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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2018/1806 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 (Kosovo*)

- Adopted by the Council on 9 March 2023

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

REGULATION (EU) 2023/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**amending Regulation (EU) 2018/1806 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**

(Kosovo*)

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), point (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 procedure¹,

* This designation is without prejudice to positions on status, and is in line with
UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

¹ Position of the European Parliament of 28 March 2019 (OJ C 108, 26.3.2021, p. 877) and
position of the Council at first reading of 9 March 2023 (not yet published in the Official
Journal). Position of the European Parliament of ... (not yet published in the Official
Journal).

Whereas:

- (1) Regulation (EU) 2018/1806 of the European Parliament and of the Council¹ 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. The composition of the lists of third countries set out in Annexes I and II to that Regulation should be, and should remain, consistent with the criteria set out in that Regulation. References to third countries in respect of which the situation has changed as regards those criteria should be transferred from one Annex to the other, as appropriate.
- (2) The criteria which should be taken into account when determining, on the basis of a case-by-case assessment, the third countries whose nationals are subject to, or exempt from, the visa requirement are laid down in Article 1 of Regulation (EU) 2018/1806. Those criteria include illegal immigration, public policy and security, economic benefit, in particular in terms of tourism and foreign trade, and the Union's external relations with the relevant third countries, including, in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity.

¹ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 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 303, 28.11.2018, p. 39).

- (3) Kosovo has met the requirements of its roadmap towards a visa-free regime. On the basis of an assessment of a variety of criteria as listed in Article 1 of Regulation (EU) 2018/1806, it is appropriate to exempt holders of passports issued by Kosovo from the visa requirement when travelling to the territory of the Member States. The exemption from the visa requirement will ensure that the whole Western Balkan region is subject to the same visa regime.
- (4) Kosovo should thus be transferred from Part 2 of Annex I to Part 4 of Annex II to Regulation (EU) 2018/1806. The exemption from the visa requirement should apply only to holders of biometric passports issued by Kosovo in line with the standards of the International Civil Aviation Organisation (ICAO). That exemption should not apply until the date from which the European Travel Information and Authorisation System (ETIAS), established by Regulation (EU) 2018/1240 of the European Parliament and of the Council¹, starts operations or until 1 January 2024, whichever date comes first.

¹ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

- (5) Without prejudice to the position of Member States on the status of Kosovo, in the period prior to the date on which the exemption from the visa requirement effectively applies, it is important that readmission agreements or arrangements, as applicable, be concluded with the Member States that do not yet have such an agreement or arrangement. Once concluded, Kosovo is to fully implement those agreements or arrangements while respecting the principle of *non-refoulement* enshrined in the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.
- (6) Kosovo has made significant progress in all blocks of Chapter II of its roadmap towards a visa-free regime. To ensure that migration is managed well and to ensure a secure environment, Kosovo should seek to further align its visa policy with that of the Union.
- (7) The exemption from the visa requirement is dependent upon the continued implementation of the requirements of the roadmap towards a visa-free regime with Kosovo. The Commission is to actively monitor the implementation of those requirements and the alignment of visa policy through the suspension mechanism under Regulation (EU) 2018/1806. The Union can suspend the exemption from the visa requirement in accordance with that mechanism, provided that the conditions set out therein are met.

- (8) 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.
- (9) 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 latters' 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.

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).

- (10) 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*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 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).

- (11) 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.
- (12) As regards Cyprus, and Bulgaria and Romania, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession and of Article 4(1) of the 2005 Act of Accession,

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 (EU) 2018/1806 is amended as follows:

(1) in Part 2 of Annex I, the following text is deleted:

‘ – Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999’;

(2) in Part 4 of Annex II, the following text is added:

‘Kosovo* (**)(***)

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

(**) The exemption from the visa requirement shall only apply to holders of biometric passports issued by Kosovo in line with the standards of the International Civil Aviation Organisation (ICAO).

(***) The exemption from the visa requirement shall apply from the date on which the European Travel Information and Authorisation System (ETIAS), established by Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1), starts operations or from 1 January 2024, whichever date comes first.’.

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
