Commission Regulation (EU) No 977/2011 of 3 October 2011 amending Regulation (EC) No 810/2009 of the European Parliament and of the Council establishing a Community Code on Visas (Visa Code)

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THE EUROPEAN COMMISSION,

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 50 thereof,

Whereas:

(1) In accordance with Article 48 of Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)[(2)], the VIS will be rolled-out progressively region by region in the order defined by the Commission in decisions adopted in accordance with the comitology procedure.

(2) In accordance with Article 48(1) and (3) of Regulation (EC) No 767/2008, the Commission is to determine the date from which the VIS starts operations in the first region and the date from which it becomes mandatory in each subsequent region to transfer to the VIS all data: alphanumeric data, photographs and fingerprints. Before the transfer of all data has become mandatory in a region, Member States can already collect and transmit to the VIS alphanumeric data and photographs, and optionally also the fingerprints, in any location as soon as they have notified the Commission that they have made the necessary technical and legal arrangements to do so. As a consequence, three situations can coexist as regards the registration in the VIS.

(3) In the regions where the collection and transmission of visa data to the VIS has become mandatory following a decision by the Commission, all data referred to in Article 5(1) of the VIS Regulation, including the fingerprints for each applicant, will be registered in the VIS, except in the cases where the applicant is exempted from the requirement to provide fingerprints in accordance with Article 13(7) of the Visa Code. In locations where the use of the VIS is not yet mandatory, Member States may similarly decide to collect and register in the VIS all data referred to in Article 5(1) of the VIS Regulation, including the fingerprints, of each visa applicant.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 977/2011. (See end of Document for details)*

(4) However, in these locations where the use of the VIS has not yet become mandatory, one or more Member States may not register visa applicants in the VIS yet; while other Member States may register only alphanumeric data and photographs of visa applicants.

(5) In accordance with Article 7(3) (aa) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)[3], from the 20th day following the date of start of operations of the VIS in the first region, the thorough checks on entry are to comprise the verification of the identity of the visa holder and of the authenticity of the visa, by consulting the VIS. In accordance with Article 18 of the VIS Regulation, searches are to be carried out using the number of the visa sticker in combination with the verification of the fingerprints of the visa holder. However, for a maximum period of 3 years from the date of start of operations in the first region, the search in the VIS may be carried out using only the number of the visa sticker. At the expiry of that period, searches in the VIS are always to be carried out using the visa sticker number in combination with the fingerprints, except for visa holders whose fingerprints cannot be used. Besides, during an additional maximum period of 3 years, by way of derogation, searches may be run using only the visa sticker number in a limited number of circumstances defined by Article 7(3) (ab) of the Schengen Borders Code.

(6) To facilitate controls at the external borders, a specific code should be added on the visa sticker to indicate that the visa holder is registered in the VIS. The absence of such code should be without prejudice to Member States' obligation to run searches on entry at the external borders of the Schengen area against the VIS for all visa holders, as laid down in Article 7(3) of the Schengen Borders Code. In situations where no data has been registered and where border authorities consequently receive a negative answer from the VIS, the fact that no code appears on the visa sticker will confirm to the border authorities that such a negative answer is not due to a technical problem (false negative identification) or fraud.

(7) A specific code should also be added on the visa sticker to indicate situations where the visa holder is registered in the VIS but his fingerprints were not collected because the collection of fingerprints was not yet mandatory in the region concerned. The presence of such a code should be without prejudice to the obligation to run searches in the VIS by using the visa sticker number in combination with the verification of the fingerprints from 3 years after the start of operations in the first region.

(8) Annex VII to Regulation (EC) No 810/2009 should be amended to ensure the harmonised application by Member States of the codes relating to the registration of visa holders and their fingerprints in the VIS.

(9) Given that Regulation (EC) No 810/2009 builds upon the Schengen *acquis* in accordance with Article 5 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community and Article 4 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on the European Union and the Treaty on the Functioning of the European Union, Denmark

notified the implementation of this *acquis* in its national law. It is therefore bound under international law to implement this Regulation.

(10) 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 of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*[(4)]. The United Kingdom is therefore not bound by it or subject to its application.

(11) 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 of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*[(5)]. Ireland is therefore not bound by it or subject to its application.

(12) 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*[(6)], which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement[(7)].

(13) 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*[(8)], which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of the Council Decisions 2008/146/EC[(9)].

(14) 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*, 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[(10)].

(15) As regards Cyprus, this Regulation constitutes provisions building upon or otherwise related to the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession.

(16) This Regulation constitutes an act building upon or otherwise related to the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession.

(17) The measures provided for in this Regulation are in accordance with the opinion of the Visa Committee,