

## Statewatch analysis

### Amending the EU's visa list legislation

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#### Background

The EU's legislation defining the countries and territories whose nationals are (and are not) subject to a visa requirement to enter the EU is a crucial part of the EU's immigration policy, and has a further significant impact on the EU's external relations. In its current form, this legislation was originally adopted in 2001 (Regulation 539/2001), and has been amended seven times since (in 2001, 2003, 2005, 2006, 2009 and twice in 2010), as well as by the 2003 and 2005 accession agreements, without ever being codified.

In May 2011, the Commission proposed the latest amendments to the legislation (the '2011 proposal'). The Commission did not suggest any amendment of the lists of countries and territories whose nationals do (or do not) need a visa to enter the EU. Instead, the 2011 proposal focussed on the adoption of a new 'safeguard clause' which would provide for a possible fast-track reintroduction of visa requirements for the nationals of any country on the visa 'white-list' (ie whose nationals are not subject to a visa requirement) in cases where Member States believed that visa liberalisation had resulted in a sharp increase in irregular ('illegal') immigration. The 2011 proposal was mainly a response to concerns about the impact of the waiver of visa requirements for nationals of Western Balkan countries in 2009 and 2010, although the new safeguard clause could in theory apply to any country on the visa white-list. Furthermore, the 2011 proposal would have further harmonised the treatment of *categories* of persons (such as diplomats and transport workers) as regards the requirement (or not) to obtain a visa.

The EU's visa list rules are applicable to all the Member States (including Denmark) except the UK and Ireland, plus the four Schengen associates: Norway, Iceland, Switzerland and Liechtenstein. This includes the Member States which have recently joined the EU but which do not yet apply all of the Schengen rules (Romania, Bulgaria and Cyprus). Similarly, Croatia will have to apply these rules as soon as it joins the EU.

#### Legislative developments

The 2011 proposal is subject to the ordinary legislative procedure, ie co-decision of the European Parliament (EP) and the Council. The EP has not yet defined its position on the proposal, although its LIBE committee has

been considering its draft report. However, shortly before Easter the Member States, in the form of their representatives to the EU (known as Coreper) were considering a deal on their position. It is not known whether Coreper agreed a deal; if so, it might differ slightly from the text submitted by the Council Presidency for approval. Any deal is subject to the need to reach an agreement with the EP before the legislation can be adopted. However, since the probable agreement in Coreper is an important point in the legislative process, this seems an opportune time to examine the latest developments.

Furthermore, at the same time, Coreper reached agreement on the Council's position on a first set of proposed amendments to the Schengen borders code. This text also comprises amendments to a number of EU measures concerning visas, including the EU visa list legislation. So, if these amendments are agreed with the EP, the visa list Regulation would be amended by two separate measures.

The texts proposed to or agreed by Coreper would do the following:

- a) the amendments agreed alongside the amendments to the Schengen borders code would change Articles 1(2) and 2 of the visa list Regulation in order to provide for a revised definition of 'visa'. This is part of a package of amendments to EU borders and visa legislation designed to overturn a ruling of the EU's Court of Justice on the calculation of the time period during which a third-country national non-resident in the EU can visit (Case C-241/05 *Bot* [2006] ECR I-9627).
- b) the Commission had proposed only a minor amendment to the rules governing 'visa reciprocity', ie the procedure for encouraging third States on the EU white-list to exempt citizens of all Member States from a visa requirement. These rules had been amended in 2005 to make them more diplomatic, but Member States had become disappointed with their application in recent years since Canada reintroduced visa requirements for Czech nationals and the Commission neither persuaded Canada to change its policy nor took any move towards retaliation. The revisions to Article 1(4) of the visa list Regulation (see also the new Article 1(6)) would therefore strengthen the rules to provide for a fast-track process of reimposing visa requirements upon countries like Canada, although the Commission would not be obliged to use this process.
- c) the new safeguard clause aimed (in practice) at possibly reimposing visa requirements on the Western Balkans states is agreed (new Article 1a), although the conditions for applying the clause are less precise than those proposed by the Commission, and the Council added some additional criteria which the Commission would have to consider when deciding on the fast-track reimposition of the requirements.
- d) the Commission's proposals for further harmonisation of the treatment of *categories* of persons as regards the requirement (or not) to obtain a visa have been rejected. Instead, Coreper has agreed on

some amendments to clarify the rules for purely optional exceptions from the rules (Article 4(1) and (2)). The proposal for a new clause giving precedence to the EU-Turkey association agreement, which at least to some extent prevents the imposition of visas on Turkish visitors (Article 4(4)), has been dropped.

- e) Finally, a new clause setting out the procedure for the fast-track reimposition of visa requirements for the Western Balkans (Article 4a) will also apply to the possible fast-track reimposition of visa requirements for countries (such as Canada) which breach the reciprocity rules. Furthermore, Coreper has agreed that the Commission cannot adopt such measures unless a qualified majority of Member States is in favour, whereas the Commission had proposed to give itself the power to act unless a simple or qualified majority of Member States was opposed.

## Assessment

Quite apart from the usual lack of transparency of EU documents (the texts submitted to Coreper have not officially been made public, although they are available on the Statewatch website - see the links below), the negotiation process is highly obscure, as it is not currently clear whether Coreper even reached an agreement on the proposed measures, and if so what text was agreed. Furthermore, an extra layer of opaqueness results from the unintelligibility of the current visa list Regulation in the absence of a codified text, since the proposed amendments cannot be understood without comparing them to the current rules.

However, the Annex to this analysis sheds light on the latter issue: it presents the visa list Regulation as it results from all of the previous amendments, and also indicates the changes that would be made by the proposed amendments (as discussed by Coreper).

As for the substance of the proposed amendments, the version of the proposed legislation discussed in Coreper clearly shows the Member States' intention to assert the EU's authority more forcefully as regards visa policy by the creation of two new fast-track powers to impose visa obligations, but also to retain a lot of political discretion when using such powers. Although these new powers would be conferred upon the Commission, Member States have tried as much as possible to assert their control over its actions, and they have rejected any attempt to remove their remaining discretion as regards visa policy for various categories of persons.

They have also asserted their control over the Court of Justice, overturning a judgment that irritated interior ministries, and refusing to make express reference to other case law that irritated them even more, by preventing them from imposing visa requirements on at least some Turkish visitors (Case C-228/06 *Soysal*; see also pending Case C-221/11 *Demirkan*). Due to the pre-eminence of international treaties over secondary EU legislation, the latter case law cannot simply be overturned by legislative amendment (otherwise, it surely would have been). It can only be overturned by

denouncing the association treaty with Turkey, or by convincing Turkey to renegotiate it on this point - which is about as likely as the Republic of Cyprus voting to become a Turkish province.

Turkey's unwillingness to serve as a further external border for the EU (see the link below to the draft Council 'roadmap' on 'migratory pressure') in the absence of the EU's unwillingness to consider further visa liberalisation for Turkish nationals is clearly contributing to the pressures placed on the EU's Dublin and Schengen systems, by increasing the numbers of asylum-seekers reaching Greece and the overall numbers of irregular migrants reaching the Schengen area. But Member States apparently believe that these diseases are not as unpleasant as the medicine (visa liberalisation for Turkey) which might help to cure them. Of course, if the future *Demirkan* judgment requires many Member States to abolish their visa requirements for Turkish nationals, the EU's negotiating power would be weakened - and the Member States will then have two sets of migration control problems, in place of one.

In general, Member States are clearly unwilling to consider the possibility of a system of decision-making on visa requirements which relies more on objective evidence about trends in irregular migration (as the Commission had proposed, to a limited degree) and less upon discretion, power politics and gestures synchronised with certain Member States' election cycles.

#### Text of the planned amendments

The Annex to this analysis includes the text of the visa list Regulation as it results from all previous amendments. The changes that would be made by the version of the proposed amendments agreed or considered by Coreper are indicated in bold italics (to show new text) or brackets and strikethrough (to show deleted text). The amendments to Articles 1(2) and 2 would follow from the amendments to the borders code and related legislation, while the other amendments would follow from the legislation amending the visa list Regulation as such.

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#### Sources

- Council's proposed text of amendments to the visa list regulation:  
<http://www.statewatch.org/news/2012/apr/eu-council-visa-list-amendments-8218-rev1-12.pdf>
- Council's agreed text of amendments to the borders code regulation and other visas and borders measures:  
<http://www.statewatch.org/news/2012/apr/eu-council-schengen-border-code-amendments-8264-12.pdf>
- Commission proposal - amendments to the visa list regulation:

[http://ec.europa.eu/commission\\_2010-2014/malmstrom/archive/1\\_EN\\_ACT\\_part1\\_v10.pdf](http://ec.europa.eu/commission_2010-2014/malmstrom/archive/1_EN_ACT_part1_v10.pdf)

- Draft Council 'roadmap' on addressing 'migratory pressure':  
<http://www.statewatch.org/news/2012/mar/eu-council-road-map-migratory-pressure-7262-12.pdf>

## Annex

Council Regulation 539/2001 of 15 March 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

[original footnotes omitted]

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62, point (2)(b)(i) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Under Article 62, point (2)(b) of the Treaty, the Council is to adopt rules relating to visas for intended stays of no more than three months, and in that context it is required to determine the list of those third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. Article 61 cites those lists among the flanking measures which are directly linked to the free movement of persons in an area of freedom, security and justice.

(2) This Regulation follows on from the Schengen acquis in accordance with the Protocol integrating it into the framework of the European Union, hereinafter referred to as the 'Schengen Protocol'. It does not affect Member States' obligations deriving from the acquis as defined in Annex A to Decision 1999/435/EC 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.

(3) This Regulation constitutes the further development of those provisions in respect of which closer cooperation has been authorised under the Schengen Protocol and falls within the area referred to in Article 1, point B, of Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis.

(4) Pursuant to Article 1 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 this Regulation. Consequently and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Regulation apply neither to Ireland nor to the United Kingdom.

(5) 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, consideration also being given to the implications of regional coherence and reciprocity. Provision should be made for a Community mechanism enabling this principle of reciprocity to be implemented if one of the third countries included in Annex II to this Regulation decides to make the nationals of one or more Member States subject to the visa obligation.

(6) As the Agreement on the European Economic Area exempts nationals of Iceland, Liechtenstein and Norway from the visa requirement, these countries are not included in the list in Annex II hereto.

(7) As regards stateless persons and recognised refugees, without prejudice to obligations under international agreements signed by the Member States and in particular the European Agreement on the Abolition of Visas for Refugees, signed at Strasbourg on 20 April 1959, the decision as to the visa requirement or exemption should be based on the third country in which these persons reside and which issued their travel documents. However, given the differences in the national legislation applicable to stateless persons and to recognised refugees, Member States may decide whether these categories of persons shall be subject to the visa requirement, where the third country in which these persons reside and which issued their travel documents is a third country whose nationals are exempt from the visa requirement.

(8) In specific cases where special visa rules are warranted, Member States may exempt certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.

(9) With a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States should communicate to the other Member States and to the Commission the measures which they take pursuant to this Regulation. For the same reasons, that information should also be published in the *Official Journal of the European Communities*.

(10) The conditions governing entry into the territory of the Member States or the issue of visas do not affect the rules currently governing recognition of the validity of travel documents.

(11) In accordance with the principle of proportionality stated in Article 5 of the Treaty, enacting a Regulation 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, is both a necessary and an appropriate means of ensuring that the common visa rules operate efficiently.

(12) This Regulation provides for full harmonisation as regards the third countries whose nationals are subject to the visa requirement for the crossing of Member States' external borders and those whose nationals are exempt from that requirement.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Nationals of third countries on the list in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States.

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 shall be required to be in possession of a visa when crossing the external borders of the Member States if the third country in which they are resident and which has issued them with their travel document is a third country listed in Annex I to this Regulation.

2. Nationals of third countries on the list in Annex II shall be exempt from the requirement set out in paragraph 1 for stays of no more than ~~[three months in all]~~ *90 days in any 180-day period.*

The following shall also be exempt from the visa requirement:

- the nationals of third countries listed in Annex I to this Regulation who are holders of a local border traffic card issued by the Member States pursuant to Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention\* when these holders exercise their right within the context of the Local Border Traffic regime;

- school pupils who are nationals of a third country listed in Annex I and who reside in a Member State applying Council Decision 94/795/JHA of 30 November 1994 on a joint action adopted by the Council on the basis of Article K.3.2.b of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State\*\* and are travelling in the context of a school excursion as members of a group of school pupils accompanied by a teacher from the school in question;

- recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State.

3. Nationals of new third countries formerly part of countries on the lists in Annexes I and II shall be subject respectively to the provisions of paragraphs 1 and 2 unless and until the Council decides otherwise under the procedure laid down in the relevant provision of the Treaty.

4. Where a third country listed in Annex II ~~[introduces]~~ *has introduced* a visa requirement for nationals of a Member State, the following provisions shall apply:

(a) ~~[within 90 days of such introduction, or its announcement,]~~ the Member State concerned shall notify *the European Parliament*, the Council and the Commission in writing~~[;]~~ *within 90 days of such introduction, or its announcement. This notification shall include a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to restoring visa-free travel with the third country in question and shall include all relevant information.* The notification shall be published *without delay by the Commission* in the C series of the *Official Journal of the European Union*; ~~it [The notification]~~ shall specify the date of implementation of the ~~[measure]~~ *visa requirement* and the type of travel documents and visas concerned.

~~If the third country decides to lift the visa obligation before the expiry of this deadline, the notification becomes superfluous;~~

(b) ~~[the Commission shall i]~~ immediately ~~[after]~~ *following the date of publication* of that notification and in consultation with the Member State concerned, *the Commission shall take steps with the authorities of the third country in order to restore or introduce visa-free travel and shall without delay inform the European Parliament and the Council about these steps.*~~[;]~~

(c) ~~If within 90 days [after] following the date of publication of [that] the Member State's notification [the Commission, in consultation with the Member State concerned, shall report to the Council. The report may be accompanied by a proposal providing for the temporary restoration of the visa requirement for nationals of the third country in question. The Commission may also present this proposal after deliberations in Council on its report. The Council shall act on such proposal by a qualified majority within three months;]~~ *the third country has not lifted the visa obligation, the Member State 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 thereof. The Commission shall examine the notification and the request, taking 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 of the visa requirement for the external relations of the Union and its Member States with the third country in question.*

*At the latest 90 days following the receipt of this request and, in the absence of such request, within six months following the date of publication of the Member State's notification, the Commission:*

*(i) may adopt an implementing decision suspending the exemption from the visa requirement for the nationals of the third country concerned or for certain categories of these nationals for a period of six months at the request of the Member State concerned or at its own initiative; this implementing decision shall be adopted in accordance with the examination procedure referred to in Article 4a(2); the implementing decision shall determine a date within 90 days on which the suspension of the exemption of the visa requirement is to take effect taking into account the available resources in the consulates of the Member States; or*

*(ii) shall submit a report assessing the situation and containing the reasons why it does not propose to suspend the exemption of the visa requirement to*

*the committee referred to in Article 4a(1) and shall inform the European Parliament thereof.*

~~[(d) if it considers it necessary, the Commission may present a proposal for the temporary restoration of the visa requirement for nationals of the third country referred to in subparagraph (c) without a prior report. The procedure provided for in subparagraph (c) shall apply to that proposal. The Member State concerned may state whether it wishes the Commission to refrain from the temporary restoration of such visa requirement without a prior report;]~~

*(d) If the third country concerned has not lifted the visa requirement in the case referred to in point (c)(ii), the Commission, in cooperation with the Member State concerned, shall report to the committee referred to in Article 4a(1) at the latest six months after the publication of the report referred to in point (c)(ii), and every six months thereafter. The Commission may, on the basis of such report, adopt an implementing decision referred to in point (c)(i) and shall inform the European Parliament thereof.*

*(e) Where an implementing decision has been adopted pursuant to points (c)(i) or (d), the Commission may extend its validity for six months, in accordance with the examination procedure referred to in Article 4a(2).*

*(f) Before the end of the period of validity of the implementing decision adopted pursuant to points (c)(i) or (d) or its extension adopted pursuant to point (e), the Commission, in cooperation with the Member State concerned, shall submit a report to the European Parliament and the Council. The report shall be accompanied by a legislative proposal for amending this Regulation in order to transfer the reference to the third country concerned to Annex I.*

*The European Parliament and the Council shall act on such proposal by the ordinary legislative procedure. ~~[(e)—] The procedures referred to in [subparagraphs] points (c) [and] to [(d)] (e) [does] do not [affect] prevent the Commission[’s right to] from presenting a proposal amending this Regulation in order to transfer the third country concerned to Annex I at any time. [Where a temporary measure as referred to in subparagraphs (c) and (d) has been decided, the proposal amending this Regulation shall be presented by the Commission at the latest nine months after the entry into force of the temporary measure. Such a proposal shall also include provisions for lifting of temporary measures, which may have been introduced pursuant to the procedures referred to in subparagraphs (c) and (d). In the meantime the Commission will continue its efforts in order to induce the authorities of the third country in question to reinstall visa-free travel for the nationals of the Member State concerned;]~~*

*(g) Where the Commission has proposed to transfer the reference to the third country concerned to Annex I pursuant to point (f), it can extend the validity of the implementing decision adopted pursuant to points (c)(i), (d), or (e) for a period of maximum twelve months. The decision to extend the validity of the implementing decision shall be adopted in accordance with the examination procedure referred to in Article 4a(2).*

~~[(f)] (h) [w]Where the third country in question abolishes the visa requirement, the Member State concerned shall immediately notify the European Parliament, the Council and the Commission to that effect. The notification shall be published by~~

*the Commission in the C series of the Official Journal of the European Union. Any ~~[temporary measure]~~ implementing decision ~~[decided upon under subparagraph (d)]~~ adopted pursuant to points (c)(i), (d) or (e) or (g) shall terminate seven days after the publication in the Official Journal of the European Union. In case the third country in question has introduced a visa requirement for nationals of two or more Member States, the ~~[termination of the temporary measure will]~~ implementing decision adopted pursuant to points (c)(i), (d) or (e) or (g) shall only terminate after the ~~[last]~~ publication of the last notification.*

5. As long as visa exemption reciprocity continues not to exist with any third country listed in Annex II in relation to any of the Member States, the Commission shall report to the European Parliament and the Council before the 1 July of every even-numbered year on the situation of non-reciprocity and shall, if necessary, submit appropriate proposals.

6. *Member States whose nationals on [date of entry into force of this Regulation] are subject to a visa requirement by a third country listed in Annex II shall notify the European Parliament, the Council and the Commission in writing by [one month after the entry into force of this Regulation]. The notification shall include a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to restoring or introducing visa-free travel with the third country in question. The notification shall be published by the Commission in the C series of the Official Journal of the European Union. Points (b) to (h) of paragraph 4 shall apply mutatis mutandis.*

#### Article 1a

1. *By way of derogation from Article 1(2), Article 1(1) shall temporarily apply in emergency situations 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 illegally staying in the Member State's territory, in comparison with the corresponding period of the previous year or the last six months prior to the introduction of the visa waiver;*

*(b) a substantial and sudden increase, leading to specific pressures on the asylum system over a six month period, in comparison with the corresponding period of the previous year or the last six months prior to the introduction of the visa waiver, in the number of asylum applications from the nationals of a third country listed in Annex II which are manifestly unfounded or which do not fulfil the conditions for international protection;*

*(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 corresponding period of the previous year or the last six months prior to the introduction of the visa waiver.*

*This notification shall be duly motivated 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.*

*Where a Member State notifies the Commission in accordance with the above, it shall inform the European Parliament thereof.*

*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) the scale of the substantial and sudden increase mentioned in points a), b) and/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 as well as from reports prepared by FRONTEX and/or the European Asylum Support Office;*

*(d) the overall question of public policy and internal security, in consultation with the Member State(s) concerned and, if necessary, after consultations with Europol, having regard to its tasks;*

*(e) the consequences of a suspension of the exemption of the visa requirement for the external relations of the EU and its Member States.*

*Where the Commission, on the basis of this examination, determines that action is needed, it shall submit a proposal, within three months following receipt of the notification, with a view to the adoption by the Commission of an implementing decision providing that Article 1(1) shall temporarily apply in relation to the third country concerned for a period of six months. The implementing decision shall be adopted in accordance with the examination procedure referred to in Article 4a(2). The implementing decision shall determine the date on which the suspension of the exemption of visa requirement is to take effect.*

*4. Before the end of the period of validity of the implementing decision adopted pursuant to paragraph 3, 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.*

*5. Where the Commission has proposed an amendment to this Regulation in order to transfer the reference to a third country to Annex I pursuant to paragraph 4, it can extend the validity of the implementing decision adopted pursuant to paragraph 3 for a period of maximum twelve months. The decision to extend the validity of the implementing decision shall be adopted in accordance with the examination procedure referred to in Article 4a(2).*

## Article 2

For the purposes of this Regulation, [~~'visa' shall mean an authorisation issued by a Member State or a decision taken by such State which is required with a view to:~~

~~— entry for an intended stay in that Member State or in several Member States of no more than three months in total,~~

~~— entry for transit through the territory of that Member State or several Member States, except for transit at an airport.] the definition of "visa" as defined in Article 2(2)(a) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas shall apply.~~

## Article 3

[Article 3 was repealed previously]

## Article 4

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; [~~in accordance with one of the procedures laid down in Articles 1(1) and 2(1) of Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications\*.~~]

(b) civilian air and sea crew members when acting in the course of their duties;

(c) 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);

~~(c)~~ (d) [~~the flight~~] crew and [~~attendants on~~] members of emergency or rescue [~~flights~~] missions [~~and other helpers~~] in the event of disaster or accident;

~~(d)~~ (e) [~~the~~] civilian crew of ships navigating in international *inland* waters;

(e) (f) [~~the~~] holders of *travel documents* [~~laissez-passer~~] issued by some 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 [~~their~~] officials of these organisations or entities.

2. A Member State may exempt from the visa requirement:

(a) 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

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;

(b) 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;

(c) members of the armed forces travelling on NATO or Partnership for Peace business and holders of identification and movement orders provided for by the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty Organisation regarding the status of their forces.

*(d) 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.*

3. A Member State may provide for exceptions from the exemption from the visa requirement provided for in Article 1(2) as regards persons carrying out a paid activity during their stay.

#### *Article 4a*

*1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.*

*2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.*

*3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.*

#### *Article 5*

1. Within 10 working days of the entry into force of this Regulation, Member States shall communicate to the other Member States and the Commission the measures they have taken pursuant to Article 3, second indent and Article 4. Any further changes to those measures shall be similarly communicated within five working days.

2. The Commission shall publish the measures communicated pursuant to paragraph 1 in the *Official Journal of the European Communities* for information.

#### *Article 6*

This Regulation shall not affect the competence of Member States with regard to the recognition of States and territorial units and passports, travel and identity documents issued by their authorities.

## Article 7

1. Council Regulation (EC) No 574/1999 shall be replaced by this Regulation.
2. The final versions of the Common Consular Instruction (CCI) and of the Common Manual (CM), as they result from the Decision of the Schengen Executive Committee of 28 April 1999 (SCH/Com-ex(99) 13) shall be amended as follows:
  1. the heading of Annex 1, part I of the CCI and of Annex 5, part I of the CM, shall be replaced by the following: 'Common list of third countries the nationals of which are subject to the visa requirement imposed by Regulation (EC) No 539/2001';
  2. the list in Annex 1, part I of the CCI and in Annex 5, part I of the CM shall be replaced by the list in Annex I to this Regulation;
  3. the heading of Annex 1, part II of the CCI and of Annex 5, part II of the CM shall be replaced by the following: 'Common list of third countries the nationals of which are exempted from the visa requirement by Regulation (EC) No 539/2001';
  4. the list in Annex 1, part II of the CCI and in Annex 5, part II of the CM shall be replaced by the list in Annex II to this Regulation;
  5. part III of Annex 1 to the CCI and part III of Annex 5 of the CM shall be deleted.
3. The decisions of the Schengen Executive Committee of 15 December 1997 (SCH/Com-ex(97)32) and of 16 December 1998 (SCH/Com-ex(98)53, rev.2) shall be repealed.

## Article 8

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 15 March 2001.

### ANNEX I

Common list referred to in Article 1(1)

#### 1. STATES

Afghanistan  
Albania  
Algeria  
Angola  
Armenia  
Azerbaijan  
Bahrain  
Bangladesh  
Belarus

Belize  
Benin  
Bhutan  
Bolivia  
Bosnia and Herzegovina  
Botswana  
Burkina Faso  
Burma/Myanmar  
Burundi  
Cambodia  
Cameroon  
Cape Verde  
Central African Republic  
Chad  
China  
Colombia  
Congo  
Côte d'Ivoire  
Cuba  
Democratic Republic of the Congo  
Djibouti  
Dominica  
Dominican Republic  
Ecuador  
Egypt  
Equatorial Guinea  
Eritrea  
Ethiopia  
Fiji  
Gabon  
Gambia  
Georgia  
Ghana  
Grenada  
Guinea  
Guinea-Bissau  
Guyana  
Haiti  
India  
Indonesia  
Iran  
Iraq  
Jamaica  
Jordan  
Kazakhstan  
Kenya  
Kiribati  
Kuwait  
Kyrgyzstan  
Laos  
Lebanon  
Lesotho  
Liberia  
Libya

Madagascar  
Malawi  
Maldives  
Mali  
Marshall Islands  
Mauritania  
Micronesia  
Moldova  
Mongolia  
Morocco  
Mozambique  
Namibia  
Nauru  
Nepal  
Niger  
Nigeria  
North Korea  
Oman  
Pakistan  
Palau  
Papua New Guinea  
Peru  
Philippines  
Qatar  
Russia  
Rwanda  
Saint Lucia  
Saint Vincent and the Grenadines  
Samoa  
São Tomé and Príncipe  
Saudi Arabia  
Senegal  
Sierra Leone  
Solomon Islands  
Somalia  
South Africa  
Sri Lanka  
Sudan  
Surinam  
Swaziland  
Syria  
Tajikistan  
Tanzania  
Thailand  
The Comoros  
Timor-Leste  
Togo  
Tonga  
Trinidad and Tobago  
Tunisia  
Turkey  
Turkmenistan  
Tuvalu  
Uganda

Ukraine  
United Arab Emirates  
Uzbekistan  
Vanuatu  
Vietnam  
Yemen  
Zambia  
Zimbabwe

## 2. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE

Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999  
Palestinian Authority

## 3. BRITISH CITIZENS WHO ARE NOT NATIONALS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE PURPOSES OF COMMUNITY LAW:

British Overseas Territories Citizens who do not have the right of abode in the United Kingdom  
British Overseas Citizens  
British Subjects who do not have the right of abode in the United Kingdom  
British Protected Persons

### *ANNEX II*

Common list referred to in Article 1(2)

#### 1. STATES

Albania(\*)  
Andorra  
Antigua and Barbuda\*  
Argentina  
Australia  
Bahamas\*  
Barbados\*  
Bosnia and Herzegovina(\*)  
Brazil  
Brunei Darussalam  
Canada  
Chile  
Costa Rica  
Croatia  
Ecuador  
Former Yugoslav Republic of Macedonia(\*)  
Guatemala  
Holy See  
Honduras  
Israel  
Japan  
Malaysia  
Mauritius\*  
Mexico  
Monaco

Montenegro(\*)  
New Zealand  
Nicaragua  
Panama  
Paraguay  
Saint Kitts and Nevis\*  
Salvador  
San Marino  
Serbia (excluding holders of Serbian passports issued by the Serbian Coordination Directorate (in Serbian: *Koordinaciona uprava*)) (\*)  
Seychelles\*  
Singapore  
South Korea  
United States of America  
Uruguay  
Venezuela

\* The exemption from the visa requirement will apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Community.

(\*) The visa requirement exemption applies only to holders of biometric passports.

## 2. SPECIAL ADMINISTRATIVE REGIONS OF THE PEOPLE'S REPUBLIC OF CHINA

Hong Kong SAR (1)  
Macao SAR (2)

(1) The visa requirement exemption applies only to holders of a 'Hong Kong Special Administrative Region' passport.

(2) The visa requirement exemption applies only to holders of a 'Região Administrativa Especial de Macau' passport.

## 3. BRITISH CITIZENS WHO ARE NOT NATIONALS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE PURPOSES OF COMMUNITY LAW:

British Nationals (Overseas)

## 4. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE:

Taiwan (\*)

(\*) The exemption from the visa requirement applies only to holders of passports issued by Taiwan which include an identity card number.

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