Third countries whose nationals are subject to or exempt from a visa requirement when crossing the external borders. Codification

2018/0066(COD) - 14/03/2018 - Legislative proposal

PURPOSE: to codify 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.

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

ROLEOF THE EUROPEAN PARLIAMENT: Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

BACKGROUND: Council Regulation (EC) No 539/20016 has been substantially amended several times. On 1 April 1987 the Commission decided to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement. The Edinburgh European Council in December 1992 confirmed this, stressing the importance of codification.

The European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

In the interests of clarity and transparency of the law, the purpose of this proposal is to undertake the **codification** 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.

The new regulation will supersede the various acts incorporated in it; the proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

CONTENT: the proposed regulation establishes **visa requirements and visa exemptions for third-country nationals** entering the EU for a short stay.

Common lists: the proposal for a regulation lists third countries whose nationals must have a visa to cross the external borders of a Member State (Annex I to the Regulation). It also lists the countries whose nationals are exempt from the visa requirement **for stays of up to 90 days in any 180-day period** (Annex II of the Regulation).

Determination of third countries whose nationals are subject to or exempt from the visa requirement is made on the basis of a **case-by-case assessment of various criteria**, relating inter alia to:

- illegal immigration, public policy and security;
- economic benefit, in particular in terms of tourism and foreign trade ;
- the Union's external relations with the relevant third countries, including, in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity.

This assessment should be **periodic** and may lead to legislative proposals to amend the lists in Annexes I and II to the Regulation.

Exceptions and exemptions: Member States may grant exceptions to the visa requirement as regards certain categories of persons, e.g. holders of diplomatic passports, service or official passports or special passports, civilian air or sea crewmembers or crew and members of emergency or rescue missions.

The following persons may be exempted from the visa requirement:

- a school pupil having the nationality of a third country listed in Annex I who resides in a third country listed in Annex II or in Switzerland and Liechtenstein and who is travelling in the context of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question;
- **recognised refugees and stateless persons** if the third country where they reside and which issued their travel document is one of the third countries listed in Annex II;

Reciprocity mechanism: the Regulation provides for a Union mechanism allowing the implementation of the principle of reciprocity if one of the third countries included in the list of third countries whose nationals are exempt from the visa requirement decides to make the nationals of one or more Member States subject to the visa obligation. That mechanism should provide for a **Union response as an act of solidarity**, if such a third country applies a visa requirement for nationals of at least one Member State.

Suspension mechanism: the proposal also provides for a mechanism for the temporary suspension of the exemption from the visa requirement for a third country included in the list of third countries whose nationals are exempt from the visa requirement **in an emergency situation,** where an urgent response is needed in order to resolve the difficulties faced by at least one Member State, and taking account of the overall impact of the emergency situation on the Union as a whole.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in order to ensure the proper participation of the European Parliament and the Council in respect of certain elements of the reciprocity and suspension mechanisms.