points (a) or (c), of Regulation (EU) 810/2009.

(7) This Decision should not affect the application of Directive 2004/38/EC, 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 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.

(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 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.

[11] 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).

(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/EC[12]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(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[13] which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC[14].

(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[15] 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[16] .

(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[17] 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[18].

(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,

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12 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).

13 OJ L 176, 10.7.1999, p. 36.

14 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).

15 OJ L 53, 27.2.2008, p. 52.

16 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).

17 OJ L 160, 18.6.2011, p. 21.

18 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 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 The Gambia who are subject to the visa requirement pursuant to Regulation (EU) 2018/1806[19].

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 Council Implementing Decision (EU) 2021/1781.

Article 2

Subject-matter

[19] 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).

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

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