



**COUNCIL OF  
THE EUROPEAN UNION**

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**"A" ITEM NOTE**

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from:            General Secretariat of the Council

to:                Council

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

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The Commission transmitted the above mentioned proposal to Council on 17 July 2006. The text has been examined at technical level at several meetings and in the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 9 November 2006.

The European Parliament is expected to give its opinion on the draft Regulation in the plenary session in December 2006.

At its meeting on 23 November 2006, the Mixed Committee at Senior Officials' level reached agreement on the text set out in the annex to this note. At its meeting on 29 November 2006, Coreper confirmed this agreement.

Without prejudice to the opinion of the European Parliament, the Council is invited to adopt a general approach on the basis of the text in this annex.

Draft

**COUNCIL REGULATION**

**amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(b)(i) thereof,

Having regard to the proposal from the Commission,<sup>1</sup>

Having regard to the opinion of the European Parliament,<sup>2</sup>

Whereas:

- (1) The composition of the lists of third countries in Annexes I and II to this Regulation should be, and should remain, consistent with the criteria laid down in recital 5 to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement.<sup>3</sup> Some third countries should be transferred from one annex to the other, particularly with regard to illegal immigration and public policy.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ L [...], [...], p. [...].

- (2) Bolivia should be transferred to Annex I. The date of application of the visa requirement for Bolivian nationals should be such as to allow Member States to rescind in good time the bilateral agreements with Bolivia and to take all the necessary administrative and organisational measures for introducing the visa requirement in question.
- (3) Antigua and Barbuda, the Bahamas, Barbados, Mauritius, Saint Kitts and Nevis, and the Seychelles should be transferred to Annex II.

Exemption from the visa requirement for nationals of those countries should not come into force before a bilateral agreement on exemption from the visa requirement between the European Community and the country in question has been concluded.

- (4) The two annexes to Regulation (EC) No 539/2001 should be exhaustive. To that end, a heading making it possible to determine the visa arrangements to be applied by the Member States to categories of persons made subject to the visa requirement by certain Member States and exempted therefrom by others should be added to each of the annexes to the Regulation. Various categories of “British” persons who are not nationals of the United Kingdom within the meaning of Community law should be added to Annex I to the Regulation and British Nationals (Overseas) should be added to Annex II.
- (5) The Member States may provide for exceptions to the visa requirement for holders of certain passports other than ordinary passports. The designations of these passports require clarification. Reference needs also to be made in Regulation (EC) No 539/2001 to the procedures applicable where recourse is had to such exceptions.

- (6) The Member States may exempt from the visa requirement recognised refugees, all stateless persons, both those under the 1954 Convention and those outside of the scope of this convention, and school pupils travelling on school excursions where the persons of these categories reside in a third country listed in Annex II.

A full exemption from the visa requirement exists already for these three categories of persons residing within the Schengen area when they (re-) enter that area; a general exemption should be introduced for persons of those categories residing in a Member State which has not or not yet joined the Schengen area, as far as their (re-) entry into the territory of any other Member State bound by the Schengen acquis is concerned.

- (7) Regulation of the European Parliament and of the Council laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention makes it necessary to provide for a new exemption from the visa requirement for holders of a local border traffic card.
- (8) The arrangements governing exceptions to the visa requirement should fully reflect actual practices. Certain Member States grant exemption from the visa requirement for nationals of third countries listed in Annex I who are members of the armed forces travelling on NATO or Partnership for Peace business. For reasons of legal certainty, these exemptions, which are based on international obligations external to Community law, should nevertheless be referred to in Regulation (EC) No 539/2001.
- (9) Because of the successive amendments to Regulation (EC) No 539/2001 it is necessary to improve its structure and make it easier to read, to which end it should be recast at a later date.

- (10) With regard to Iceland and Norway, this Regulation represents 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 latter's association with the implementation, application and development of the Schengen acquis,<sup>1</sup> which falls within the area referred to in Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement.<sup>2</sup>
- (11) The United Kingdom and Ireland are not bound by Regulation (EC) No 539/2001. Consequently, they are not participating in the adoption of this Regulation and are not bound by or subject to the application thereof.
- (12) With regard to Switzerland, this Regulation represents a development of the provisions of the Schengen acquis, within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis,<sup>3</sup> which falls within the area referred to in Article 1(B) of Council Decision 1999/437/EC, read in conjunction with Article 4(1) of Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the Swiss Confederation's association with the implementation, application and development of the Schengen acquis,<sup>4</sup>

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<sup>1</sup> OJ L 176, 10.7.1999, p. 31.

<sup>2</sup> OJ L 368, 15.12.2004, p. 26.

<sup>3</sup> Council document 13054/04, available on <http://register.consilium.eu.int>.

<sup>4</sup> OJ L 370, 17.12.2004, p. 78.

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 539/2001 is amended as follows:

(1) Article 1 is amended as follows:

(a) The following subparagraph is added to paragraph 1:

"Without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons shall be in possession of a visa when crossing the external borders of the Member States if the third country in which they are resident and which has issued them with their travel document is a third country listed in Annex I."

(b) The following subparagraph is added to paragraph 2:

"The following shall also be exempt from the visa requirement:

- the nationals of third countries listed in Annex I who are holders of a local border traffic card issued by the Member States pursuant to Regulation (EC) No ..... when these holders exercise their right within the context of the Local Border Traffic regime

- school pupils who are nationals of a third country listed in Annex I and who reside in a Member State applying Decision 94/795<sup>1</sup> and are travelling in the context of a school excursion as members of a group of school pupils accompanied by a teacher from the school in question;
- recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State."

(1bis) Article 3 of Regulation 539/2001 is repealed.

(2) Article 4 is amended as follows:

(a) Paragraph (1)(a) is replaced by the following:

"(a) holders of diplomatic passports, service/official passports or special passports in accordance with one of the procedures laid down in Articles 1(1) and 2(1) of Regulation (EC) No 789/2001;".

(b) Paragraph 2 is replaced by the following:

"2.A Member State may exempt from the visa requirement:

- (a) a school pupil having the nationality of a third country listed in Annex I who resides in a third country listed in Annex II or in Switzerland and Liechtenstein and is travelling in the context of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question;

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**1** Council Decision of 30 November 1994 on a joint action adopted by the Council on the basis of Article K.3.2.b of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State (94/795/JHA), OJ L 327, 19.12.1994, p. 1–3.

- (b) recognised refugees and stateless persons if the third country where they reside and which issued their travel document is one of the third countries listed in Annex II;
- (c) members of the armed forces travelling on NATO or Partnership for Peace business and holders of identification and movement orders provided for by the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the status of their forces."

(3) Annex I is amended as follows:

- (a) a reference to Bolivia is inserted;
- (b) the references to Antigua and Barbuda, the Bahamas, Barbados, Mauritius, Saint Kitts and Nevis, and the Seychelles are deleted;
- (c) the following point 3 is added:

"3) BRITISH CITIZENS WHO ARE NOT NATIONALS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE PURPOSES OF COMMUNITY LAW:

British Overseas Territories Citizens who do not have the right of abode in the United Kingdom

British Overseas Citizens

British Subjects who do not have the right of abode in the United Kingdom

British Protected Persons";

- (d) the reference to "East Timor" is replaced by a reference to "Timor-Leste";

the reference to "Federal Republic of Yugoslavia" is replaced by references to "Serbia" and to "Montenegro";

the reference to "Western Samoa" is replaced by "Samoa".

- (4) Annex II is amended as follows:

- (a) the reference to Bolivia is deleted;  
(b) the following lines are inserted:

Antigua and Barbuda\*

Bahamas\*

Barbados\*

Mauritius\*

Saint Kitts and Nevis\*

Seychelles\*

\* The exemption from the visa requirement will apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Community.

- (c) the following point 3 is added:

"3) BRITISH CITIZENS WHO ARE NOT NATIONALS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE PURPOSES OF COMMUNITY LAW:

British Nationals (Overseas)".

- (d) the reference to "Brunei" is replaced by a reference to "Brunei Darussalam"

*Article 2*

The Member States shall apply the visa requirement for Bolivian nationals with effect from 1 April 2007.

The Member States shall apply the exemption from the visa requirement for nationals of Antigua and Barbuda, the Bahamas, Barbados, Mauritius, Saint Kitts and Nevis and the Seychelles from the date of entry into force of an agreement on visa exemptions to be concluded by the European Community with the third country in question.

*Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

*For the Council*

*The President*