



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 9 November 2012

15910/12

**Interinstitutional File:
2011/0138 (COD)**

LIMITE

**VISA 214
CODEC 2600
COMIX 621**

NOTE

from: Presidency
to: Delegations

No. Cion prop.: 10834/1/11 REV 1 VISA 96 CODEC 927 COMIX 369 (COM(2011) 290 final/2
No. prev. doc.: 11958/12 VISA 137 CODEC 1788 COMIX 412

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

The JHA Counsellors group discussed on 22 June 2012 on the basis of 11603/12 the issue of the reciprocity mechanism (Article 1(1)(b)).

The situation was that the Council and the Commission had a preference for the use of Commission implementing acts for the purpose of the temporary (re)introduction of a visa requirement in relation to a third country (Article 291(3) TFEU and Article 5(4)(b) of Regulation 182/2011 - examination procedure with a need for qualified majority support). However, the EP insisted that the EP and the Council should be involved in the different phases of the procedure on an equal footing and had proposed the use of the procedure of delegated acts (TFEU Article 290).

The majority of delegations and the Commission continue to favour the use of implementing acts and oppose the EP's suggestion. Some delegations were, however, prepared to consider some kind of automaticity in case that no implementing act is adopted and the third country concerned continues to breach the principle of reciprocity beyond a certain period of time.

15910/12

PR/lm

1

DG D 1 A

LIMITE EN

The JHA Counsellors at its meeting on 29 June 2012 took note of the text in 11958/12 of the draft Regulation as it stood following the informal trilogue with the European Parliament on 27 June 2012.

Commissioner Malmström in September 2012 in a letter to MEP Alexander Alvaro confirmed that the Commission is not in a position to accept the use of the "delegated acts" approach for the reciprocity mechanism.

On the basis of the position of the Council as described above, the Presidency has on a number of occasions been in contact with the European Parliament and the Commission regarding the reciprocity mechanism. The EP has insisted on its position ("equal footing") but has at the same time further developed its thinking, thus informally making certain suggestions which move from its initial insistence on delegated acts. One of those involves an automatic reintroduction of the visa requirement (not by the adoption of a delegated act) - unless opposed by the Council or the EP - in the case where no implementing decision is taken and the third country concerned continues to be in breach of the reciprocity principle beyond a certain deadline. This suggestion would in the view of the Presidency, the Commission and Council Legal Services give rise to serious legal concerns. Another, more recent, suggestion made by the EP would involve automatic reintroduction of the visa requirement, which would be applicable after a certain period of time unless otherwise decided on the basis of a Commission proposal in the normal legislative procedure.

Based on the latter suggestion of the EP, the services of DG Home of the Commission have informally prepared the attached text, which the Presidency presents as a basis for further consideration. It is noted that the Presidency will meet the EP and the Commission on 14 November 2012 to discuss the proposal, and that the LIBE Committee may adopt its report on the proposal by 27 November 2012.

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

*Compromise wording suggested by the Services of DG Home of the Commission concerning
Art.1(4) of Regulation 539/01*

Deleted: (e)

~~6.11.12~~

Deleted: .

"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 (30) days of such introduction or its announcement or, in cases where the requirement is maintained, within (30) 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 shall not be made or shall be withdrawn.

Deleted: annulled;

(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 without delay;

(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 propose to suspend the exemption from the visa requirement for the nationals of the third country concerned or for certain categories of these nationals.

Where a Member State makes such a request, it shall inform the European Parliament and the Council 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 (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 temporarily 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 and the Council 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 shall inform the European Parliament and the Council thereof. The Commission may, on the basis of such report, adopt an implementing decision referred to in point (c)(i).

(e) Before the end of the period of validity of the decision adopted pursuant to points (c)(i) and (d), the Commission shall submit a report to the European Parliament and the Council. The report shall be accompanied by a proposal for amending this Regulation in order to transfer the reference to the third country concerned to Annex I. Where the Commission has proposed to transfer the reference to the third country concerned to Annex I, it can extend the validity of the implementing decision adopted pursuant to points (c)(i) and (d) for a period of 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).

Deleted: ¶

~~(f)~~ If within (18) months following the date of publication of the Member State(s)' notification the third country has not lifted the visa obligation and no implementing decision pursuant to points (c)(i) or (d) has been taken, the reference to the third country shall automatically be transferred from Annex II to Annex I. The information on the introduction of the visa requirement for nationals of the third country concerned shall be published by the Commission in the Official Journal of the European Union without delay. It shall become applicable [~~6~~ months] after publication, unless the Member State(s) concerned have notified that the third country has abolished the visa obligation for the citizens of the Member State(s) concerned before the expiration of the [6] month period.

Deleted: ¶

Deleted: e

Deleted: exemption from the visa requirement for the nationals of the third country concerned shall be automatically suspended.

Deleted: suspension of the exemption from

Deleted: 4

At the same time of the publication in the Official Journal of the above mentioned information, the Commission may submit a proposal, to be adopted in accordance with the ordinary legislative procedure, in order to prevent the automatic transfer to Annex I.

Deleted: shall submit a report to the European Parliament and the Council. The report may be accompanied by

Deleted: legislative

Deleted: amend the Regulation in such a way as to exclude the use of the automatic temporary suspension in some specific cases.

~~g~~ The procedures referred to in this paragraph 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;

Deleted: .(g) At the latest x months before the end of the period of validity of the decision adopted pursuant to points (c)(i), (d), the Commission shall submit a report to the European Parliament and 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. ¶

~~h~~ 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 temporary suspension pursuant to points (c)(i) ~~and (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 temporary suspension pursuant to points (c)(i) ~~and (d)~~ shall only terminate after the publication of the last notification.

Deleted: h

Deleted: i

Deleted: to

Deleted: e

Deleted: ,

Deleted: , (e) and (f)