***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 and those whose nationals are exempt from that requirement (revision of the suspension mechanism) (COM(2016)0290 – C8-0176/2016 – 2016/0142(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**

**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 and those whose nationals are exempt from that requirement (revision of the suspension mechanism) (COM(2016)0290 – C8-0176/2016 – 2016/0142(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

having regard to the Commission proposal to Parliament and the Council (COM(2016)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 (C8-0176/2016),

having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

having regard to Rules 59, 39 and 40 of its Rules of Procedure,

having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0235/2016),

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 3

<table>
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<td>(3) In particular, the use of the mechanism should be facilitated by shortening reference periods and deadlines allowing for a faster procedure and by extending the possible grounds of suspension, which should include a</td>
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</table>
substantial increase in the number of rejected readmission applications for third-country nationals having transited through the third country concerned, where a readmission agreement concluded between the Union or a Member State and that third country provides for such a readmission obligation. The Commission should also be able to trigger the mechanism in case the third country fails to cooperate on readmission, in particular where a readmission agreement has been concluded between the third country concerned and the Union.

Amendment 2
Proposal for a regulation
Recital 3 a (new)

Text proposed by the Commission

(3a) With a view to ensuring that the specific criteria relating, inter alia, to irregular 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, a set of guarantees and measures to protect human rights and fundamental freedoms, which were used to assess the appropriateness of a visa exemption, granted as a result of a successful conclusion of a visa liberalisation dialogue, continue to be fulfilled over time, the Commission should monitor the situation in the third countries concerned, and regularly report to the European Parliament and the Council.
Amendment 3
Proposal for a regulation
Recital 3 b (new)

Text proposed by the Commission

(3b) The Commission should, before taking any decision to temporarily suspend a visa exemption for nationals of a third country, examine the situation of human rights in that third country and take into account the possible consequences of a suspension of the visa exemption for that situation.

Amendment

Amendment 4
Proposal for a regulation
Recital 3 c (new)

Text proposed by the Commission

(3c) In order to ensure the adequate involvement of the European Parliament and of the Council in the application of the suspension mechanism, given the particularly sensitive political nature of the suspension of the exemption from the visa requirement for all the nationals of a third country listed in Annex II to Regulation (EC) No 539/2001 and its horizontal implications for the Member States, the Schengen associated countries and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, the power to adopt acts in accordance with Article 290 of the Treaty of the Functioning of the European Union should be delegated to the Commission in respect of the decision temporarily suspending the application of Annex II to Regulation (EC) No 539/2001 in relation to the third country concerned. Conferring such power on the
Commission takes into account the need for political discussion on the Union policy on visas in the Schengen area. It reflects also the need to ensure adequate transparency and legal certainty in the application of the suspension mechanism to all the nationals of the third country concerned, in particular through the corresponding temporary amendment of Annex II to Regulation (EC) No 539/2001. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Amendment 5

Proposal for a regulation
Article 1 – paragraph 1 – point 1
Regulation (EC) No 539/2001
Article 1a – paragraph 1

Text proposed by the Commission

(1) in paragraph 1 the following is deleted:

"in emergency situations, as a last resort,"

Amendment

(1) paragraph 1 is replaced by the following:

“1. By way of derogation from Article 1(2), the exemption from the visa requirement for nationals of a third country listed in Annex II shall be temporarily suspended as a last resort, based on strict and objective data, in accordance with this Article.”
Amendment 6

Proposal for a regulation
Article 1 – paragraph 1 – point 2
Regulation (EC) No 539/2001
Article 1a – paragraph 2 – point a

Text proposed by the Commission

(a) a substantial increase in the number of nationals of that third country found to be staying in the Member State's territory without a right thereto;

Amendment

(a) a substantial increase in the number of nationals of that third country refused entry or found to be staying in the Member State's territory without a right thereto;

Amendment 7

Proposal for a regulation
Article 1 – paragraph 1 – point 2
Regulation (EC) No 539/2001
Article 1a – paragraph 2 – point c a (new)

Text proposed by the Commission

(ca) an increased risk or imminent threat to the public policy or internal security of Member States, related to nationals of that third country, substantiated by objective, concrete and relevant information and data provided by national law enforcement authorities or Europol.

Amendment

"2a. Where the Commission has concrete and reliable information, taking into account relevant data, reports and statistics, of circumstances referred to in points (a), (b) or (c) of paragraph 2, or that the third country is not cooperating on readmission, in particular where a readmission
agreement has been concluded between that third country and the Union, for instance:

- by rejecting or not replying to readmission applications,
- by failing to issue travel documents for the purposes of return within deadlines specified in the agreement or not accepting European travel documents issued following the lapse of deadlines specified in the agreement,
- or by terminating or suspending the agreement,

the Commission may, on its own initiative, inform the European Parliament and the Council. This information shall be equivalent to a notification made pursuant to paragraph 2.

Amendment 9

Proposal for a regulation

Article 1 – paragraph 1 – point 3 a (new)

Regulation (EC) No 539/2001

Article 1a – paragraph 2 b (new)

Text proposed by the Commission

(3a) the following paragraph is inserted:

“2b. The Commission shall monitor the continuous fulfilment of the specific criteria as referred to in Article -1 which were used to assess the appropriateness of a visa liberalisation by the third countries whose nationals are exempt from the visa requirement when travelling to the territory of Member States as a result of a successful conclusion of a visa liberalisation dialogue conducted between the Union and that third country. The Commission shall report regularly to the European Parliament and to the Council at least once a year, or more frequently when necessary. The report shall focus on
third countries for which the Commission considers, based on concrete and reliable information, that certain criteria are no longer fulfilled. Where a report of the Commission shows that one or more of the specific criteria is no longer fulfilled in relation to a particular third country this shall be equivalent to a notification made pursuant to paragraph 2 and paragraph 3 shall apply.”

Amendment 10

Proposal for a regulation

Article 1 – paragraph 1 – point 4
Regulation (EC) No 539/2001
Article 1a – paragraph 3

Text proposed by the Commission

"3. The Commission shall examine any notification made pursuant to paragraph 2, taking into account:

(a) whether any of the situations described in paragraphs 2 and 2a are present;

(b) the number of Member States affected by any of the situations described in paragraphs 2 and 2a;

(c) the overall impact of the increases referred to in paragraph 2 on the migratory situation in the Union as it appears from the data provided by the Member States or available to the Commission;

(d) the reports prepared by the [European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union], the European Asylum Support Office or the European Police Office (Europol) if circumstances so require in the specific case;

Amendment

"3. The Commission shall examine any notification made pursuant to paragraph 2, including information pursuant to paragraphs 2a and 2b, taking into account:

(a) whether any of the situations described in paragraphs 2, 2a or 2b are present;

(b) the number of Member States affected by any of the situations described in paragraphs 2, 2a and 2b;

(c) the overall impact of the increases referred to in paragraph 2 on the migratory situation in the Union as it appears from the data provided by the Member States or available to the Commission;

(d) the reports prepared by the [European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union], the European Asylum Support Office or the European Police Office (Europol) or any other Union institution, body, office, agency or international organisation competent in matters covered by this Regulation if circumstances so require in the specific
(e) the overall question of public policy and internal security, in consultations with the Member State concerned.

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

Amendment 11

Proposal for a regulation

Article 1 – paragraph 1 – point 5
Regulation (EC) No 539/2001
Article 1a – paragraph 4

Text proposed by the Commission

(5) in paragraph 4, "three months" is replaced by "one month".

Amendment

(5) paragraph 4 is replaced by the following:

"4 Where the Commission, on the basis of the examination referred to in paragraph 3, and taking into account the consequences of a suspension of the exemption from the visa requirement for that third country and its citizens; as well as for the external relations of the Union and its Member States with the third country concerned and the situation in that third country, while working in close cooperation with that third country to find alternative long-term solutions, decides that action is needed, it shall, within one month of receipt of the notification referred to in paragraph 2, adopt a delegated act in accordance with Article 4b temporarily suspending the application of Annex II for a period of 6 months for the nationals of that third country. The delegated act shall determine a date on which the suspension of the application of Annex II is to take effect, taking into account the available resources in the consulates of the Member States and shall amend Annex II accordingly. That amendment shall be made through inserting next to the name of the third
country in question a footnote indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension.

Without prejudice to the application of Article 4, during the periods of that suspension, the nationals of the third country concerned by the delegated act shall be required to be in possession of a visa when crossing the external borders of the Member States."

Amendment 12

Proposal for a regulation
Article 1 – paragraph 1 – point 5 a (new)
Regulation (EC) No 539/2001
Article 1a – paragraph 4 - second subparagraph

Text proposed by the Commission

(5a) The following is added in the second subparagraph of paragraph 4:

‘A Member State which, in accordance with Article 4 of this Regulation, wishes to introduce new exceptions to the visa requirement for a category of nationals of the third country covered by the delegated act suspending the exemption from the visa requirement, shall notify the Commission in advance.’

Amendment 13

Proposal for a regulation
Article 1 – paragraph 1 – point 5 b (new)
Regulation (EC) No 539/2001
Article 1a – paragraph 5

Present text

(5b) paragraph 5 is amended as follows:

"5. Before the end of the period of validity of the implementing act adopted
pursuant to paragraph 4, the Commission, in cooperation with the Member State concerned, shall submit a report to the European Parliament and to the Council. The report may be accompanied by a legislative proposal for amending this Regulation in order to transfer the reference to the third country concerned from Annex II to Annex I.

Amendment 14

Proposal for a regulation
Article 1 – paragraph 1 – point 5 c (new)
Regulation (EC) No 539/2001
Article 1a – paragraph 6

Present text

6. Where the Commission has submitted a legislative proposal pursuant to paragraph 5, it may extend the validity of the implementing act adopted pursuant to paragraph 4 by a period not exceeding 12 months. The decision to extend the validity of the implementing act shall be adopted in accordance with the examination procedure referred to in Article 4a(2).

Amendment

(5c) paragraph 6 is replaced by the following:

"6. Where the Commission submits a legislative proposal as referred to in paragraph 5, the period of suspension referred to in paragraph 4 shall be extended by six months. The footnote referred to in that paragraph shall be amended accordingly."

Amendment 15

Proposal for a regulation
Article 1 – paragraph 2 (new)
Regulation (EC) No 539/2001
Article 4b – paragraph 2

Present text

2. The power to adopt delegated acts referred to in point (f) of Article 1(4) shall be conferred on the Commission for a

Amendment

Paragraph 2 of Article 4b of Regulation (EC) No 539/2001 is amended as follows:

"2. The power to adopt delegated acts referred to in point (f) of Article 1(4) and in Article 1a(4) and (6) shall be conferred
period of five years from 9 January 2014. 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.
EXPLANATORY STATEMENT

Visa policy is a crucial matter for the European Union, with repercussions for both external action and internal security. It is because of its importance that it is clearly regulated as an area of shared competence between the co-legislators through the ordinary procedure.

The regulation amending Regulation (EC) No 539/2001 adopted by the European Parliament and the Council on 11 December 2013 introduced substantial aspects such as the ‘suspension mechanism’, which is now itself to be amended. It also modified the reciprocity mechanism as a counterweight to the suspension mechanism, in an agreement between the institutions whose legality was confirmed by the Court of Justice of the EU on 16 July 2015. That ruling became case law and provided the basis for the correct use of delegated and implementing acts, thus guaranteeing equality among the institutions.

Developments in the political and migratory situation, particularly in the light of successive visa liberalisation processes, makes it necessary to revise the suspension mechanism to make it faster and more flexible. There is no doubt that we need to provide ourselves with the tools that will enable the EU to respond to circumstances, which all have their own specific features, arising from:

- substantial and sudden increases in the number of third-country nationals residing irregularly in EU territory;
- unfounded asylum applications from nationals of that third country;
- rejected readmission applications;
- threats to security in European territory.

This increased flexibility must nevertheless be accompanied by a robust set of guarantees and measures to protect human rights, along with reports and statistics supplied by the European agencies and the competent law enforcement authorities. This is the only way of guaranteeing the rights of third-country citizens and safeguarding the principles of the Community visa policy.

It is both necessary and legally appropriate for the European Parliament to be involved in the decision making, since we should not forget that reimposing visa requirements for third-country nationals is one of the harshest political measures that can be taken. In keeping with the case referred to above, the suspension mechanism should be amended as regards the use of delegated acts and brought into line with the judgment of the Court of Justice of 16 July 2015, by which the Court has already ruled on this matter with regard to the reciprocity mechanism. These mechanisms are two sides of the same coin, representing legislative and political counterweights with similar effects, and the corresponding procedures should therefore be brought into line.
**PROCEDURE – COMMITTEE RESPONSIBLE**

<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th>List of 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 (review of the suspension mechanism)</th>
</tr>
</thead>
</table>
| **Committee responsible** | **LIBE**  
  Date announced in plenary | 12.5.2016 |
| **Committees asked for opinions** | **AFET**  
  Date announced in plenary | 12.5.2016 |
| **Not delivering opinions** | **AFET**  
  Date of decision | 1.7.2016 |
| **Rapporteurs** | **Agustín Díaz de Mera García Consuegra**  
  Date appointed | 23.5.2016 |
| **Discussed in committee** | 26.5.2016  
  15.6.2016 |
| **Date adopted** | 7.7.2016 |
| **Result of final vote** | +: 42  
  −: 9  
  0: 1 |
| **Substitutes present for the final vote** | Anna Maria Corazza Bildt, Dennis de Jong, Gérard Deprez, Anna Hedh, Petr Ježek, Petra Kammerevert, Jean Lambert, Gilles Lebreton, Andrejs Manikins, Salvatore Domenico Pogliese, Christine Revault D’Allonnes Bonnefoy, Barbara Spinelli |
| **Substitutes under Rule 200(2) present for the final vote** | Georg Mayer |
| **Date tabled** | 18.7.2016 |
### FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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<td>ENF</td>
<td>Georg Mayer</td>
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**Key to symbols:**
- **+**: in favour
- **-**: against
- **0**: abstention