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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council
No. prev. doc.:	9025/16, 8926/16
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Subject:	Proposal for a Regulation of the European Parliament and of the Council amending 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 (revision of the suspension mechanism) – General approach

1. On 10 May 2016 the Council received a proposal for a Regulation of the European Parliament and of the Council amending 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 (revision of the suspension mechanism).

2. On 11 May 2016 the Visa Working Party discussed this proposal. On the basis of the discussions, and taking into account the written comments sent by the delegations, the Presidency submitted the text set out in 8926/16, which was discussed at the meeting of the JHA Counsellors on 17 May 2016. The outcome of these discussions is reflected in 9025/16.

3. On 18 May 2016 Coreper discussed this subject and agreed to a revised version of the text, as set out in the annex.
4. In this context, **the Council is invited to adopt a general approach on the proposal on the basis of the text set out in the Annex with a view to negotiating with the European Parliament.**

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending 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

(revision of the suspension mechanism)

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 point (a) Article 77(2) 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:

- (1) Council Regulation (EC) No 539/2001¹ lists the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement.
- (2) The mechanism for the temporary suspension of the exemption from the visa requirement for the nationals of a third country listed in Annex II of that regulation ("the suspension mechanism") should be strengthened by making it easier for Member States to notify circumstances leading to a possible suspension and by enabling the Commission to trigger the mechanism on its own initiative.

¹ Council Regulation (EC) No 539/2001 of 15 March 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, OJ L 81, 21.03.2001, p. 1.

- (3) In particular, the use of the mechanism should be facilitated by shortening reference periods and deadlines allowing for a faster procedure and by extending the possible grounds of suspension, which should include a decrease of cooperation on readmission, in particular a substantial increase in the refusal rate of readmission applications, including for third-country nationals having transited through the third country concerned, where a readmission agreement concluded between the Union or a Member State and that third country provides for such a readmission obligation, and a substantial increase of risks to the public policy or internal security of the Member States. The Commission should also be able to trigger the mechanism in case the third country fails to cooperate on readmission, in particular where a readmission agreement has been concluded between the third country concerned and the Union.
- (3a) For the purposes of the suspension mechanism, a substantial increase indicates an increase exceeding a threshold of 50 %. It may also indicate a lower increase if the Commission deems it applicable in the particular case notified by the Member State concerned.²
- (3b) For the purposes of the suspension mechanism, a low recognition rate indicates a recognition rate of asylum applications of around 3 or 4 %. It may also indicate a higher recognition rate if the Commission deems it applicable in the particular case notified by the Member State concerned.³
- (3c) It is necessary to avoid and counter any abuse of the visa exemption where it leads to an increase in migratory pressure, resulting from, for instance, an increase in unfounded asylum applications, also when leading to unfounded applications for residence permits.

² Text similar to that of recital (5) of Regulation (EU) No 1289/2013 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 (OJ L 347, 20.12.2013, p.74).

³ Text similar to that of recital (6) of Regulation (EU) No 1289/2013 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 (OJ L 347, 20.12.2013, p.74).

- (3d) With a view to ensuring that the specific criteria which were used to assess the appropriateness of a visa exemption, granted as a result of a successful conclusion of a visa liberalisation dialogue, continue to be fulfilled over time, the Commission should monitor the situation in the third countries concerned and regularly report to the European Parliament and the Council.
- (4) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC⁴. The United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (5) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC⁵. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (6) As regards Iceland and Norway, this Regulation constitutes a development of 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 association of those two States with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in point B of Article 1, of Council Decision 1999/437/EC⁶.

⁴ 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 *acquis*, OJ L 131, 1.6.2000, p. 43.

⁵ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*, OJ L 64, 7.3.2002, p. 20.

⁶ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*, OJ L 176, 10.7.1999, p. 31.

- (7) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of 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 point B of Article 1, of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC⁷.
- (8) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed 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 point B of Article 1, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁸.

⁷ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of 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*, OJ L 53, 27.2.2008, p. 1.

⁸ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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*, relating to the abolition of checks at internal borders and movement of persons, OJ L 160, 18.6.2011, p. 19.

HAVE ADOPTED THIS REGULATION:

Article 1

Article 1a of Regulation (EC) No 539/2001 is amended as follows:

(1) in paragraph 1 the following is deleted:

"in emergency situations, as a last resort,"

(2) paragraph 2 is replaced by the following:

"2. A Member State may notify the Commission if it is confronted, over a two-month period, in comparison with the same period in the previous year or with the last two months prior to the implementation of the exemption from the visa requirement for nationals of a third country listed in Annex II, with one or more of the following circumstances, namely:

- (a) a substantial increase in the number of nationals of that third country found to be staying in the Member State's territory without a right thereto;
- (b) a substantial increase in the number of asylum applications from the nationals of that third country for which the recognition rate is low;
- (c) a decrease of cooperation on readmission with that third country, substantiated by adequate data, in particular a substantial increase in the refusal rate of readmission applications submitted by the Member State to that third country for its own nationals or, where a readmission agreement concluded between the Union or that Member State and that third country provides for such obligation, for third country nationals having transited through that third country;
- (d) an increase of risks to the public policy or internal security of Member States, substantiated by adequate data, in particular a substantial increase of serious crime or terrorist offences related to that third country.

The notification referred to in the first subparagraph shall state the reasons on which it is based 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 of such notification."

(3) the following paragraph is inserted:

"2a. Where the Commission has concrete and reliable information of circumstances referred to in points (a), (b), (c) or (d) of paragraph 2, arising in one or more Member States, or that the third country is not cooperating on readmission, in particular where a readmission agreement has been concluded between that third country and the Union, for instance:

- by refusing or failing to process readmission applications in due time,
- by failing to issue in due time travel documents for the purposes of return within deadlines specified in the agreement or not accepting European travel documents issued following the lapse of deadlines specified in the agreement,
- or by terminating or suspending the agreement,

the Commission shall inform the European Parliament and the Council promptly with its analysis, and paragraph 4 shall apply."

(3a) the following paragraph is inserted:

“2b. The Commission shall monitor the continuous fulfilment of the specific criteria which were used to assess the appropriateness of a visa liberalisation by the third countries whose nationals are exempt from the visa requirement when travelling to the territory of Member States as a result from a successful conclusion of a visa liberalisation dialogue conducted between the Union and that third country. The Commission shall report regularly to the European Parliament and the Council at least once a year, or more frequently when necessary. The report shall focus on third countries for which the Commission considers, based on concrete and reliable information, that certain criteria are no longer fulfilled. Where a report of the Commission shows that one or more of the specific criteria is no longer fulfilled in relation to a particular third country, paragraph 4 shall apply.

(4) paragraph 3 is replaced by the following:

- "3. The Commission shall examine any notification made pursuant to paragraph 2, taking into account:
- (a) whether any of the situations described in paragraph 2 are present;
 - (b) the number of Member States affected by any of the situations described in paragraph 2;
 - (c) the overall impact of the circumstances referred to in paragraph 2 on the migratory situation in the Union as it appears from the data provided by the Member States or available to the Commission;
 - (d) the reports prepared by the [European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union], the European Asylum Support Office or the European Police Office (Europol) if circumstances so require in the specific case;

- (e) the overall question of public policy and internal security, in consultations with the Member State concerned.

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

- (5) paragraph 4 is replaced by the following:

"4. Where the Commission, on the basis of the information as referred to in paragraph 2a or the report as referred to in paragraph 2b or the examination referred to in paragraph 3, and taking into account the consequences of a suspension of the exemption from the visa requirement for the external relations of the Union and its Member States with the third country concerned, while working in close cooperation with that third country to find alternative long-term solutions, decides that action is needed, it shall, within one month of the notification referred to in paragraph 2 or the information or report referred to under paragraphs 2a and 2b, adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of six months. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 4a(2). The implementing act shall determine the date on which the suspension of the exemption from the visa requirement is to take effect.

By derogation to paragraph 3 and the first subparagraph of paragraph 4, where the Commission has been notified by a simple majority of Member States, the Commission shall, within one month from the notification, adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of 6 months. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 4a(2). The implementing act shall determine the date on which the suspension of the exemption from the visa requirement is to take effect.

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

Article 2

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
