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**A7-0000/2012**

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**\*\*\*I**

## **ORIENTATION VOTE RESULT**

on the proposal for a 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 (COM(2011)0290 – C7-0135/2011 – 2011/0138(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Agustín Díaz de Mera García Consuegra

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in bold. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a 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 (COM(2011)0290 – C7-0135/2011 – 2011/0138(COD))**

**(Ordinary legislative procedure: first reading)**

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0290),
  - having regard to Article 294(2) and Article 77(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0135/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### Amendment 1

#### Proposal for a regulation

##### Recital 1

*Text proposed by the Commission*

(1) This Regulation establishes a visa safeguard clause allowing the rapid, temporary suspension of the visa waiver for a third country *on the positive list* in case of an emergency situation, where an urgent response is needed in order to

*Amendment*

This Regulation establishes, *as a last resort a mechanism for* the rapid and temporary suspension of the visa waiver for a third country *listed in Annex II of Regulation (EC) No 539/2001* in case of an emergency *situation arising in connection with the*

resolve the difficulties faced by one or more Member States, and taking account of the overall impact of the emergency situation on the European Union as a whole.

***third country***, where an urgent response is needed in order to resolve the difficulties faced by one or more Member States, and taking account of the overall impact of the emergency situation on the European Union as a whole ***and in the third country in question.***

## Amendment 2

### Proposal for a regulation Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(1 a) Any suspension of the visa waiver should be based on a thorough examination of the circumstances of the third country concerned and be justified by objective criteria as set in this Regulation in order to ensure consistency, transparency and better decision making.***

## Amendment 3

### Proposal for a regulation Recital 2

*Text proposed by the Commission*

*Amendment*

(2) In order to ensure uniform conditions for the implementation of the ***visa safeguard clause***, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

(2) In order to ensure uniform conditions for the implementation of the ***suspension mechanism***, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

## Amendment 4

### Proposal for a regulation Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) The European Parliament, as the institution representing the European public, should be invited to attend the meetings of the committee responsible for examining requests for suspension.***

*Justification*

*The European Parliament, as the only institution directly elected by the European public, must be invited to attend the entire comitology proceedings.*

## **Amendment 5**

### **Proposal for a regulation**

#### **Recital 3**

*Text proposed by the Commission*

*Amendment*

(3) The mechanism regarding reciprocity to be implemented if one of the third countries included in Annex II to Regulation (EC) No 539/2001 decides to make the nationals of one or more Member States subject to the visa obligation needs to be adapted to the entry into force of the Lisbon Treaty in combination with the case law of the Court on secondary legal bases.

(3) The mechanism regarding reciprocity to be implemented if one of the third countries included in Annex II to Regulation (EC) No 539/2001 decides to make the nationals of one or more Member States subject to the visa obligation needs to be adapted to the entry into force of the Lisbon Treaty in combination with the case law of the Court ***of Justice of the European Union*** on secondary legal bases. ***In addition, the mechanism needs to be adapted to provide for a Union answer as an act of solidarity, 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 visa requirements.***

*Justification*

*This is a technical modification intended only to specify which court has jurisdiction in this area and settle any possible controversy. To demand a Community answer principles such as solidarity, equality and mutual trust among Member States are being respected. Such an*

*approach shall allow the EU to act as one actor on the international scene, promoting and protecting fundamental values that are at its core.*

#### **Amendment 6**

##### **Proposal for a regulation**

##### **Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) The reciprocity mechanism should be applicable in cases where a third country listed in Annex II of Regulation (EC) No 539/2001 introduces, reintroduces or maintains visa requirements for the nationals of a Member State.***

#### **Amendment 7**

##### **Proposal for a regulation**

##### **Recital 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***(3b) Upon receipt of a notification from a Member State that a third country listed in Annex II to this Regulation has decided to introduce visa requirements for that Member State's nationals, all Member States should react in common, thus providing a Community response to a situation which affects the Union in its entirety and allows for its citizens to be subjected to differing treatments.***

#### **Amendment 8**

##### **Proposal for a regulation**

##### **Recital 3 c (new)**

*Text proposed by the Commission*

*Amendment*

***(3c) Full visa reciprocity is an objective which the Union should pursue in a proactive manner in its relations with third countries, thus contributing to improving of the credibility and consistency of the Union's external policy***

*at international level.*

*Justification*

*To ensure consistency with the European Parliament declaration of March 2011, it is necessary to refer specifically to the substance thereof*

**Amendment 9**

**Proposal for a regulation**

**Recital 3 d (new)**

*Text proposed by the Commission*

*Amendment*

***(3 d) Notwithstanding the reciprocity mechanism, it is essential that the Commission discusses and negotiates matters relating to visa policy in an open and transparent manner, without using the threat of restoration of visa requirements.***

*Justification*

*It is essential for the maintenance of good bilateral relations between the EU and its partners in the world that the EU refrains from using its visa policy as a tool to pressure third countries to change their visa policies.*

**Amendment 10**

**Proposal for a regulation**

**Recital 3 e (new)**

*Text proposed by the Commission*

*Amendment*

***(3e) It is necessary to keep in mind the content of the declaration of the European Parliament of 8 March 2011 on the restoration of reciprocity in the visa regime calling on the Commission to establish 'a new mechanism that guarantees full visa reciprocity for all Member States while ensuring that, if a non-EU country breaches that visa reciprocity, all Member States will***

***immediately restore the visa requirement for nationals of that country.***

## **Amendment 11**

### **Proposal for a regulation Recital 6**

#### *Text proposed by the Commission*

(6) As Regulation (EC) No 1932/2006 on the visa rules applicable for refugees and stateless persons does not apply to such persons when they are residing in the United Kingdom or Ireland, it is necessary to clarify the situation concerning the visa requirement for certain refugees and stateless persons who reside in the United Kingdom or in Ireland. This Regulation ***leaves Member States free to decide on visa exemption or obligation for*** that category of persons. ***Such national decisions shall be notified to the Commission.***

#### *Amendment*

(6) As Regulation (EC) No 1932/2006 on the visa rules applicable for refugees and stateless persons does not apply to such persons when they are residing in the United Kingdom or Ireland, it is necessary to clarify the situation concerning the visa requirement for certain refugees and stateless persons who reside in the United Kingdom or in Ireland. This Regulation ***exempts*** that category of persons ***from the visa requirement.***

## **Amendment 12**

### **Proposal for a regulation Recital 7**

#### *Text proposed by the Commission*

(7) Having regard to certain obligations on the Member States under international agreements concluded by the Community before the entry into force of Regulation (EC) No 539/2001 which imply the need to derogate from the common visa rules, this Regulation introduces a provision allowing Member States to exempt persons providing services during their stay from the visa requirement, to the extent necessary to respect those obligations.

#### *Amendment*

(7) Having regard to certain obligations on the Member States under international agreements concluded by the Community before the entry into force of Regulation (EC) No 539/2001 which imply the need to derogate from the common visa rules, this Regulation introduces a provision allowing Member States to exempt persons providing services during their stay from the visa requirement, to the extent necessary to respect those obligations, ***while fully taking into account the judgments of the Court of Justice of the European Union.***

## Amendment 13

### Proposal for a regulation Recital 8

*Text proposed by the Commission*

(8) This Regulation provides a legal basis for the visa requirement or exemption of holders of *laissez-passer, diplomatic or service passports* issued by certain entities subject to international law which are not international intergovernmental organisations.

*Amendment*

(8) This Regulation provides a legal basis for the visa requirement or exemption of holders of *travel documents* issued by certain entities subject to international law which are not international intergovernmental organisations.

*Justification*

*It is necessary to ensure consistency with recently adopted legislative acts and avoid excluding any other documents.*

## Amendment 14

### Proposal for a regulation Article 1 – point 1 – point a – point ii

*Text proposed by the Commission*

*(ii) in the second subparagraph, the following indents are added:*

- “civilian air crew members;*
- civilian sea crew members when they go ashore who hold a seafarer’s identity document issued in accordance with the International Labour Organisation Conventions (No 108 of 1958 and No 185 of 2003) or the IMO London Convention of 1965 (FAL) on the facilitation of international maritime traffic.”*

*Amendment*

*deleted*

*Justification*

*The existing system, under which Member States may already at present exclude the groups referred to here from visa requirements (Article 4 of the Regulation), has worked well, and no problems are known. The proposed amendment would not entail any further harmonisation.*

## Amendment 15

### Proposal for a regulation

#### Article 1 – point 1 – point a – point ii – indent 2 a (new)

*Text proposed by the Commission*

*Amendment*

*- recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by the United Kingdom or Ireland.*

#### *Justification*

*Recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by the United Kingdom or Ireland should be exempted from the visa requirement.*

## Amendment 16

### Proposal for a regulation

#### Article 1 – point 1 – point b

*Text proposed by the Commission*

*Amendment*

(b) *in* paragraph 4 *point (c)* is replaced by the following:

(b) paragraph 4 is replaced by the following:

**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 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 concerned shall notify the European Parliament, 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 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 at the earliest opportunity;**

(c) within **90** days after publication of that notification, the Commission, in consultation with the Member State concerned, shall report to the European Parliament and 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 the European Parliament and the Council on its report. The European Parliament and the Council shall act on such proposal by the ordinary legislative procedure.***

(c) within **45** days after publication of that notification, the Commission, in consultation with the Member State concerned, shall report to the European Parliament and the Council. ***If within 45 days of the date of publication of that notification, the third country concerned has not lifted the visa requirement, the Commission, in consultation with that Member State, shall propose the restoration of the visa requirement for nationals of the third country in question. If within 90 days of the date of publication of that notification, the third country has not lifted the visa requirement, the Commission's proposal providing for the restoration of the visa requirement for nationals of the third country in question shall be deemed to have been adopted, unless the Council, acting by qualified majority, and the European Parliament, acting by absolute majority, decide to reject the proposal beforehand.***

***(d) where the third country in question 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 measure***

*decided upon under subparagraph (c) 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.*

## Amendment 17

### Proposal for a regulation Article 1 – point 2

*Text proposed by the Commission*

Article 1a – *Safeguard clause*

*Amendment*

Article 1a – *Suspension mechanism*

## Amendment 18

### Proposal for a regulation Article 1 – point 2

*Text proposed by the Commission*

1. Paragraphs 2 to 5 of this Article shall apply in the event of one or more Member States being confronted by an emergency situation characterised by the occurrence of any of the following:

- (a) a sudden increase *of at least 50%*, over a six month period, in the number of nationals of a third country listed in Annex II found to be *illegally* staying in the Member State's territory, in comparison with the previous *six month period*;
- (b) a sudden increase *of at least 50%*, over a six month period, in comparison with the *previous six*

*Amendment*

1. Paragraphs 2 to 5 of this Article shall apply, *as a last resort, based on objective criteria to ensure consistency and transparency, namely* in the event of one or more Member States being confronted by an emergency situation characterised by the occurrence of any of the following:

- (a) a sudden *and substantial* increase, *which has a serious impact on the overall migratory situation in the Member States concerned*, over a six month period, in the number of nationals of a third country listed in Annex II found to be *irregularly* staying in the Member State's territory, in comparison with the *same period in the previous year*.
- (b) a sudden *and substantial* increase, *which has a serious impact on the overall asylum system in the Member States*

*month period*, in the number of asylum applications from the nationals of a third country listed in Annex II for which the recognition rate of asylum applications was less than 3% over *that previous six month period*;

- (c) a sudden increase *of at least 50%*, over a six month period, in the number of rejected readmission applications submitted by a Member State to a third country listed in Annex II for its own nationals, in comparison with the *previous six month period*.

2. A Member State which is confronted by any of the emergency situations described in paragraph 1 may notify the Commission. This notification shall be duly motivated and shall include relevant data and statistics as well as a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to remedying the situation.

3. The Commission shall examine the notification taking into account *the number of Member States affected by any of the situations described in paragraph 1 and the overall impact of the increases on the migratory situation in the Union as the latter appears from the data provided by the Member States as well as from reports prepared by FRONTEX and/or the European Asylum Support Office, and, within three months following receipt thereof, the Commission may adopt an implementing decision suspending the exemption of visa requirement for the*

*concerned*, over a six month period, in comparison with the *same period in the previous year*, in the number of asylum applications from the nationals of a third country listed in Annex II for which the recognition rate of asylum applications was less than 3% over the *same period in the previous year*.

- c) a sudden *and substantial* increase, *which has a serious impact on the overall migratory situation in the Member States concerned*, over a six month period, in the number of rejected readmission applications submitted by a Member State to a third country listed in Annex II for its own nationals, in comparison with the *same period in the previous year*

2. A Member State which is confronted by any of the emergency situations described in paragraph 1 may notify the Commission. This notification shall be duly motivated and shall include relevant data and statistics as well as a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to remedying the situation. *The Commission shall inform the European Parliament and the Council immediately after receiving such notification by the Member State concerned.*

3. The Commission shall *inform the European Parliament and the Council without delay of the notification received by the Member States concerned and* examine the notification taking into account:  
- *whether the increase is in line with subparagraphs (a), (b) and (c) of paragraph 1;*  
- *whether or not this increase takes into consideration substantive factors affecting the specific circumstances of the notifying Member State;*  
- *the number of Member States affected*

*nationals of the third country concerned for a period of six months. The implementing decision shall be adopted in accordance with the procedure referred to in Article 4a (2). The implementing decision shall determine the date on which the suspension of the exemption of visa requirement is to take effect.*

*by any of the situations described in paragraph 1;*  
*- the overall impact of the increases on the migratory situation in the Union as the latter appears from the data provided by the Member States;*  
*- the reports prepared by European External Action Service and / or FRONTEX and/or the European Asylum Support Office and / or Europol if circumstances so require in the specific case notified. Within three months following receipt thereof, the Commission shall send the results of its examination to the European Parliament and the Council, which shall have a maximum one month in which to express their opinion.*

*3a. The Commission shall take into account the specific situation of the third country concerned, the impact of such suspension on the country itself, and on the Union's relations with that third country, and work in close cooperation with that third country to find alternative long-term solutions.*

*3b. Following an evaluation of the above factors, the Commission may, within three months following receipt of the notification, decide to suspend the exemption of the visa requirement for the nationals of the third country concerned for a period of six months. The implementing decision shall be adopted in accordance with the procedure referred to in Article 4a(2). The implementing decision shall determine the date on which the suspension of the exemption of visa requirement is to take effect.*

4. Before the end of the period of validity of the implementing decision adopted pursuant to paragraph 3, the Commission, in cooperation with the Member State(s) concerned, shall submit a report to the European Parliament and the Council. The

4 Before the end of the period of validity of the implementing decision adopted pursuant to paragraph 3(a), the Commission, in cooperation with the Member State(s) concerned, shall submit a report to the European Parliament and the

report may be accompanied by a proposal amending this Regulation in order to transfer the third country concerned to Annex I.

5. Where the Commission has proposed an amendment to this Regulation in order to transfer a third country to Annex I pursuant to paragraph 4, it can extend the validity of the implementing decision adopted pursuant to paragraph 3 for a period of maximum nine months. The decision to extend the validity of the implementing decision shall be adopted in accordance with the procedure referred to in Article 4a (2).

## Amendment 19

### Proposal for a regulation

#### Article 1 – point 4

##### *Text proposed by the Commission*

4. Article 4 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. A Member State may provide for exceptions from the visa requirement provided for by Article 1 (1) or from the exemption from the visa requirement provided for by Article 1 (2) as regards:

(a) holders of diplomatic passports, service/official passports or special passports;

(b) the civilian crew of ships navigating in international waters;

(c) the holders of *laissez-passer, diplomatic or service passports* issued by some intergovernmental international organisations or by other entities subject to

Council. The report may be accompanied by a proposal amending this regulation in order to transfer the third country concerned to Annex I.

5. Where the Commission has proposed an amendment to this Regulation in order to transfer a third country to Annex I pursuant to paragraph 4 it can extend the validity of the implementing decision adopted pursuant to paragraph 3(a) for a period of maximum nine months. The decision to extend the validity of the implementing decision shall be adopted in accordance with the procedure referred to in Article 4a (2).

##### *Amendment*

4. Article 4 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. A Member State may provide for exceptions from the visa requirement provided for by Article 1 (1) or from the exemption from the visa requirement provided for by Article 1 (2) as regards:

(a) holders of diplomatic passports, service/official passports or special passports;

**(aa) crew and attendants on emergency or rescue flights and other helpers in the event of a disaster or accident;**

(b) the civilian crew of ships navigating in international waters;

(c) the holders of *travel documents* issued by some intergovernmental international organisations or by other entities subject to international law to their officials."

international law to their officials."

(b) in paragraph 2 the following point (d) is added:

"(d) recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by those Member States".

*(c) A new paragraph 4 is added:*

*"To the extent imposed by the application of Article 41(1) of the Additional Protocol to the Association Agreement between Turkey and the EC, a Member State may provide for exceptions from the visa requirement provided for by Article 1(1), as regards Turkish nationals providing services during their stay."*

(b) in paragraph 2 the following point (d) is added:

"(d) recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by those Member States".

#### *Justification*

*Deletion of the provision originally laid down in Regulation (EC) No 539/2001 makes no sense since it could give rise to absurd situations in which a visa is required of persons who, although risking their lives, are nonetheless prepared to help other Member States in cases of disaster. With regard to the case of Turkey and travel documents, please refer to the justifications to amendments 7 and 8.*

#### **Amendment 20**

##### **Proposal for a regulation**

##### **Article 1 – point 4**

*Text proposed by the Commission*

*Amendment*

*(aa) crew and attendants on emergency or rescue flights and other helpers in the event of a disaster or accident;*

#### *Justification*

*Member States should continue to be allowed to exempt this group of people from visa requirements.*

## Amendment 21

### Proposal for a regulation Article 1 – point 4 – point a

*Text proposed by the Commission*

*Amendment*

*(aa) civilian air and sea crew members in the performance of their duties;*

## Amendment 22

### Proposal for a regulation Article 1 – point 4 – point b

*Text proposed by the Commission*

*Amendment*

*(b) in paragraph 2 the following point (d) is added:* *deleted*

*‘(d) recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by those Member States’*

### *Justification*

*Recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by the United Kingdom or Ireland should be exempted from the visa requirement.*

## Amendment 23

### Proposal for a regulation Article 1 – point 4 – point c

*Text proposed by the Commission*

*Amendment*

To the extent imposed by the application of Article 41(1) of the Additional Protocol to the Association Agreement between Turkey and the EC, a Member State *may* provide for exceptions from the visa requirement provided for by Article 1(1),

To the extent imposed by the application of Article 41(1) of the Additional Protocol to the Association Agreement between Turkey and the EC, a Member State *shall* provide for exceptions from the visa requirement provided for by Article 1(1),

as *regards Turkish nationals providing services during their stay.*

as *decided by the Court of Justice of the European Union.*

*Justification*

*This amendment takes into account previous and future judgements of the ECJ, Member States have an obligation to follow the rulings of the ECJ.*

## **EXPLANATORY STATEMENT**

Regulation (EC) No 539/2001 lists the third countries whose nationals must be in possession of visas when crossing the Union's external borders and those whose nationals are exempt. That Regulation lays down the conditions under which nationals of third countries may benefit from the visa waiver for short stays on Union territory.

The decision on waivers is taken after carrying out an assessment of the country concerned in relation to clandestine immigration, public order and security, the European Union's external relations, regional coherence and the principle of reciprocity.

The objectives of the proposed amendment to Regulation No 539/2001 under review are to provide for a safeguard clause allowing the rapid, temporary suspension of the visa waiver in case of an emergency situation; to modify the reciprocity mechanism; to establish definitions in line with the Community Code on Visas; to lay down the conditions governing visa exemption for citizens of a third country, refugees and stateless persons, certain categories of nationals of a non-Community country and holders of laissez-passers and passports issued by entities subject to international law; and finally to address Member States' obligations under international agreements.

### **RAPPORTEUR'S REMARKS**

Even if it is confined to an overview of the situation, this report should reflect an objective approach to all the elements considered, taking into account not only the Community perspective but also the position of countries that do not belong to the European Union.

It would be contradictory to regard visas as a necessary instrument for controlling growing irregular immigration within the Union whilst at the same time being surprised that non-Community countries might impose the same requirement for the same purpose.

The common visa policy is a basic feature in the field of immigration that grants visas a key role as an instrument for controlling irregular immigration.

The proposed amendment to the regulation represents the Commission's response to the recent misuse of the Community visa system. It has become clear that a significant number of third-country citizens have taken advantage of the visa waiver to travel to Union territory to apply for international protection with little justification.

Far from restricting itself to laying down purely technical provisions, the Commission proposal contains politically significant measures. With the introduction of the safeguard clause, together with the reciprocity mechanism, instruments will be available whose activation may affect the EU's international relations.

With regard to the terminology, the European Parliament has already highlighted the need on several occasions for immigration to be described using the terms 'irregular' or 'clandestine' rather than 'illegal', where it takes place in a manner that does not comply with the relevant legislation in the Member States.

**Safeguard clause:** a more accurate term should be used to describe this instrument, since its objective is to ‘suspend’ the visa waiver when certain circumstances arise. It would perhaps be better to use a different wording such as ‘suspension clause or mechanism’, or simply to delete the current term.

The wording of the clause itself also raises a number of questions. First of all it needs to be specified whether its activation must comply with strict criteria, as proposed by the Commission, or whether it could be triggered more flexibly, as proposed by some of the Member States.

It seems clear that the mechanism should only be triggered in very specific emergency situations in which a ‘substantial’ and sudden increase has been detected in the number of irregular immigrants or the number of unfounded applications for international protection.

The decision as to when the increase is at a sufficient level, and thus when the suspension of visa waiver should be granted, will be taken not only because the percentages set out in the proposed amendment of Regulation 539/2001 have been reached, but where the case-by-case assessment process makes it advisable. To this end, the Commission will need to consider the notification made by the Member State concerned, the data and statistics provided, the reports drawn up by Frontex, the European Asylum Support Office or Europol, depending on what is required by the specific circumstances of the case, as well as the overall impact that the increased migration would have for the European Union.

In this light, using percentages as an objective element when the assessment procedure is launched is not entirely inappropriate. However, the percentages should be used exclusively for that purpose, i.e. to initiate the assessment process. Only after having carried out a full assessment of each case should the Commission decide whether the circumstances considered provide a sufficient basis to grant the suspension of the visa waiver. Such circumstances should involve a 'substantial' increase in the figures relating to irregular immigration or applications for international protection by comparison with the previous year.

With regard to the comitology procedure, it would be desirable if Parliament could take part in the procedure from the time when the Commission first decides to consider the request made by any of the Member States, a request which should moreover also be forwarded to Parliament. This means that Parliament should be informed at the same time as the Commission when a Member State submits a request for suspension, and not only when the start of the comitology process is announced.

**With regard to reciprocity:** this is one of the principles that inspired the common visa policy, i.e. a third country that benefits from the visa waiver must extend the same treatment to European Union citizens.

However, even though this principle provides a basis for policy in this field, it should not be used as an argument with which to call into question the fairness of a visa obligation imposed on citizens of a Member State by a third country, where that country considers the Member State concerned to have become a source of irregular immigration.

On this point it is necessary to reflect on the reasons for which Community citizens apply for

international protection outside the European Union. Whether or not it is true that the majority of such applications are based on purely economic criteria, linked to the expectations created by generous asylum arrangements, it is nevertheless important to recognise the need to strengthen European systems for integrating minorities, a field for which the Member States are responsible and which should perhaps be the subject of joint action and a shared approach in the European Union.

With regard to reciprocity itself, it is clear that, despite the Commission's statements, the current system amended by Regulation 851/2005 is not effective. Even though there is no need to reintroduce the automatic mechanism originally provided for in Regulation 539/2001, it is necessary to carry out an in-depth review of the current mechanism with the aim of guaranteeing united action and solidarity among the Member States. Other considerations such as the European Union's trade relations should not jeopardise the basic pillars of the common visa policy.

In this connection it is important to achieve the objectives of Written Declaration 2011/2053, adopted in March 2011, in which Parliament called on the Commission and Council to exert pressure on third countries which do not comply with the reciprocity regime, highlighting the need to reimpose a visa requirement where no positive response is forthcoming from the country concerned. To this end Parliament called on the Commission to establish *'a new mechanism that guarantees full visa reciprocity for all Member States while ensuring that if a non-EU country breaches that visa reciprocity, all Member States will immediately restore the visa requirement for nationals of that country'*.

On 14 July 2009 Canada reintroduced the visa requirement for Czech citizens. Two and a half years later Canada has still not revoked that decision, despite whatever pressure the Commission may have brought to bear.

The fact that it has been impossible to find a favourable solution in this case constitutes a highly damaging precedent for the European Union's common visa policy and demonstrates the weaknesses in the current mechanism. Consequently, a mechanism needs to be introduced that will enable the European Union to react quickly, although not automatically, in cases where the reciprocity principle is breached.

It would be sufficient to reintroduce the visa obligation on a provisional basis for a reasonable period that is nevertheless long enough for the third country to reconsider its decision and for the European Union to offer guarantees concerning irregular immigration. At the end of that period, the Commission could propose that the country concerned be included in Annex I to Regulation 539/2001.

**With regard to the situation of service providers from third countries:** the reference to citizens of a specific country, as in the case of Turkey, appears reasonable bearing in mind that this is currently a unique case. Nevertheless, it would be inappropriate to take a decision that concerns this situation exclusively, particularly when the case-law of the Court of Justice of the European Union could require fresh amendments to the regulation if similar situations had to be examined in the future. It would therefore be appropriate to amend the proposal by stating that account will be taken of the case-law established by the Court of Justice, without making any reference to the nationality of non-Community citizens.

**Further issues:** the remaining issues included in the revision are more of a technical nature and do not pose any problems from this point of view.

**New definitions:** the definitions are to be updated in line with those used in the Visa Code, taking into account the interpretation of short stay given by the European Court of Justice.

**Refugees and stateless persons residing in the United Kingdom or in Ireland:** as there is no mutual recognition of visas and no equivalence with similar instruments or residence permits in these Member States, the proposal leaves Member States entirely free to decide on visa exemption or obligation for this category of persons.

**Harmonisation with certain categories of third-country nationals:** the regulation provides the possibility for Member States to lift the visa requirement for certain categories of non-Community nationals, specifically civilian air and sea crew and holders of diplomatic, special or official passports or passports issued by international intergovernmental organisations or organisations subject to international law.