Regulation (EU) 2016/93 of the European Parliament and of the Council of 20 January 2016 repealing certain acts from the Schengen acquis

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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),(b) and (d), Article 78(2)(e) and (g), Article 79(2)(c) and (d) and Article 87(2)(a) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) Improving the transparency of Union law is an essential element of the better lawmaking strategy that the institutions of the Union are implementing. In that context, it is appropriate to repeal those acts which no longer serve any purpose.

(2) A number of acts belonging to the Schengen *acquis* are no longer relevant due to their temporary nature or because their content has been taken up by successive acts.

(3) Decision of the Executive Committee SCH/Com-ex (95) PV 1 rev.[(2)] referred to a very specific situation with regard to the prior consultation requested by Portugal *vis-à-vis* Indonesian visa applicants. That Decision became obsolete after the entry into force of Regulations (EC) No 810/2009[(3)] and (EC) No 767/2008[(4)] of the European Parliament and of the Council, which provide for new rules for the prior consultation of other Member States in relation to the issuance of visas.

(4) Decision of the Executive Committee SCH/Com-ex (95) 21[(5)] provided for the obligation of Member States to exchange statistical information for better monitoring of migration at external borders. That Decision became obsolete after the entry into force of Council Regulation (EC) No 2007/2004[(6)], which entrusts Frontex with the tasks of carrying out risk analyses regarding emerging risks and the current state of affairs at the external borders, and of developing and operating information systems enabling the exchange of such information.

(5) Decision of the Executive Committee SCH/Com-ex (96) 13 rev. 1[(7)] established the principles regulating the rights and obligations of representing and represented Member States in respect of the issuance of Schengen visas in third countries where not all Schengen States are represented. That Decision became obsolete after the entry

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into force of Regulation (EC) No 810/2009, which provides for new rules on the representation arrangements in situations where a Member State agrees to represent another Member State for the purpose of examining applications and issuing visas on behalf of that Member State.

(6) Decision of the Executive Committee SCH/Com-ex (97) 39 rev.[8] approved the guiding principles for means of proof and indicative evidence under readmission agreements between Schengen States. That Decision became obsolete after the entry into force of Council Regulation (EC) No 343/2003[9] and of Commission Regulation (EC) No 1560/2003[10], which provide for the elements of proof and circumstantial evidence that are to be used for determining the Member State responsible for examining the application for asylum.

(7) Decision of the Executive Committee SCH/Com-ex (98) 1 rev. 2[11] provided for a number of measures aimed to increase the efficiency of checks at external borders. That Decision became obsolete after the entry into force of Regulation (EC) No 562/2006 of the European Parliament and of the Council[12], which sets out the rules on crossing external borders, and of Regulation (EC) No 2007/2004, which entrusts Frontex with the task of facilitating the application of Community measures relating to the management of external borders by ensuring the coordination of Member States' actions in the implementation of those measures.

(8) Decision of the Executive Committee SCH/Com-ex (98) 18 rev.[13] provided for a procedure to be followed by the Schengen States experiencing serious difficulties in obtaining a *laissez-passer* to repatriate illegal foreign nationals. It also provided for the possibility to investigate, at the Union level, the need for using other means of a more binding nature against the countries posing problems in that regard. That Decision became obsolete after the Union concluded readmission agreements with a number of third countries. Those agreements set out the specific obligations and procedures to be complied with by the authorities of the third countries and of Member States with regard to the repatriation of foreign nationals who are irregularly residing in the Union.

(9) Decision of the Executive Committee SCH/Com-ex (98) 21[14] approved common rules for affixing stamps to the passports of all visa applicants as a means of preventing the same person from lodging multiple or successive visa applications. That Decision became obsolete after the entry into force of Regulation (EC) No 810/2009, which provided for a new set of rules for issuing visas and for stamping an applicant's travel document.

(10) Decision of the Executive Committee SCH/Com-ex (98) 37 def. 2[15] established a set of measures aimed to establish an integrated approach for stepping up the fight against illegal migration. Those measures were put into effect by the Decision of the Central Group of 27 October 1998 on the adoption of measures to fight illegal immigration (SCH/C (98) 117). Those Decisions became obsolete after the entry into force of Council Regulation (EC) No 377/2004[16], which establishes the common framework for posting immigration liaison officers in third countries, Regulation (EC) No 562/2006, which provides for a set of common measures on the control of external borders, and

Council Decision 2009/371/JHA[(17)], which entrusts Europol with specific tasks related to the exchange of information, including on countering irregular migration.

(11) Decision of the Executive Committee SCH/Com-ex (98) 59 rev.[(18)] provided for a set of guidelines for the coordinated deployment of document advisers for air and maritime traffic to consular representations of Member States with the aim to strengthen the combating of illegal immigration. That Decision became obsolete after the entry into force of Regulation (EC) No 377/2004, which establishes new rules for the deployment of liaison officers in third countries.

(12) Decision of the Executive Committee SCH/Com-ex (99) 7 Rev 2[(19)] approved a plan for Member States' reciprocal secondment of liaison officers to advise and assist in the performance of security and checking tasks at external borders. That Decision became obsolete after the entry into force of Regulation (EC) No 562/2006 and Regulation (EC) No 2007/2004, which together introduced a new legal framework for cooperation between Member States with regard to the control of external borders, including secondment of liaison officers.

(13) Council Regulation (EC) No 189/2008[(20)] established specifications relevant to certain SIS II tests aimed to demonstrate that central SIS II, the communication infrastructure and the interactions between central SIS II and the national systems (N.SIS II) work in accordance with the technical and functional requirements set out in the SIS II legal instruments. That Regulation lost its legal effect once the SIS II became operational on 9 April 2013.

(14) For reasons of legal certainty and clarity, those obsolete Decisions and Regulation should be repealed.

(15) Since the objective of this Regulation, namely the repeal of a number of obsolete Union acts belonging to the Schengen *acquis* cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(16) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the TEU and to the Treaty on the Functioning of the European Union, 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.

(17) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[(21)]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

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(18) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[22]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(19) 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*[23] which fall within the area referred to in Article 1 of Council Decision 1999/437/EC[24].

(20) 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*[25], which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/146/EC[26] and 2008/149/JHA[27].

(21) 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*[28] relating to the abolition of checks at internal borders and movement of persons, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2011/349/EU[29] and 2011/350/EU[30],

HAVE ADOPTED THIS REGULATION:

Article 1

Repeal of obsolete acts

The following acts are repealed:

— Decision SCH/Com-ex (95) PV 1 rev. (visa policy),
— Decision SCH/Com-ex (95) 21 (exchange of statistical information),
— Decision SCH/Com-ex (96) 13 rev. 1 (issuance of Schengen visas),
— Decision SCH/Com-ex (97) 39 rev. (evidence under readmission agreements),
— Decision SCH/Com-ex (98) 1 rev. 2 (task force);
— Decision SCH/Com-ex (98) 18 rev. (difficulties in obtaining *laissez-passer*),
— Decision SCH/Com-ex (98) 21 (stamping of passports),
— Decision SCH/Com-ex (98) 37 def. 2 (fight against illegal immigration),
— Decision SCH/C (98) 117 (fight against illegal immigration),