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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) (First reading)

At its meeting on 7 December 2016, COREPER agreed on text of the draft 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), as set out in the Annex.

This text was sent to the European Parliament, with a view to the LIBE Committee on 8 December 2016, accompanying a letter confirming that, should the European Parliament adopt its position at first reading in the form of the text as contained in the Annex, after its revision by the Legal Linguists, the Council would approve the European Parliament's position and adopt the act.

Several statements would be included in the minutes of the Council meeting where the Regulation will be finally adopted.

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 539/2001 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.

- (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.
- (3aa) With a view to ensuring that the specific requirements which are based on Article -1 and 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. The Commission should pay particular attention to the situation of human rights in the third countries concerned.
- (3ab) The Commission should report regularly to the European Parliament and the Council at least once a year, for a period of seven years after the entry into force of visa liberalisation for that third country, or thereafter when the Commission considers it necessary or upon request by the European Parliament or the Council.

- (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.
- (3ba) The Commission should, before taking any decision to temporarily suspend the visa exemption for nationals of a third country, take into account the situation of human rights in that third country and the possible consequences of a suspension of the visa exemption for that situation.
- (3bb) 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.
- (3bc) In order to ensure the efficient application of the suspension mechanism and in particular where an urgent response is needed in order to resolve the difficulties faced by at least one Member State, and taking account of the overall impact of the emergency situation on the Union as a whole, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council . The examination procedure should be used for the adoption of such implementing acts.
- (3bd) The suspension of the exemption from the visa requirement by implementing act should cover certain categories of nationals of the third country concerned, by reference to the relevant types of travel documents and, where appropriate, additional criteria, such as persons travelling for the first time to the territory of the Member States. The implementing act should determine the categories of nationals to which the suspension should apply, taking into account the specific circumstances notified by one or several Member States or reported by the Commission and the principle of proportionality.

- (3be) In order to ensure the adequate involvement of the European Parliament and of the Council in the application of the suspension mechanism, given the particularly sensitive political nature of the suspension of the exemption from the visa requirement for all the nationals of a third country listed in Annex II to Regulation (EC) No 539/2001 and its horizontal implications for the Member States, the Schengen associated countries and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, the power to adopt acts in accordance with Article 290 of the Treaty of the Functioning of the European Union should be delegated to the Commission in respect of the temporary suspension of the exemption of the visa requirement for the nationals of the third countries concerned. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (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/EC . 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/EC . 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/EC.
- (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/EC.
- (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/EU.

Article 1

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

(1) Paragraph 1 is replaced by the following:

"1. By way of derogation from Article 1(2), the exemption from the visa requirement for nationals of a third country listed in Annex II shall be temporarily suspended, based on relevant and objective data, in accordance with this Article."

(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 refused entry or 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 or imminent threat to public policy or internal security of Member States, in particular a substantial increase of serious criminal offences, related to nationals of that third country, substantiated by objective, concrete and relevant information and data provided by competent authorities.

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 Member State concerned may in its notification specify which categories of nationals of the third country concerned the Member State considers should be covered by an implementing act under paragraph 4(a), indicating the detailed reasons therefor. 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 taking into account relevant data, reports and statistics, of circumstances referred to in points (a), (b), or (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 requirements which are based on Article -1 and 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.

In addition, the Commission shall report regularly to the European Parliament and the Council at least once a year, for a period of seven years after the entry into force of visa liberalisation for that third country, or thereafter when the Commission considers it necessary or upon request by the European Parliament or the Council. The report shall focus on third countries for which the Commission considers, based on concrete and reliable information, that certain requirements are no longer fulfilled.

Where a report of the Commission shows that one or more of the specific requirements 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 Border and Coast Guard, the European Asylum Support Office or the European Police Office (Europol) or any other Union institution, body, office, agency or international organisation competent in matters covered by this Regulation if circumstances so require in the specific case;
- (da) The indications the Member State concerned may have given in its notification in relation to possible measures under paragraph 4(a).
- (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 examination referred to in paragraph 3, on the basis of the report referred to in paragraph 2b, or on the basis of the analysis referred to in paragraph 2a 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, or where a simple majority of Member States have notified the Commission of circumstances referred to in points (a), (b), (c) or (d) of paragraph 2, the following provisions shall apply:

- (a) The Commission shall adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of nine months. The suspension shall apply to certain categories of nationals of the third country concerned, by reference to the relevant types of travel documents and, where appropriate, additional criteria. When determining to which categories the suspension shall apply, the Commission shall, based on the information available, include categories that are sufficiently large in order to efficiently contribute to addressing the circumstances referred to in paragraphs 2, 2a and 2b in the specific case, while respecting the principle of proportionality. The Commission shall adopt the implementing act within one month of:
- receiving the notification referred to in paragraph 2;
 - being made aware of the information as referred to in paragraph 2a;
 - making the report as referred to in paragraph 2b; or
 - receiving the notification of a simple majority of Member States of circumstances referred to in points (a), (b), (c) or (d) of paragraph 2.

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.

During the period of suspension, the Commission shall establish an enhanced dialogue with the third country concerned with a view to remedying the circumstances in question.

- (b) Where the circumstances referred to in paragraphs 2, 2a, and 2b persist, the Commission shall adopt, at the latest two months prior to the expiry of the nine-month period referred to in point (a), a delegated act in accordance with Article 4b temporarily suspending the application of Annex II for a period of 18 months for all the nationals of the third country concerned. The delegated act shall take effect from the date of expiry of the implementing act referred to in point (a) and shall amend Annex II accordingly. That amendment shall be made through inserting next to the name of the third country in question a footnote indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension.

Where the Commission has submitted a legislative proposal pursuant to paragraph 5, the period of suspension provided for in the delegated act shall be extended by six months. The footnote shall be amended accordingly.

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

A Member State which, in accordance with Article 4 of this Regulation, provides for new exemptions from the visa requirement for a category of nationals of the third country covered by the act suspending the exemption from the visa requirement shall communicate those measures in accordance with Article 5."

(5a) Paragraph 5 is replaced by the following:

- "5. Before the end of the period of validity of the delegated act adopted pursuant to point (b) of paragraph 4, the Commission, shall submit a report to the European Parliament and to the Council. The report may be accompanied by a legislative proposal for amending this Regulation in order to transfer the reference to the third country concerned from Annex II to Annex I."

(5b) The following Article is inserted:

"Article 1c

By ...¹, the Commission shall submit a report to the European Parliament and to the Council assessing the effectiveness of the suspension mechanism provided for in Article 1a and shall, if necessary, submit a legislative proposal for amending this Regulation. The European Parliament and the Council shall act on such a proposal by the ordinary legislative procedure."

(5c) Article 4b of Regulation (EC) No 539/2001 is amended as follows:

– A new paragraph 2a is added:

"2a. The power to adopt delegated acts referred to in point (b) of Article 1a(4) shall be conferred on the Commission for a period of five years from ...². 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."

– Paragraph 3 is replaced by the following:

"3. The delegation of power referred to in point (f) of Article 1(4) and in and in point (b) of Article 1a(4) 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."

¹ 4 years after the entry into force of this Regulation.

² The date of entry into force of this Regulation.

– A new paragraph 3a is inserted:

"3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016."

– The following paragraph is inserted:

"6. A delegated act adopted pursuant to point (b) of Article 1a(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two 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."

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