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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

(Turkey)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 16 December 2013 the European Union (EU) and Turkey launched the Visa Liberalisation Dialogue (VLD), in parallel with the signature of the EU-Turkey Readmission Agreement. The VLD is based on the *Roadmap towards a visa free regime with Turkey* ("the Roadmap"), a document setting out the requirements that Turkey needs to meet in order to enable the European Parliament and the Council to amend Regulation (EC) No 539/2001¹ which would allow Turkish citizens holding biometric passports in line with EU standards to travel to the Member States without a visa for short stays (i.e. up to 90 days within any 180-day period). The 72 requirements listed in the Roadmap are organised in five thematic groups ("blocks"): document security; migration management; public order and security; fundamental rights; and readmission of irregular migrants.

The *First report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap*² ("the First Report") was adopted by the Commission on 20 October 2014. It assessed the fulfilment of each requirement and issued recommendations for making further progress in all of them.

At the EU-Turkey Summit on 29 November 2015, the Turkish side expressed its commitment to accelerate the fulfilment of the Roadmap, including by anticipating the application of all the provisions of the EU-Turkey Readmission agreement, with the objective of obtaining visa liberalisation by October 2016³. The commitment was welcomed by the European Union.

On 4 March 2016 the Commission adopted its *Second report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap*⁴ ("the Second Report") assessing the progress in the implementation of the requirements of the Roadmap by Turkey. It concluded that, since the EU-Turkey Summit of 29 November 2015, the Turkish authorities had intensified their efforts in implementing the Roadmap. It listed specific recommendations on the measures that Turkey should take to make further progress towards the complete fulfilment of all requirements, and encouraged the Turkish authorities to further accelerate the reform process, by addressing the outstanding issues identified in the report as a matter of urgency. The report confirmed areas where Turkey fulfilled the benchmarks and identified actions to be taken to ensure that Turkey meets all benchmarks of the Roadmap.

On 7 and 18 March 2016, meetings of the Heads of State or Government of the EU and Turkey took place. The latter meeting concluded with an EU-Turkey Statement⁵ which stipulates that "*the fulfilment of the visa liberalisation roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met. To this end Turkey will take the necessary steps to fulfil the remaining requirements to allow the Commission to make, following the required assessment of compliance with the benchmarks,*

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.

² COM(2014) 646 final.

³ Statement adopted at the Meeting of EU heads of state or government with Turkey: <http://www.consilium.europa.eu/en/press/press-releases/2015/11/29-eu-turkey-meeting-statement/>

⁴ COM(2016) 140 final.

⁵ Statement adopted at the Meeting of EU heads of state or government with Turkey: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

an appropriate proposal by the end of April on the basis of which the European Parliament and the Council can make a final decision".

In the *Third report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap*⁶, submitted in parallel with this proposal, the Commission notes that building on the new level of engagement and determination demonstrated by Turkey since the EU-Turkey Summit of 29 November 2015, in the last months the Turkish authorities have further intensified their efforts to fulfil that condition. The Commission acknowledges the good progress made by the Turkish authorities so far, and it encourages them to urgently step up these efforts to meet all requirements in order to obtain visa liberalisation by the end of June.

As indicated in the Report, however, the Turkish authorities have not yet managed to meet this ambitious objective as 7 requirements out of 72 have not yet been fulfilled. Some of them are of particular importance.

Two of these seven outstanding requirements need for practical and procedural reasons a longer timeline for implementation, and this has made it impossible for them to be fulfilled in a complete manner by the time of the presentation of this proposal. This concerns the following two benchmarks:

- upgrading the existing biometric passports so as to include security features in line with the latest EU standards;
- fully implementing the provisions of the EU-Turkey readmission agreement, including those related to the readmission of third country nationals.

As indicated in the Report, the Commission and the Turkish authorities have agreed on practical ways of implementing these benchmarks before their complete fulfilment.

The Commission invites the Turkish authorities to urgently undertake the measures that are necessary to fulfil the other outstanding benchmarks of the Roadmap, namely:

- adopting the measures to prevent corruption foreseen by the Roadmap, i.e. ensuring an effective follow-up to the recommendations issued by the Council of Europe's Group of States against Corruption (GRECO);
- aligning the legislation on personal data protection to EU standards, notably to ensure that the data protection authority can act in an independent manner and that the activities of law enforcement agencies fall within the scope of the law;
- negotiating an operational cooperation agreement with Europol. This also depends upon the above changes to the data protection legislation;
- offering effective judicial cooperation in criminal matters to all EU Member States;
- revising the legislation and practices on terrorism in line with European standards, notably by better aligning the definition of terrorism with that set out in Framework Decision 2002/475/JHA as amended in order to narrow the scope of the definition and by introducing a criterion of proportionality.

On the understanding that the Turkish authorities will fulfil, as a matter of urgency and as they committed to do so on 18 March 2016, the outstanding benchmarks of the Roadmap, the Commission has decided to present the proposal to amend Regulation (EC) No 539/2001 to lift the visa requirement for Turkish citizens who are holders of a biometric passport in line with EU standards.

⁶ COM(2016) 278.

In order to assist the co-legislators in their deliberations, the Commission will continue monitoring the steps which the Turkish authorities take to fulfil the outstanding requirements of the Roadmap.

The presentation of this proposal at the beginning of May allows for an eight-week period to elapse between the draft being made available to national Parliaments and its adoption by the end of June, as mentioned in the EU-Turkey Statement of 18 March 2016, and in accordance with Article 4 of Protocol No 1 to the Treaties on the role of national Parliaments in the European Union. As such the proposal ensures that a key element of the EU-Turkey statement, agreed on 18 March by Heads of State or Government, can be delivered.

- **Consistency with existing policy provisions in the policy area**

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. Regulation (EC) No 539/2001 is applied by all Member States – with the exception of Ireland and the United Kingdom – and also by Iceland, Liechtenstein, Norway and Switzerland. The Regulation is part of the EU's common visa policy for short stays of 90 days in any 180-day period.

Turkey is currently listed in Annex I of Regulation (EC) No 539/2001, i.e. among those countries whose nationals are required to hold a visa when travelling to the territory of EU Member States.

Regulation (EC) No 539/2001 was last amended by Regulation (EU) No 259/2014⁷ when Moldova was transferred to the visa-free list after successfully implementing its VLAP; and by Regulation (EU) No 509/2014⁸ when five Caribbean⁹ and eleven Pacific countries¹⁰, as well as Colombia, Peru and the United Arab Emirates were exempted from the visa requirement – subject to the conclusion of visa waiver agreements between the EU and the respective third countries – following a periodical review of the visa lists. On 9 March 2016 and 20 April 2016 the Commission made proposals to amend Regulation (EC) No 539/2001, transferring – respectively – Georgia¹¹ and Ukraine¹² to the visa-free list after successful implementation of their VLAP roadmaps.

The criteria which should be taken into account when determining – based on 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 (EC) No 539/2001 (as introduced by Regulation (EU) No 509/2014). They 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

⁷ Regulation (EU) No 259/2014 of the European Parliament and of the Council of 3 April 2014 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 105, 8.4.2014, p. 9.

⁸ Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 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 149, 20.5.2014, p. 67.

⁹ Dominica, Grenada, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago.

¹⁰ Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, Vanuatu.

¹¹ COM(2016) 142 final.

¹² COM(2016) 236 final.

reciprocity.”¹³ Particular attention should be paid to the security of travel documents issued by the third countries concerned.

As regards reciprocity, on 2 May 2016 the Turkish Government adopted a decree stating that the citizens of all Member States will be able to enter Turkey without a visa from the date of lifting the visa requirement for Turkish citizens.

- **Consistency with other Union policies**

On 6 April 2016 the Commission proposed setting up an EU Entry/Exit System (EES) to strengthen the Schengen area's external borders¹⁴. The main objectives of this proposal are to improve the quality of border checks for third-country nationals and to ensure a systematic and reliable identification of overstayers. The future EES will thus be an important element to ensure lawful use of the visa-free stays in the Schengen area by third-country nationals and to contribute to preventing irregular migration of nationals from visa-free countries.

Furthermore, in a Communication¹⁵, the Commission announced that it will assess the need, feasibility and proportionality of the establishment of an EU Travel Information and Authorisation System (ETIAS). The Commission has committed to explore still in 2016 whether such an additional layer of control for visa-free country nationals is feasible and proportional, and will effectively contribute to maintaining and strengthening the security of the Schengen area.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

As the proposal will amend the EU's common visa policy, the legal basis for the proposal is point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation will constitute a development of the Schengen *acquis*.

- **Subsidiarity, proportionality and choice of the instrument**

As Regulation (EC) No 539/2001 is a legal act of the EU, it can only be amended by way of an equivalent legal act. Member States cannot act individually to achieve the policy objective. No other (non-legislative) options to achieve the policy objective are available.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Regular discussions with Member States at the Justice and Home Affairs Councils, COREPER, Council Working Party on Enlargement (COELA), meetings with Justice and Home Affairs Counsellors of the Member States and several presentations of the state of play

¹³ 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.

¹⁴ Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes, COM(2016) 194 final.

¹⁵ Communication from the Commission to the European Parliament and Council, "Stronger and Smarter Information Systems for Borders and Security", COM(2016) 205 final.

of the visa liberalisation dialogue to the European Parliament – in plenary and in the Committee on Civil Liberties, Justice and Home Affairs (LIBE) – have taken place.

- **Collection and use of expertise**

The Commission has collected comprehensive data on Turkey's implementation of all requirements under the Roadmap. During the visa liberalisation dialogue with Turkey, and notably in view of the preparation of its reports, experts from the Commission services, the European External Action Service (EEAS), EU Member States and relevant EU agencies (Frontex, EASO, Europol, Eurojust) have analysed Turkish legislation in the areas covered by the VLD as well as its practical implementation. Several technical talks and visits on the ground were carried out, and large documentation was collected with the assistance of Turkish authorities and experts.

- **Impact assessment**

The Second Report of the Commission issued on 4 March 2016 was accompanied by a Commission Staff Working Document¹⁶, assessing – on the basis of EUROSTAT statistical information, inputs from the relevant EU Agencies, and observed trends – the possible impact of visa liberalisation for Turkey on the migratory situation of the European Union.

The Third Report, issued in parallel with this proposal, is accompanied by a Commission Staff Working Document¹⁷ providing, for each requirement, factual information on the state of play of its fulfilment. This document also includes an assessment of the possible impact of visa liberalisation for Turkey on the security situation of the European Union.

No further impact assessment is necessary.

- **Fundamental rights**

This proposal has no negative consequences for the protection of fundamental rights in the European Union. The fulfilment of the benchmarks of the Roadmap will improve the protection of human rights in Turkey.

4. BUDGETARY IMPLICATIONS

n/a

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The amended Regulation will be directly applicable from the date of its entry into force and will be implemented immediately by Member States. No implementation plan is necessary.

The Commission will continue to actively monitor Turkey's continuous implementation of all benchmarks under the five blocks of the Roadmap through the existing association structures and dialogue and, if necessary, through *ad hoc* follow-up mechanisms.

In particular, even after the granting of the visa-free regime to Turkey, the Commission, through the regular organisation of the meetings of the EU-Turkey Joint Readmission Committee, will continue to monitor the implementation by Turkey of the provisions of the

¹⁶ SWD (2016) 97.

¹⁷ SWD (2016) 161.

EU-Turkey Readmission Agreement. The respect of these provisions towards all EU Member States represents one of the fundamental requirements for the visa-free regime.

- **Detailed explanation of the specific provisions of the proposal**

Regulation (EC) No 539/2001 will be amended, transferring Turkey from Annex I (list of visa-required countries) to Annex II (list of visa-free countries). In line with the Roadmap, a footnote will be added specifying that the visa exemption applies to holders of biometric passports issued in line with the standards of Council Regulation (EC) No 2252/2004, in particular with encryption of fingerprints by Supplementary Access Control (SAC).

Turkey has informed the Commission that it will complete all necessary reforms to issue fully EU-compliant biometric passports by the end of 2016. In parallel Turkey will already ensure by early June that all passports to be issued will include a photograph and the fingerprints of the holder in the chip and will be fully in line with standards of the International Civil Aviation Organisation (ICAO). In those passports, the fingerprints will be protected by Extended Access Control (EAC) encryption. Therefore the visa exemption will exceptionally also apply to holders of those latter passports, provided that they were issued between 1 June 2016 and 31 December 2016. This exception will expire on 31 December 2017. Before the visa-free regime starts, Turkey should provide to all Member States the certificates allowing to authenticate and read the information stored in the chips of the Turkish passports.

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(Turkey)

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) of 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 539/2001¹⁸ 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 in Annexes I and II should be, and should remain, consistent with the criteria set out therein. 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 – based on 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 (EC) No 539/2001. They 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”.
- (3) Following the EU-Turkey Summits on 29 November 2015 and on 18 March 2016 it was agreed that the fulfilment of the visa liberalisation roadmap presented by the Commission to the Turkish Government on 16 December 2013 will be accelerated *vis-à-vis* all participating Member States with a view to lifting the visa requirements for Turkish nationals at the latest by the end of June 2016.
- (4) Visa liberalisation for Turkey is a key component of the EU-Turkey Statement of 18 March 2016. The Statement stipulates that the visa requirement for Turkish citizens

¹⁸ 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.

should be lifted at the latest by the end of June 2016. Presenting the proposal for visa liberalisation at the beginning of May enables the eight-week period provided to national Parliaments by Article 4 of Protocol No 1 to the Treaties on the role of national Parliaments in the European Union to elapse before its adoption at the end of June.

- (5) [Turkey has met the requirements of its visa liberalisation roadmap. On the basis of this assessment and taking account of all the criteria listed in Article -1 of Regulation (EC) No 539/2001, it is appropriate to exempt Turkish nationals from the visa requirement when travelling to the territory of the Member States.]
- (6) Turkey should thus be transferred from Annex I to Regulation (EC) No 539/2001 to Annex II thereof.
- (7) The visa exemption is dependent upon the continued implementation of the requirements of the visa liberalisation roadmap and of the European Union-Turkey Statement of 18 March 2016. The Commission will actively monitor the implementation of the requirements and of the Statement. The visa exemption may be suspended by the EU in line with the suspension mechanism established by Article 1a of Regulation (EC) No 539/2001, as amended by Regulation xxx, should the conditions set out therein be met.
- (8) This visa exemption should apply only to holders of biometric passports issued in line with the standards of Council Regulation (EC) No 2252/2004¹⁹ Exceptionally the exemption should also apply to holders of biometric passports that include the passport holders' fingerprints, issued in line with standards of the International Civil Aviation Organisation (ICAO), and provided that such passports were issued between 1 June 2016 and 31 December 2016. This exception will expire on 31 December 2017.
- (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/EC²⁰. 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.
- (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/EC²¹. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (11) 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/EC²².

¹⁹ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1.

²⁰ 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.

²¹ 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.

²² 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

- (12) 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/EC²³.
- (13) 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/EU²⁴,

HAVE ADOPTED THIS REGULATION:

Article 1

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

- (a) in Annex I, Part 1 ("STATES"), the reference to Turkey is deleted.
- (b) in Annex II, Part 1 ("STATES"), the following reference is inserted:
- "Turkey"*

* The exemption from the visa requirement applies only to holders of biometric passports issued in line with Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1. Exceptionally the exemption shall also apply to holders of biometric passports that include the passport holders' fingerprints, issued in line with standards of the International Civil Aviation Organisation (ICAO), and provided that such passports were issued between 1 June 2016 and 31 December 2016. This exception shall expire on 31 December 2017.

²³ 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.

²³ 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.

²⁴ 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 2

This Regulation shall enter into force on the 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