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REPORT

on the proposal for a Council regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement
(COM(2006)0084 – C6-0256/2006 – 2006/0022(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Ioannis Varvitsiotis

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

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

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(COM(2006)0084 – C6-0256/2006 – 2006/0022(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2006)0084)¹,
 - having regard to Article 62(2)(b)(i) of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0256/2006),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0431/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 3

(3) Antigua and Barbuda, the Bahamas, Barbados, Mauritius, Saint Kitts and Nevis,

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¹ Not yet published in OJ.

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

and the Seychelles must be transferred to Annex II. Exemption from the visa requirement for nationals of those countries should not come into force before a bilateral agreement on exemption from the visa requirement between the European Community and the country in question has been concluded. ***When Regulation (EC) No 539/2001 is next reviewed, the case of other small island states should be examined.***

Justification

For reasons of regional coherence (according to recital 5 of the initial Regulation 539/2001) and in order to avoid 'visa-shopping' travel.

Amendment 2 RECITAL 6

(6) The Member States may exempt from the visa requirement recognised refugees ***and*** stateless persons ***residing in a third country listed in Annex II*** and school pupils travelling on school excursions who reside ***in one of those countries***. A full exemption from the visa requirement ***should be introduced*** for these ***two*** categories of ***person if they reside in a Member State***.

(6) The Member States may exempt from the visa requirement recognised refugees, ***all*** stateless persons, ***both those within the scope of the 1954 Convention relating to the Status of Stateless Persons and those outside its scope***, and school pupils travelling on school excursions who reside in ***a third country listed in Annex II***. A full exemption from the visa requirement ***already exists*** for these ***three*** categories of ***persons residing within the Schengen area when they re-enter that area***. ***A general exemption should be introduced for persons of those categories residing in a Member State which has not or not yet joined the Schengen area, as far as their re-entry into the territory of any other Member State bound by the Schengen acquis is concerned.***

Justification

This wording aims at finding a solution for all stateless persons, including those outside the scope of the 1954 Convention, in particular in the Baltic States.

Amendment 3

ARTICLE 1, POINT 1, POINT (B)

Article 1, paragraph 2, subparagraph 1 a, indent 3 (Regulation (EC) No 539/2001)

– recognised refugees **and** stateless persons who reside in a Member State and are holders of **a** travel document issued by that Member State.

– recognised refugees, stateless persons **and other persons who do not hold the nationality of any country** who reside in a Member State and are holders of **an alien's passport, a non-citizen's passport or another** travel document issued by that Member State;

– **third-country nationals who are in possession of a long-term residence permit in accordance with Article 8 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents¹.**

¹ OJ L 116, 23.1.2004, p. 44.

Justification

As long as the SIS II system is not operational, and therefore the completion of the Schengen area is postponed, those with a long term residence permit residing in the new Member States will need a visa for travelling to the Schengen area. Also long-term residents of the old Schengen member states will need a visa for travelling to the new member states during this transition period. At the moment all residents of full Schengen members are free to travel within the Schengen area. The amendment suggests that those with a long term residence permit would have the right to travel in the whole European Union without applying for visa. This is necessary to avoid an internal visa border within the Union during a short transition period.

There is a need to define the groups of persons exempt from the visa requirement more clearly in line with the Declaration on the holders of aliens' and non-citizens' passports made in the course of the negotiations on the proposal for a Regulation establishing a Community Code on the rules governing the movement of persons across borders: "The European Parliament and the Council request the Commission to bring forward proposals, in the framework of the revision of Regulation (EC) No. 539/2001, in order to exempt holders of aliens' and non-citizens' passports residing in a Member State from the visa obligation" (A6-0188/2005, 15 June 2005). The current wording proposed by the Commission does not cover the essential categories of people referred to in that.

Amendment 4

ARTICLE 1, POINT 2, POINT (A)

Article 4, paragraph 1, point (a) (Regulation (EC) No 539/2001)

(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;

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

Justification

The term 'special passports' was deleted because this word may lead to a non well defined category.

Amendment 5

ARTICLE 1, POINT 3, POINT (C)

Annex I, point 3 (Regulation (EC) No 539/2001)

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

British Overseas Citizens

British Subjects

British Protected Persons;

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;

Justification

This solution proposed in the latest discussions in Council may be accepted by the Commission if it ensured that it does not lead to discrimination between categories of British citizens.

EXPLANATORY STATEMENT

The purpose of reviewing Regulation (EC) No 539/2001 is to amend the following two lists: the list of third country nationals who must be in possession of a visa when crossing the external borders of Member States (Annex I) and the list of those who are exempted (Annex II).

The Regulation is based on the principle of reciprocity and takes account of illegal immigration and public policy criteria. It applies to short stay visas only (no longer than three months).

1. The Commission proposals are as follows:

- Transferring Bolivia from Annex II to Annex I (visa requirement) as there is evidence of persistent and intense migratory pressure.
- Antigua and Barbuda, the Bahamas, Barbados, Mauritius, Saint Kitts and Nevis, and the Seychelles will be transferred from Annex I to Annex II (visa exemption). We suggest that in a future review of this Regulation other small island states be also included in Annex II (visa exemption) for reasons of regional coherence (according to recital 5 of the initial Regulation 539/2001) and in order to avoid 'visa-shopping' travel.
- The regulation proposal deals also with the Categories of British nationals. The following point is added: British citizens who are not nationals of the United Kingdom of Great Britain and Northern Ireland for the purposes of community law: British National (Overseas) persons are to be listed in Annex II (visa exemption). There is no evidence to suggest that they will constitute a migratory risk or a risk in terms of public policy.

British Overseas Territories Citizens (BOTC) who do not have the right to abode (residence) in the United Kingdom; British Overseas Citizens (BOC); and British Subjects who do not have the right to abode (residence) in the United Kingdom and British Protected Persons (BPP) will be listed under Annex I (visa requirement).

The rapporteur would like to ask the Commission to make sure that this solution, reached in Council, does not lead to the introduction of discrimination between categories of British citizens into the EC law.

- Provisions on diplomatic, service and special passports

In a bid to avoid ambiguities regarding exemptions for persons holding either a diplomatic, service or special passport, the Commission is proposing that a more precise distinction be made between these three categories of passports.

The rapporteur proposes the removal of the wording 'special passport' as it may lead to some confusion.

- Harmonised exemption cases: Recognised refugees/stateless persons

An automatic visa exemption is proposed for recognised refugees and all stateless persons,

both those under the 1954 Convention and those outside the scope of this Convention.

- Harmonised exemption cases: pupils on school excursions

School pupils who are nationals of a third country who reside in a Member State and are travelling on a school trip will be exempted from the visa requirement.

- Local border traffic

The nationals of third countries listed in Annex I who are holders of a “local border traffic card” issued by a member state will be exempt from the visa requirement.

- NATO armed forces and Partnership for Peace business

For reasons of legal certainty, all arrangements governing exception to the visa requirement for nationals of third countries listed in Annex I but who are members of the armed forces travelling either on NATO or Partnership for Peace business, must be referred to in Regulation 539/2001.

2. Comments:

The proposal includes issues of quite a different nature. Some of them may be considered as urgent:

- transferring Bolivia to Annex I because of increased migratory pressure, or

- adding a new exemption for the visa requirement for persons travelling in the context of the local border traffic, or

- solving the situation of stateless persons in some Member States like the Baltic States. This issue is of significance as a solution has to be found for several hundreds of thousands of persons concerned in countries which are not yet in the Schengen area. The rapporteur would nevertheless like to emphasise that in the future the Commission should avoid referring to a legal basis like Article 62(2) [crossing of external borders] to solve problems relating to the situation in Member States of the Union.

Member States and the Commission push for a quick adoption of these measures. In the future the Commission should avoid dealing with issues of different nature and urgency in the same legal instrument.

3. Conclusion:

The rapporteur puts forward the attached amendments to the Commission proposal.

PROCEDURE

Title	Proposal for a Council regulation amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement
References	COM(2006)0084 – C6-0256/2006 – 2006/0022(CNS)
Date of consulting Parliament	26.7.2006
Committee responsible Date announced in plenary	LIBE 5.9.2006
Committee(s) asked for opinion(s) Date announced in plenary	
Not delivering opinion(s) Date of decision	
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Ioannis Varvitsiotis 13.9.2006
Previous rapporteur(s)	
Simplified procedure – date of decision	
Legal basis disputed Date of JURI opinion	
Financial endowment amended Date of BUDG opinion	
Parliament to consult European Economic and Social Committee – date decided in plenary	
Parliament to consult Committee of the Regions – date decided in plenary	
Discussed in committee	22.11.2006 27.11.2006
Date adopted	27.11.2006
Result of final vote	+: 10 –: 0 0: 0
Members present for the final vote	Edit Bauer, Giusto Catania, Jean-Marie Cavada, Agustín Díaz de Mera García Consuegra, Martine Roure, Ioannis Varvitsiotis, Stefano Zappalà, Tatjana Ždanoka
Substitute(s) present for the final vote	Giorgos Dimitrakopoulos, Roland Gewalt, Sophia in 't Veld
Substitute(s) under Rule 178(2) present for the final vote	
Date tabled	29.11.2006
Comments (available in one language only)	