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NOTE

from: Presidency
to: Delegations

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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

Following the JHA Counsellors meeting on 14 June 2012, the Presidency had a technical meeting on 15 June 2012 and a political trilogue on 18 June 2012 with the European Parliament (EP) focusing solely on the reciprocity mechanism (Article 1(1)(b)).

During negotiations with the EP, the Presidency has defended the use of a comitology procedure. It has been stressed e.g. that even though it may be possible legally to use delegated acts for the reciprocity mechanism, since the legislature has a considerable margin of discretion in determining the essential and non-essential elements of the acts it adopts, that would not be the most appropriate procedure. Furthermore, during the negotiations the Presidency as well as the Commission has stated that both institutions could accept a certain degree of automatism in the procedure as long as it is absolutely clear that there will be no automatic reintroduction of the visa requirement towards a third country not respecting the principle of reciprocity. The only 'automatic' element would be for the Commission to put forward a proposal.

The Presidency's compromise proposal, which is based on comitology, is included in Annex II.

The EP continues to insist that the EP and the Council should be involved in the different phases of the procedure on an equal footing, i.e. by introducing a text based on Article 290 TFEU (delegated acts), with the approach that where the Commission adopts a delegated act, that act enters into force only if no objection is expressed by the EP or the Council within a deadline. With a view to further discussions, the EP has suggested a draft compromise text whereby:

- the Member State concerned shall notify the EP, the Council and the Commission within 30 days following the introduction of a visa requirement by a third country;
- if within 30 days following the date of publication of the Member State's notification the third country has not lifted the visa obligation, the Member State concerned may request the Commission to propose to suspend the exemption from the visa requirement for the nationals of the third country concerned:
- at the latest 30 days following the receipt of a request from a Member State, the Commission (i) *may* adopt a delegated act restoring temporarily the visa requirement for nationals of the third country in question; or (ii) shall submit a report assessing the situation and containing the reasons why it does not propose to suspend the exemption of the visa requirement to the EP and Council;
- if within 90 days following the receipt of this request, the third country has not lifted the visa requirement, the Commission *shall* adopt without delay a delegated act restoring temporarily the visa requirement for nationals of the third country in question. The delegated act shall enter into force only if no objection has been expressed either by the EP or the Council within a period of 30 days of notification of that act by the Commission;
- if within 2 years following the date of publication of the Member State's notification the third country has not lifted the visa obligation, the Commission shall submit a report to the EP and to the Council. The report *shall* be accompanied by a legislative proposal to amend this Regulation by transferring the reference to the third country concerned from Annex II to Annex I.

Furthermore, the EP also proposes to list countries for whose nationals' visa requirement has been temporarily restored in a new Annex III to 539/2001.

The EP's compromise proposal is included in Annex I.

It should be emphasised that during the political trilogue it has not been discussed what should be the deadlines for certain actions, e.g. 30 days vs. 90 days etc. However, the Presidency attaches importance to the fact that the EP's proposal provides that not earlier than after two years following the original notification, the Commission shall present a legislative proposal to transfer the reference to the third country concerned from Annex II to Annex I.

CONCLUSION

In order to make further progress in the negotiations, the Presidency invites delegations to consider the two compromise proposals, in particular the possible use of delegated powers and the various deadlines e.g. if it would be acceptable to shorten some of the deadlines in order to meet the EP. Delegations are also invited to consider the suggested introduction of a new annex III.

Compromise suggestion made by the Rapporteur

The proposed final compromise text reads as follows:

Article 1(4)

4. Where a third country listed in Annex II introduces, reintroduces or maintains a visa requirement for nationals of a Member State, the following provisions shall apply:

(a) within 30 days of such introduction, or in cases where the requirement is maintained, within 30 days of the date of entry into force of this Regulation, the Member State concerned shall notify the European Parliament, the Council and the Commission in writing; this notification shall include a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to restoring visa-free travel with the third country in question and shall include all relevant information; 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 this deadline, the notification becomes superfluous;

(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 visa-free travel and shall inform the European Parliament and the Council about the status of the negotiations *without delay*;

(c) [...] If within 30 days following the date of publication of the Member State's notification the third country has not lifted the visa obligation, the Member State concerned may request the Commission to propose to suspend the exemption from the visa requirement for the nationals of the third country concerned. Where a Member State makes such a request, it shall inform the European Parliament thereof. The Commission shall examine the notification and the request, taking into account 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.

At the latest 30 days following the receipt of this request, the Commission:

(i) may adopt a delegated act in accordance with Article Y restoring temporarily the visa requirement for nationals of the third country in question by adding it in Annex III; or

(ii) shall submit a report assessing the situation and containing the reasons why it [...] does not propose to suspend the exemption of the visa requirement to Council and the European Parliament.

d) [...] If within 90 days *following the receipt of this request*, the third country has not lifted the visa requirement, the Commission, in consultation with the Member State concerned, shall *adopt without delay a delegated act in accordance with Article Y restoring temporarily* the visa requirement for nationals of the third country in question by adding it in Annex III.

Where, in the case of a decision restoring the visa requirement for nationals of the third country in question, imperative grounds of urgency so require, the procedure provided for in Article Ya shall apply to delegated acts adopted pursuant to this Article.

e) where the third country in question abolishes the visa requirement, the Member State shall immediately notify *the European Parliament*, 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 measure decided upon under subparagraph (c)(i) (d) 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 measure will only terminate after the last publication.

f) If within [2] years following the date of publication of the Member State's notification the third country has not lifted the visa obligation, the Commission shall submit a report to the European Parliament and to the Council. The report shall be accompanied by a legislative proposal to amend this Regulation by transferring the reference to the third country concerned from Annex II to Annex I.

The delegated act referred to in Article 1(4)(c)(i) and 1(4)(d) shall remain in force until the European Parliament and the Council have adopted an amendment to this Regulation pursuant to the previous subparagraph.

Article Y

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 1(4)(c)(i) and 1(4)(d) shall be conferred on the Commission for a period of 5 years from XX (entry into force of this Regulation). The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than four months before the end of each period.

3. The delegation of power referred to in Articles 1(4)(c)(i) and 1(4)(d) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 1(4)(c)(i) and 1(4)(d) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 30 days of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.

Article Ya

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article Y(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.

Recital 8a

The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of decisions restoring temporarily the visa requirements for nationals of third countries listed in Annex II which introduce, reintroduce or maintain a visa requirement for nationals of a Member State. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Annex III

Third countries temporarily subject to the restoration of visa requirements pursuant to Articles 1(4)(c)(i) and 1(4)(c)(d)

F.ex. Maldives (from 11/11/2012)

Amendment to Regulation (EC) 539/01 - Interinstitutional file 2011/0138 (COD)

Compromise wording suggested by the Presidency concerning Art.1(4)(c) of Regulation 539/01

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

(a) within **90** days of such introduction or its announcement or, in cases where the requirement is maintained, within 90 days of the date of entry into force of this Regulation, the Member State(s) concerned shall notify the European Parliament, the Council and the Commission in writing.

This notification:

- shall include a detailed explanation of the preliminary measures that the Member State(s) concerned has taken with a view to restoring visa-free travel with the third country in question and all relevant information;
- shall be published without delay by the Commission in the C series of the Official Journal of the European Union and 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 this deadline, the notification becomes superfluous;

(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 at the earliest opportunity;

(c) if within **90** days following the date of publication of the Member State(s) notification 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 submit a proposal for suspending the exemption from the visa requirement for the nationals of the third country concerned.

Where a Member State makes such a request, it shall inform the European Parliament thereof. The Commission shall examine the notification and the request, taking into account 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.

Within **90** days following the receipt of this request and, in the absence of such request, within six months following the date of publication of the Member State's notification, the Commission:

- (i) may adopt an implementing decision suspending the exemption from the visa requirement for the nationals of the third country concerned or for certain categories of these nationals for a period of six months at the request of the Member State concerned or at its own initiative; this implementing decision shall be adopted in accordance with the examination procedure referred to in Article 4a(2); the implementing decision shall determine a date within 90 days on which the suspension of the exemption of the visa requirement is to take effect taking into account the available resources in the consulates of the Member States; or
- (ii) shall submit a report assessing the situation and containing the reasons why it does not propose to suspend the exemption of the visa requirement to the committee referred to in Article 4a(1) and shall inform the European Parliament thereof.

(d) If the third country concerned has not lifted the visa requirement in the case referred to in point (c)(ii), the Commission, in cooperation with the Member State concerned, shall report to the committee referred to in Article 4a(1) at the latest six months after the publication of the report referred to in point (c)(ii), and every six months thereafter. The Commission may, on the basis of such report, adopt an implementing decision referred to in point (c)(i) and shall inform the European Parliament thereof.

(e) If within **two years** following the date of publication of the Member State(s)' notification the third country has not lifted the visa obligation and if no implementing decision pursuant to points (c)(i) or (d) has been adopted the Commission shall submit a report to the European Parliament and the Council. The Commission shall at the same time submit a proposal for an implementing decision suspending the exemption from the visa requirement for the nationals of the third country concerned or for certain categories of these nationals for a period of six months.

This implementing decision:

- shall be adopted in accordance with the examination procedure referred to in Article 4a(2);
- shall determine a date within 90 days on which the suspension of the exemption of the visa requirement is to take effect taking into account the available resources in the consulates of the Member States;

(f) Where an implementing decision has been adopted pursuant to points (c)(i), (d) or (e), the Commission may extend its validity for six months, in accordance with the examination procedure referred to in Article 4a(2).

(g) Before the end of the period of validity of the implementing decision adopted pursuant to points (c)(i), (d) or (e) or its extension adopted pursuant to point (f), the Commission shall submit a report to the European Parliament and to the Council. The report shall be accompanied by a legislative proposal for amending this Regulation in order to transfer the reference to the third country concerned to Annex I. The European Parliament and the Council shall act on such proposal by the ordinary legislative procedure.

(h) The procedures referred to in points (c) to (f) 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;

(i) where the Commission has proposed to transfer the reference to the third country concerned to Annex I pursuant to point (g) and (h), it can extend the validity of the implementing decision adopted pursuant to point (e) for a period of maximum twelve months. The decision to extend the validity of the implementing decision shall be adopted in accordance with the examination procedure referred to in Article 4a(2).

(j) Where the third country in question abolishes 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 implementing decision adopted pursuant to points (ci), (d), (e) and (f) 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 implementing decision adopted pursuant to points (ci), (d), (e) and (f) shall only terminate after the publication of the last notification.
