



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-0373/2013

8.11.2013

*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council amending regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement (COM(2012)0650 – C7-0371/2012 – 2012/0309(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Mariya Gabriel

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

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement (COM(2012)0650 – C7-0371/2012 – 2012/0309(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0650),
 - having regard to Article 294(2) and Article 77(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0371/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0373/2013),
1. Adopts its position at first reading hereinafter set out;
 2. 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

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) The imposition of the visa requirement on the nationals of Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu and Vanuatu is no longer justified. These countries do not present any risk of illegal immigration or a threat to public policy for the Union in accordance with the criteria set out in recital 5 of Regulation (EC) N° 539/2001. Consequently, nationals of those countries should be exempt from the visa requirement for stays of no more than three months in all and references to those countries should be transferred to Annex II.

Amendment

(2) The imposition of the visa requirement on the nationals of **Colombia**, Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, **Peru**, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, **the United Arab Emirates** and Vanuatu is no longer justified. These countries do not present any risk of illegal immigration or a threat to public policy for the Union in accordance with the criteria set out in recital 5 of Regulation (EC) N° 539/2001. Consequently, nationals of those countries should be exempt from the visa requirement for stays of no more than three months in all and references to those countries should be transferred to Annex II.

Justification

The United Arab Emirates fulfil the conditions laid down in the regulation for visa waiver to the same extent as the countries which are already mentioned in the text of the regulation. The United Arab Emirates should therefore be added to the list laid down in Annex II.

Given the criteria specified in Recital 5 of Regulation (EC) No 539/2001, it is evident that the UAE does not represent any risk of illegal immigration, public order or security. Furthermore, the UAE have long-standing relations with several EU member states which should be broadened on a larger scale within the EU. Furthermore, the UAE issues biometric passports to its citizens and will offer total reciprocity to the EU. In this Visa 'positive list' update, the UAE should undoubtedly be added.

Amendment 2

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Exemption from the visa requirement for nationals of Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu and Vanuatu should not come into force until bilateral agreements on visa waiver between the Union and the countries concerned have been concluded in order to ensure full reciprocity.

Amendment

(3) Exemption from the visa requirement for nationals of **Colombia**, Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, **Peru**, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, **the United Arab Emirates** and Vanuatu should not come into force until bilateral agreements on visa waiver between the Union and the countries concerned have been concluded in order to ensure full reciprocity.

Justification

The United Arab Emirates fulfil the conditions laid down in the regulation for visa waiver to the same extent as the countries which are already mentioned in the text of the regulation. The United Arab Emirates should therefore be added to the list laid down in Annex II.

Given the criteria specified in Recital 5 of Regulation (EC) No 539/2001, it is evident that the UAE does not represent any risk of illegal immigration, public order or security. Furthermore, the UAE have long-standing relations with several EU member states which should be broadened on a larger scale within the EU. Furthermore, the UAE issues biometric passports to its citizens and will offer total reciprocity to the EU. In this Visa 'positive list' update, the UAE should undoubtedly be added.

Amendment 3

Proposal for a regulation

Article 1 – point -1 a (new)

Regulation (EC) No 539/2001

Article 2 a (new)

Text proposed by the Commission

Amendment

-1. The following article is inserted:

“Article 2a

The determination of the third countries whose nationals are subject to, or exempt

from, the visa requirement shall be made on the basis of a considered, case-by-case assessment of a variety of criteria relating, inter alia, to irregular immigration, public policy and security, and the Union's external relations with the relevant third countries, including, in particular, respect of human rights and fundamental freedoms. Consideration shall also be given to the implications of regional coherence and reciprocity.”

Amendment 4

Proposal for a regulation

Article 1 – point -1 b (new)

Regulation (EC) No 539/2001

Article 7 a (new)

Text proposed by the Commission

Amendment

-1b. The following article is inserted:

“Article 7a

The Commission shall inform the European Parliament on a regular basis about the situation with regard to the negotiations of bilateral agreements for visa exemptions, as well as about whether third countries whose nationals benefit from an exemption from the visa requirement continue to meet the criteria which led to that exemption. The Commission shall present, at least annually, a report to the European Parliament and to the Council summarising its activities and findings in that regard.”

Amendment 5

Proposal for a regulation

Article 1 – point 1 – point a

Regulation (EC) No 539/2001

Annex I – point 1

Text proposed by the Commission

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

Amendment

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

Justification

The United Arab Emirates fulfil the conditions laid down in the regulation for visa waiver to the same extent as the countries which are already mentioned in the text of the regulation. The United Arab Emirates should therefore be added to the list laid down in Annex II.

Given the criteria specified in Recital 5 of Regulation (EC) No 539/2001, it is evident that the UAE does not represent any risk of illegal immigration, public order or security. Furthermore, the UAE have long-standing relations with several EU member states which should be broadened on a larger scale within the EU. Furthermore, the UAE issues biometric passports to its citizens and will offer total reciprocity to the EU. In this Visa 'positive list' update, the UAE should undoubtedly be added.

Amendment 6

Proposal for a regulation

Article 1 – point 2 – point a

Regulation (EC) No 539/2001

Annex II – point 1

Text proposed by the Commission

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

"Dominica*"

"Grenada*",

Amendment

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

"Colombia*"

"Dominica*"

"Grenada*",

"Kiribati*"	"Kiribati*"
"Marshall Islands*"	"Marshall Islands*"
"Micronesia*"	"Micronesia*"
"Nauru*"	"Nauru*"
	"Peru*"
"Palau*"	"Palau*"
"Saint Lucia*"	"Saint Lucia*"
"Saint Vincent and the Grenadines*"	"Saint Vincent and the Grenadines*"
"Samoa*"	"Samoa*"
"Solomon Islands*"	"Solomon Islands*"
"Timor-Leste*"	"Timor-Leste*"
"Tonga*"	"Tonga*"
"Trinidad and Tobago*"	"Trinidad and Tobago*"
"Tuvalu*" and	"Tuvalu*"
	"The United Arab Emirates*" and
"Vanuatu*"	"Vanuatu*"

Justification

The United Arab Emirates fulfil the conditions laid down in the regulation for visa waiver to the same extent as the countries which are already mentioned in the text of the regulation. The United Arab Emirates should therefore be added to the list laid down in Annex II.

Given the criteria specified in Recital 5 of Regulation (EC) No 539/2001, it is evident that the UAE does not represent any risk of illegal immigration, public order or security. Furthermore, the UAE have long-standing relations with several EU member states which should be broadened on a larger scale within the EU. Furthermore, the UAE issues biometric passports to its citizens and will offer total reciprocity to the EU. In this Visa 'positive list' update, the UAE should undoubtedly be added.

EXPLANATORY STATEMENT

1. Introduction

Regulation 539/2001¹ lists the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (the so-called negative list, Annex I) and those whose nationals are exempt from that requirement (the so-called positive list, Annex II).

The purpose of this Commission proposal is to update the regulation. As the criteria set out in Regulation (EC) No 539/2001 can evolve over time in relation to third countries, the composition of the negative and positive lists should be reviewed at regular intervals.

The Commission submitted its proposal in response to the European Council's request, expressed in the Stockholm programme, that it keep the two lists under regular review. Since the entry into force of the Lisbon Treaty, Parliament has had codecision powers in relation to all aspects of the common visa policy in accordance with Article 77(2)(a) TFEU.

2. General background to the proposal

The Commission proposes firstly that the visa requirement be removed for nationals of the following Caribbean Island Nations and Pacific Island Nations: Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands, Samoa, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu and Vanuatu.

In order to guarantee full reciprocity in the future between these countries and the Member States in respect of short stays by their citizens, of three months in a six-month period, and to ensure consistency with previous visa exemptions, it is also proposed that nationals of these countries should not benefit from the visa exemption until a bilateral visa waiver agreement between the Union and the countries concerned has been concluded and has entered into force.

Secondly, the Commission proposes that the visa requirement be removed for all British citizens who are not nationals of the United Kingdom of Great Britain and Northern Ireland for the purposes of Union law.

The Commission came to the conclusion that there was no longer any justification for imposing a visa requirement on nationals of any of the abovementioned countries.

¹ A consolidated version is available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001R0539:20110111:FR:PDF>

The final element of the Commission proposal is that the negative list be updated by including South Sudan among the countries whose nationals are subject to the visa requirement.

3. Rapporteur's observations

The rapporteur welcomes the Commission proposal to amend Regulation (EC) No 539/2001 and supports its proposed changes to the lists.

In the rapporteur's view, the Commission has carried out a considered, case-by-case assessment in respect of each of the abovementioned countries. It has also taken due account of the criteria intended to guide it in proposing the composition of the lists. The criteria, which are set out in Recital 5 to Regulation (EC) No 539/2001, concern in particular illegal immigration, public policy and security as well as the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity.

The proposal aims to develop common policy on immigration while also helping to strengthen relations between the EU and the countries in question.

In this context, the process of deepening relations between the EU and these countries will undoubtedly contribute to improving the exercise of justice and respect for freedoms.

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With regard to the transfer to the positive list of certain Caribbean and Pacific Island Nations, there is no longer any justification for imposing a visa requirement on these countries. They do not represent any risk to the EU Member States in terms of irregular immigration or public order and security.

Moreover, the rapporteur supports their transfer to the positive list in view of the problem of the low level of EU Member States' consular representation in the countries concerned, which means that their citizens have to request Schengen visas abroad, a step that entails significant costs and, in some cases, necessitates a visa for crossing external borders.

As regards the security of the travel documents issued by the third countries concerned, there is no risk. Although the issuing of biometric passports was set as a condition for the transferring of Western Balkan countries from the negative to the positive visa list, the issuing of biometric passports should not be a requirement for transferring Dominica, Grenada, Saint Lucia, Saint Vincent and the Grenadines or Trinidad and Tobago. These third countries have highly secure CARICOM machine-readable passports and they intend to replace their passports by biometric ones in the near future.

The passports issued by the Pacific Island Nations are machine readable and contain a sufficient number of security features.

The second aspect of the revision of the regulation entails clarifying the situation of British citizens in specific categories. Statistical data show that the groups of British nationals currently listed in point 3 of Annex I do not pose a risk in terms of irregular migration to the

Schengen area and that most of them live in islands of the Caribbean region which have strong links and similarities with neighbouring countries exempt from the visa obligation.

Moreover, the security of British nationals' travel documents is ensured, as such documents are made in the United Kingdom according to strict technical specifications. They are machine readable and contain a number of security features.

The third part of the Commission's proposal is to update the negative list through the inclusion of South Sudan. On 9 July 2011, South Sudan declared its formal independence from Sudan, which is included on the negative list. On 14 July 2011 it became a member of the United Nations. Annex I must therefore be amended to include a reference to South Sudan.

4. Conclusion and rapporteur's recommendations

The rapporteur supports the Commission proposal.

The Caribbean and Pacific Island Nations mentioned pose no threat to the European Union either in terms of irregular immigration or with regard to public security and nor do the specified categories of British citizen.

The rapporteur met with representatives of the Caribbean Island Nations, the Pacific Island Nations and the specified categories of British citizen. All these representatives were at pains to express their desire for closer and wider-ranging ties with the EU.

The significance of visa liberalisation for ordinary people is considerable. It will reduce the time and cut the costs associated with travelling to the Schengen area. Exemption from the requirement for visas will also facilitate people-to-people contact – an essential condition for the steady development of economic, cultural, scientific and other ties. The visa system also intensifies contacts between peoples and embodies the principle of freedom of movement, which is one of the fundamental rights of the European Union.

The proposal to amend Regulation (EC) No 539/2001 is justified by the need for the EU to act in a proportionate manner and on the basis of criteria of reciprocity.

While welcoming the Commission proposal, the rapporteur believes that certain recommendations must be made.

The rapporteur asks the Commission to review the visa requirement for members of the ACP-EU Joint Parliamentary Assembly when they are participating in meetings of the Assembly in the Schengen area. They currently experience frequent problems in this regard and solutions should be pursued.

The rapporteur urges that Parliament should be involved in and informed about the situation with regard to the bilateral visa exemption agreements between the EU and those third countries for which it is proposed to remove the visa requirement. The rapporteur asks the Commission to fulfil its obligation to inform Parliament fully at all stages of procedure on the agreements, reporting to it at least every six months. With regard to those agreements already

in force, the rapporteur asks the Commission to notify Parliament immediately of any information it receives that could lead to the suspension of an agreement. In order to achieve this, the rapporteur proposes including an article stipulating Parliament's obligations concerning information as set out in the Treaty (Article 218(10) TFUE). The proposed article also calls on the Commission to ensure that the countries on the positive list continue to comply with the visa exemption criteria. The rapporteur recommends that Parliament ensure the enforcement of these agreements.

The rapporteur also proposes including in an article the criteria which feature, as mentioned below, in a recital. This is necessary because, in a legislative act, 'The purpose of the recitals is to set out concise reasons for the chief provisions of the enacting terms' and 'they shall not contain normative provisions'.¹ Expressing this in an article should not reduce the flexibility which is necessary in visa policy but would have the advantage of providing for increased transparency. The rapporteur also proposes stating explicitly that the EU's external relations apply equally to human rights and fundamental freedoms.

Taking into account the recent developments in this matter and the forthcoming inclusion of the United Arab Emirates (UAE) in the positive list, the rapporteur is in favour of this inclusion whilst at the same time pointing out to the Commission and the authorities in the UAE two priorities that require a particular focus alongside the adoption of this report and negotiations on a future bilateral implementation agreement.

Firstly, given that human rights are one of the EU's fundamental principles, the rapporteur welcomes the UAE's constructive proposal to set up a UAE-EU technical working group on human rights and is in favour of doing so as soon as possible. She underlines how important it is for the working party to operate effectively, thereby serving as an example of best practice for all countries in the region.

Secondly, the rapporteur is in favour of full compliance with the reciprocity principle and urges equal treatment for all EU citizens (EU-15 and EU-13) by the UAE, including during the so-called transition period leading up to the entry into force of the EU/UAE bilateral agreement.

As regards moving Peru and Colombia to the positive list, the rapporteur places particular stress on the criterion of regional coherence and welcomes the progress made by these two countries in the economic and social fields in recent years. At the same time, reciprocity should be guaranteed and all the standard conditions required for visa exemption should be satisfied before the exemption comes into force.

² Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation (2013)

PROCEDURE

Title	Listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement			
References	COM(2012)0650 – C7-0371/2012 – 2012/0309(COD)			
Date submitted to Parliament	7.11.2012			
Committee responsible Date announced in plenary	LIBE 19.11.2012			
Committee(s) asked for opinion(s) Date announced in plenary	AFET 19.11.2012	JURI 19.11.2012		
Not delivering opinions Date of decision	AFET 27.11.2012	JURI 26.11.2012		
Rapporteur(s) Date appointed	Mariya Gabriel 17.12.2012			
Discussed in committee	31.1.2013	27.6.2013	5.9.2013	21.10.2013
Date adopted	21.10.2013			
Result of final vote	+: -: 0:	50 2 3		
Members present for the final vote	Jan Philipp Albrecht, Edit Bauer, Rita Borsellino, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Salvatore Caronna, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Cornelia Ernst, Tanja Fajon, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Clemente Mastella, Véronique Mathieu Houillon, Anthea McIntyre, Nuno Melo, Louis Michel, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Wim van de Camp, Axel Voss, Josef Weidenholzer, Cecilia Wikström, Tatjana Ždanoka, Auke Zijlstra			
Substitute(s) present for the final vote	Alexander Alvaro, Silvia Costa, Dimitrios Droutsas, Mariya Gabriel, Monika Hohlmeier, Franziska Keller, Jan Mulder, Juan Andrés Naranjo Escobar, Raúl Romeva i Rueda, Marco Scurria			
Substitute(s) under Rule 187(2) present for the final vote	Francisco José Millán Mon, Britta Reimers, José Ignacio Salafranca Sánchez-Neyra, Kay Swinburne, Rafał Trzaskowski, Luis de Grandes Pascual			
Date tabled	8.11.2013			