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REPORT

on the proposal for a 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 (COM(2011)0290 – C7-0135/2011 – 2011/0138(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Agustín Díaz de Mera García Consuegra

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in bold. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a 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 (COM(2011)0290 – C7-0135/2011 – 2011/0138(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0290),
 - 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 (C7-0135/2011),
 - having regard to Article 294(3) 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 and the opinion of the Committee on Foreign Affairs (A7-0139/2013),
1. Adopts its position at first reading hereinafter set out;
 2. 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;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■** .

**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**

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,

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 ...

Whereas:

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- (3a)** *Full visa reciprocity is an objective which the Union should pursue in a proactive manner in its relations with third countries, thus contributing to improving of the credibility and consistency of the Union's external policy at international level.*
- (3b)** *Upon receipt of a notification from a Member State that a third country listed in Annex II to Regulation (EC) No 539/2011 has decided to introduce visa requirements for that Member State's nationals, all Member States should react in common, thus providing a Union response to a situation which affects the Union in its entirety and allows for its citizens to be subjected to differing treatments.*
- (3c)** *This Regulation should establish a mechanism for the temporary suspension of the visa waiver for a third country listed in Annex II to Regulation (EC) No 539/2001 in the event of an emergency situation, where an urgent response is needed in order to resolve the difficulties faced by one or more Member States, and taking account of the overall impact of the emergency situation on the Union as a whole.*
- (3d)** *A substantial and sudden increase indicates reaching beyond the threshold of 50 per cent. It may also be lower if the Commission deems it applicable in the particular case notified by the Member State under pressure.*
- (3e)** *A low recognition rate indicates a recognition rate of asylum applications of less than 3 per cent. It may also be higher if the Commission deems it applicable in the particular case notified by the Member State under pressure.*
- (3f)** *It is necessary to avoid and counter any abuse resulting from the granting of visa free travel for short-stay visits for nationals of a particular third-country where they pose a threat to the public policy and internal security of the Member States.*
- (3g)** *In order to provide for a transparent and efficient mechanism applicable to the suspension of the exemption from the visa requirement for the nationals of a third country listed in Annex II to Regulation (EC) No 539/2001, as a means of reciprocity or in the event of an emergency situation, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be granted to the Commission in respect of amending Annex II to Regulation (EC) No 539/2001 in relation to the third country for which the visa requirement is temporarily restored. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council. In exceptional cases relating to an emergency situation, where an urgent response is needed in order to resolve the difficulties faced by one or more Member States, the Commission shall be empowered to adopt delegated acts in respect of*

amending Annex II to Regulation (EC) No 539/2001 in relation to the third country for which the visa requirement is temporarily restored, in accordance with the urgency procedure.

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(6) As ■ the visa rules applicable for refugees and stateless persons ***introduced by Council Regulation (EC) No 1932/2006 of 21 December 2006 amending Regulation (EC) No 539/2001***, do not apply to such persons when they are residing in the United Kingdom or Ireland, it is necessary to clarify the situation concerning the visa requirement for certain refugees and stateless persons who reside in the United Kingdom or in Ireland. This Regulation ***should leave*** Member States free to decide on ***the*** visa exemption or obligation for that category of persons ***in compliance with their international obligations***. Such national decisions ***should*** be notified to the Commission.

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(8) ***This Regulation should provide*** a legal basis for the visa requirement or exemption of holders of ***travel documents*** issued by certain entities ***subject to*** international law which are not ***intergovernmental international*** organisations.

(8a) ***Regulation (EC) No 539/2001 shall be without prejudice to the application of international agreements concluded by the European Community before its entry into force which imply the need to derogate from the common visa rules, while taking into account the case-law of the Court of Justice of the European Union.***

(9) This Regulation constitutes a development of the Schengen acquis, in accordance with the Protocol integrating the Schengen acquis into the framework of the European Union, as defined in Annex A to Council Decision 1999/435/EC¹ of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis.

(10) 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 acquis², which fall within the area referred to in Article 1, point (B), of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement³.

(11) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European

¹ OJ L 176, 10.7.1999, p. 1.

² OJ L 176, 10.7.1999, p. 36.

³ OJ L 176, 10.7.1999, p. 31.

Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis¹, which fall within the area referred to in Article 1, point (B) of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC².

- (12) 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 acquis³, which fall within the area referred to in Article 1, point (B) of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁴.
- (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/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 acquis⁵; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (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/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis⁶; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Article 1

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

1. Article 1 is **hereby** amended as follows:

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(aa) *paragraph 4 is replaced by the following:*

"4. Where a third country listed in Annex II introduces, reintroduces or

¹ OJ L 53, 27.2.2008, p. 52.

² OJ L 53, 27.2.2008, p. 1.

³ *OJ L 160, 18.5.2011, p. 21.*

⁴ *OJ L 160, 18.5.2011, p. 19.*

⁵ OJ L 131, 1.6.2000, p. 43.

⁶ OJ L 64, 7.3.2002, p. 20.

maintains a visa requirement for nationals of one or more Member State(s), the following provisions shall apply:

- (a) *within (30) days of the implementation by the third country of the visa requirement or, in cases where the requirement is maintained, within (30) days of the date of entry into force of this Regulation, the Member State(s) concerned shall notify the European Parliament, the Council and the Commission in writing.*

That notification:

i) shall specify the date of implementation of the measure and the type(s) of travel documents and visas concerned;

ii) shall include a detailed explanation of the preliminary measures that the Member State(s) concerned has taken with a view to ensuring visa-free travel with the third country in question and all relevant information;

Information about that notification shall be published without delay by the Commission in the C series of the Official Journal of the European Union, including information on the date of application of the visa requirement and the type(s) of travel documents and visas concerned.

If the third country decides to lift the visa obligation, the notification shall not be made or shall be withdrawn;

(b) *the Commission shall, immediately following the date of publication of that notification and in consultation with the Member State concerned, take steps with the authorities of the third country in order to restore or introduce visa-free travel and shall inform the European Parliament and the Council about those steps without delay;*

(c) *if within (90) days of the date of publication of the notification(s) and despite all the steps taken in accordance with point (b) in particular in the political, economic and commercial fields, the third country has not lifted the visa obligation, the Member State(s) concerned may request the Commission to propose to suspend the exemption from the visa requirement for the nationals of the third country concerned.*

Where a Member State makes such a request, it shall inform the European Parliament and the Council thereof;

(d) *the Commission shall, when considering further steps, take into account the outcome of the measures taken by the Member State concerned, the steps taken in accordance with point (b) in order to restore or introduce visa-free travel, and the consequences of the suspension of the exemption from the visa requirement for the external relations of the Union and its Member States with the third country in question;*

(e) *if within 6 months of the date of publication of the notification the third country concerned has not lifted the visa requirement, the Commission, at the request of the Member State or at its own initiative:*

(i) may adopt, in accordance with Articles 4a and 4b, a delegated act amending Annex II and suspending for the period of (12) months the exemption from the visa requirement for the nationals of the third country concerned; or

(ii) shall submit to the European Parliament and the Council a report assessing the situation and setting out the reasons why it does not propose to suspend the exemption from the visa requirement. All relevant factors shall be taken into account in that report, such as the outcome of the measures taken by the Member State concerned, the steps taken in accordance with point (b) in order to restore or introduce visa-free travel, and the consequences of the suspension of the exemption from the visa requirement for the external relations of the Union and its Member States with the third country in question;

(f) **█** *if within 24 months of the date of publication of the notification, the third country concerned has not lifted the visa requirement, the Commission shall adopt, in accordance with Articles 4a and 4b, a delegated act amending Annex II and suspending for a period of 12 months the exemption from the visa requirement for the nationals of the third country concerned;*

(g) *if within 6 months of the date where the delegated act referred to in point (e)(i) or point (f) has taken effect, the third country concerned has not lifted the visa obligation, the Commission may submit a legislative proposal, to be adopted in accordance with the ordinary legislative procedure, in order to transfer the reference to the third country concerned from Annex II to Annex I;*

(h) *the procedures referred to in points (e) (f) and (g) shall not prevent the Commission from presenting a proposal amending this Regulation in order to transfer the reference to the third country concerned from Annex II to Annex I at any time;*

(i) *where the third country in question abolishes the visa requirement, the Member State(s) concerned shall immediately notify the European Parliament, the Council and the Commission of that fact. The notification shall be published by the Commission in the C series of the Official Journal of the European Union. Any delegated act adopted pursuant to point (e) (i) or point (f) shall cease to have effect seven days after the publication of the notification in the Official Journal of the European Union. Where the third country in question has introduced a visa requirement for nationals of two or more Member States, this only applies after the publication of the last notification."*

(j) *The Commission shall adopt, by means of delegated acts, in accordance with Article 4b, appropriate adjustments to Annex II in order to reflect the termination of effect of the delegated acts referred to in point (i).*

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(bb) paragraph 5 is deleted.

2. The following *Articles are* inserted:

"Article 1a

1. ***By way of derogation from Article 1(2), Article 1(1) shall temporarily apply in emergency situation(s), as a last resort, in relation to a third country listed in Annex II when so decided in accordance with this Article.***
2. ***A Member State may notify the Commission if it is confronted with one or more of the following circumstances leading to an emergency situation which it is unable to remedy on its own:***
 - (a) ***a substantial and sudden increase*** █ , over a six month period, in the number of nationals of a third country listed in Annex II found to be █ staying in the Member State's territory ***without the right to do so***, in comparison with the ***same period in the*** previous year;
 - (b) ***a substantial and sudden increase leading to specific pressures on the asylum system*** over a six month period, in comparison with the ***same period in the*** previous year, in the number of asylum applications from the nationals of a third country listed in Annex II for which the recognition rate ***is low***;
 - (c) ***a substantial and sudden increase*** █ , over a six month period, in the number of rejected readmission applications submitted by a Member State to a third country listed in Annex II for its own nationals, in comparison with the ***same period in the previous year.***

That notification 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 Commission shall inform the European Parliament and the Council immediately after receiving such notification by the Member State concerned.

3. The Commission shall examine the notification(s) ***made by one or more Member State(s) pursuant to paragraph 2***, taking into account:
 - (a) the number of Member States affected by any of the situations described in paragraph 2;
 - (b) ***whether the increase is consistent with points (a), (b) or (c) of paragraph 2;***
 - (c) the overall impact of the increases on the migratory situation in the Union as the latter appears from the data provided by the Member States █ ;

- (d) *the reports prepared by FRONTEX **█**, the European Asylum Support Office or Europol if circumstances so require in the specific case notified;*
- (e) *the overall question of public policy and internal security, in consultation with the Member State(s) concerned.*

The Commission shall inform the European Parliament and the Council of the results of its examination.

3a. *The Commission shall take 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, and work in close cooperation with that third country to find alternative long-term solutions.*

3b. *Where the Commission, on the basis of the examination referred to in paragraph 3a, determines that action is needed, it shall within three months of receipt of the notification, adopt in accordance with Articles 4a and 4b, a delegated act amending Annex II and suspending for the period of (12) months the exemption from the visa requirement for the nationals of the third country concerned*

Where, in the case of a decision suspending the exemption from the visa requirement for the nationals of the third country concerned, imperative grounds of urgency so require, the procedure provided for in Article 4c shall apply to delegated acts adopted pursuant to this Article.

4. Before the end of the period of validity of *the delegated act* adopted pursuant to *paragraph 3b*, the Commission, in cooperation with the Member State(s) concerned, shall submit a report to the European Parliament and the Council. The report may be accompanied by a proposal amending this Regulation in order to transfer the *reference to the* third country concerned to Annex I.

Article 1b

At the latest four years after the 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 reciprocity and suspension mechanisms and shall, if necessary, submit a legislative proposal for amending this Regulation in order to amend the mechanisms referred to in Articles 1 and 1a. The European Parliament and the Council shall act on such a proposal by the ordinary legislative procedure."

4. Article 4 is *hereby* amended as follows:

(a) *paragraph 1* is replaced by the following:

"1. A Member State may provide for exceptions from the visa requirement

provided for by Article 1 (1) or from the exemption from the visa requirement provided for by Article 1 (2) as regards:

- (a) holders of diplomatic passports, service/official passports or special passports;
 - (aa) *civilian air and sea crew members in the performance of their duties;*
 - (ab) *civilian sea crew members when they go ashore who hold a seafarer's identity document issued in accordance with the International Labour Organisation Conventions (No 108 of 13 May 1958 or No 185 of 16 June 2003) or the International Maritime Organisation Convention on Facilitation of International Maritime Traffic of 9 April 1965 (FAL Convention);*
 - (ac) *crew and members of emergency or rescue missions in the event of disaster or accident;*
 - (b) civilian crew of ships navigating in international *inland* waters;
 - (c) █ holders of *travel documents* issued by █ intergovernmental international organisations *of which one or more Member States are members*, or by other entities *recognised by the Member State concerned as subject to international law*, to █ officials *of those organisations or entities*".
- (b) in paragraph 2 the following point █ is added:
- "(d) *without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for refugees signed at Strasbourg on 20 April 1959*, recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by *the United Kingdom or Ireland, which is recognised by the Member State concerned.*";

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5. The following *Articles are* inserted:

"Article 4a

1. *Delegated acts referred to in Articles 1(4)(e)(i) , 1(4)(f) and 1a(3b) shall amend Annex II by inserting in the reference to the third country concerned the information on the dates of the beginning and of the end of suspension of the exemption from the visa requirement for the nationals of that third country.*

2. *Delegated acts referred to in Articles 1(4)(e)(i) , 1(4)(f) and 1a(3b) shall determine a date on which the suspension of the exemption of the visa requirement is to take effect taking into account the available resources in the Member States' consulates . That date shall be between six and nine months following the notification of the delegated act to the European Parliament and the Council pursuant to Article 4b(4).*
3. *By way of derogation from paragraph 2, a delegated act referred to in Article 1a(3b), second subparagraph, shall be applicable from the date of its entry into force, in accordance with Article 4c .*
4. *The Commission may extend the validity of the delegated acts act referred to in Articles 1(4)(e)(i) , 1(4)(f) and 1a(3b) for a period of maximum 12 months. Where the Commission has proposed an amendment to this Regulation in order to transfer the reference to the third country concerned to Annex I pursuant to Articles 1(4)(g), 1(4)(h) or 1a(4), it shall extend the validity of the delegated act in force is for a period of maximum 12 months. The decision to extend the validity of the delegated act shall be adopted in accordance with Article 4b and shall amend Annex II pursuant to paragraph 1.*

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 in Articles 1(4)(e)(i) , 1(4)(f), 1(4)(j) and 1a(3b) 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 Articles 1(4)(e)(i) , 1(4)(f) and 1a(3b) 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.*
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 Articles 1(4)(e)(i) , 1(4)(f) and 1a(3b) 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. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 4c

- 1. *Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.***
- 2. *Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 4b(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.***

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

EXPLANATORY STATEMENT

Regulation (EC) No 539/2001 lists the third countries whose nationals must be in possession of visas when crossing the Union's external borders and those whose nationals are exempt. That Regulation lays down the conditions under which nationals of third countries may benefit from the visa waiver for short stays on Union territory.

The decision on waivers is taken after carrying out an assessment of the country concerned in relation to clandestine immigration, public order and security, the European Union's external relations, regional coherence and the principle of reciprocity.

The objectives of the proposed amendment to Regulation No 539/2001 under review are to provide for a safeguard clause allowing the rapid, temporary suspension of the visa waiver in case of an emergency situation; to modify the reciprocity mechanism; to establish definitions in line with the Community Code on Visas; to lay down the conditions governing visa exemption for citizens of a third country, refugees and stateless persons, certain categories of nationals of a non-Community country and holders of laissez-passers and passports issued by entities subject to international law; and finally to address Member States' obligations under international agreements.

RAPPORTEUR'S REMARKS

Even if it is confined to an overview of the situation, this report should reflect an objective approach to all the elements considered, taking into account not only the Community perspective but also the position of countries that do not belong to the European Union.

It would be contradictory to regard visas as a necessary instrument for controlling growing irregular immigration within the Union whilst at the same time being surprised that non-Community countries might impose the same requirement for the same purpose.

The common visa policy is a basic feature in the field of immigration that grants visas a key role as an instrument for controlling irregular immigration.

The proposed amendment to the regulation represents the Commission's response to the recent misuse of the Community visa system. It has become clear that a significant number of third-country citizens have taken advantage of the visa waiver to travel to Union territory to apply for international protection with little justification.

Far from restricting itself to laying down purely technical provisions, the Commission proposal contains politically significant measures. With the introduction of the safeguard clause, together with the reciprocity mechanism, instruments will be available whose activation may affect the EU's international relations.

With regard to the terminology, the European Parliament has already highlighted the need on several occasions for immigration to be described using the terms 'irregular' or 'clandestine' rather than 'illegal', where it takes place in a manner that does not comply with the relevant legislation in the Member States.

Safeguard clause: a more accurate term should be used to describe this instrument, since its objective is to ‘suspend’ the visa waiver when certain circumstances arise. It would perhaps be better to use a different wording such as ‘suspension clause or mechanism’, or simply to delete the current term.

The wording of the clause itself also raises a number of questions. First of all it needs to be specified whether its activation must comply with strict criteria, as proposed by the Commission, or whether it could be triggered more flexibly, as proposed by some of the Member States.

It seems clear that the mechanism should only be triggered in very specific emergency situations in which a ‘substantial’ and sudden increase has been detected in the number of irregular immigrants or the number of unfounded applications for international protection.

The decision as to when the increase is at a sufficient level, and thus when the suspension of visa waiver should be granted, will be taken not only because the percentages set out in the proposed amendment of Regulation 539/2001 have been reached, but where the case-by-case assessment process makes it advisable. To this end, the Commission will need to consider the notification made by the Member State concerned, the data and statistics provided, the reports drawn up by Frontex, the European Asylum Support Office or Europol, depending on what is required by the specific circumstances of the case, as well as the overall impact that the increased migration would have for the European Union.

In this light, using percentages as an objective element when the assessment procedure is launched is not entirely inappropriate. However, the percentages should be used exclusively for that purpose, i.e. to initiate the assessment process. Only after having carried out a full assessment of each case should the Commission decide whether the circumstances considered provide a sufficient basis to grant the suspension of the visa waiver. Such circumstances should involve a 'substantial' increase in the figures relating to irregular immigration or applications for international protection by comparison with the previous year.

With regard to the comitology procedure, it would be desirable if Parliament could take part in the procedure from the time when the Commission first decides to consider the request made by any of the Member States, a request which should moreover also be forwarded to Parliament. This means that Parliament should be informed at the same time as the Commission when a Member State submits a request for suspension, and not only when the start of the comitology process is announced.

With regard to reciprocity: this is one of the principles that inspired the common visa policy, i.e. a third country that benefits from the visa waiver must extend the same treatment to European Union citizens.

However, even though this principle provides a basis for policy in this field, it should not be used as an argument with which to call into question the fairness of a visa obligation imposed on citizens of a Member State by a third country, where that country considers the Member State concerned to have become a source of irregular immigration.

On this point it is necessary to reflect on the reasons for which Community citizens apply for

international protection outside the European Union. Whether or not it is true that the majority of such applications are based on purely economic criteria, linked to the expectations created by generous asylum arrangements, it is nevertheless important to recognise the need to strengthen European systems for integrating minorities, a field for which the Member States are responsible and which should perhaps be the subject of joint action and a shared approach in the European Union.

With regard to reciprocity itself, it is clear that, despite the Commission's statements, the current system amended by Regulation 851/2005 is not effective. Even though there is no need to reintroduce the automatic mechanism originally provided for in Regulation 539/2001, it is necessary to carry out an in-depth review of the current mechanism with the aim of guaranteeing united action and solidarity among the Member States. Other considerations such as the European Union's trade relations should not jeopardise the basic pillars of the common visa policy.

In this connection it is important to achieve the objectives of Written Declaration 2011/2053, adopted in March 2011, in which Parliament called on the Commission and Council to exert pressure on third countries which do not comply with the reciprocity regime, highlighting the need to reimpose a visa requirement where no positive response is forthcoming from the country concerned. To this end Parliament called on the Commission to establish *'a new mechanism that guarantees full visa reciprocity for all Member States while ensuring that if a non-EU country breaches that visa reciprocity, all Member States will immediately restore the visa requirement for nationals of that country'*.

On 14 July 2009 Canada reintroduced the visa requirement for Czech citizens. Two and a half years later Canada has still not revoked that decision, despite whatever pressure the Commission may have brought to bear.

The fact that it has been impossible to find a favourable solution in this case constitutes a highly damaging precedent for the European Union's common visa policy and demonstrates the weaknesses in the current mechanism. Consequently, a mechanism needs to be introduced that will enable the European Union to react quickly, although not automatically, in cases where the reciprocity principle is breached.

It would be sufficient to reintroduce the visa obligation on a provisional basis for a reasonable period that is nevertheless long enough for the third country to reconsider its decision and for the European Union to offer guarantees concerning irregular immigration. At the end of that period, the Commission could propose that the country concerned be included in Annex I to Regulation 539/2001.

With regard to the situation of service providers from third countries: the reference to citizens of a specific country, as in the case of Turkey, appears reasonable bearing in mind that this is currently a unique case. Nevertheless, it would be inappropriate to take a decision that concerns this situation exclusively, particularly when the case-law of the Court of Justice of the European Union could require fresh amendments to the regulation if similar situations had to be examined in the future. It would therefore be appropriate to amend the proposal by stating that account will be taken of the case-law established by the Court of Justice, without making any reference to the nationality of non-Community citizens.

Further issues: the remaining issues included in the revision are more of a technical nature and do not pose any problems from this point of view.

New definitions: the definitions are to be updated in line with those used in the Visa Code, taking into account the interpretation of short stay given by the European Court of Justice.

Refugees and stateless persons residing in the United Kingdom or in Ireland: as there is no mutual recognition of visas and no equivalence with similar instruments or residence permits in these Member States, the proposal leaves Member States entirely free to decide on visa exemption or obligation for this category of persons.

Harmonisation with certain categories of third-country nationals: the regulation provides the possibility for Member States to lift the visa requirement for certain categories of non-Community nationals, specifically civilian air and sea crew and holders of diplomatic, special or official passports or passports issued by international intergovernmental organisations or organisations subject to international law.

24.11.2011

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a 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
(COM(2011)0290 – C7-0135/2011 – 2011/0138(COD))

Rapporteur: Andrey Kovatchev

SHORT JUSTIFICATION

The Committee on Foreign Affairs welcomes the Commission proposal for amending Regulation EC 539/2001.

As precisely detailed in the Commission proposal, the reciprocity mechanism needs to be updated in order to fully comply with the provisions of the Treaty on the Functioning of the European Union (TFEU).

The Committee on Foreign Affairs agrees that the current reciprocity mechanism has proved efficient and need not be modified beyond the necessary codification exercise. It also believes that the deliberations in the Council and the European Parliament are necessary before the Commission presents its proposal on temporary restoration of the visa requirement for the third country in question.

Concerning the proposal for introduction of a safeguard clause, the Committee recognises that the very existence of this clause, which provides a general framework for the future, may help overcome the reluctance of certain Member States to pave the way for further visa liberalisation processes and increase the transparency of EU's policies and decision-making mechanisms towards its partners.

While understanding the necessity of relative indicators proposed in the new Article 1a, it considers that substantial increase in real numbers shall be necessary to trigger the safeguard clause. It welcomes the commitment of the Commission to non-automatism and assessment of the appropriateness of suppressing the visa waiver for a third country by taking into account the number of Member States affected and the overall impact of the "emergency situation" in

question on the migratory situation in the EU.

It furthermore insists that any assessment of an 'emergency situation' by the European Commission should take into account the broader EU foreign policy context and in particular the impact of the suspension of a visa waiver on the EU policies and standing towards the third country concerned and its neighbouring region. The granting of a visa-free regime is always one element in broader relations between the EU and a third country or a region. Thus, the reintroduction of a visa requirement can not be disconnected from this broader process and should in particular not jeopardise the consistency of EU's external policies.

The Committee therefore proposes that the Commission should examine the notification by a Member State by not only considering data provided by the Member States and reports prepared by FRONTEX and/or the European Asylum Support office, but also on the basis of an assessment prepared by the European External Action Service (EEAS). The relevant services of the Commission, as well as FRONTEX and the European Asylum Support office should therefore involve the EEAS in the process as early as possible.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendment in its report:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) This Regulation establishes a visa safeguard clause allowing the rapid, temporary suspension of the visa waiver for a third country on the positive list in case of an emergency situation, where an urgent response is needed in order to resolve the difficulties faced by one or more Member States, and taking account of the overall impact of the emergency situation on the European Union as a whole.

Amendment

(1) This Regulation establishes a visa safeguard clause allowing the rapid, temporary suspension of the visa waiver for a third country on the positive list in case of an emergency situation, where an urgent response is needed in order to resolve the difficulties faced by one or more Member States, and taking account of the overall impact of the emergency situation on the European Union as a whole ***and the impact on its foreign relations policies with third countries in cases of suspension of the visa waiver.***

Justification

It is important to underline that also attention needs to be given to the impact of the reintroduction of the visa requirement on EU foreign policy and the relations with third countries.

Amendment 2

Proposal for a regulation

Article 1 - point 2

Regulation EC No 539/2001

Article 1a - paragraph 1

Text proposed by the Commission

1. Paragraphs 2 to 5 of this Article shall apply in the event of one or more Member States being confronted by an emergency situation characterised by the occurrence of any of the following:

(a) a sudden increase *of at least 50%*, over a six month period, in the number of nationals of a third country listed in Annex II found to be illegally staying in the Member State's territory, in comparison with the *previous six month* period;

(b) a sudden increase *of at least 50%*, over a six month period, in comparison with the *previous six month* period, in the number of asylum applications from the nationals of a third country listed in Annex II for which the recognition rate of asylum applications was less than 3% over that previous six month period;

(c) a sudden increase *of at least 50%*, over a six month period, in the number of rejected readmission applications submitted by a Member State to a third country listed in Annex II for its own nationals, in comparison with the *previous*

Amendment

1. Paragraphs 2 to 5 of this Article shall apply in the event of one or more Member States being confronted by an emergency situation characterised by the occurrence of any of the following:

(a) a sudden *and substantial* increase, *which has a serious impact on the overall migratory situation in the Member States concerned*, over a six month period, in the number of nationals of a third country listed in Annex II found to be illegally staying in the Member State's territory, in comparison with the *same* period *in the previous year*;

(b) a sudden *and substantial* increase, *which has a serious impact on the overall migratory situation in the Member States concerned*, over a six month period, in comparison with the *same* period *in the previous year*, in the number of asylum applications from the nationals of a third country listed in Annex II for which the recognition rate of asylum applications was less than 3% over that previous six month period;

(c) a sudden *and substantial* increase, *which has a serious impact on the overall migratory situation in the Member States concerned*, in the number of rejected readmission applications submitted by a Member State to a third country listed in

six month period.

Annex II for its own nationals, in comparison with the *same* period *in the previous year*.

Amendment 3

Proposal for a regulation

Article 1 – point 2

Regulation (EC) No 539/2001

Article 1a – paragraph 3

Text proposed by the Commission

3. The Commission shall examine the notification taking into account the number of Member States affected by any of the situations described in paragraph 1 and the overall impact of the increases on the migratory situation in the Union as the latter appears from the data provided by the Member States as well as from reports prepared by FRONTEX and/or the European Asylum Support Office, and, within three months following receipt *thereof*, the Commission may adopt an implementing decision suspending the exemption of visa requirement for the nationals of the third country concerned for a period of six months. The implementing decision shall be adopted in accordance with the procedure referred to in Article 4a (2). The implementing decision shall determine the date on which the suspension of the exemption of visa requirement is to take effect.

Amendment

3. The Commission shall examine the notification taking into account the number of Member States affected by any of the situations described in paragraph 1 and the overall impact of the increases on the migratory situation in the Union as the latter appears from the data provided by the Member States as well as from reports prepared by FRONTEX and/or the European Asylum Support Office. ***The Commission shall also take into account the impact of a possible reintroduction of the visa requirement on the Union policies and standing towards the third country concerned and its neighbouring region, on the basis of a report by the European External Action Service.*** Within three months following receipt ***of the notification***, the Commission may adopt an implementing decision suspending the exemption of visa requirement for the nationals of the third country concerned for a period of six months. The implementing decision shall be adopted in accordance with the procedure referred to in Article 4a (2). The implementing decision shall determine the date on which the suspension of the exemption of visa requirement is to take effect.

Amendment 4

Proposal for a regulation

Article 1 - point 2

Regulation EC No 539/2001

Article 1a - paragraph 3

Text proposed by the Commission

3. The Commission shall examine the notification taking into account the number of Member States affected by any of the situations described in paragraph 1 and the overall impact of the increases on the migratory situation in the Union as the latter appears from the data provided by the Member States as well as from reports prepared by FRONTEX and/or the European Asylum Support Office, and, within three months following receipt thereof, the Commission may adopt an implementing decision suspending the exemption of visa requirement for the nationals of the third country concerned for a period of six months. The implementing decision shall be adopted in accordance with the procedure referred to in Article 4a (2). The implementing decision shall determine the date on which the suspension of the exemption of visa requirement is to take effect.

Amendment

3. The Commission shall ***inform the European Parliament and the Council without delay of the notification received by the Member States concerned and*** examine the notification taking into account the number of Member States affected by any of the situations described in paragraph 1 and the overall impact of the increases on the migratory situation in the Union as the latter appears from the data provided by the Member States as well as from reports prepared by FRONTEX and/or the European Asylum Support Office and, within three months following receipt thereof, the Commission ***shall send the results of its examination to the European Parliament and the Council, which shall give their opinion in a timely manner, after which the Commission*** may adopt an implementing decision suspending the exemption of visa requirement for the nationals of the third country concerned for a period of six months. The implementing decision shall be adopted in accordance with the procedure referred to in Article 4a (2). The implementing decision shall determine the date on which the suspension of the exemption of visa requirement is to take effect.

PROCEDURE

Title	Amendment of 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
References	COM(2011)0290 – C7-0135/2011 – 2011/0138(COD)
Committee responsible Date announced in plenary	LIBE 9.6.2011
Committee(s) asked for opinion(s) Date announced in plenary	AFET 9.6.2011
Rapporteur(s) Date appointed	Andrey Kovatchev 21.6.2011
Date adopted	22.11.2011
Result of final vote	+: 40 -: 1 0: 2
Members present for the final vote	Frieda Brepoels, Elmar Brok, Marietta Giannakou, Andrzej Grzyb, Takis Hadjigeorgiou, Anna Ibrisagic, Othmar Karas, Ioannis Kasoulides, Evgeni Kirilov, Andrey Kovatchev, Eduard Kukan, Krzysztof Lisek, Sabine Lösing, Ulrike Lunacek, Barry Madlener, Francisco José Millán Mon, Annemie Neyts-Uyttebroeck, Raimon Obiols, Justas Vincas Paleckis, Ioan Mircea Pașcu, Cristian Dan Preda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Jacek Saryusz-Wolski, Werner Schulz, Marek Siwiec, Charles Tannock, Inese Vaidere, Kristian Vigenin
Substitute(s) present for the final vote	Laima Liucija Andrikiienė, Elena Băsescu, Tanja Fajon, Diogo Feio, Monica Luisa Macovei, Emilio Menéndez del Valle, György Schöpflin, Traian Ungureanu, Ivo Vajgl, Renate Weber, Janusz Władysław Zemke
Substitute(s) under Rule 187(2) present for the final vote	Luís Paulo Alves, Sylvie Guillaume, Vladimir Urutchev

PROCEDURE

Title	Amendment of 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		
References	COM(2011)0290 – C7-0135/2011 – 2011/0138(COD)		
Date submitted to Parliament	24.5.2011		
Committee responsible Date announced in plenary	LIBE 9.6.2011		
Committee(s) asked for opinion(s) Date announced in plenary	AFET 9.6.2011		
Rapporteur(s) Date appointed	Agustín Díaz de Mera García Consuegra 12.7.2011		
Discussed in committee	31.8.2011	29.11.2011	8.4.2013
Date adopted	8.4.2013		
Result of final vote	+: -: 0:	33 7 3	
Members present for the final vote	Jan Philipp Albrecht, Edit Bauer, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Cornelia Ernst, Hélène Flautre, Kinga Gál, Kinga Göncz, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Monica Luisa Macovei, Véronique Mathieu Houillon, Anthea McIntyre, Nuno Melo, Claude Moraes, Georgios Papanikolaou, Jacek Protasiewicz, Carmen Romero López, Birgit Sippel, Rui Tavares, Nils Torvalds, Wim van de Camp, Josef Weidenholzer, Tatjana Ždanoka, Auke Zijlstra		
Substitute(s) present for the final vote	Jan Mulder, Salvador Sedó i Alabart, Marie-Christine Vergiat		
Substitute(s) under Rule 187(2) present for the final vote	Preslav Borissov, Verónica Lope Fontagné, Gabriel Mato Adrover, Vittorio Prodi, José Ignacio Salafranca Sánchez-Neyra		
Date tabled	23.4.2013		