Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019 amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(a) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The Union's common visa policy has been an integral part of the establishment of an area without internal borders. Visa policy should remain an essential tool for facilitating tourism and business, while helping counter security risks and the risk of irregular migration to the Union. The common visa policy should contribute to generating growth and be consistent with other Union policies, such as those concerning external relations, trade, education, culture and tourism.

(2) The Union should use its visa policy in its cooperation with third countries, and to ensure a better balance between migration and security concerns, economic considerations and general external relations.

(3) Regulation (EC) No 810/2009 of the European Parliament and of the Council[(3)] establishes the procedures and conditions for issuing visas for intended stays on the territory of Member States not exceeding 90 days in any 180-day period.

(4) Visa applications should be examined and decided on by consulates or, by way of derogation, central authorities. Member States should ensure that the consulates and central authorities have sufficient knowledge of local circumstances to ensure the integrity of the visa procedure.

(5) The application procedure should be as easy as possible for applicants. It should be clear which Member State is competent to examine an application, in particular where the applicant intends to visit several Member States. Where possible, Member States should allow for application forms to be completed and submitted electronically. It

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should also be possible for applicants to sign the application form electronically, where electronic signature is recognised by the competent Member State. Deadlines should be established for the various steps of the procedure, in particular to allow travellers to plan ahead and avoid peak seasons in consulates.

(6) Member States should not be required to maintain the possibility of direct access for the lodging of applications at the consulate in places where an external service provider has been mandated to collect applications on its behalf, without prejudice to the obligations imposed on Member States by Directive 2004/38/EC of the European Parliament and of the Council[(4)], in particular Article 5(2) thereof.

(7) The visa fee should ensure that sufficient financial resources are available to cover the expenses of processing applications, including of appropriate structures and of sufficient staff to ensure the quality and integrity of the examination of applications, as well as the respect for deadlines. The amount of the visa fee should be revised every three years on the basis of objective assessment criteria.

(8) Third-country nationals subject to the visa requirement should be able to lodge their application in their place of residence even if the competent Member State has no consulate for the purpose of collecting applications, and is not represented by another Member State, in that third country. To that end, Member States should endeavour to cooperate with external service providers, who should be able to charge a service fee. That service fee should, in principle, not exceed the amount of the visa fee. Where that amount is not sufficient to provide a full service, the external service provider should however be able to charge a higher service fee, subject to the limit provided for in this Regulation.

(9) Representation arrangements should be streamlined and eased and obstacles to the conclusion of such arrangements among Member States should be avoided. The representing Member State should be responsible for the entire visa procedure without the involvement of the represented Member State.

(10) Where the jurisdiction of the consulate of the representing Member State covers more than the host country, it should be possible for the representation arrangement to cover those third countries.

(11) In order to lessen the administrative burden on consulates and to facilitate travel for frequent or regular travellers, multiple-entry visas with a long period of validity should be issued to applicants fulfilling the entry conditions during the entire period of validity of the issued visa according to objectively determined common criteria and not be limited to specific travel purposes or categories of applicants. In that context, Member States should have particular regard for persons travelling for the purpose of exercising their profession, such as business people, seafarers, artists and athletes. It should be possible to issue multiple-entry visas with a shorter period of validity if there are reasonable grounds to do so.

(12) Given the differences in local circumstances, notably with regard to migratory and security risks, as well as the relationships that the Union maintains with specific countries, consulates in individual locations should assess the need to adapt the

rules on the issuing of multiple-entry visas to allow for a more favourable or more restrictive application. More favourable approaches in issuing multiple-entry visas with a long period of validity should take into account, in particular, the existence of trade agreements covering the mobility of business persons. On the basis of that assessment, the Commission should, by means of implementing acts, adopt rules regarding the conditions for the issuing of such visas to be applied in each jurisdiction.

(13) Where there is a lack of cooperation by certain third countries to readmit those of their nationals who have been apprehended in an irregular situation, and failure by those third countries to cooperate effectively in the return process, a restrictive and temporary application of certain provisions of Regulation (EC) No 810/2009 should, on the basis of a transparent mechanism based on objective criteria, be applied to enhance a given third country's cooperation on readmission of irregular migrants. The Commission should assess regularly, at least once a year, third countries' cooperation with regard to readmission, and should examine any notification by the Member States concerning the cooperation with a third country in the readmission of irregular migrants. The Commission should, in its assessment of whether a third country is cooperating sufficiently and whether action is needed, take into account the overall cooperation of that third country in the field of migration, in particular in the areas of border management, of prevention of and the fight against migrant smuggling and of prevention of transit of irregular migrants through its territory. Where the Commission considers that the third country is not cooperating sufficiently or where it is notified by a simple majority of Member States that a third country is not cooperating sufficiently, it should submit a proposal to the Council to adopt an implementing decision, while continuing its efforts to improve cooperation with the third country concerned. Also, where, as regards the level of cooperation of a third country with Member States on the readmission of irregular migrants, assessed on the basis of relevant and objective data, the Commission considers that a third country is cooperating sufficiently, it should be possible for the Commission to submit a proposal to the Council to adopt an implementing decision concerning applicants or categories of applicants who are nationals of that third country and who apply for a visa on the territory of that third country, providing for one or more visa facilitations.

(14) In order to ensure that all relevant factors and possible implications of the application of the measures to enhance a third country's cooperation on readmission are adequately taken into account, having regard to the particularly sensitive political nature of such measures and their horizontal implications for the Member States and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, implementing powers should be conferred on the Council, acting on a proposal from the Commission. Conferring such implementing powers on the Council adequately takes into account the potential politically sensitive nature of the implementation of the measures to enhance the cooperation of a third country on readmission, given also the facilitation agreements that Member States have in place with third countries.

(15) Applicants who have been refused a visa should have the right to appeal. The notification of the refusal should include detailed information on the reasons for the

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refusal and on the appeal procedure. During the appeal procedure, the applicants should be given access to all relevant information for their case, in accordance with national law.

(16) This Regulation respects fundamental rights and observes the rights and principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect of the right to protection of personal data, the right to respect for private and family life, the rights of the child, and the protection of vulnerable persons.

(17) Local Schengen cooperation is crucial for the harmonised application of the common visa policy and for proper assessment of migratory and security risks. Within that cooperation, Member States should assess the operational application of specific provisions in the light of local circumstances and migratory risk. Cooperation and exchanges among consulates in individual locations should be coordinated by Union delegations.

(18) Member States should closely and regularly monitor the operations of external service providers to ensure compliance with the legal instrument governing the responsibilities entrusted to them. Member States should report to the Commission annually on the cooperation with and monitoring of external service providers. Member States should ensure that the entire procedure for the processing of applications and the cooperation with external service providers is monitored by expatriate staff.

(19) Flexible rules should be established to allow Member States to optimise the sharing of resources and to increase consular coverage. Cooperation among Member States (Schengen Visa Centres) could take any form suited to local circumstances in order to increase geographical consular coverage, reduce Member States' costs, increase the visibility of the Union and improve the service offered to applicants.

(20) Electronic application systems are an important tool to facilitate application procedures. A common solution aiming at digitisation should be developed in the future, thereby making full use of the recent legal and technological developments, to allow applications to be lodged online to accommodate applicants' needs and to attract more visitors to the Schengen area. Straightforward and streamlined procedural guarantees should be strengthened and uniformly applied. Furthermore, where possible, interviews could be conducted using modern digital tools and remote means of communication, such as voice or video calls via internet. The fundamental rights of applicants should be guaranteed during the process.

(21) In order to provide for the possibility of revising the amount of the visa fees set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amending this Regulation as regards the amount of the visa fees. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(5)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the

Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(22) In order to ensure uniform conditions for the implementation of Regulation (EC) No 810/2009, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(6)].

(23) In accordance with Articles 1 and 2 of the Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation 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 Regulation whether it will implement it in its national law.

(24) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[(7)]; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(25) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[(8)]; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(26) As regards Iceland and Norway, this Regulation 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 latters' 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/EC[(10)].

(27) As regards Switzerland, this Regulation 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 Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[(12)].

(28) As regards Liechtenstein, this Regulation 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,