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NOTE

From: Presidency
To: Delegations

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 (amendment to Annexes)

Delegations will find attached the four-column text on the above draft Regulation for the purpose of the JHA Counsellors/Mixed Committee meeting on 21 January 2014.

The fourth column contains the suggestions sent by the Rapporteur following the trilogue on 8 January 2014.

There was an agreement at that trilogue on the 19 countries to be transferred to Annex II to Regulation 539/2001. The remaining outstanding issues, which the Presidency wish to put under discussions at the meeting on 21 January 2014, are as follows:

- the criteria to be taken into account for moving third-countries from one Annex to the other (see recitals 1 to 7 and Article 2a; amendments 1 and 3 of the EP);
 - assessment of Colombia and Peru (recital 7);
 - information of the EP by the Commission (amendment 4)
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Draft Regulation of the European Parliament and of the Council establishing 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 (amendment to Annexes)

COMMISSION PROPOSAL	LIBE vote on 21 October 2013	DRAFT COUNCIL POSITION (common approach at Coreper on 13 December 2013)	COMMENTS AND COMPROMISE TEXT
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 Commission, After transmission of the draft legislative act to the national parliaments, Acting in accordance with the ordinary legislative procedure, Whereas:		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 Commission, After transmission of the draft legislative act to the national parliaments, Acting in accordance with the ordinary legislative procedure, Whereas:	

		(1) The determination of the third countries whose nationals are subject to, or exempt from, the visa requirement has since 2001 been made on the basis of the criteria included in recital 5 of Council Regulation (EC) N° 539/2001 of 15 March 2001¹.	Suggestions by the rapporteur following the trilogue on 8.01.14 (<i>Rapporteur</i>): <i>Could be accepted subject to an agreement on the inclusion of the criteria in an article.</i>
		(2) The evolving nature of the EU's visa policy and the increased need to ensure more coherence between visa policy and other EU policies justify that some additional criteria be taken into account when reviewing the lists of countries in Annexes I and II to the Regulation.	(<i>Rapporteur</i>): <i>Could be accepted subject to an agreement on the inclusion of the criteria in an article.</i>
		(3) From now on the determination of the third countries whose nationals are subject to, or exempt from, the visa requirement should be governed by a considered, case-by-case assessment of a variety of criteria relating, inter alia, to illegal	(<i>Rapporteur</i>): (3) Therefore, from now on, inter alia, also economic benefits, in particular in terms of tourism and foreign trade, should be assessed and it should be specified that the Union's external relations with the relevant third countries include the

¹ OJ L 81, 21.3.2001, p. 1.

		immigration, public policy and security, the economic benefits, in particular in terms of tourism and foreign trade, and the Union's external relations with the relevant third countries including, in particular, respect of human rights and fundamental freedoms. Consideration should also be given to the implications of regional coherence and reciprocity.	respect of human rights and fundamental freedoms. <i>(Rapporteur):</i> (3a) For reasons of transparency and given their importance all criteria should be included in an article of this Regulation.
		(4) This assessment should be made periodically and could lead to proposals for amending the annexes of the Regulation, notwithstanding the possibility to have country-specific amendments to the annexes in particular circumstances, for instance as the result of a visa liberalisation process or as the ultimate consequence of a temporary suspension of the visa exemption.	<i>(Rapporteur):</i> (4) This The assessment of all relevant criteria should be made periodically and could lead to proposals for amending the annexes of the Regulation, notwithstanding the possibility to have country-specific amendments to the annexes in particular circumstances, for instance as the result of a visa liberalisation process or as the ultimate consequence of a temporary suspension of the visa exemption.
(1) The composition of the lists of third countries in Annexes I and II to Council Regulation (EC) N°		(5) The composition of the lists of third countries in Annexes I and II to Council Regulation 539/2001 should	<i>(Rapporteur):</i> (5) The composition of the lists of third countries in Annexes I and II to

<p>539/2001 of 15 March 2001¹ should be, and should remain, consistent with the criteria laid down in recital 5 thereto. References to third countries for which the situation has changed as regards these criteria, should be transferred from one Annex to the other.</p>		<p>be, and should remain, consistent with the criteria laid down in recital 3. References to third countries for which the situation has changed as regards these criteria, should be transferred from one Annex to the other.</p>	<p>Council Regulation (EC) N° 539/2001 of 15 March 2001² should be, and should remain, consistent with the criteria laid down in this Regulation. References to third countries for which the situation has changed as regards these criteria, should be transferred from one Annex to the other.</p>
	<p><i>AM I</i></p>		
<p>(2) The imposition of the visa requirement on the nationals of Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu and Vanuatu is no longer justified. These countries do not present any risk of illegal immigration or a threat to public policy for the Union in accordance with the criteria set out in recital 5 of Regulation (EC) N° 539/2001. Consequently, nationals of those countries should be exempt from the visa requirement for stays of no more than three months in all</p>	<p>(2) The imposition of the visa requirement on the nationals of Colombia, Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Peru, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu is no longer justified. These countries do not present any risk of illegal immigration or a threat to public policy for the Union in accordance with the criteria set out in recital 5 of Regulation (EC) N° 539/2001. Consequently, nationals of those countries should be exempt from the</p>	<p>(6) The imposition of the visa requirement on the nationals of Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu is no longer justified. These countries do not present any risk of illegal immigration or a threat to public policy for the Union in accordance with the criteria set out in recital 3. Consequently, nationals of those countries should be exempt from the visa requirement for stays of no more than 90 days in any 180-day period</p>	<p>(<i>Rapporteur</i>): (6) The imposition of the visa requirement on the nationals of Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu is no longer justified. These countries do not present any risk of illegal immigration or a threat to public policy for the Union in accordance with the criteria set out in this Regulation. Consequently, nationals of those countries should be exempt from the visa requirement for stays</p>

¹ OJ L 81, 21.3.2001, p. 1.

² OJ L 81, 21.3.2001, p. 1.

and references to those countries should be transferred to Annex II.	visa requirement for stays of no more than three months in all and references to those countries should be transferred to Annex II.	in all and references to those countries should be transferred to Annex II.	of no more than 90 days in any 180-day period in all and references to those countries should be transferred to Annex II.
		(7) The Commission should further assess the situation of Colombia and Peru with regard to the criteria set out in recital 3 before the opening of negotiations on bilateral agreements on visa waiver between the Union and those countries.	<i>(Rapporteur):</i> (7) Within six months of the entry into force of this Regulation the Commission should further assess the situation of Colombia and Peru with regard to the criteria set out in this Regulation before the opening of negotiations on bilateral agreements on visa waiver between the Union and those countries and transmit this assessment to the Parliament and the Council.
	AM 2		
(3) Exemption from the visa requirement for nationals of Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu and Vanuatu should not come into force until bilateral agreements on visa waiver between the Union and the countries concerned have been concluded in order to ensure full reciprocity.	(3) Exemption from the visa requirement for nationals of Colombia , Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Peru , Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu should not come into force until bilateral agreements on visa waiver between the Union and the countries concerned have been concluded in	(8) Exemption from the visa requirement for nationals of Colombia , Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Peru , Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu should not come into force until bilateral agreements on visa waiver between the Union and the countries concerned have been concluded in	

	order to ensure full reciprocity.	order to ensure full reciprocity.	
(4) Statistical data show that the groups of British Nationals currently listed in point 3 of Annex I do not pose a risk in terms of irregular migration to the Schengen Area and that most of them live in islands of the Caribbean region which have strong links and similarities with neighbouring countries which are exempt from the visa obligation. These groups of British Nationals should therefore be exempt from the visa requirement for stays of no more than three months in all and references to those groups should be transferred to Annex II.		(9) Statistical data show that the groups of British Nationals currently listed in point 3 of Annex I do not pose a risk in terms of irregular migration to the Schengen Area and that most of them live in islands of the Caribbean region which have strong links and similarities with neighbouring countries which are exempt from the visa obligation. These groups of British Nationals should therefore be exempt from the visa requirement for stays of no more than three months in all and references to those groups should be transferred to Annex II.	
(5) Developments in international law entailing changes in the status or designation of certain states or entities should be reflected in the Annexes to Regulation (EC) No 539/2001. Reference to South Sudan should be added to Annex I to that Regulation, as the country declared its independence on 9 July 2011 and was granted membership of the United Nations on 14 July 2011.		(10) Developments in international law entailing changes in the status or designation of certain states or entities should be reflected in the Annexes to Regulation (EC) No 539/2001. Reference to South Sudan should be added to Annex I to that Regulation, as the country declared its independence on 9 July 2011 and was granted membership of the United Nations on 14 July 2011.	
(6) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the		(11) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the	

<p>Schengen <i>acquis</i> 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 latter's' association with the implementation, application and development of the Schengen <i>acquis</i>¹, 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.²</p>		<p>Schengen <i>acquis</i> 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 latter's' association with the implementation, application and development of the Schengen <i>acquis</i>³, 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.⁴</p>	
<p>(7) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> within the meaning of the Agreement signed by 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 <i>acquis</i>⁵, which falls within the area referred to in Article 1, points (B)</p>		<p>(12) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> within the meaning of the Agreement signed by 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 <i>acquis</i>², which falls within the area referred to in Article 1, points (B)</p>	

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 176, 10.7.1999, p. 31.

³ OJ L 176, 10.7.1999, p. 36.

⁴ OJ L 176, 10.7.1999, p. 31.

⁵ OJ L 53, 27.2.2008, p. 52.

<p>and (C), of Council Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC.¹</p>		<p>and (C), of Council Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC.³</p>	
<p>(8) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> 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 <i>acquis</i>, which fall within the area referred to in Article 1, points (B) and (C), of Council Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/261/EC.⁴</p>		<p>(13) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> 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 <i>acquis</i>, which fall within the area referred to in Article 1, points (B) and (C), of Council Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/261/EC.⁵</p>	

² OJ L 53, 27.2.2008, p. 52.

¹ OJ L 53, 27.2.2008, p. 1.

³ OJ L 53, 27.2.2008, p. 1.

⁴ OJ L 83, 26.3.2008, p. 3.

⁵ OJ L 83, 26.3.2008, p. 3.

<p>(9) This Regulation constitutes a development of provisions of the Schengen <i>acquis</i> 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 <i>acquis</i>.¹ The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.</p>		<p>(14) This Regulation constitutes a development of provisions of the Schengen <i>acquis</i> 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 <i>acquis</i>.² The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.</p>	
<p>(10) This Regulation constitutes a development of provisions of the Schengen <i>acquis</i> 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 <i>acquis</i>.³ Ireland is therefore not taking part in its adoption and is not bound by it or subject to its</p>		<p>(15) This Regulation constitutes a development of provisions of the Schengen <i>acquis</i> 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 <i>acquis</i>.⁴ Ireland is therefore not taking part in its adoption and is not bound by it or subject to its</p>	

¹ OJ L 131, 1.6.2000, p. 43.

² OJ L 131, 1.6.2000, p. 43.

³ OJ L 64, 7.3.2002, p. 20.

⁴ OJ L 64, 7.3.2002, p. 20.

application.		application.	
(11) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise related to, the Schengen <i>acquis</i> within the meaning of Article 3(1) of the 2003 Act of Accession.		(16) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise related to, the Schengen <i>acquis</i> within the meaning of Article 3(1) of the 2003 Act of Accession.	
(12) This Regulation constitutes an act building upon, or otherwise related to, the Schengen <i>acquis</i> within the meaning of Article 4(1) of the 2005 Act of Accession,		(17) This Regulation constitutes an act building upon, or otherwise related to, the Schengen <i>acquis</i> within the meaning of Article 4(1) of the 2005 Act of Accession.	
		(18) This Regulation constitutes an act building upon, or otherwise related to, the Schengen <i>acquis</i> within the meaning of Article 4(1) of the 2011 Act of Accession,	
HAVE ADOPTED THIS REGULATION:		HAVE ADOPTED THIS REGULATION:	
<i>Article 1</i>		<i>Article 1</i>	
Regulation (EC) No 539/2001 is hereby amended as follows:		Regulation (EC) No 539/2001 is hereby amended as follows:	
	AM 3		
	<i>-1. The following article is inserted:</i>		
	<i>“Article 2a</i>		
	<i>The determination of the third countries whose nationals are</i>		<i>(Rapporteur):</i>

	<p><i>subject to, or exempt from, the visa requirement shall be made on the basis of a considered, case-by-case assessment of a variety of criteria relating, inter alia, to irregular immigration, public policy and security, and the Union's external relations with the relevant third countries, including, in particular, respect of human rights and fundamental freedoms. Consideration shall also be given to the implications of regional coherence and reciprocity.”</i></p>		<p>The determination of the third countries whose nationals are subject to, or exempt from, the visa requirement shall be made on the basis of a considered, case-by-case assessment of a variety of criteria relating, inter alia, to irregular immigration, public policy and security, <i>the economic benefits, in particular in terms of tourism and foreign trade</i>, and the Union's external relations with the relevant third countries, including, in particular, respect of human rights and fundamental freedoms. Consideration shall also be given to the implications of regional coherence and reciprocity.</p>
	AM 4		
	<i>-1b. The following article is inserted:</i>		
	<i>“Article 7a</i>		<i>”Article 7a</i>
	<p><i>The Commission shall inform the European Parliament on a regular basis about the situation with regard to the negotiations of bilateral agreements for visa exemptions, as well as about whether third countries whose nationals benefit from an exemption from the visa requirement continue to meet the</i></p>		<p><i>(Rapporteur):</i></p> <p>The Commission shall inform the European Parliament on a regular basis about the situation with regard to the negotiations of bilateral agreements for visa exemptions, as well as about whether third countries whose nationals benefit from an exemption from the visa requirement continue to meet the criteria</p>

	<i>criteria which led to that exemption. The Commission shall present, at least annually, a report to the European Parliament and to the Council summarising its activities and findings in that regard.”</i>		which led to that exemption. The Commission shall present, at least annually, a report to the European Parliament and to the Council summarising its activities and findings in that regard.”
1. Annex I is amended as follows:		Annex I is amended as follows:	
	AM 5		
(a) in point 1, the references to Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu and Vanuatu are deleted and a reference to South-Sudan is inserted;	(a) in point 1, the references to Colombia , Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Peru , Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu are deleted and a reference to South-Sudan is inserted;	(a) in point 1, the references to Colombia , Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Peru , Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu are deleted and a reference to South-Sudan is inserted;	
(b) point 3 is deleted;		(b) point 3 is deleted;	
2. Annex II is amended as follows:		Annex II is amended as follows:	

	AM 6		
<p>(a) in point 1, the following references are inserted:</p> <p>"Dominica¹⁸", "Grenada¹", "Kiribati¹" "Marshall Islands¹", "Micronesia¹", "Nauru¹",</p> <p>"Palau¹" "Saint Lucia¹", "Saint Vincent and the Grenadines¹", "Samoa¹", "Solomon Islands¹", "Timor-Leste¹", "Tonga¹", "Trinidad and Tobago¹", "Tuvalu¹" and</p> <p>"Vanuatu¹".</p>	<p>(a) in point 1, the following references are inserted:</p> <p>"Colombia¹" "Dominica¹", "Grenada¹", "Kiribati¹" "Marshall Islands¹", "Micronesia¹", "Nauru¹", "Peru¹" "Palau¹" "Saint Lucia¹", "Saint Vincent and the Grenadines¹", "Samoa¹", "Solomon Islands¹", "Timor-Leste¹", "Tonga¹", "Trinidad and Tobago¹", "Tuvalu¹" "The United Arab Emirates¹" and "Vanuatu¹".</p>	<p>(a) in point 1, the following references are inserted:</p> <p>"Colombia[*]", "Dominica[*]", "Grenada[*]", "Kiribati[*]" "Marshall Islands[*]", "Micronesia[*]", "Nauru[*]", "Palau[*]" "Peru[*]" "Saint Lucia[*]", "Saint Vincent and the Grenadines[*]", "Samoa[*]", "Solomon Islands[*]", "Timor-Leste[*]", "Tonga[*]", "Trinidad and Tobago[*]", "Tuvalu[*]" "the United Arab Emirates[*]" and "Vanuatu[*]".</p>	
<p>(b) point 3 is replaced by the following</p>		<p>(b) point 3 is replaced by the following</p>	
<p>"3. British citizens who are not nationals of the United Kingdom of</p>		<p>"3. British citizens who are not nationals of the United Kingdom of</p>	

¹⁸ "The exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union".

Great Britain and Northern Ireland for the purposes of Union law: British nationals (Overseas) British overseas territories citizens (BOTC) British overseas citizen (BOC) British protected persons (BPP) British subjects (BS)"		Great Britain and Northern Ireland for the purposes of Union law: British nationals (Overseas) British overseas territories citizens (BOTC) British overseas citizen (BOC) British protected persons (BPP) <i>British subjects (BS)"</i>	
<i>Article 2</i>		<i>Article 2</i>	
This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .		This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	
This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.		This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.	
Done at Brussels, For the Council The President For the European Parliament The President		Done at Brussels, For the Council The President For the European Parliament The President	