



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 January 2009

5930/09

**Interinstitutional File:
2008/0225 (CNS)**

**CODIF 15
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COMIX 83**

NOTE

from: General Secretariat of the Council
to: Council Working Party on Codification of Legislation
No. Cion prop: 16750/1/08 REV 1 VISA 393 COMIX 885 CODIF 169
Subject: Proposal for a Council Regulation 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 (codified version)

1. Following the circulation of the codification proposal, delegations sent comments in accordance with the working method agreed by the Working Party on Codification of Legislation.

The Commission replied in writing to those delegations that had sent comments.

2. The comments received by 20 January 2009, which affect several or all language versions, together with the Commission's reply, appear in the Annex.¹
3. Comments submitted by the new Member States' delegations which are apparently of a purely linguistic nature and relating solely to the language in question have not been included in the Annex. These delegations are however invited to raise in writing or during the meeting any matter they consider necessary.

¹ For technical reasons, the delegations' comments and the Commission's response are presented within a double lined text box set next to the provision they refer to.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.11.2008
COM(2008) 761 final

2008/0225 (CNS)

Proposal for a

COUNCIL REGULATION

**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**

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of 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 and those whose nationals are exempt from that requirement³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex III to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Regulation (EC) No 539/2001 and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex IV to the codified Regulation.

Proposal for a

COUNCIL REGULATION

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 (codified version)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Whereas:

- (1) 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 and those whose nationals are exempt from that requirement³ has been substantially amended several times⁴. In the interests of clarity and rationality the said Regulation should be codified.

*cc

Recital 1 of Regulation (EC) No 539/2001

DE: Recital 1 of Regulation (EC) No 539/2001 should be reinstated:

"Under Article 62, point (2)(b) of the Treaty, the Council is to adopt rules relating to visas for intended stays of no more than three months, and in that context it is required to

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ L 81, 21.3.2001, p. 1.

⁴ See Annex III.

determine the list of those third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. Article 61 cites those lists among the flanking measures which are directly linked to the free movement of persons in an area of freedom, security and justice."

Would the "Gemeinsame konsularische Instructionen" (EN:"Common consular instructions") also need to be amended?

Cion: recital 1 of Regulation 539/2001 only contains quotations from the wordings of two Treaty articles. According to point 10.5.1 of the joint practical guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions, "The recitals should constitute a genuine statement of reasons: they should not set out the legal bases (which must be in the citations) nor should they repeat the passage in the provision already cited as the legal basis which empowers the institution to act". In compliance with that rule, and with more general principles imposing not to use wordings that only paraphrase articles from the treaties, the that recital was not presented in the preamble.

☒ 2414/2001 Art. 1 pt. 1 (adapted)

- (2) This Regulation should provide for full harmonisation as regards the third countries whose nationals are subject to the visa requirement for the crossing of Member States' external borders and those whose nationals are exempt from that requirement.

*cc

Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal

DE: the original verbs should be kept in the text, i.e. remove the verb "should" and reinstate the original verbs.

Cion cannot accept these changes. The texts of those recitals are deemed to have been drafted in compliance with currently applicable rules on legislative drafting. Indeed, according to point 10 of the joint practical guide "The purpose of the recitals is to set out concise reasons for the chief provisions of the enacting terms [...]. They shall not contain normative provisions [...]". Moreover, according to point 10.1 of the guide "The recitals are the part of the act which contains the statement of reasons for the act; [...]. The statement of reasons [...] uses non-mandatory language and must not be capable of confusion with the enacting terms".

Ⓔ 539/2001 Recital 5 first sentence (adapted)

- (3) The determination of those third countries whose nationals are subject to the visa requirement, and those exempt from it, is governed by a considered, case-by-case assessment of a variety of criteria relating inter alia to illegal immigration, public policy and security, and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity.

Ⓔ 539/2001 Recital 6 (adapted)

- (4) As the Agreement on the European Economic Area exempts nationals of Iceland, Liechtenstein and Norway from the visa requirement, these countries should not be included in the list of third countries whose nationals are exempt from the visa requirement .

Ⓔ 453/2003 Recital 3 (adapted)

- (5) Since the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons provides for free movement without visas for nationals of Switzerland and of the Member States, Switzerland should not be included in the list of third countries whose nationals are exempt from the visa requirement .

Ⓔ 539/2001 Recital 8 (adapted)

- (6) In specific cases where special visa rules are warranted, Member States should be able to exempt certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.

*cc

Recital 6 of the proposal

DE: no formal changes, the original text should be kept.

" In specific cases where special visa rules are warranted, Member States **may** exempt certain categories of persons from the visa requirement or impose it on them in accordance with [DE: **insbesondere**, this word not present in EN] public international law or custom.

Cion cannot accept these changes. The reasons being those given for Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal on page 6.

- (7) As regards stateless persons and recognised refugees, without prejudice to obligations under international agreements signed by the Member States and in particular the European Agreement on the Abolition of Visas for Refugees, signed at Strasbourg on 20 April 1959, the decision as to the visa requirement or exemption should be based on the third country in which these persons reside and which issued their travel documents. However, given the differences in the national legislation applicable to stateless persons and to recognised refugees, Member States should be able to decide whether these categories of persons should be exempted, where the third country in which these persons reside and which issued their travel documents is a third country whose nationals are exempt from the visa requirement.

*cc

Recital 7 of the proposal

DE: no formal changes, the original text should be kept.

"... However, given the differences in the national legislation applicable to stateless persons and to recognised refugees, Member States **may** decide whether these categories of persons **shall be subject to the visa requirement**, where the third country in which these persons reside and which issued their travel documents is a third country whose nationals are exempt from the visa requirement."

Cion cannot accept these changes. The reasons being those given for Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal on page 6.

- (8) In accordance with Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention⁵, an exemption from the visa requirement should be laid down for holders of a local border traffic permit .

⁵ OJ L 405, 30.12.2006, p. 1.

*cc

Recital 8 of the proposal (recital 7 of 1932/2006)

DE: no formal changes, the original text should be kept.

"Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention [2] **makes it necessary to provide for a new exemption** from the visa requirement for holders of a local border traffic card."

Cion cannot accept these changes. The reasons being those given for Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal on page 6.

Ⓔ 1932/2006 Recital 5 (adapted)

- (9) Member States should be able to provide for exemptions from the visa requirement for holders of certain passports other than ordinary passports.

*cc

Recital 9 of the proposal (recital 5 of 1932/2006)

DE: the second original sentence should be reinstated.

"Member States **may** provide for exemptions from the visa requirement for holders of certain passports other than ordinary passports. **The designations of these passports require clarification.**"

Cion cannot accept these changes. The reasons being those given for Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal on page 6.

Ⓔ 1932/2006 Recital 6 (adapted)

- (10) Member States should be able to exempt from the visa requirement recognised refugees, all stateless persons, both those covered by the Convention relating to the Status of Stateless Persons of 28 September 1954 and those outside of the scope of that Convention, and school pupils travelling on school excursions where the persons in these categories reside in a third country the national of which are exempt from the visa requirement for stays of no more than three months in all as listed in this Regulation.

*cc

Recital 10 of the proposal (recital 6 first paragraph of 1932/2006)

DE: no formal changes, the original text should be kept.

"Member States **may** exempt from the visa requirement recognised refugees, all stateless persons, both those under the Convention relating to the Status of Stateless Persons of 28 September 1954 and those outside of the scope of that Convention, and school pupils travelling on school excursions where the persons of these categories reside in a third country listed **in Annex II to this Regulation.**"

Cion cannot accept these changes. The reasons being those given for Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal on page 6.

- (11) A general exemption from the visa requirement should also be laid down for persons in those categories residing in a Member State which has not or not yet joined the Schengen area, as far as their entry or re-entry into the territory of any other Member State bound by the Schengen *acquis* is concerned.

*cc

Recital 11 of the proposal (recital 6 second paragraph of 1932/2006)

DE: no formal changes, the original text should be kept.

"**A full exemption from the visa requirement exists already for these three categories of persons residing within the Schengen area when they enter or 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 entry or re-entry into the territory of any other Member State bound by the Schengen *acquis* is concerned."

Cion cannot accept these changes. The reasons being those given for Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal on page 6.

Ⓔ 1932/2006 Recital 8 (adapted)

- (12) The arrangements governing exemptions from the visa requirement should fully reflect actual practices. Certain Member States grant exemption from the visa requirement for nationals of third countries included in the list of third countries whose nationals are required to be in possession of a visa when crossing the external borders of the

Member States 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 this Regulation.

*cc

Recital 12 of the proposal (recital 8 of 1932/2006)

DE: no formal changes, the original text should be kept.

" ... Certain Member States grant exemption from the visa requirement for nationals of third countries **listed in Annex I to this Regulation** who are members of the armed forces travelling on NATO or Partnership for Peace business...."

Cion cannot accept these changes. The reasons being those given for Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal on page 6.

Ⓔ 539/2001 Recital 9 (adapted)

- (13) With a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States should communicate to the Commission and to the other Member States the measures which they take pursuant to this Regulation. For the same reasons, that information should also be published in the *Official Journal of the European Union* .

Ⓔ 539/2001 Recital 5 second sentence (adapted)

- (14) A Community mechanism should be provided for enabling the principle of reciprocity to be implemented if one of the third countries included in the list of third countries whose nationals are exempt from the visa requirement decides to make the nationals of one or more Member States subject to the visa obligation.

*cc

Recital 14 of the proposal (recital 5 second sentence of 539/2001)

DE: no formal changes, the original text should be kept.

" Provision should be made for a Community mechanism enabling this principle of reciprocity to be implemented if one of the third countries included in **Annex II to this Regulation** decides to make the nationals of one or more Member States subject to the visa obligation."

Cion cannot accept these changes. The reasons being those given for Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal on page 6.

- (15) Given the seriousness of situations of non-reciprocity, it is essential that they should be notified without fail by the Member State(s) concerned. To ensure that the third country in question again applies visa-free travel to nationals of the Member States concerned, a mechanism should be provided for that combines measures at variable levels and intensities that can be rapidly carried out. Thus the Commission should take steps with the third country without delay, report to the Council and be able at any moment to propose that the Council adopt a temporary measure restoring the visa requirement for nationals of the third country in question. Resorting to such a temporary measure should not make it impossible to transfer the third country in question to the list of third countries the national of which are required to be in possession of a visa when crossing the external borders of the Member States, as set out in Annex I to this Regulation. A temporal link should also be provided between the entry into force of the temporary measure and any proposal to transfer the third country to the list in that Annex.

*cc

Article 15 of the proposal (recital 2 of 851/2005)

DE: no formal changes, the original text should be kept.

" 2) ... Thus the Commission should take steps with the third country without delay, report to the Council and be able at any moment to propose that the Council adopt a **provisional decision** restoring the visa requirement for nationals of the third country in question. Resorting to such a **provisional decision** should not make it impossible to transfer the third country in question to **Annex I of Regulation (EC) No 539/2001**. A temporal link should also be provided between the entry into force of the provisional measure and any proposal to [transfer the country to Annex I." (*DE version slightly different as translation reads "proposal to delete the third country and to include it in Annex I"*)] "

Cion cannot accept these changes. The reasons being those given for Recitals 2, 4, 6, 7, 8, 9, 10, 16, 17 and 20 of the proposal on page 6.

- (16) The conditions governing entry into the territory of the Member States or the issue of visas should not affect the rules currently governing recognition of the validity of travel documents.

Ⓔ 539/2001 Recitals 2 and 3
(adapted)

- (17) This Regulation follows on from the Schengen *acquis* in accordance with the Protocol integrating it into the framework of the European Union, hereinafter referred to as the ‘Schengen Protocol’. It should not affect Member States' obligations deriving from the *acquis* as defined in Annex A to Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen *acquis* for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the *acquis*⁶. This Regulation constitutes the further development of those provisions in respect of which closer cooperation has been authorised under the Schengen Protocol .

Ⓔ 851/2005 Recital 7

- (18) 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 association of those two States with the implementation, application and development of the Schengen *acquis*⁷, which fall 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 Agreement⁸.

Ⓔ 1932/2006 Recital 12

- (19) As regards Switzerland, this Regulation constitutes 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*, which falls within the area referred to in Article 1(B) of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC of 28 January 2008 on the conclusion 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*⁹.

Ⓔ 2414/2001 Recital 4 (adapted)

- (20) Pursuant to Article 1 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland and the United Kingdom are not participating in the adoption of this Regulation. Consequently, without prejudice to Article 4 of that

⁶ OJ L 176, 10.7.1999, p. 1.

⁷ OJ L 176, 10.7.1999, p. 36.

⁸ OJ L 176, 10.7.1999, p. 31.

⁹ OJ L 53, 27.2.2008 p. 1 .

Protocol, the provisions of this Regulation should not apply to Ireland or to the United Kingdom,

☐ CE 539/2001 (adapted)

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, ‘visa’ shall mean an authorisation issued by a Member State or a decision taken by such Member State which is required with a view to:

- (a) entry for an intended stay in that Member State or in several Member States of no more than three months in total;
- (b) entry for transit through the territory of that Member State or several Member States, except for transit at an airport.

Article 2

1. Nationals of third countries listed in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States.

☐ CE 1932/2006 Art. 1(1)(a)

2. 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 required to 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 to this Regulation.

☐ CE 539/2001 (adapted)
☒ 1 2414/2001 Art. 1 pt. 2

Article 3

☒ 1 Nationals of third countries listed in Annex II shall be exempt from the requirement set out in Article 2(1) for stays of no more than three months in all.

☐ CE 1932/2006 Art.1(1)(b) (adapted)

The following shall also be exempt from the visa requirement:

- (a) the nationals of third countries listed in Annex I to this Regulation who are holders of a local border traffic permit issued by the Member States pursuant to Regulation (EC) No 1931/2006 I when these holders exercise their right within the context of the local border traffic regime;

- (b) school pupils who are nationals of a third country listed in Annex I to this Regulation and who reside in a Member State applying Council Decision 94/795/JHA¹⁰ 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;
- (c) 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.

☒ 539/2001 (adapted)

Article 4

Nationals of new third countries formerly part of countries listed in Annexes I and II shall be subject respectively to the provisions of Articles 2 and 3 unless and until the Council decides otherwise under the procedure laid down in the relevant provision of the Treaty.

Article 5

1. A Member State may provide for exceptions from the visa requirement referred to in Article 2 or from the exemption from the visa requirement referred to in Article 3 as regards:

☒ 1932/2006 Art. 1(3)(a)

- (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 Council Regulation (EC) No 789/2001¹¹.

*cc

Article 5(1)(a) of the proposal

DE: the whole title of Regulation (EC) No 789/2001 should be reinstated.

"(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 **of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications.**"

Cion: with regard to enacting terms and annexes, the practice followed by the Commission is that of always giving titles of acts in a short form.

¹⁰ OJ L 327, 19.12.1994, p. 1.

¹¹ OJ L 116, 26.4.2001, p. 2.



☒ 539/2001

- (b) civilian air and sea crew;
 - (c) the flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident;
 - (d) the civilian crew of ships navigating in international waters;
 - (e) the holders of *laissez-passer* issued by some intergovernmental international organisations to their officials.
-

☒ 1932/2006 Art. 1(3)(b)
(adapted)

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 who 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;
 - (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 Organisation regarding the status of their forces.
-

☒ 539/2001

3. A Member State may provide for exceptions from the exemption from the visa requirement provided for in Article 3 as regards persons carrying out a paid activity during their stay.

☒ 539/2001 (adapted)

Article 6

1. Member States shall communicate to the Commission and to the other Member States the measures they take pursuant to Article 5, within five working days of the adoption of those measures .

*cc

Article 6(1) of the proposal

DE: no formal changes, the original text should be kept.

"1. Member States shall **communicate to the other Member States and the Commission** the measures they take pursuant to Article 5, within five working days of the adoption of those measures ."

Cion: accepts the DE suggestion.

☒ 539/2001

2. The Commission shall publish the measures communicated pursuant to paragraph 1 in the *Official Journal of the European Union* for information.

☒ 851/2005 Art. 1(1) (adapted)

Article 7

1. Where a third country listed in Annex II introduces a visa requirement for nationals of a Member State, the provisions set out in the second to fifth subparagraphs of this paragraph and in paragraphs 2 to 5 shall apply.

.Within 90 days of such introduction, or its announcement, the Member State concerned shall notify the Council and the Commission in writing; the notification shall be published in the C series of the *Official Journal of the European Union*. The notification shall specify 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 obligation before the expiry of that deadline, the notification shall become superfluous.

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 visa-free travel.

.Within 90 days after publication of that notification, the Commission, in consultation with the Member State concerned, shall report to the Council. The report may be accompanied by a proposal providing for the temporary restoration of the visa requirement for nationals of the third country in question. The Commission may also present this proposal after deliberations in Council on its report. The Council shall act on such proposal by a qualified majority within three months.

*cc

Article 7(1) fifth subparagraph

[Possible secondary legal basis]

2. If it considers it necessary, the Commission may present a proposal for the temporary restoration of the visa requirement for nationals of the third country referred to in the fifth subparagraph of paragraph 1 without a prior report. The procedure provided for in that subparagraph shall apply to that proposal. The Member State concerned may state whether it wishes the Commission to refrain from the temporary restoration of such visa requirement without a prior report.

3. The procedure referred to in the fifth subparagraph of paragraph 1 and in paragraph 2 shall not affect the Commission's right to present a proposal amending this Regulation in order to transfer the third country concerned to the list set out in Annex I.

Where a temporary measure as referred to in the fifth subparagraph of paragraph 1 and in paragraph 2 has been decided, the proposal amending this Regulation shall be presented by the Commission at the latest nine months after the entry into force of the temporary measure.

Such a proposal shall also include provisions for lifting of temporary measures, which may have been introduced pursuant to the procedures referred to in the fifth subparagraph of paragraph 1 and in paragraph 2. In the meantime the Commission shall continue its efforts in order to induce the authorities of the third country in question to reinstall visa-free travel for the nationals of the Member State concerned.

4. Where a third country listed in Annex II requiring a visa for nationals of a Member State abolishes the visa requirement, the Member State shall immediately notify the Council and the Commission to that effect.

The notification shall be published in the C series of the *Official Journal of the European Union*. Any temporary measure decided upon under paragraph 2 shall terminate seven days after the publication 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 the termination of the temporary measure shall only terminate after the last publication.

☒ 851/2005 Art. 1(2)

5. As long as visa exemption reciprocity continues not to exist with any third country listed in Annex II in relation to any of the Member States, the Commission shall report to the European Parliament and the Council before the 1 July of every even-numbered year on the situation of non-reciprocity and shall, if necessary, submit appropriate proposals.

Ⓔ 539/2001 (adapted)

Article 8

This Regulation shall not affect the competence of Member States with regard to the recognition of States and territorial units and passports, travel and identity documents issued by their authorities.

Ⓔ 1932/2006 Art. 2, second paragraph (adapted)

Article 9

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 Community with the third country in question.

Ⓔ

Article 10

Regulation (EC) No 539/2001 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

Ⓔ 2414/2001 Art. 1 pt. 3

Article 11

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

Ⓔ 539/2001 (adapted)

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
[...]*

ANNEX I

List of third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States

1. STATES

Afghanistan

Albania

Algeria

Angola

Armenia

Azerbaijan

Bahrain

Bangladesh

Belarus

Belize

Benin

Bhutan

☒ 1932/2006 Art. 1(4)(a)(i)

Bolivia

☒ 539/2001 (adapted)

Bosnia and Herzegovina

Botswana

Burkina Faso

Burundi

Cambodia

Cameroon
Cape Verde
Central African Republic
Chad
China
Colombia
Comoros
Congo
~~Côte d'Ivoire~~ Ivory Coast
Cuba
Democratic Republic of the Congo
Djibouti
Dominica
Dominican Republic

Ⓔ 1932/2006 Art. 1(4)(a)(iii)
(adapted)

East Timor

Ⓔ 453/2003 Art. 1 pt. 1(b)

Ecuador

Ⓔ 539/2001

Egypt
Equatorial Guinea
Eritrea
Ethiopia
Fiji
the former Yugoslav Republic of Macedonia
Gabon

Gambia
Georgia
Ghana
Grenada
Guinea
Guinea-Bissau
Guyana
Haiti
India
Indonesia
Iran
Iraq
Jamaica
Jordan
Kazakhstan
Kenya
Kiribati
Kuwait
Kyrgyzstan
Laos
Lebanon
Lesotho
Liberia
Libya
Madagascar
Malawi
Maldives

Mali

Marshall Islands

Mauritania

Micronesia

Ⓔ 539/2001 (adapted)

Republic of Moldova

Ⓔ 539/2001

Mongolia

Ⓔ 1932/2006 Art. 1(4)(a)(iv)

Montenegro

Ⓔ 539/2001 (adapted)

Morocco

Mozambique

Myanmar

Namibia

Nauru

Nepal

Niger

Nigeria

North Korea

Northern Marianas

Oman

Pakistan

Palau

Papua New Guinea

Peru

Philippines

Qatar

Russia

Rwanda

Saint Lucia

Saint Vincent and the Grenadines

☒ 1932/2006 Art. 1(4)(a)(v)

Samoa

☒ 539/2001

São Tomé and Príncipe

Saudi Arabia

Senegal

☒ 1932/2006 Art. 1(4)(a)(iv)

Serbia

☒ 539/2001 (adapted)

Sierra Leone

Solomon Islands

Somalia

South Africa

Sri Lanka

Sudan

Surinam

Swaziland

Syria

Tajikistan

Tanzania

Thailand

☒ 539/2001

Togo

Tonga

Trinidad and Tobago

Tunisia

Turkey

Turkmenistan

Tuvalu

Uganda

Ukraine

United Arab Emirates

Uzbekistan

Vanuatu

Vietnam

Yemen

Zambia

Zimbabwe

2. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE

Palestinian Authority

Taiwan

*cc

Annex I(2)

LUX: according to current practice certain Member States recognise Kosovo as an independent State whereas others don't. Given this situation Kosovo should appear on the list of Annex I(2) under "Entities and territorial authorities that are not recognised

as States by at least one Member State".

Cion: such change constitutes a substantive amendment of Regulation (EC) No 539/2001 not admissible in the context of a codification exercise.

Ⓔ 1932/2006 Art. 1(4)(b)

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

CE 539/2001 (adapted)

ANNEX II

List of third countries whose nationals are exempt from the visa requirement for stays of no more than three months in all

1. STATES

Andorra

CE 1932/2006 Art. 1(5)(a)(ii) and (iii) (adapted)

Antigua and Barbuda¹

CE 539/2001

Argentina

Australia

CE 1932/2006 Art. 1(5)(a)(ii) and (iii) (adapted)

The Bahamas²

Barbados³

CE 539/2001

Brazil

CE 1932/2006 Art. 1(5)(a)(iv) (adapted)

Brunei Darussalam

CE 539/2001 (adapted)

Canada

¹ 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 Community.

² 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 Community.

³ 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 Community.

Chile
Costa Rica
Croatia
El Salvador
Guatemala
the Holy See
Honduras
Israel
Japan
Malaysia

Ⓔ 1932/2006 Art. 1(5)(a)(ii) and
(iii) (adapted)

Mauritius⁴

Ⓔ 539/2001

Mexico
Monaco
New Zealand
Nicaragua
Panama
Paraguay

Ⓔ 1932/2006 Art. 1(5)(a)(ii) and
(iii) (adapted)

Saint Kitts and Nevis⁵

⁴ 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 Community.

⁵ 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 Community.

Ⓔ 539/2001 (adapted)

San Marino

Ⓔ 1932/2006 Art. 1(5)(a)(ii) and (iii) (adapted)

Seychelles⁶

Ⓔ 539/2001 (adapted)

Singapore

South Korea

United States

Uruguay

Venezuela

2. SPECIAL ADMINISTRATIVE REGIONS OF THE PEOPLE'S REPUBLIC OF CHINA

Hong Kong SAR ⁷

Macau SAR ⁸

Ⓔ 1932/2006 Art. 1(5)(b)

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)

⁶ 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 Community.

⁷ The visa requirement exemption shall only apply to holders of a 'Hong Kong Special Administrative Region' passport.

⁸ The visa requirement exemption shall only apply to holders of a 'Região Administrativa Especial de Macau' passport.

ANNEX III**Repealed Regulation with list of its successive amendments**

Council Regulation (EC) No 539/2001
(OJ L 81, 21.3.2001, p. 1)

Council Regulation (EC) No 2414/2001
(OJ L 327, 12.12.2001, p. 1)

Council Regulation (EC) No 453/2003
(OJ L 69, 13.3.2003, p. 10)

Act of Accession of 2003, Annex II, point 18(B)
(OJ L 236, 23.9.2003, p. 718)

*cc

Annex III (fourth entry)

CS: the particular provision from the Act of Accession should be specified. This entry should read:

Act of Accession of 2003, Annex II, point 18(B)**(2)**
(OJ L 236, 23.9.2003, p. 718)

Council Regulation (EC) No 851/2005
(OJ L 141, 4.6.2005, p. 3)

Council Regulation (EC) No 1791/2006
(OJ L 363, 20.12.2006, p. 1)

Only the eleventh indent of
Article 1(1) as regards
Regulation (EC) No 539/2001, and
point 11(B)(3) of the Annex

Council Regulation (EC) No 1932/2006
(OJ L 405, 30.12.2006, p. 23)

ANNEX IV

CORRELATION TABLE

| Regulation (EC) No 539/2001 | This Regulation |
|---|------------------------------------|
| Article 1(1), first subparagraph | Article 2(1) |
| Article 1(1), second subparagraph | Article 2(2) |
| Article 1(2), first subparagraph | Article 3(1) |
| Article 1(2), second subparagraph, introductory wording | Article 3(2), introductory wording |
| Article 1(2), second subparagraph, first indent | Article 3(2)(a) |
| Article 1(2), second subparagraph, second indent | Article 3(2)(b) |
| Article 1(2), second subparagraph, third indent | Article 3(2)(c) |
| Article 1(3) | Article 4 |
| Article 1(4), introductory wording | Article 7(1), first subparagraph |
| Article 1(4)(a), first and second sentence | Article 7(1), second subparagraph |
| Article 1(4)(a), third sentence | Article 7(1), third subparagraph |
| Article 1(4)(b) | Article 7(1), fourth subparagraph |
| Article 1(4)(c) | Article 7(1), fifth subparagraph |
| Article 1(4)(d) | Article 7(2) |
| Article 1(4)(e), first sentence | Article 7(3), first subparagraph |
| Article 1(4)(e), second sentence | Article 7(3), second subparagraph |
| Article 1(4)(e), third and fourth sentences | Article 7(3), third subparagraph |
| Article 1(4)(f), first sentence | Article 7(4), first subparagraph |
| Article 1(4)(f), second and third sentences | Article 7(4), second subparagraph |

*cc

Annex IV (entry just above this comment box)

CS: the entry should read:

"Article 1(4)(f), second, third **and fourth** sentences"

Article 1(5)

Article 2, introductory wording

Article 2, first indent

Article 2, second indent

Article 4

Article 5

Article 6

Article 7

-

-

Article 8

Annex I

Annex II

-

-

Article 7(5)

Article 1, introductory wording

Article 1(a)

Article 1(b)

Article 5

Article 6

Article 8

-

Article 9

Article 10

Article 11

Annex I

Annex II

Annex III

Annex IV