

Third countries whose nationals are subject to or exempt from a visa requirement

2012/0309(COD) - 07/11/2012 - Legislative proposal

PURPOSE: to amend Regulation (EC) No 539/2001 to include some small Pacific islands on the positive list under the Regulation (Regulation, Annex II, list of nationals exempt from the obligation to be in possession of visas when crossing the external borders of Member States).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

CONTEXT: Regulation (EC) No 539/2001 lists the third countries whose nationals must be in possession of visas when crossing the external borders (the so-called negative list) and those whose nationals are exempt from that requirement (the so-called positive list).

The determination of those third countries whose nationals are subject to the visa requirement, and those exempt from it, is governed by a considered, case-by-case assessment of a variety of criteria relating *inter alia* to illegal immigration, public policy and security, and to the European Union's external relations with third countries or territories. Consideration is also given to the implications of regional coherence and reciprocity. In view of the criteria of public order and illegal immigration, particular attention should also be paid to the security of travel documents issued by the third countries or territories concerned.

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.

This review aims in particular to:

- ensure that the composition of the lists of third countries complies with the criteria set out in Recital 5 of the Regulation, in particular the illegal immigration and public policy criteria and the transfer of countries from one annex to another as appropriate;
- ensure that in accordance with Article 77 (2) (a) of the TFEU, the Regulation determines exhaustively whether a third-country national is to be subject to, or exempt from, the visa requirement.

As a result, a new amended version of Regulation (EC) No 539/2001 is proposed to add a certain number of States to the positive or negative list of the Regulation.

IMPACT ASSESSMENT: no impact assessment has been carried out.

LEGAL BASE: article 77, par. 2, point a) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: in line with the approach taken within the framework of previous amendments to Regulation (EC) No 539/2001, it is proposed to:

- **transfer some countries onto the positive list:** 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. Exemption from the visa requirement 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**.

- **transfer the groups of “British nationals” onto the positive list:** 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 which are exempt from the visa obligation. These groups of British nationals should therefore be exempt from the visa requirement for stays of no more than three months in all and references to those groups should be transferred to Annex II.
- **update the negative list (Annex I) by the inclusion of South Sudan:** on 9 July 2011, South Sudan declared its independence from Sudan, which is on the negative list. On 14 July 2011, the country was granted membership of the United Nations. Annex I should therefore be amended so as to include South Sudan.

BUDGETARY IMPLICATIONS: the proposed amendment has no implications for the Union budget.