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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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 (revision of the suspension mechanism)

REGULATION (EU) .../...
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
(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 procedure¹,

¹ Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of

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 nationals of a third country listed in Annex II of Regulation (EC) No 539/2001, as set out in Article 1a 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 suspension mechanism on its own initiative.
- (3) In particular, the use of the suspension mechanism should be facilitated by shortening reference periods and deadlines, allowing for a faster procedure and by extending the possible grounds of suspension, so as to include a decrease in cooperation on readmission as well as a substantial increase in risks to the public policy or internal security of Member States among those grounds. That decrease in cooperation should cover 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. The Commission should also be able to trigger the suspension 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.

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, 21.3.2001, p.1).

- (4) 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.
- (5) 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.
- (6) 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 example, an increase in unfounded asylum applications, also when leading to unfounded applications for residence permits.
- (7) 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.
- (8) 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, and thereafter when the Commission considers it necessary, or upon request by the European Parliament or the Council.

- (9) 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.
- (10) 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 into account 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 Council¹. The examination procedure should be used for the adoption of such implementing acts.
- (11) The suspension of the exemption from the visa requirement by an 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, to 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.

¹ 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 (OJ L 55, 28.2.2011, p. 13).

- (12) In order to ensure the adequate involvement of the European Parliament and of the Council in the implementation of the suspension mechanism, given the politically sensitive nature of a suspension of an exemption from the visa requirement for all nationals of a third country listed in Annex II to Regulation (EC) No 539/2001 and its horizontal implications for the Member States 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 on 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 Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹. 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.
- (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/EC²; 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.

¹ OJ L 123, 12.5.2016, p. 1.

² 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).

- (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/EC¹; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (15) 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 *acquis*² which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC³.
- (16) 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*⁴ 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 2008/146/EC⁵.

¹ 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).

² OJ L 176, 10.7.1999, p. 36.

³ 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).

⁴ OJ L 53, 27.2.2008, p. 52.

⁵ 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).

- (17) 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*¹ 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/EU²,

HAVE ADOPTED THIS REGULATION:

¹ OJ L 160, 18.6.2011, p. 21.

² 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).

Article 1

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

(1) Article 1a is replaced by the following:

"Article 1a

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. 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:
 - (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 in 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 so provides, for third-country nationals having transited through that third country;
- (d) an increased risk or imminent threat to the public policy or internal security of Member States, in particular a substantial increase in 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 are to be covered by an implementing act under point (a) of paragraph 4, indicating the detailed reasons therefor. The Commission shall inform the European Parliament and the Council immediately of such notification.

2a. Where the Commission, taking into account relevant data, reports and statistics, has concrete and reliable information of circumstances referred to in point (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:

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

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

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 granting visa liberalisation, by the third countries whose nationals have been exempted from the visa requirement when travelling to the territory of Member States as a result of 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 to the Council, at least once a year, for a period of seven years after the date of entry into force of visa liberalisation for that third country, and thereafter when the Commission considers it to be necessary, or upon request by the European Parliament or the Council. The report shall focus on third countries for which the Commission considers that, based on concrete and reliable information, 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.

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 institution, body, office or agency of the Union or international organisation competent in matters covered by this Regulation, if circumstances so require in the specific case;

- (e) the indications the Member State concerned may have given in its notification in relation to possible measures under point (a) of paragraph 4;
- (f) 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.

4. Where, on the basis of the analysis referred to in paragraph 2a, the report 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, the Commission decides that action is needed, or where a simple majority of Member States have notified the Commission of the existence of circumstances referred to in point (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 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, to additional criteria. When determining to which categories the suspension applies, 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 each specific case, while respecting the principle of proportionality. The Commission shall adopt the implementing act within one month of:
- (i) receiving the notification referred to in paragraph 2;

- (ii) being made aware of the information referred to in paragraph 2a;
- (iii) presenting the report referred to in paragraph 2b; or
- (iv) receiving the notification from a simple majority of Member States of the existence of circumstances referred to in point (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). It 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 before the expiry of the nine-month period referred to in point (a) of this paragraph, a delegated act in accordance with Article 4b, temporarily suspending the application of Annex II for a period of 18 months for all 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) of this paragraph and shall amend Annex II accordingly. That amendment shall be made by inserting a footnote next to the name of the third country in question, 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 period of 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, 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.

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.
6. Where the Commission has submitted a legislative proposal pursuant to paragraph 5, it may extend the validity of the implementing act adopted pursuant to paragraph 4 by a period not exceeding 12 months. The decision to extend the validity of the implementing act shall be adopted in accordance with the examination procedure referred to in Article 4a(2).";

(2) Article 1b is replaced by the following:

"Article 1b

By 10 January 2018, the Commission shall submit a report to the European Parliament and to the Council assessing the effectiveness of the reciprocity mechanism provided for in Article 1(4) 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";

(3) the following Article is inserted:

"Article 1c

By ... [4 years after the date of 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 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.";

(4) Article 4b is replaced by the following:

"Article 4b

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 point (f) of Article 1(4) shall be conferred on the Commission for a period of five years from 9 January 2014. 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.

- 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 ... [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 point (f) of Article 1(4) 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.
- 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 of 13 April 2016 on Better Law-Making*.
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 point (f) of Article 1(4) 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.

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 by the Council within a period of two months of notification of that act to the European Parliament and to 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.

* OJ L 123, 12.5.2016, p. 1."

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 ...,

For the European Parliament

The President

For the Council

The President
