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INFORMATION NOTE

from: General Secretariat of the Council
to: Permanent Representatives Committee/Council

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 of Member States and those whose nationals are exempt from that requirement - Outcome of the European Parliament's first reading (Strasbourg, 24 to 27 February 2014)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Mrs Maryia GABRIEL (EPP-BG) presented one compromise amendment (amendment 7) to the proposal for a Regulation, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. Two further amendments containing statements were tabled (amendments 8 and 9). These amendments had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 27 February 2014, the plenary adopted the compromise amendment (amendment 7) to the proposal for a Regulation. Amendments 8 and 9 were also adopted.

The Commission's proposal as thus amended and the legislative resolution constitute the Parliament's first-reading position¹, it reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement *I**

European Parliament legislative resolution of 27 February 2014 on the 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 of Member States and those whose nationals are exempt from that requirement (COM(2012)0650 – C7-0371/2012 – 2012/0309(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0650),
 - having regard to Article 294(2) and Article 77(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0371/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the undertaking given by the Council representative by letter of 5 February 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0373/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Approves the statement by Parliament, the Council and the Commission annexed to this resolution;
 3. Takes note of the statement by the Commission annexed to this resolution;
 4. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2012)0309

Position of the European Parliament adopted at first reading on 27 February 2014 with a view to the adoption of Regulation (EU) No .../2014 of the European Parliament and of the Council amending *Council Regulation (EC) No 539/2001* listing the third countries whose nationals must be in possession of visas when crossing the external borders **■ and those whose nationals are exempt from that requirement***

THE 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,

* TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

Having regard to the proposal from the Commission,

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

Acting in accordance with the ordinary legislative procedure¹,

Whereas:

- (-1) *The determination of the third countries whose nationals are subject to, or exempt from, the visa requirement has since 2001 been made on the basis of the criteria included in recital 5 of Council Regulation (EC) No 539/2001².*
- (-1a) *The evolving nature of the EU's visa policy and the increased need to ensure more coherence between visa policy and other EU policies justify that some additional criteria be taken into account when reviewing the lists of countries in Annexes I and II to Regulation (EC) No 539/2001.*

¹ Position of the European Parliament of 27 February 2014.

² *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).*

- (-1b) *The determination of the third countries whose nationals are subject to, or exempt from, the visa requirement should be governed by a considered, case-by-case assessment.*
- (-1c) *This assessment should be made periodically and could lead to proposals for amending the annexes of the Regulation, notwithstanding the possibility to have country-specific amendments to the annexes in particular circumstances, for instance as the result of a visa liberalisation process or as the ultimate consequence of a temporary suspension of the visa exemption.*
- (1) The composition of the lists of third countries in Annexes I and II to Regulation (EC) No 539/2001 should be, and should remain, consistent with the criteria laid down in **Article X as introduced by Article 1 of this Regulation**. References to third countries for which the situation has changed as regards these criteria, should be transferred from one Annex to the other.

- (2) The imposition of the visa requirement on the nationals of Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, ***the United Arab Emirates*** and Vanuatu is no longer justified. These countries do not present any risk of illegal immigration or a threat to public policy for the Union in accordance with the criteria set out in ***Article X***. Consequently, nationals of those countries should be exempt from the visa requirement for stays of no more than ***90 days in any 180-day period*** in all and references to those countries should be transferred to Annex II.
- (2a) ***The Commission should further assess the situation of Colombia and Peru with regard to the criteria set out in Article X before the opening of negotiations on bilateral agreements on visa waiver between the Union and those countries.***

- (3) Exemption from the visa requirement for nationals of *Colombia*, Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, *Peru*, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, *the United Arab Emirates* and Vanuatu should not come into force until bilateral agreements on visa waiver between the Union and the countries concerned have been concluded in order to ensure full reciprocity.
- (4) Statistical data show that the groups of British Nationals currently listed in point 3 of Annex I do not pose a risk in terms of irregular migration to the Schengen Area and that most of them live in islands of the Caribbean region which have strong links and similarities with neighbouring countries which are exempt from the visa obligation. These groups of British Nationals should therefore be exempt from the visa requirement for stays of no more than three months in all and references to those groups should be transferred to Annex II.

- (5) Developments in international law entailing changes in the status or designation of certain states or entities should be reflected in the Annexes to Regulation (EC) No 539/2001. Reference to South Sudan should be added to Annex I to that Regulation, as the country declared its independence on 9 July 2011 and was granted membership of the United Nations on 14 July 2011.
- (6) 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*¹, which fall within the area referred to in Article 1, point (B), of Council Decision 1999/437/EC².

¹ OJ L 176, 10.7.1999, p. 36.

² 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 signed by 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 falls within the area referred to in Article 1, points (B) and (C), of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC².

¹ OJ L 53, 27.2.2008, p. 52.

² 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) 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, points (B) and (C), of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2011/350/EC².

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).

- (9) 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/EC¹. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (10) 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/EC². Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (11) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 3(1) of the 2003 Act of Accession.

¹ 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).

² 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).

(12) This Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(1) of the 2005 Act of Accession.

(12a) ***This Regulation constitutes an act building upon, or otherwise related to, the Schengen acquis within the meaning of Article 4(1) of the 2011 Act of Accession,***

HAVE ADOPTED THIS REGULATION:

Article 1

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

(-1) *The following article is inserted before Article 1:*

"Article X

The purpose of this Regulation is to determine those third countries whose nationals are subject to or exempt from the visa requirement, based on a case-by-case assessment of a variety of criteria relating, inter alia, to illegal immigration, public policy and security, the economic benefits, in particular in terms of tourism and foreign trade, and the Union's external relations with the relevant third countries including, in particular, human rights and fundamental freedoms considerations, as well as the implications of regional coherence and reciprocity."

(1) Annex I is amended as follows:

- (a) in point 1, the references to *Colombia*, Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, *Peru*, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, *the United Arab Emirates* and Vanuatu are deleted and a reference to South-Sudan is inserted;
- (b) point 3 is deleted;

(2) Annex II is amended as follows:

- (a) in point 1, the following references are inserted:

"Colombia"*,

"Dominica*",

"Grenada*",

"Kiribati*"

"Marshall Islands*"

"Micronesia*"

"Nauru*"

"Palau*"

"Peru*"

"Saint Lucia*"

"Saint Vincent and the Grenadines*"

"Samoa*"

"Solomon Islands*"

"Timor-Leste*"

"Tonga*",
"Trinidad and Tobago*",
"Tuvalu*",
"the United Arab Emirates" and
"Vanuatu".

* The exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union.";

(b) point 3 is replaced by the following

"3. British citizens who are not nationals of the United Kingdom of Great Britain and Northern Ireland for the purposes of Union law:

British nationals (Overseas)

British overseas territories citizens (BOTC)

British overseas citizen (BOC)

British protected persons (BPP)

British subjects (BS)".

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 Council
The President

For the European Parliament
The President

ANNEX TO THE LEGISLATIVE RESOLUTION

European Parliament, Council and Commission statement on the further assessment of Colombia and Peru

The European Parliament and the Council recognise the need for a further assessment of the fulfilment by Colombia and Peru of the relevant criteria before the Commission presents recommendations to the Council for decisions authorising the opening of negotiations on visa waiver agreements with those countries.

The Commission commits to proceed with those assessments without delay and to transmit them to the European Parliament and to the Council as soon as possible after the entry into force of this Regulation.

The European Parliament and the Council take note of that commitment by the Commission.

Commission statement on informing the European Parliament

The Commission welcomes the adoption by the European Parliament and the Council of its proposal amending Regulation (EC) No 539/2001 aimed at updating the Annexes containing the lists of third countries whose nationals are subject to, or exempt from, the visa requirement.

In accordance with the Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission, and in particular point 23 thereof, the Commission reiterates its commitment to inform the European Parliament regularly about the conduct of negotiations on visa waiver agreements arising from the transfer of certain countries to Annex II to Regulation (EC) No 539/2001. The Commission will present updates to the relevant bodies in the European Parliament at least twice a year.