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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2023) 569 final.

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2023/0345 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

**on repealing Implementing Decision (EU) 2022/2459 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 Regulation (EC) No 810/2009 (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 the annual assessment on cooperation in 2019 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. On 15 July 2021, in accordance with point (a) of Article 25a(5) of the Visa Code, the Commission adopted a proposal for a Council Implementing Decision suspending the application of provisions in Article 14(6), point (b), Article 16(5), Article 23(1) and Article 24(2) and (2c) of the Visa Code in respect of nationals of The Gambia. The Council adopted the Implementing Decision (EU) 2021/1781 on 7 October 2021².

In accordance with Article 25a(2) of the Visa Code, the Commission continuously assessed the cooperation on readmission with The Gambia after the entry into force of Council Implementing Decision (EU) 2021/1781. Based on the annual assessment on cooperation in 2020, the Commission concluded that the measures applied were ineffective as, despite some limited developments, cooperation on readmission remained insufficient.

Therefore, on 9 November 2022, in accordance with point (b) of Article 25a(5) of the Visa Code, the Commission adopted a proposal for a Council Implementing Decision on the application of an increased visa fee of EUR 120 in respect of nationals of The Gambia. The Council adopted the Implementing Decision (EU) 2022/2459 on 8 December 2022³.

In accordance with Article 25a(6) of the Visa Code, the Commission shall continuously assess and report, on the basis of the indicators set out in paragraph 2 of that Article, whether substantial and sustained improvement in the cooperation with the third country concerned 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 decisions referred to in paragraph 5 of that Article.

Following the entry into force of Council Implementing Decision (EU) 2022/2459, in accordance to Article 25a(6) of the Visa Code, the Commission continued to assess The Gambia's cooperation on readmission, including the assistance provided in the identification

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.

³ Council Implementing Decision (EU) 2022/2459 of 8 December 2022 on the application of an increased visa fee with respect to The Gambia.

of Gambian nationals illegally staying on the territory of the Member States, the timely issuance of travel documents and the organisation of return operations.

The Commission assessed that, since the entry into force of Council Implementing Decision (EU) 2022/2459, a substantial and sustained improvement in the cooperation on readmission can be established in the organisation of return flights and operations.

However, the cooperation with The Gambia on readmission is still not sufficient with regard to assistance provided in the identification of Gambian nationals illegally staying on the territory of all Member States and the timely issuance of travel documents. Additionally, capacity or frequency of charter flights should be increased to allow for a sustainable reduction of the number of persons illegally staying in the Member States. Therefore, the Commission considers that Council Implementing Decision (EU) 2021/1781 should remain in force.

The case of The Gambia

The non-binding EU readmission arrangement with The Gambia (“Good Practices on identification and return”) entered into operation on 16 November 2018.

Following the adoption of the Council Implementing Decision (EU) 2021/1781, the Commission and the High Representative enhanced their engagement with the authorities of The Gambia on readmission cooperation at all levels, both in Brussels and Banjul, while continuing to monitor The Gambia’s cooperation.

The EU reiterated the need to restart cooperation on processing readmission applications and on return operations based on the existing readmission arrangement, including during high-level meetings with the Gambian Ministry of Foreign Affairs, as well as during the first meeting of the Joint Working Group under the EU readmission arrangement that took place in October 2022. The Commission stressed the need to relaunch cooperation on all phases of the readmission process, in particular by reactivating the embassies’ processing and responsiveness towards all Member States to achieve substantial and sustained progress.

Despite the continuous engagement of the EU to improve the level of cooperation by The Gambia, such progress was not achieved on all steps of the readmission procedure.

The Commission and the High Representative continued to pursue the enhanced engagement with the Gambian authorities also following the adoption of Council Implementing Decision (EU) 2022/2459. The Commission reiterated its expectations regarding the processing of readmission applications and achieving a steady pace of return operations, based on the existing readmission arrangement, to reduce the existing backlog, including during senior official meetings and the second meeting of the Joint Working Group in March 2023.

The Commission acknowledged a number of steps taken by The Gambia but indicated that further efforts were needed to ensure the full implementation of the readmission arrangement towards all Member States, and the need to build on the ongoing actions to achieve sustained and substantial progress in all phases of the readmission procedure.

At the end of 2022 and in 2023, in the framework of the continuous assessment carried out by the Commission based on data and information provided by Member States as well as by Union institutions, bodies, offices and agencies, discussions in the relevant Council Working Groups and experts’ groups meetings, and of the information exchanged with The Gambia

during Joint Working Group meetings, Member States reported constructive steps taken by The Gambia. In particular, The Gambia undertook steps to facilitate communication through the appointment of a focal point for readmission, as well as to ensure that charter flights continued to take place, with the timely issuance of landing permits. These steps resulted in partial improvements in the operational cooperation for some Member States, including as regards an increased responsiveness from some Gambian embassies, the organisation of identification missions and the issuance of travel documents within the timeframe agreed in the readmission arrangement. A substantial and sustained improvement in the cooperation on readmission can thus be established regarding the organisation of return flights and operations.

However, the cooperation with The Gambia on readmission is still not sufficient with regard to the assistance provided in the identification of Gambian nationals illegally staying on the territory of the Member States, the timely issuance of travel documents and the capacity and frequency of charter flights to allow for a sustainable reduction of the number of persons illegally staying in the Member States.

On the basis of the above, the Commission is therefore proposing to repeal Council Implementing Decision 2022/2459. This means that the standard fee of 80 EUR will once again apply to nationals of The Gambia.

However, since the cooperation with The Gambia on readmission is still not sufficient with regard to the assistance provided in the identification of Gambian nationals illegally staying on the territory of all Member States, the timely issuance of travel documents and the capacity and frequency of charter flights to allow for a sustainable reduction of the number of persons illegally staying in the Member States, the Commission considers that Council Implementing Decision (EU) 2021/1781 should remain in force.

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 EU is continuing to support the stabilisation and consolidation of democracy in the country, including inter-alia the constitutional and security sector reforms.

The National Multiannual Indicative programme established for the period 2021-2024 by the EU to assist The Gambia through the NDICI-Global Europe instrument has a financial envelope of EUR 119 million and covers 3 priority areas: promoting good governance, green economy for sustainable growth and jobs, and human development.

The country enjoys duty-free and quota-free access to the European market under the "Everything but Arms" scheme. A 6-years fisheries partnership agreement between the EU and The Gambia was signed in 2019. The Gambia is a party to the Cotonou agreement.

• 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 and 2022 with respect to The Gambia under Council Implementing Decision (EU) 2021/1781

and Council Implementing Decision (EU) 2022/2459 and is therefore consistent with them.

- **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 measures⁴.

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(6).

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

n.a.

- **Proportionality**

The purpose of the proposed measure is to adjust the visa measures, acknowledging the efforts of The Gambia to improve its cooperation on the readmission of illegally staying third country nationals that has been observed to date. They are proportionate to the objective pursued. The proposed measure will re-establish the standard visa fee of 80 EUR for nationals of The Gambia. The possibility for nationals of The Gambia to apply for and be granted visas remains unaffected.

⁴ EUCO 22/21 (17)

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 sets out that Council Implementing Decision (EU) 2022/2459 of 8 December 2022 on the application of an increased visa fee with respect to The Gambia is repealed. This means that the standard fee of 80 EUR, as set in Article 16(1) of the Visa Code, will once again apply to nationals of The Gambia.

Article 2 contains the list of addressees of the proposed decision, i.e. the relevant Member States.

Proposal for a

COUNCIL IMPLEMENTING DECISION

on repealing Implementing Decision (EU) 2022/2459 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)⁵, and in particular Article 25a(6), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Cooperation on readmission with The Gambia was assessed as insufficient in accordance with Article 25a(2) of Regulation (EC) No 810/2009. Taking into account the steps taken by the Commission 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) Implementing Decision (EU) 2021/1781⁶ temporarily suspended the application of certain provisions of Regulation (EC) No 810/2009 with respect to nationals of The Gambia.
- (3) The assessment of the cooperation on readmission with The Gambia, following the adoption of Implementing Decision (EU) 2021/1781, indicated that no significant improvements had taken place, as cooperation on identification, issuance of travel documents and return operations remained challenging. Despite some limited developments, cooperation on readmission remained insufficient and substantial and sustained improvements were still needed. Therefore, Implementing Decision (EU) 2022/2459⁷ introduced an increased visa fee for nationals of The Gambia.

⁵ OJ L 243, 15.9.2009, p. 1.

⁶ 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).

⁷ Council Implementing Decision (EU) 2022/2459 of 8 December 2022 on the application of an increased visa fee with respect to The Gambia (OJ L 321, 15.12.2022, p. 18).

- (4) The Commission's continuous assessment of the cooperation on readmission by The Gambia after Implementing Decision (EU) 2022/2459 indicates that a substantial and sustained improvement in the cooperation on readmission can be established with regard to the organisation of return flights and operations. Therefore, it is no longer necessary to apply an increased visa fee to nationals of The Gambia and Implementing Decision (EU) 2022/2459 should be repealed.
- (5) The Commission's continuous assessment of the cooperation on readmission by The Gambia also shows that the cooperation on readmission with The Gambia remains insufficient with regard to the assistance provided in the identification of Gambian nationals illegally staying on the territory of all Member States, the timely issuance of travel documents and the capacity and frequency of charter flights to allow for a sustainable reduction of the number of Gambian nationals illegally staying in the Member States. Implementing Decision (EU) 2021/1781 should therefore remain in force.
- (6) 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 is to, 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.
- (7) 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.
- (8) 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*⁹ which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC¹⁰.
- (9) 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*¹¹ which fall within the area referred to in Article 1, point B, of

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 OJ L 176, 10.7.1999, p. 36.

¹⁰ 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).

¹¹ OJ L 53, 27.2.2008, p. 52.

Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹².

- (10) 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*¹³ 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/EU¹⁴.
- (11) 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 and Article 4(2) of the 2005 Act of Accession,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision (EU) 2022/2459 is repealed.

Article 2

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.

¹² 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 OJ L 160, 18.6.2011, p. 21.

¹⁴ 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).

Done at Brussels,

*For the Council
The President*