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CORRIGENDUM

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Concerne les versions DA-DE-EN-NL et EL.

Amended proposal for a

COUNCIL REGULATION

**determining the list of third countries whose nationals must be in possession of visas
when crossing the external borders and those whose nationals are exempt from that
requirement**

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The Commission is presenting this amended proposal for a Regulation both in response to Parliament's legislative resolution of 5 July 2000 on its proposal of 26 January 2000 and to take account of the work done so far on the proposal within the Council.

The Lehne report adopted on 21 June 2000 by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs gave firm support to the Commission's proposal and also suggested eight amendments. At Parliament's sitting of 3 July 2000 the Commission set out its position on those amendments and this amended proposal reflects the undertakings it gave.

The work done in the Council was another valuable contribution, prompting further reflection on the original proposal. Building on this, the Commission has enhanced or improved the proposed text without undermining the objectives it had in mind when submitting the original proposal. The amended proposal thus reflects the outcome of discussions in the Council on a number of points.

The following commentary on the articles and annexes explains the proposed amendments and indicates the reasons behind them, some of them reflecting both Parliament's resolution and the discussions in the Council.

2. COMMENTARY ON THE PROPOSED AMENDMENTS

2.1. Recitals:

- (a) **Recital 2 (new):** The addition of this recital is a consequence of the position taken by the Commission before Parliament on two amendments and also reflects discussions in the Council. In both instances a wish was expressed that the provisions of the Regulation itself should clarify the links between it and other existing provisions or instruments. The Commission explained to the House that it could not agree to the inclusion of such clarifications (already partly covered by the explanatory memorandum) in the form of articles, but that it was not opposed to including them in the form of a recital. This is the purpose of the proposed new recital 2.
- (b) **Recital 3 (former recital 2):** This recital has been expanded to take account of the addition to Article 1(2) of a new subparagraph concerning reciprocity (see the commentary on Article 1 below).
- (c) **Former recital 3:** The proposed deletion of this recital is a consequence of the proposed deletion of former Article 3 (see commentary on that Article).
- (d) **Recital 4 (new):** The addition of this recital is due to the deletion of the reference to Iceland, Liechtenstein and Norway in Annex II to the Regulation (see the commentary on Annex II).
- (e) **Recital 10:** The addition of this recital reflects the wish expressed during discussions in the Council to clarify the position of Iceland and Norway in respect of the Regulation.

2.2. Articles:

(a) Article 1

- Paragraph 2: It is proposed that the phrase “for stays of no more than three months” should be added at the end of the first subparagraph. The original version of the Regulation specified the maximum length of stay covered by a visa (see the visa definition in Article 2) but was silent on the maximum length of stay that was exempt from the visa requirement. Under the Treaty the period is the same for both types of stay. The proposed addition is therefore intended to fill the gap left in the original proposal.
- It is also proposed to add a new subparagraph to paragraph 2. This addition is the result of discussions in the Council and represents a major improvement to the proposed Regulation. The discussions highlighted that the Regulation is silent on how to react in situations where the appropriate response mechanisms are currently laid down in bilateral visa exemption agreements that the Member States have concluded with various third countries. These agreements are based on the principle of reciprocity, whereby the unilateral reimposition of the visa requirement by one of the parties to such an agreement generally entails the reimposition of that same requirement by the other party to the agreement. This kind of response is implemented by invoking the suspension or denunciation clauses of the bilateral agreement. The proposed new subparagraph, based on work done by the Council on the issue, aims to set in place a reciprocal mechanism making it possible to react against any third country in Annex II that might reimpose a visa requirement on nationals of a Member State. However, any such reaction now falls within the new context of Article 62(2)(b)(i): determining the countries whose nationals are exempt from the visa requirement is a matter of exclusive Community competence and therefore, pending the conclusion of future agreements between the Community and third countries on exemption from the visa requirement, suspending any such exemption must now be done by means of a Community mechanism. This is the purpose of the new subparagraph.
- Paragraph 3: The proposed addition of the word “new” is a drafting improvement, making it clearer that it refers to the case where a State is succeeded by new ones.

(b) Article 2

- The proposed wording changes are in response not only to two of Parliament’s amendments but also to the concerns expressed during discussions in the Council.
- The changes are intended to avoid formulations that pose a danger of conflict with existing provisions elsewhere under the Schengen acquis. Although the Regulation does not affect provisions on visas elsewhere that do not relate to the country lists, as stressed in the explanatory memorandum of the initial proposal and now reflected in a new recital in this amended proposal for a Regulation, it is still essential for the sake of

legal certainty to avoid any contradiction with other existing provisions elsewhere.

- The deletion of the phrase “for entry into its territory” makes the wording compatible with the Schengen rule whereby a uniform Schengen visa issued by Schengen State A enables the holder to enter the territory of Schengen State B.
- The rewording of the second indent is also designed to avoid contradiction with the Schengen rules, using the term “airport transit” that appears in point 2.1.1. of the Common Consular Instructions.

(c) Former Article 3

- In its legislative opinion the European Parliament voted in favour of an amendment deleting Article 3. The Commission stated that it was prepared to accept the amendment. Doubts had also been expressed as to whether the Article was justified.
- The amended proposal therefore no longer includes the original Article 3. The view is that equivalence between a residence permit issued by a Member State and a visa for crossing the external borders could be incorporated in a future instrument on rules for a uniform visa. The deletion of Article 3 poses no danger of a legal void since the Schengen States already apply the rule that a residence permit is equivalent to a visa, while the non-Schengen States (Ireland and the United Kingdom) are not involved in the adoption of the proposed Regulation since they did not exercise their option to participate under the terms of Protocol annexed to the Treaty of Amsterdam on the position of those Member States.

(d) Article 3 (former Article 4)

- The purpose of the additions is to incorporate the specific references that appeared in the explanatory memorandum accompanying the original proposal.

(e) Article 4 (former Article 5)

- Paragraph 1: The layout of the opening of this paragraph has been changed to make it clearer, by the use of two indents, that exceptions can work both ways, applying either to the visa requirement or to exemption from that requirement. As far as exceptions to exemption are concerned, the wording now states explicitly that this question will in due course be covered by agreements to be concluded between the Community and the third countries.
- The words added to point (d) do not affect the substance, but are merely intended to make it clearer. The change to point (e), reducing the scope in terms of persons covered by exemption, is justified by the need to avoid contradiction with the Schengen rules (Annex 2 to the Common Consular Instructions).

- New point f: Discussions in the Council brought to light a factor that had not been taken into account in the Commission’s original proposal. Some Member States exclude persons entering their territory to pursue a gainful activity from the exemption from the visa requirement. The existence of such exclusions is indicated for information in the Commission communication on the implementation of Regulation (EC) No 574/99. So that these exclusions are not prohibited when the new Regulation comes into force, it was deemed necessary to provide for the possibility of such exceptions to exemption from the visa requirement.
- The wording of the proposed new point (f) takes account of the future implications of the institutional context. Such exceptions should, at some future stage, be covered by an agreement between the Community and any particular third country.

(f) Article 5 (former Article 6)

- This amendment is due to the deletion of Article 3.

(g) Article 6 (former Article 7)

- Only parts I, II and III of Annex 5 of the Common Manual correspond to Annex 1 of the Common Consular Instructions. Part IV of Annex 5 to the Common Manual is therefore not affected, which is reflected in the proposed addition.

2.3. Annexes

(a) Annex I:

- The tenor of Annex I remains unchanged as compared with the original proposal.

(b) Annex II:

- In the original proposal Iceland, Norway and Liechtenstein appeared at the end of Annex II, with a footnote reference to the European Economic Area. It was considered preferable not to include these three countries in Annex II but to add an explanatory recital (see above) including a reference to the European Economic Area.
- As regards Hong Kong and Macao, the heading of the second part of the Annex was considered inappropriate in view of the characteristics of the two entities concerned. It was thought preferable to use the administrative denomination applicable to them. The original proposal referred in Annex II to the two entities without further particulars, leaving some doubt as to precisely which persons came within the scope of exemption from the visa requirement. The amended proposal indicates in a footnote that it applies only to holders of passports issued by these two administrative regions.

Amended proposal for a

COUNCIL REGULATION

determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,¹

Having regard to the Opinion of the European Parliament,²

Whereas:

- (1) Article 62((2)(b) empowers the Council to adopt rules relating to visas for intended stays of no more than three months, and in that context it must determine the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.³ These lists are among the flanking measures which are directly linked to the free movement of persons in an area of freedom, security and justice for the purposes of Article 61.
- (2) Determining the lists of third countries referred to above is an element of visa policy, which requires a range of provisions for its implementation. These provisions, which may be part of national law, public international law, EU law or EC law, including the elements of the Schengen *acquis* incorporated into the EU framework, lie outside the scope of this Regulation. Consequently this Regulation does not affect any such provisions, which relate principally to:
 - authorisations, other than visas, that may be required before a person crosses the external borders of the Member States in view of the purpose of their short stay, such as authorisations for access to employment, an occupation or a study course;

¹ COM (2000) 27 final; OJ C 177, E/66, 27.6.2000.

² OJ C ..., p.

³ Under Article 1 of the Agreement concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* and Annex B to it (which refers to Regulation (EC) No 574/99), this proposal for a Regulation will have to be considered by the Joint Committee in accordance with Article 4 of the Agreement.

- the procedures and conditions governing the issue of visas and the territorial validity of visas;
- the controls to which nationals of third countries are subject when crossing external borders of the Member States;
- recognition of States and territorial entities and of the passports, identity and travel documents issued by their authorities;

Any decisions which the Council might adopt under the common foreign and security policy that have an impact on Member States' decisions in issuing visas are not affected by this Regulation.

- (3) The countries that are subject to or exempt from the visa requirement are determined individually on the basis of a variety of criteria relating principally to illegal immigration, public policy and public security and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity. The arrangements for exemption from the visa requirement must also be based on the principle of reciprocity. This principle should in future be applied for any suspension of exemption from the visa requirement for nationals of a third country listed in Annex II by means of agreements to be concluded by the Community with those countries. However, pending those agreements, the Regulation should itself lay down a Community mechanism for this purpose to be applied in the meantime.
- (4) Nationals of Iceland, Liechtenstein and Norway, which are not listed in Annex II, are exempt from the visa requirement under the EEA Agreement.
- (5) As regards stateless persons, who have no connecting factor with a particular State, and recognised refugees, who are unable to enjoy the protection of the State of which they have the nationality, the decision as to the visa requirement or exemption should be based on a simple criterion reflecting the fact that the State where these persons reside affords them its protection and issues them with travel documents.
- (6) In specific cases where special visa rules are warranted, Member States may release certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.
- (7) With a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States should communicate to the other Member States and to the Commission the measures which they take pursuant to this Regulation. For the same reasons that information must also be published in the Official Journal of the European Communities.
- (8) In accordance with the principal of proportionality stated by Article 5 of the Treaty, enacting a Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement is both a necessary and an appropriate means of ensuring that the common visa rules operate efficiently.
- (9) This Regulation provides for full harmonisation as regards the countries whose nationals require a visa to cross external borders and those whose nationals are exempt

from this requirement. Consequently the existing Community legislation on this matter should be replaced.

- (10) As regards the Republic of Iceland and the Kingdom of Norway, this Regulation represents an extension of the Schengen *acquis* under the terms of the Agreement concluded on 17 May 1999 by the Council of the European Union and those two States. On completion of the procedures laid down in the Agreement, the rights and obligations flowing from this Regulation will also apply to those two States.

HAS ADOPTED THIS REGULATION:

Article 1

1. Nationals of third countries on the common list in Annex 1 shall be required to be in possession of visas when crossing the external borders of the Member States.
2. Nationals of third countries on the common list in Annex 2 shall be exempt from this requirement for stays of no more than three months.

Pending the conclusion of agreements on exemption from the visa requirement between the Community and the third countries listed in Annex II:

- (a) if one of those third countries imposes a visa requirement on nationals of a Member State:
 - the Member State concerned may notify the Commission and the Council in writing of the measure by which the third country imposed the visa requirement;
 - no later than two months after notification the Commission shall publish in the ‘L’ series of the *Official Journal of the European Communities* a notice on the measure taken by the third country. Exemption from the visa requirement for nationals of that third country shall be suspended five days after publication of the notice.
- (b) if the third country revokes the measure imposing the visa requirement for nationals of a Member State:
 - the Member State concerned shall immediately notify the Commission and the Council in writing of the revoking measure; on receiving notification the Commission shall publish in the ‘L’ series of the *Official Journal of the European Communities* a notice on the measure;
 - exemption from the visa requirement for nationals of the third country shall be restored five days after publication of the notice.

The publications provided for by points (a) and (b) shall specify, inter alia, the date on which measures suspending or restoring visa requirements take effect.

3. Nationals of new third countries on these lists shall be subject to the requirements of paragraphs 1 and 2 unless and until the Council decides otherwise under the procedure laid down in the relevant provision of the Treaty.

Article 2

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

- entry for an intended stay in that Member State or in several Member States of no more than three months in all,
- entry for transit through the territory of that Member State or several Member States, except for airport transit.

Article 3

Stateless persons within the meaning of the New York Convention of 28 September 1954 and recognised refugees within the meaning of the Geneva Convention of 28 July 1951 shall be subject to the visa requirement or exempted from it on the same terms as nationals of the non-member State in which they reside and which issued their travel document.

Article 4

Without prejudice to agreements on exemption from the visa requirement to be concluded by the Community with the third countries listed in Annex II, a Member State may maintain or provide for exceptions from the visa requirement provided for by Article 1(1) or for exemption from the visa requirement provided for by Article 1(2) as regards:

- (a) holders of diplomatic passports, official-duty passports and other official passports;
- (b) civilian air and sea crew;
- (c) flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident;
- (d) civilian crew of ships navigating on international inland waterways;
- (e) holders of laissez-passer issued by certain international intergovernmental organisations to their officials.
- (f) persons entering its territory to pursue a gainful activity during their stay.

A Member State may exempt from the visa requirement a school pupil having the nationality of a third country listed in Annex 1 who resides in a third country listed in Annex 2 and is travelling in the framework of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question.

Article 5

Within 10 working days of the entry into force of this Regulation, Member States shall communicate to the other Member States and the Commission the exception measures they have taken pursuant to Article 4. Any further changes to this list and these measures shall be similarly communicated within five working days.

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

Article 6

Regulation (EC) No 574/99⁴ is replaced by this Regulation.

Annex 1 to the Common Consular Instructions and Annex 5 to the Common Manual, excluding part IV thereof, as laid down by the decision of the Executive Committee of 28 April 1999 (SCH/Com-ex(99)13) concerning the final versions of the Common Manual and the Common Consular Instructions, are replaced by Annexes 1 and 2 to this Regulation.

Article 7

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

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

⁴ OJ L 72, 18.3.1999, p. 2.

ANNEX 1

List referred to in Article 1(1)

1. STATES

Afghanistan
Albania
Algeria
Angola
Antigua and Barbuda
Armenia
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belize
Benin
Bhutan
Bosnia and Herzegovina
Botswana
Burkina Faso
Burma/Myanmar
Burundi
Cambodia
Cameroon
Cape Verde
Central African Republic
Chad
China
Colombia
Congo
Côte d'Ivoire
Cuba
Democratic Republic of the Congo
Djibouti
Dominica
Dominican Republic
Egypt
Equatorial Guinea

Eritrea
Ethiopia
Federal Republic of Yugoslavia (Serbia-Montenegro)
Fiji
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
Mauritius
Micronesia
Moldova
Mongolia
Morocco

Mozambique
Namibia
Nauru
Nepal
Niger
Nigeria
North Korea
Northern Marianas
Oman
Pakistan
Palau
Papua New Guinea
Peru
Philippines
Qatar
Russia
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
São Tomé and Príncipe
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Solomon Islands
Somalia
South Africa
Sri Lanka
Sudan
Surinam
Swaziland
Syria
Tajikistan
Tanzania
Thailand
The Comoros
Togo
Tonga
Trinidad and Tobago
Tunisia

Turkey
Turkmenistan
Tuvalu
Uganda
Ukraine
United Arab Emirates
Uzbekistan
Vanuatu
Vietnam
Western Samoa
Yemen
Zambia
Zimbabwe

2. ENTITIES AND TERRITORIAL AUTHORITIES NOT RECOGNISED AS STATES BY ALL THE MEMBER STATES

East Timor
Palestinian Authority
Taiwan

ANNEX 2

List referred to in Article 1(2)

1. STATES

Andorra

Argentina

Australia

Bolivia

Bulgaria

Brazil

Brunei

Canada

Chile

Costa Rica

Croatia

Cyprus

Czech Republic

Ecuador

Estonia

Guatemala

Holy See

Honduras

Hungary

Israel

Japan

Latvia

Lithuania

Malaysia

Malta

Mexico

Monaco

New Zealand

Nicaragua

Panama

Paraguay

Poland

Romania

Salvador

San Marino

Singapore

Slovakia

Slovenia
South Korea
Switzerland
United States
Uruguay
Venezuela

2. SPECIAL ADMINISTRATIVE REGIONS OF CHINA

Hong Kong SAR*

Macao SAR*

* Exemption from the visa requirement applies only to the holders of passports issued by these special administrative regions.