



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**VISA 66
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COMIX 169**

NOTE

from: French and Swedish delegations

to: Delegations

No. Cion prop.: 10834/1/11 REV 1 VISA 96 CODEC 927 COMIX 369 (COM(2011) 290 final/2)

Subject: Draft Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

With a view to the discussions at the JHA Counsellors meeting on 18 March 2013, the French and the Swedish delegations have prepared the attached drafting suggestions for the reciprocity and the suspension mechanisms contained in the draft Regulation.

RECIPROCITY MECANISM :

1. Article 1 is hereby amended as follows:

(a) paragraph 4 is replaced by the following:

"4. Where a third country listed in Annex II applies a visa requirement for nationals of one or more Member State(s), the following provisions shall apply:

(a) within (30) days of the application by the third country of the visa requirement or, in cases where the visa requirement existing on the date of entry into force of this Regulation is maintained, within (30) days of this date of entry into force the Member State(s) concerned shall notify the European Parliament, the Council and the Commission in writing.

This notification:

- shall specify the date of implementation of the measure and the type(s) of travel documents and visas concerned;

- shall include, except in case of a visa requirement existing on the date of entry into force of this Regulation, a detailed explanation of the preliminary measures that the Member State(s) concerned has taken with a view to ensuring visa-free travel with the third country in question and all relevant information.

Information about that notification shall be published without delay by the Commission in the C series of the Official Journal of the European Union, specifying the date of implementation of the measure and the type of travel documents and visas concerned.

If the third country decides to lift the visa requirement before the expiry of this deadline, the notification shall not be made or shall be withdrawn.

- (b) the Commission shall, immediately following the date of publication of that notification and in consultation with the Member State concerned, take steps with the authorities of the third country in order to restore or introduce visa-free travel and shall inform the European Parliament and the Council about these steps without delay.
- (c) if **within (90) days** following the date of publication of the notification(s) referred to in point (a) and despite all the steps taken in accordance with point (b) in particular in political, economic and commercial fields, the third country has not lifted the visa obligation, **the Member State(s) concerned may request** the Commission to suspend the exemption from the visa requirement for the nationals of the third country concerned or for certain categories of these nationals.

Where a Member State makes such a request, it shall inform the European Parliament and the Council thereof.

- (d) If the third country concerned has not lifted the visa requirement, **the Commission shall** at the latest **(6) months** from the date of publication of the notification and then with intervals of no longer than six months, **within a total period which may not go beyond (30) months** following the date of the publication of the notification(s) referred to in point (a):
- (i) submit, at the request of the Member State(s) concerned or at its own initiative, a **draft implementing decision** temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned, or for certain categories of such nationals, **for a period of 12 months**; the implementing decision shall determine a date within 90 days of its adoption on which the suspension of the exemption from the visa requirement is to take effect, taking into account the available resources in the consulates of the Member States; it shall be adopted in accordance with the examination procedure referred to in Article 4a(2); the Commission may submit a **subsequent proposal for extending the temporary suspension with a further period of 12 months** which may modify the categories of nationals of the third country for which the exemption from the visa requirement is suspended; or

(ii) submit to the EP and the Council **a report** assessing the situation and containing the reasons why it does not propose to suspend the exemption of the visa requirement. All relevant factors shall be taken into account in this report, such as the outcome of the measures taken by the Member State concerned, the steps taken in accordance with point (b) in order to restore or introduce visa-free travel, and the consequences of the suspension of the exemption of the visa requirement for the external relations of the Union and its Member States with the third country in question.

(d bis) If the third country concerned has not lifted the visa requirement **before the end of the period of validity of an implementing decision adopted, and subsequently extended**, in accordance with point (d)(i), the third country concerned shall be **automatically transferred from Annex II to Annex I** on the day of expiration of the latter implementing decision.

(e) If no implementing decision has been adopted for all the nationals of the third country in accordance with point (d) **after (24) months** following this date of publication of the notification(s) referred to in point (a), **the European Parliament or the Council may request until 30 months** after that date the Commission to continue, beyond (30) months following the date of publication, taking steps with the authorities of the third country in question in order to lift the visa requirement.

(f) If **within (30) months** following the date of publication of the notification(s) referred to in point (a), the third country in question has not lifted the visa requirement, the exemption from the visa requirement for the nationals of this third country **shall automatically be suspended for a period of (12) months**, unless the Commission further to a request made pursuant to point (e) continues taking steps with the authorities of the third country in order to lift the visa requirement. The Commission shall regularly inform the European Parliament and the Council about these steps.

If there is no request pursuant to paragraph (e), the information on the temporary introduction of the visa requirement for nationals of the third country concerned shall be published by the Commission in the Official Journal of the European Union without delay.

(f bis) If the automatic temporary suspension foreseen in point (f) is not enacted, the procedure foreseen in points (e) and (f) shall be replicated **after 36 and before 42** months following the date of publication of the notification(s) referred to in point (a).

(f ter) If **at the end of period of validity of the automatic temporary suspension foreseen in points (f) and (f bis)** the third country concerned has not lifted the visa obligation for nationals of one or more Member States, **the temporary suspension shall automatically be extended for another 12 months.**

(f quater) If **at the end of the period of validity of the extension of the temporary suspension foreseen in point (f ter)** the third country concerned has not lifted the visa obligation for nationals of one or more Member States, **the third country concerned shall be automatically transferred from Annex II to Annex I** on the day of expiration of the 12 months period defined in point (f quater).

(g) The procedures referred to in points (d), (e), (f), (f bis) and (f ter) do not prevent the Commission from presenting a proposal amending this Regulation in order to transfer the reference to the third country concerned to Annex I at any time.

(h) Where the third country in question lifts the visa requirement, the Member State(s) concerned shall immediately notify the European Parliament, the Council and the Commission to that effect. The notification shall be published by the Commission in the C series of the Official Journal of the European Union. *Any temporary suspension pursuant to points (d)(i) and (f), (f bis) and (f ter) shall terminate seven days after the publication of the notification of the lifting of the visa requirement by the third country in question in the Official Journal of the European Union.* In case the third country in question has introduced a visa requirement for nationals of two or more Member States, this only applies after the publication of the last notification.

SUSPENSION MECHANISM :

1 – RECITAL :

(3e) A low recognition rate as mentioned in Article 1a(2) indicates a recognition rate of asylum applications ***by the determining authority*** of less than 5 per cent. It may also be higher if the Commission deems it applicable in the particular case notified by the Member State under pressure.

2 – ARTICLES 1a(2) :

2. A Member State may notify the Commission if it is confronted with one or more of the following circumstances leading to an emergency situation which it is unable to remedy on its own:

- (a) a substantial and sudden increase (...), over a six month period, in the number of nationals of a third country listed in Annex II found to be (...) staying in the Member State's territory without a right thereto, in comparison with the same period in the previous year, ***or with the last six months prior to the implementation of the exemption from the visa requirement for nationals of that third country;***
- (b) a substantial and sudden increase, leading to specific pressures on the asylum system, in the number of asylum applications from the nationals of a third country listed in Annex II for which the recognition rate ***by the determining authority*** is low over a six month period, in comparison with the same period in the previous year ***or with the last six months prior to the implementation of the exemption from the visa requirement for nationals of that third country;***
- (c) a substantial and sudden increase (...), over a six month period, in the number of rejected readmission applications submitted by a Member State to a third country listed in Annex II for its own nationals, in comparison with the same period in the previous year, ***or with the last six months prior to the implementation of the exemption from the visa requirement for nationals of that third country;***

The comparison with the six months period prior to the implementation of the exemption from the visa requirement shall only be applicable during a period of [8] years from the date of implementation of the exemption from the visa requirement for nationals of that third country.

(...) This notification shall be duly motivated and shall include relevant data and statistics as well as a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to remedying the situation. The Commission shall inform the European Parliament and the Council immediately after receiving such notification by the Member State concerned.
