



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 December 2011

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**17924/2/11
REV 2**

LIMITE

**VISA 255
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COMIX 793**

NOTE

from: Presidency

to: Council/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

No. Cion prop.: 10834/1/11 REV1 VISA 96 CODEC 927 COMIX 369 (COM(2011) 290 final/2)

No prev.doc. 17924/1/11 REV 1 VISA 255 CODEC 2267 COMIX 793

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

INTRODUCTION

The Commission submitted on 26 May 2011 a 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. The final version of the proposal is set out in doc. 10834/1/11.

The European Parliament has not yet delivered its position on the proposal.¹

¹ The AFET Committee adopted its opinion on the proposal on 22 November 2011. The Rapporteur presented his draft report to the LIBE Committee on 29 November 2011 (PR/88155/EN).

The proposal contains several elements and has been discussed on a number of occasions by the Visa Working Party/Mixed Committee, by the JHA Counsellors Group/Mixed Committee and on 1 December 2011 by the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on the basis of doc. 17513/11.

Coreper discussed at its meeting on 12 December 2011 the suspension mechanism contained in draft Article 1a on the basis of doc. 17924/1/11 and agreed to submit that issue to Council for consideration. The compromise text reflecting the outcome of that meeting is set out in the Annex.

The Presidency is of the view that the agreement within the Council and with the European Parliament on the suspension mechanism can be reached before the end of this year.

QUESTION FOR COUNCIL

Some delegations called for a further reference to public policy and internal security. The Presidency suggests introducing a new Recital 5(b) to meet those concerns.

The main outstanding question is the wording of Article 1a(2)(b). The Presidency, based on a suggestion made by PT, has suggested the revised wording of that provision set out in the Annex. BE/DE entered reservations on this amended text.

The Presidency invites Council to examine the compromise text set out in the Annex, with a view to adopting a general approach on this text.

New recital 5b¹

It is necessary to avoid and counter any abuse resulting from the granting of visa free travel for short-stay visits for nationals of a particular third-country where they pose a threat to the public policy ("ordre public") and internal security of the Member States.

New recital 8b

A substantial and sudden increase as mentioned in Article 1a(2) indicates reaching beyond the threshold of 50 percent, nevertheless it may also be lower if the Commission deems it applicable in the particular case notified by the Member State under pressure.

"Article 1a (...) ²

1. **By way of derogation from Article 1(2), Article 1(1) shall temporarily apply in emergency situations in relation to a third country listed in Annex II when so decided in accordance with this Article.**

¹ The amendments to the text of the draft Regulation as already agreed appear in **bold** whereas new suggestions by the Presidency are **in bold and underlined**.

² The title has been deleted for reasons of coherence as the current articles of Regulation 539/2001 have no title.

2. A Member State may notify the Commission if it is confronted with one or more of the following circumstances leading to an emergency situation which it is unable to remedy on its own:
- (a) a **substantial and** sudden increase (...), 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 **corresponding period of the previous year or the last six months prior to the introduction of the visa waiver**;
 - (b) a **substantial and** sudden increase (...), **leading to specific pressures on the asylum system** over a six month period, in comparison with the **corresponding period of the previous year or the last six months prior to the introduction of the visa waiver**, in the number of asylum applications from the nationals of a third country listed in Annex II **which are manifestly unfounded**;¹
 - (c) a **substantial and** sudden increase (...), 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 **corresponding period of the previous year or the last six months prior to the introduction of the visa waiver**.

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.

Where a Member State notifies the Commission in accordance with the above, it shall inform the European Parliament thereof.

¹ The final part of point (b) previously read as follows: "...which do not fulfil the conditions for international protection". This text was amended on a proposal made by PT. BE entered a reservation and called for the deletion altogether of the final part of point (b). DE also entered a reservation on the PT suggestion, and could support the BE suggestion.

3. The Commission shall examine the notification(s) made by one or more Member State(s) pursuant to paragraph 2, taking into account:
- (a) the number of Member States affected by any of the situations described in paragraph 2;
 - (b) the scale of the **substantial and sudden** increase mentioned in points a), b) and/or c) of paragraph 2;
 - (c) 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; (...);
 - (d) **the overall question of public policy and internal security, in consultation with the Member State(s) concerned and, if necessary, after consultations with Europol, having regard to its tasks;**
 - (e) **the consequences of a suspension of the exemption of the visa requirement for the external relations of the EU and its Member States.**

(...) **Where the Commission, on the basis of this examination, determines that action is needed, it shall submit a proposal,** within three months following receipt **of the notification, with a view to the adoption by** the Commission **of** an implementing decision providing that Article 1(1) shall temporarily apply in relation to the third country concerned for a period of six months. The implementing decision shall be adopted in accordance with the **examination** 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 report may be accompanied by a proposal amending this Regulation in order to transfer **the reference to** the third country concerned to Annex I.

 5. Where the Commission has proposed an amendment to this Regulation in order to transfer **the reference to** 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 **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).
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