II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 4 November 2008

amending Annex 3, Part I, to the Common Consular Instructions on third-country nationals subject to airport visa requirements

(2008/859/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications ([1]),

Having regard to the initiative of France,

Whereas:

(1) Annex 3, Part I, to the Common Consular Instructions contains the joint list of third countries whose nationals are subject to airport transit visa (ATV) requirements by all Member States.

(2) France wishes, as regards Ghanaian and Nigerian nationals, to limit the ATV requirement to persons who do not hold a valid visa issued by Member States of the European Union or for a State party to the Agreement on the European Economic Area of 2 May 1992, Canada, Japan, Switzerland or the United States of America. The Common Consular Instructions should therefore be amended accordingly.

(3) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, 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* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of that Protocol, decide within a period of six months after the Council has adopted this Decision whether it will implement the Decision in its national law.

(4) 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 association of those two States with the implementation, application and development of the Schengen *acquis* ([2]), which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ([3]).

(5) As regards Switzerland, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/146/EC ([4]) and 2008/149/JHA ([5]).

([1]) OJ L 116, 26.4.2001, p. 2.

([2]) OJ L 176, 10.7.1999, p. 36.
([3]) OJ L 176, 10.7.1999, p. 31.
([4]) OJ L 53, 27.2.2008, p. 1.
([5]) OJ L 53, 27.2.2008, p. 50.

(6) As regards Liechtenstein, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol signed 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* ([6]), which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/261/EC ([7]) and 2008/262/EC ([8]).

(7) This Decision 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* ([9]). The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(8) 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 of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ([10]). Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(9) As regards Cyprus, this Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.

(10) This Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession,

HAS ADOPTED THIS DECISION:

Article 1

Annex 3, Part I, to the Common Consular Instructions is hereby amended as follows:

1. in the entry regarding Ghana, the existing footnote shall be replaced by the following:

   'For the Benelux countries, France, Germany, Italy and Spain

   The following persons shall be exempted from the ATV requirement:

   — Nationals in possession of a valid visa for a Member State of the EU or for a State party to the Agreement on the European Economic Area of 2 May 1992, Canada, Japan, Switzerland or the United States of America, or when they return from these countries after having used the visa.';

2. in the entry regarding Nigeria, the existing footnote shall be replaced by the following:

   'For the Benelux countries, France, Germany, Italy and Spain

   The following persons shall be exempted from the ATV requirement:

   — Nationals in possession of a valid visa for a Member State of the EU or for a State party to the Agreement on the European Economic Area of 2 May 1992, Canada, Japan, Switzerland or the United States of America, or when they return from these countries after having used the visa.'

Article 2

This Decision shall apply from 5 November 2008.

Article 3

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 4 November 2008.

For the Council
The President
C. LAGARDE

([6]) OJ L 83, 26.3.2008, p. 3.
([7]) See footnote 6.
([8]) OJ L 83, 26.3.2008, p. 5.
([9]) OJ L 131, 1.6.2000, p. 43.
([10]) OJ L 64, 7.3.2002, p. 20.