Basic information

2011/0138(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Visas: third countries whose nationals are subject to or exempt from a visa requirement Amending Regulation (EC) No 539/2001 2000/0030(CNS) **Subject** 7.10.04 External borders crossing and controls, visas	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	DÍAZ DE MERA GARCÍA CONSUEGRA Agustín (PPE)	12/07/2011
	Shadow rapporteur FAJON Tanja (S&D) WEBER Renate (ALDE) ŽDANOKA Tatjana (Verts /ALE) KIRKHOPE Timothy (ECR) ERNST Cornelia (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	KOVATCHEV Andrey (PPE)	21/06/2011

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3135	2011-12-13
Justice and Home Affairs (JHA)	3195	2012-10-25
Justice and Home Affairs (JHA)	3096	2011-06-09
Transport, Telecommunications and Energy	3278	2013-12-05

European Commission

Commission DG	Commissioner
Migration and Home Affairs	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
24/05/2011	Legislative proposal published	COM(2011)0290	Summary
09/06/2011	Debate in Council		
09/06/2011	Committee referral announced in Parliament, 1st reading		
13/12/2011	Debate in Council		Summary
25/10/2012	Debate in Council		Summary
08/04/2013	Vote in committee, 1st reading		
23/04/2013	Committee report tabled for plenary, 1st reading	A7-0139/2013	Summary
10/09/2013	Debate in Parliament		
12/09/2013	Decision by Parliament, 1st reading	T7-0370/2013	Summary
12/09/2013	Results of vote in Parliament		
05/12/2013	Act adopted by Council after Parliament's 1st reading		
11/12/2013	Final act signed		
11/12/2013	End of procedure in Parliament		
20/12/2013	Final act published in Official Journal		

Technical information

Procedure reference	2011/0138(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 539/2001 2000/0030(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 077-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/06107

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE475.760	16/11/2011	
Committee opinion	AFET	PE474.076	24/11/2011	
Amendments tabled in committee		PE478.421	07/12/2011	

Amendments tabled in committee		PE507.997	22/03/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0139/2013	23/04/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0370/2013	12/09/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00065/2013/LEX	11/12/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0290	24/05/2011	Summary
Commission response to text adopted in plenary	SP(2013)774	06/12/2013	
Follow-up document	C(2014)7218	10/10/2014	
Follow-up document	C(2015)2575	22/04/2015	
Follow-up document	C(2015)7455	06/11/2015	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	IT_SENATE	COM(2011)0290	16/08/2011	
Contribution	PT_PARLIAMENT	COM(2011)0290	14/10/2011	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Regulation 2013/1289
OJ L 347 20.12.2013, p. 0074 Summary

Visas: third countries whose nationals are subject to or exempt from a visa requirement

2011/0138(COD) - 25/10/2012

The Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) discussed the **post-visa liberalisation monitoring for the Western Balkan countries** and, in particular, the Commission's third report on the subject.

Delegations expressed concern about a considerable increase in mostly unfounded asylum applications from nationals of several Western Balkan countries and underlined the importance of taking forward measures to remedy the situation. Among other things, dialogue with the countries concerned was seen to be of major importance, and the Commission confirmed that the subject will be addressed at the forthcoming ministerial forum on justice and home affairs between the EU and the Western Balkan countries (5 and 6 November 2012 in Tirana, Albania).

In this context, a large number of delegations also asked to **speed up current negotiations** with the European Parliament on amendments to the rules governing the EU's visa-free regime. The discussions between Council and Parliament focus on the introduction of **a safeguard clause allowing the temporary reintroduction of the visa requirement – in specific circumstances - for nationals of a third country who can normally travel to the EU without a visa** (those countries in Annex II). The new rules would also strengthen the notion of reciprocity, i.e. how to deal with situations where a country in Annex II reintroduces a visa requirement for citizens of particular EU Member States or the EU as a whole.

Visas: third countries whose nationals are subject to or exempt from a visa requirement

2011/0138(COD) - 23/04/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Agustín DÍAZ DE MERA GARCÍA CONSUEGRA (EPP, ES) 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.

The committee recommends that the position of the European Parliament adopted in first reading, following the ordinary legislative procedure, should amend the Commission proposal as follows:

Reciprocity: it is stated that **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.

Reintroduction mechanism of a visa requirement: a series of amendments have been made to introduce, reintroduce or maintain visa requirements. 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:

- 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. It 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;
- if within 90 days of the date of publication of the notification(s) and despite all the steps taken 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 and inform the European Parliament and the Council thereof**;
- 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 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;**
- 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 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;
- if within 6 months of the date where the delegated act 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;
- **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. Any delegated act adopted shall cease to have effect seven days after the publication of the notification in the Official Journal of the European Union.

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.

Safeguard clause in case of an emergency situation: it is stipulated that the draft 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.

Amendments have been introduced to ensure that this special mechanism should only apply in emergency situation(s), as a **last resort**. This clause should apply in particular in a series of specific circumstances where Member State are confronted with circumstances leading to an emergency situation which it is unable to remedy on its own (e.g. 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**).

The Commission shall examine the notification(s) made by one or more Member State(s), taking into account the number of Member States affected by any of the emergency situations and 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 as well as 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.

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;
- within three months of receipt of the notification, adopt 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 imperative grounds of urgency so require, any decision suspending the exemption from the visa requirement for nationals of the third country concerned, must be taken by delegated act.

Derogations: derogations have been proposed to enable Member State to provide for exceptions from the visa requirement or from the exemption from the visa requirement as regards:

- holders of diplomatic passports, service/official passports or special passports;
- civilian air and sea crew members in the performance of their duties;
- civilian sea crew members when they go ashore who hold a seafarer's identity document issued in accordance with the International Labour Organisation Conventions or other International instruments;
- crew and members of emergency or rescue missions in the event of disaster or accident.

Report: 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 relevant mechanisms. The European Parliament and the Council shall act on such a proposal by the ordinary legislative procedure.

Delegated acts: the Commission shall be empowered to adopt delegated acts in accordance with Article 290 of the TFEU 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. The Commission 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 in accordance with the urgency procedure.

Visas: third countries whose nationals are subject to or exempt from a visa requirement

2011/0138(COD) - 12/09/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 328 votes to 257 with 46 abstentions, a legislative resolution 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.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise between Parliament and Council. They amend the proposal as follows:

Reciprocity mechanism: the mechanism regarding reciprocity should be applicable when a third country listed in Annex II to Regulation (EC) No 539 /2001 (exempt from the revisa requirement) applies a visa requirement for nationals of one or more Member States. Upon receipt of a notification from a Member State that a third country listed in Annex II to Regulation (EC) No 539/2001 applies a visa requirement for that Member State's nationals, **all Member States should react in common, thus providing an EU response** to a situation which affects the Union in its entirety and allows for its citizens to be subjected to differing treatments.

It is specified that 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.

Suspension mechanism: the revised Regulation also establishes 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 case 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 European Union as a whole (particularly where there is a substantial increase in illegal immigrants, of unfounded asylum applications or rejected readmission applications over a six month period).

Reintroduction mechanism of a visa requirement: a series of amendments have been made to respond 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 mechanism is designed to react in a **step-by-step manner**, and is comprised of several stages. Generally, 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 may **adopt an implementing act temporarily suspending** the exemption from the visa requirement for certain categories of nationals of the third country concerned for a period of up to six months (visas will be required for the external borders of Member States.)

Public policy and internal security: the Commission must investigate 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 ('ordre public') and internal security of the Member States.

The Commission shall take into account the consequences of a suspension of the exemption of the visa requirement for the external relations of the EU and its Member States with the country concerned, and work in close cooperation with that third country to find alternative long-term solutions.

Derogations: new derogations have been proposed to enable Member State to provide for exceptions from the visa requirement or from the exemption from the visa requirement as regards:

- holders of diplomatic passports, service/official passports or special passports;
- civilian air and sea crew members in the performance of their duties;
- civilian sea crew members when they go ashore who hold a seafarer's identity document issued in accordance with the International Labour Organisation Conventions;
- crew and members of emergency or rescue missions in the event of disaster or accident;
- 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 subjects of international law, to officials of these organisations or entities.

Report: at the latest four years after the entry into force of the 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 relevant mechanisms. The European Parliament and the Council shall act on such a proposal by the ordinary legislative procedure.

Implementing and delegated acts: in order to ensure the efficient application of the suspension mechanism and of certain provisions of the reciprocity mechanism and in particular in order to allow for the adequate taking into consideration of all relevant factors and possible implications of the application of these mechanisms, the Commission will be granted:

- implementing powers with regard to the **determination of the categories of the nationals of the third country concerned that should be subject to a temporary suspension of the exemption from the visa requirement within the framework of the reciprocity mechanism;**
- the powers to determine the corresponding temporary scope of that suspension;
- powers to implement the suspension mechanism. The examination procedure should be applicable for the adoption of such acts.

In order to ensure the adequate involvement of the Council and the European Parliament in the second phase of application of the reciprocity mechanism, given the particularly sensitive political nature of the suspension of the exemption from the visa requirement for all the nationals of the third country concerned and its horizontal implications for Members States, the powers to adopt delegated acts is granted to the Commission with regard to certain elements of the reciprocity mechanism. Conferring such powers on the Commission takes into account the need for political discussion on the Union policy on visas in the Schengen area. It also reflects the need to ensure the adequate transparency and legal certainty in application of the reciprocity mechanism when applied to all the nationals of the third country concerned.

The power to adopt delegated acts will be conferred on the Commission for a period of five years from the date of entry into force of the Regulation.

A delegated act adopted shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four 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.

Visas: third countries whose nationals are subject to or exempt from a visa requirement

2011/0138(COD) - 11/12/2013 - Final act

PURPOSE: to review some elements of Regulation (EC) No 539/2001listing the third countries whose nationals must be in possession of visas ("negative list") when crossing the external borders and those whose nationals are exempt from that requirement ("positive list").

LEGISLATIVE ACT: Regulation (EU) No 1289/2013 of the European Parliament and 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.

CONTENT: this Regulation seeks to review some elements of Regulation (EC) No 539/2001listing 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.

Essentially, the Regulation intends to introduce new provisions on:

- the introduction of a **"suspension clause"** allowing on a temporary basis, in specific circumstances, to reintroduce the visa requirement for nationals of a third country who are usually exempt from visas to enter the European Union (countries listed in annex II of the regulation);
- the strengthening of the reciprocity mechanism to apply to counter-measures against a **violation of reciprocity** committed by a third country when it introduced a visa requirement from one or more Member States.

The suspension mechanism: under the amended Regulation, **when a Member State is confronted**, over a six-month period (in comparison with the same period in the previous year or with the last six months prior to the implementation of the exemption from the visa requirement for nationals of a third country listed in Annex II), **with one or more of the following well-defined circumstances leading to an emergency situation** which it is unable to remedy on its own, the Member State concerned may request the Commission **to suspend the exemption from the visa requirement for certain categories of nationals of that third country**. The exemption from the visa requirement shall be temporarily suspended as a last resort.

The circumstances would include::

- a substantial and sudden increase in the number of migrants in an irregular situation (for example, an increase exceeding a threshold of 50%);
- unfounded asylum applications;
- rejected readmission applications.

While the conditions for the activation of the safeguard clause are clearly defined, the Commission should assess the situation, and **no automatism should result from the notifications of the Member States**.

If the Commission decides, on the basis of the examination it conducted and taking into account the consequences of the exemption from the visa requirement on the external relations of the Union and its Member States with the third country concerned, that measures must be taken, it should adopt an implementing act temporarily suspending the exemption from the visa requirement for certain categories of nationals of the third country concerned for a period of up to six months. The implementing act specifies the date on which the suspension of the exemption of the visa requirement should take effect.

The reciprocity mechanism: the reciprocity mechanism aims to implement a procedure where if a third country listed in Annex II to Council Regulation (EC) No 539/2001 applies a visa requirement for nationals of at least one Member State, this requires a Union response as an **act of solidarity**, if a third country applies a visa requirement for nationals of at least one Member State.

Different stages to apply the mechanism are scheduled in this case, as described in the Regulation, to allow for a measured response on the part of the EU regarding the reintroduction of a visa requirement by a third country.

Report: by 10 January 2018, 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 relevant mechanisms. The European Parliament and the Council shall act on such a proposal by the ordinary legislative procedure.

Territorial provisions: the United Kingdom and Ireland would not participate in the adoption of the Regulation and are not bound by it or subject to its application.

ENTRY INTO FORCE: 09.01.2014.

Delegated acts: the Commission may adopt delegated acts with regard to some elements of the reciprocity mechanism. The power to adopt delegated acts shall be conferred on the Commission for a period of five years from 9 January 2014. The European Parliament or the Council may raise objections in regard to a delegated act within four months of notification of that act (this period may be extended by two months). If the European Parliament or the Council make objections, the delegated act will not enter into force.

Visas: third countries whose nationals are subject to or exempt from a visa requirement

2011/0138(COD) - 13/12/2011

The Council adopted a **general approach** concerning certain elements of the Commission proposal to amend the rules governing the EU's visa-free regime. This allows for negotiations with the European Parliament to start.

To recall, the core of the Commission's proposal is the introduction of a safeguard clause allowing the temporary reintroduction of the visa requirement for citizens of a third country whose nationals can normally travel to the EU without a visa.

While welcoming the **safeguard clause**, the Council decided to amend Article 1a. The original proposal for this article set the following condition for a Member State to notify the Commission of an emergency situation that could trigger the safeguard procedure: a sudden increase of at least 50% in relation to illegal stays and/or asylum applications and/or rejected readmission applications.

In the Council's general approach, three main changes were introduced:

- the reference to a percentage has been replaced by a reference to "**a substantial and sudden increase**". The 50% notion was moved to a recital, thus becoming a guiding principle that indicates how the provision could be applied;
- the **notion of asylum applications was clarified** by adding that this criteria refers to asylum applications "which are manifestly unfounded or do not fulfil the conditions for international protection";
- the paragraph listing the issues to be taken into account by the Commission when examining the Member State notification was extended, adding a reference to public policy and internal security as well as to the **consequences of a possible suspension**.

The main reason for the changes proposed is to have the Commission focus on the assessment of the real situation described by the Member State presenting the notification.

The safeguard clause as it stands now also provides that, if problems regarding a third country persist, the Commission can propose to move that country permanently from Annex 2 to Annex 1, i.e. to the list of those countries whose nationals are not exempt from having a visa when travelling to the EU.

Visas: third countries whose nationals are subject to or exempt from a visa requirement

2011/0138(COD) - 24/05/2011 - Legislative proposal

PURPOSE: to revise certain parts of Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders (the negative list) and those whose national are exempt from that requirement (the positive list).

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

BACKGROUND: since its adoption, Regulation (EC) No 539/2001 has been amended eight times. All the recent modifications of the Regulation focused on the revision of the positive and the negative visa lists annexed to the Regulation. Over the past few years, the need arose to make some further, technical modifications as well to the main text of the Regulation, e.g. strengthening legal certainty by providing rules for certain situations which were not covered yet by the Regulation and adjusting certain definitions due to recent changes brought by secondary legislation, particularly by the adoption of the Visa Code.

Furthermore, ten years after the integration of the Schengen acquis into the framework of the EU and the establishment of the common visa policy, it is necessary to make progress towards further harmonisation of the EU's common visa policy with regard to certain categories listed in the Regulation and left until now to the unilateral decisions of individual Member States.

Lastly, as a result of the entry into force of the Lisbon Treaty, further modifications are required, such as the introduction of a safeguard clause and a modification of the reciprocity mechanism.

This proposal aims to reconcile these objectives.

IMPACT ASSESSMENT: no impact assessment was undertaken.

LEGAL BASIS: Article 77(2)(a) of the Treaty on the Functioning of the European Union. (TFEU).

CONTENT: the present modification of the Regulation aims at :

(1) making provision for a visa safeguard clause allowing the rapid, temporary suspension of the visa waiver for a third country on the positive list in case of an emergency situation, where an urgent response needs to be given to solve the difficulties faced by Member States. Following the adoption of the visa waiver for Albania and Bosnia Herzegovina, certain Member States suggested the insertion of a safeguard clause into Regulation 539/2001, giving power to the Commission to decide on a temporary suspension of the visa waiver, in accordance with a comitology procedure, if certain conditions are met.

The clause would be complementary to, but distinct from, the safeguard clause in Article 78(3) of the TFEU. It should be applied only as a temporary measure in clearly defined emergency situations. It should cover only a short period of time and be triggered only in case of an emergency situation, i. e. if there is a sudden change of the situation, e.g. when the relevant figures increase suddenly within a relatively short period of time, and where an urgent "visa" response needs to be given to solve the difficulties faced by the Member States affected.

Before the safeguard clause is triggered, the Commission will have to assess the situation and there should be no automatism flowing from the notifications by Member States. The Commission will take into account the number of Member States affected by the sudden occurrence of any of the situations listed in this proposal and the overall impact of them on the migratory situation in the EU.

In accordance with the comitology rules in Regulation (EU) No 182/2011, under the examination procedure, the European Parliament and the Council will receive the proposal for a Commission decision suspending the visa waiver for one or more third countries. The proposal makes provisions ofr information to be available in sufficient time for the European Parliament and the Council to reject or adopt the proposal to amend the lists of Regulation (EC) No 539/2001.

(2) modifying the reciprocity mechanism: a suggestion has been made by a Member State to modify the current reciprocity mechanism in order to make it more efficient. According to the suggestion, the Commission would be obliged to present a proposal, within a very short period of time, for a temporary restoration of a visa requirement for nationals of a third country, which does not lift the visa obligation within a period of no longer than 12 months of its introduction for a Member State. However, such a modification of the reciprocity mechanism would infringe the exclusive right of initiative of the Commission and would not necessarily lead to adoption of the proposed retaliatory measure. The initial reciprocity mechanism of Regulation (EC) No 539/2001 already contained a certain automatism: the notification of non-reciprocity cases was not mandatory; the Member State concerned was free to decide to notify or not. But if notification took place, then Member States were obliged to impose the visa requirement for nationals of the third country concerned provisionally and automatically, 30 days after the notifications, unless the Council decided otherwise. This automatism was considered to be the weakness of the initial reciprocity mechanism and thus it has been abandoned in 2005 as being counter-productive. There is no reason to believe that it would entail more efficiency now. The current reciprocity mechanism, as modified in 2005, is considered to be overall efficient, and the cases of non-reciprocity have been considerably reduced. The remaining non-reciprocity situations are mostly cases where some Member States are considered by third countries not to meet objective criteria for visa waiver set out by these third countries in their domestic legislation. Most Member States also cautioned against an "automatic" (re)imposition of a visa requirement for citizens of third countries due to its political implications and advocated instead a tailor-made approach and application of provisional measures in other fields.

(3) ensuring compliance with the Visa Code by providing e.g. for appropriate definitions concerning short stay and visa. Accordingly, a visa is an authorisation of transit through or for an intended stay in the territory of the Member States for duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States. The airport transit visa is excluded from this definition, since the visa regime applicable by Member States to third-country nationals transiting through the international airports of Member States is regulated by and contained in the Visa Code.

(4) ensuring that the Regulation determines exhaustively whether a third-country national is to be subject to or exempt from the visa requirement. Apart from aligning the definition of “visa” with that in the Visa Code, the proposal seeks to ensure legal clarity by complementing the rules applicable to refugees and stateless persons in order to clarify the applicable visa regime for those residing in the United Kingdom or in Ireland. On the basis of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland and the United Kingdom are not participating in the adoption of Regulation (EC) No 539/2001 and its amendments. Thus, for Regulation (EC) No 539/2001 the United Kingdom and Ireland are not considered to be Member States. Consequently, the provisions of Regulation (EC) No 1932/2006 on the visa rules applicable for refugees and stateless persons do not apply to such persons when they are residing in the United Kingdom or in Ireland. The proposal aims at remedying this unsatisfactory situation by including a provision into the Regulation on refugees and stateless persons residing in the UK or Ireland.

(5) making progress towards a full harmonisation of the common visa policy by providing for new, more harmonised rules with regard to the visa requirement or exemption applicable to various categories of third country nationals. The proposal aims at limiting the freedom of Member States to grant visa waiver or to impose a visa requirement to various categories of persons covered by Article 4(1) of Regulation (EC) No 539/2001 by establishing further common rules on the visa requirement for some of these categories.

The following provisions are made:

- **further progress towards full harmonisation with regard to the categories of Article 4(1), for which a de facto harmonisation or quasi harmonisation already exists**. Civilian air crew members are exempted from the visa requirement by all Member States. As regards civilian sea crew, all Member States but two exempt such persons from the visa requirement in case of shore leave, while all Member States but two maintain the visa requirement for transit purposes. This amendment will therefore set out the general, harmonised visa exemption for the first category and visa requirement for the second one respectively. There is only one Member State exempting flight crew and attendants on emergency or rescue flights and other helpers in case of a disaster or accident from the visa requirement, therefore this Regulation would abolish this category;
- **procedure to exempt diplomatic and service passport holders of third countries from the visa requirement after the abolition of Council Regulation (EC) No 789/2001**: the current text of Article 4(1) of Regulation (EC) No 539/2001 refers to the procedure established by Regulation (EC) No 789/2001 to be followed when a Member State decides to exempt the diplomatic and/or service passport holders of a third country from the visa requirement. Pursuant to Regulation (EC) No 789/2001, Member States, willing to exempt holders of diplomatic and service passports of third countries whose nationals are subject to prior consultation, should have submitted a legislative initiative, on which the Council decided by qualified majority (since 2006).

As regards the holders of such passports of third countries not subject to prior consultation, Regulation (EC) No 789/2001 obliged Member States simply to communicate to the Council any amendments to their visa rules (requirement or exemption). However, Regulation (EC) No 789/2001 has been repealed by Council Regulation (EC) No 810/2009 establishing a Community Code on visas (Visa Code). It was considered that after the repeal of the above Regulation, the appropriate place to cover these "procedural" aspects of national decisions on visa requirement or exemption for such passport holders would be Regulation (EC) No 539/2001, if need be.

Thus, in the framework of the present modification, it needs to be examined whether a specific decision-making procedure should be provided for the case when a Member State wants to abolish the visa requirement for the diplomatic and service passport holders of a third country subject to prior consultation. The Commission considers that there is no need to establish such a specific "common decision mechanism" for this issue, both for institutional and substantive reasons;

(6) clarifying the situation and establishing the legal basis of the visa requirement or exemption for other entities subject to international law which issue diplomatic or service passport or laissez-passers to its members: there are certain entities subject to international law, which do issue diplomatic or service passports or laissez-passers. These entities are not intergovernmental organisations, thus they are not covered at this moment by Article 4 of Regulation (EC) No 539/2001. On the other hand they are included in the Table of travel documents and Member States declared whether they recognise their travel documents or not (e.g. Sovereign Order of the Knights of Malta). It is necessary to have such entities also covered by Regulation (EC) No 539/2001 and Member States should decide and notify to the Commission;

(7) adopting new provision in respect of obligations for certain Member States flowing from prior EU/international agreements implying the need to derogate from the common visa rules. Prior to the establishment of the EU common visa policy, the European Union and its Member States have concluded international agreements, like association agreements, with third countries dealing i.a. with the movement of persons and services, which might have an impact on the visa requirement imposed on nationals of third countries. Such international agreements concluded by the Union take primacy over provisions of secondary EU legislation, including Regulation (EC) No 539/2001. In case such international agreements contain a so-called 'standstill clause', it might entail the obligation for certain Member States to derogate from the rules of the common visa policy in accordance with their respective legislations and practices applicable/in force on the date the standstill clause entered into force for them. Therefore, the Commission proposes the introduction in Article 4 of a provision allowing Member States to exempt service providers from the visa requirement, to the extent necessary to respect international obligations concluded by the Community before the entry into force of Regulation (EC) No 539/2001.

BUDGETARY IMPLICATIONS: the proposal has no implications for the budget of the EU.