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THE EUROPEAN UNION**

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of: Permanent Representatives Committee

on: 27 March 2013

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

No. prev. doc.: 7787/13 VISA 73 CODEC 659 COMIX 187

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
- Approval of the final compromise text with a view to an agreement at first reading

Following the discussions on 27 March 2013 at Coreper on the basis of doc. 7787/13 VISA 73 CODEC 659 COMIX 187, Coreper agreed by unanimity on the revised text set out in the Annex with a view to a first reading agreement with the European Parliament. Coreper also took note that the Presidency would inform the European Parliament accordingly.

It was also concluded that the issue of a statement related to the possible impact of the reciprocity mechanism on the external relations of the Union and its Member States would be further examined.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

**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 EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the *Functioning* of the European Union, and in particular Article 77(2)(a) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national *parliaments*,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (2) In order to ensure *the efficient application of the suspension mechanism and of certain provisions of the reciprocity mechanism and in particular in order to allow for the adequate taking into consideration of all relevant factors and possible implications of the application of these mechanisms*, implementing powers should be conferred on the Commission *with regard to the determination of the categories of the nationals of the third country concerned that should be subject to a temporary suspension of the exemption from the visa requirement within the framework of the reciprocity mechanism, the powers to determine the corresponding temporary scope of that suspension, as well as the powers to implement the suspension mechanism*. 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 powers¹. *The examination procedure should be applicable for the adoption of such acts.*

¹ OJ L 55, 28.2.2011, p. 13.

- (2a) *In order to ensure the adequate involvement of the Council and the European Parliament in the second phase of application of the reciprocity mechanism, given the particularly sensitive political nature of the suspension of the exemption from the visa requirement for all the nationals of the third country concerned and its horizontal implications for the Member States, the Schengen associated countries and the Union itself, notably for their external relations and for the overall functioning of the Schengen area, the powers to adopt acts in accordance with Article 290 of the Treaty of the Functioning of the European Union should be delegated to the Commission with regard to certain elements of the reciprocity mechanism. Conferring such powers on the Commission takes into account the need for political discussion on the Union policy on visas in the Schengen area. It reflects also the need to ensure the adequate transparency and legal certainty in application of the reciprocity mechanism when applied to all the nationals of the third country concerned, notably through the corresponding temporary amendment of Annex II to Regulation (EC) No 539/2001. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.*
- (2b) *The mechanism regarding reciprocity should be applicable when a third country listed in Annex II to Regulation (EC) No 539/2001 applies a visa requirement for nationals of one or more Member States.*
- (3) The mechanism regarding reciprocity to be implemented if one of the third countries included in Annex II to Regulation (EC) No 539/2001 *applies a visa requirement for the nationals of one or more Member States* 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 Regulation (EC) No 539/2001 applies a visa requirement for nationals of one or more Member States.*

- (3a) *Upon receipt of a notification from a Member State that a third country listed in Annex II to Regulation (EC) No 539/2001 applies a visa requirement for that Member State's nationals, all Member States should react in common, thus providing an EU response to a situation which affects the Union in its entirety and allows for its citizens to be subjected to differing treatments.*
- (3b) *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.*
- (3c) *This Regulation should establish a mechanism for the temporary suspension of the visa waiver for a third country listed in Annex II to Regulation (EC) No 539/2001 in case of an emergency situation, 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.*
- (3d) *A substantial and sudden increase as mentioned in Article 1a(2) indicates reaching beyond the threshold of 50 per cent. It may also be lower if the Commission deems it applicable in the particular case notified by the Member State under pressure.*
- (3e) *A low recognition rate as mentioned in Article 1a(2) indicates a recognition rate of asylum applications of less than 5 per cent. It may also be higher if the Commission deems it applicable in the particular case notified by the Member State under pressure.*
- (3f) *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.*

- (6) As the visa rules applicable for refugees and stateless persons *introduced by Council Regulation (EC) No 1932/2006 of 21 December 2006 amending Regulation (EC) No 539/2001*, do 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 *should leave* Member States free to decide on *the* visa exemption or obligation for that category of persons *in compliance to their international obligations*. Such national decisions *should* be notified to the Commission.
- (7) *This regulation should provide* a legal basis for the visa requirement or exemption of holders of *travel documents* issued by certain entities *subjects of* international law which are not intergovernmental *international* organisations.
- (7a) *Regulation (EC) 539/2001 should be without prejudice to application of international agreements concluded by the European Community before the entry into force of that regulation which imply the need to derogate from the common visa rules, while taking into account the case-law of the Court of Justice of the European Union.*
- (9) This Regulation constitutes a development of the Schengen acquis, in accordance with the Protocol integrating the Schengen acquis into the framework of the European Union, as defined in Annex A to Council Decision 1999/435/EC¹ of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis.

¹ OJ L 176, 10.7.1999, p. 1.

- (10) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis¹, which falls within the area referred to in Article 1, point (B), of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement².
- (11) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis³, which fall within the area referred to in Article 1, point (B) of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁴.
- (12) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point (B) of (...) Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁵.

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 176, 10.7.1999, p. 31.

³ OJ L 53, 27.2.2008, p. 52.

⁴ OJ L 53, 27.2.2008, p. 1.

⁵ OJ L

- (13) This Regulation constitutes a development of the provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis¹. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (14) This Regulation constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis². Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application,

¹ OJ L 131, 1.6.2000, p. 43.

² OJ L 64, 7.3.2002, p. 20.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 539/2001 is **hereby** amended as follows:

1. Article 1 is **hereby** amended as follows:

(aa) paragraph 4 is replaced by the following:

"4. Where a third country listed in Annex II applies a visa requirement for the nationals of one or more Member State(s), the following provisions shall apply:

(a) within (30) days of the implementation by the third country of the visa requirement or, in cases where the visa requirement existing on [...insert the date of entry into force of the amending Regulation...] is maintained, within (30) days of that date, the Member State(s) concerned shall notify the European Parliament, the Council and the Commission in writing.

This notification:

(i) shall specify the date of implementation of the measure and the type(s) of travel documents and visas concerned;

(ii) shall include a detailed explanation of the preliminary measures that the Member State(s) concerned has taken with a view to ensuring visa-free travel with the third country in question and all relevant information;

Information about this notification shall be published without delay by the Commission in the Official Journal of the European Union, including information on 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 the deadline referred to in the first subparagraph, the notification shall not be made or shall be withdrawn and the information shall not be published;

- (b) the Commission shall, immediately following the date of publication referred to in point (a) and in consultation with the Member State concerned, take steps with the authorities of the third country in question, in particular in political, economic and commercial fields, 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 referred to in point (a) and despite all the steps taken in accordance with point (b), the third country has not lifted the visa obligation, the Member State(s) concerned may request the Commission to suspend the exemption from the visa requirement for certain categories of nationals of the third country concerned. Where a Member State makes such a request, it shall inform the European Parliament and the Council thereof;*
- (d) the Commission shall, when considering further steps in accordance with points (e), (f) or (g), take 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;*

- (e) *if the third country concerned has not lifted the visa requirement, the Commission shall, at the latest (6) months from the date of publication referred to in point (a) and then with intervals of no longer than six months within a total period which may not go beyond the date on which the delegated act referred to in point (f) takes effect or is objected to:*
- (i) *adopt, at the request of the Member State(s) concerned or on its own initiative, an implementing act temporarily suspending the exemption from the visa requirement for certain categories of nationals of the third country concerned for a period of up to six months. This implementing act shall determine a date, within 90 days of its entry into force, on which the suspension of the exemption from the visa requirement is to take effect, taking into account the available resources in the consulates of the Member States. The Commission may extend the period of this suspension by further periods of up to six months and may modify the categories of nationals of the third country in question for which the exemption from the visa requirement is suspended. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 4a(2). Without prejudice to the application of Article 4 of this Regulation, during the periods of this suspension all the categories of nationals of the third country concerned by the implementing act(s) shall be required to be in possession of a visa when crossing the external borders of the Member States.*

or

- (ii) *submit to the committee referred to in Article 4a(1) a report assessing the situation and containing the reasons why it decided not to suspend the exemption of the visa requirement and inform the European Parliament and the Council thereof.*

All relevant factors shall be taken into account in this report, such as 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. The Council and the European Parliament may have a political discussion on the basis of these reports;

(f) if within (24) months following the date of publication referred to in point (a), the third country concerned has not lifted the visa requirement, the Commission shall adopt a delegated act in accordance with Article X temporarily suspending for a period of twelve months the application of Annex II for the nationals of the third country concerned. The delegated act shall determine a date, within (90) days of its entry into force, on which the suspension of the application of Annex II is to take effect, taking into account the available resources in the Member States' consulates and shall amend Annex II accordingly. This shall be done through inserting next to the name of the third country in question a reference to a footnote indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of this suspension.

As of the date when the suspension of Annex II takes effect or when an objection to the delegated act has been expressed pursuant to Article X(5), the measures taken in application of point (e) with regard to the third country in question, including any implementing act adopted pursuant to that provision in relation to notification(s) concerning that third country shall expire.

In case the Commission submits a legislative proposal as referred to in point (g), the period of twelve-months shall be extended for a further period of six months. This extension shall be indicated in Annex II.;

Without prejudice to the application of Article 4 of this Regulation, during the periods of this suspension the nationals of the third country concerned by the delegated act shall be required to be in possession of a visa when crossing the external borders of the Member States.

- (fa) any subsequent notification made by another Member State pursuant to point (a) concerning the same third country during the period of application of measures adopted under the procedures set out in points (e)(i) or (f) with regard to that third country shall be merged into these ongoing procedures without prolonging the deadlines or periods of application of such measures;*
- (g) if within (6) months following the date where the delegated act referred to in point (f) has entered into force the third country in question has not lifted the visa obligation, the Commission may submit a legislative proposal in order to transfer the third country from Annex II to Annex I;*
- (h) the procedures referred to in points (e), (f) and (g) shall not affect the right of the Commission to submit at any time a proposal amending this Regulation in order to transfer the third country concerned from Annex II to Annex I;*
- (i) 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 thereof. The notification shall be published without delay by the Commission in the Official Journal of the European Union.*

Any implementing act adopted pursuant to point (e)(i) or delegated act adopted pursuant to point (f) concerning the third country in question shall expire seven days after the publication referred to in the first subparagraph. In case the third country in question has introduced a visa requirement for nationals of two or more Member States, the implementing or delegated acts concerning that third country shall expire seven days after the publication of the notification concerning the last Member State concerned. The information about this expiry shall be published without delay by the Commission in the Official Journal of the European Union.

In case the third country in question abolishes the visa requirement without the Member State(s) concerned notifying it in accordance with the first subparagraph, the Commission shall on its own initiative proceed without delay with the publication referred to in that subparagraph and the second subparagraph shall apply."

(bb) paragraph 5 is deleted.

2. The following *article* is inserted:

"Article 1a

1. ***By way of derogation from Article 1(2), Article 1(1) shall temporarily apply in emergency situation(s), as a last resort, in relation to a third country listed in Annex II when so decided in accordance with this Article.***
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 staying in the Member State's territory without a right thereto, in comparison with the same period in the previous year or with the last six months prior to the implementation of the exemption from the visa requirement for nationals of that third country;***
 - (b) ***a substantial and sudden increase leading to specific pressures on the asylum system 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 is low in comparison with the same period in the previous year or with the last six months prior to the implementation of the exemption from the visa requirement for nationals of that third country;***
 - (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 same period in the previous year or with the last six months prior to the implementation of the exemption from the visa requirement for nationals of that third country;***

The comparison with the six months period prior to the implementation of the exemption from the visa requirement shall only be applicable during a period of [7] years from the date of implementation of the exemption from the visa requirement for nationals of that third country.

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 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) *whether any of the circumstances specified in subparagraphs a), b) or c) of paragraph 2 are present;*
 - (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;
 - (d) *the reports prepared by FRONTEX, the European Asylum Support Office or Europol if circumstances so require in the specific case notified;*
 - (e) *the overall question of public policy and internal security, in consultations with the Member State(s) concerned.*

The Commission shall inform the European Parliament and the Council of the results of this examination.

- 3a. *The Commission shall take into account the consequences of a suspension of the exemption of the visa requirement for the external relations of the EU and its Member States with the country concerned, and work in close cooperation with that third country to find alternative long-term solutions.*

Where the Commission, on the basis of this examination, determines that action is needed, it shall, within three months following receipt of the notification, adopt an implementing decision temporarily suspending the exemption from 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 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 *by* 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).".

3. *The following article is inserted:*

"Article 1b

At the latest four years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and to the Council assessing the effectiveness of the reciprocity and the suspension mechanisms and shall, if necessary, submit a legislative proposal for amending this Regulation in order to amend the above mentioned mechanisms. The European Parliament and the Council shall act on such a proposal by the ordinary legislative procedure."

4. Article 4 is *hereby* 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) *civilian air and sea crew members in the performance of their duties;*

(ab) *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 13 May 1958 or No 185 of 16 June 2003) or the International Maritime Organisation Convention on Facilitation of International Maritime Traffic of 9 April 1965 (FAL Convention);*

(ac) *crew and members of emergency or rescue missions in the event of disaster or accident;*

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

(c) holders of *travel documents* issued by intergovernmental international organisations *of which one or more Member States are members*, or by other entities *recognised by the Member State concerned as subjects of international law*, to officials *of these organisations or entities*".

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

"(d) ***without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for refugees signed at Strasbourg on 20 April 1959***, 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, which is recognised by the Member State concerned.***";

5. The following ***article*** (...) is inserted:

"Article 4a

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of 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 Member States of the Commission's exercise of implementing powers.***
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
- 2a. ***Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.***

5a. *The following article is inserted:*

"NEW Article X

Exercise of the delegation

1. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
2. *The power to adopt delegated acts referred to in Article 1(4)(f) shall be conferred on the Commission for a period of five years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*
3. *The delegation of power referred to in Article 1(4)(f) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
4. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
5. *A delegated act adopted pursuant to Article 1(4)(f) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."*

Article 2

With regard to Article 1(2) of this Regulation, the procedure provided for in Article 1a of Regulation 539/2001 as amended, and notably the provisions of the second subparagraph of Article 1a(2), shall apply also to the third countries with regard to whom the exemption from the visa requirement was introduced before the entry into force of this Regulation.

Article 3

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, [...]

For the European Parliament
The President

For the Council
The President
