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Committee on Civil Liberties, Justice and Home Affairs

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AMENDMENT 55

Draft report

Agustín Díaz de Mera García Consuegra

(PE475.760v01-00)

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

Proposal for a regulation

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Amendment 55
Agustín Díaz de Mera García Consuegra

Proposal for a regulation

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AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

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,

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

¹ Position of the European Parliament of ...

Whereas:

- I**
- (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.*

- (6) As **the** 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 Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis⁴, 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/EC⁵.
- (12) As regards Liechtenstein, this Regulation constitutes a development of the provisions

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.

⁴ OJ L 53, 27.2.2008, p. 52.

⁵ OJ L 53, 27.2.2008, p. 1.

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 acquis¹, which fall within the area referred to in Article 1, point (B) of Council Decision 2011/350/EU².

- (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 acquis³; 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 acquis⁴; 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:

(aa) paragraph 4 is replaced by the following:

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

¹ OJ L 160, 18.5.2011, p. 21.

² OJ L 160, 18.5.2011, p. 19.

³ OJ L 131, 1.6.2000, p. 43.

⁴ OJ L 64, 7.3.2002, p. 20.

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).**

(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 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.*”;

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

For the Council

The President

The President

Or. en