



Analysis

Amending the EU's visa list legislation February 2014 version

Steve Peers
Professor of Law, University of Essex

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 was amended seven times up until 2010 (in 2001, 2003, 2005, 2006, 2009 and twice in 2010), as well as by the last three accession agreements, without ever being codified.

A new amendment to the visa list rules was adopted in December 2013, and the European Parliament and the Council have also agreed on two further amendments to the rules, which will be officially adopted early in 2014. This analysis examines all of these recent changes, and presents an informally codified version of the text of what the Regulation will look like after they all take effect.

Furthermore, the visa list Regulation was also amended back in summer 2013, as part of a set of amendments to the Schengen borders code and other EU visa legislation. The amendment (which is also highlighted in the codified Regulation below) changed Articles 1(2) and 2 of the visa list Regulation in order to provide for a revised definition of 'visa'. This was intended 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).

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 those newer Member States which do not yet apply all of the Schengen rules (Romania, Bulgaria, Cyprus and Croatia).

The three new amendments

(a) the December 2013 amendments

This first amendment, which came into force on 9 January 2014, did not make any amendment to the lists of countries and territories whose nationals do (or do not) need a visa to enter the EU. Instead, it set out three other changes to the rules: a new 'safeguard clause', a revised 'reciprocity clause' and revised rules on exemptions for categories of persons. These three issues will be considered in turn.

First of all, the 'safeguard clause' (new Article 1a; see also new Article 4a) provides 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 has resulted in a sharp increase in irregular ('illegal') immigration. This change is 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. The Council (ie, Member States' interior ministers) amended the Commission's proposal so that the relevant rules leave more discretion. Both this new clause and the amended reciprocity clause must be reviewed in 2018 (new Article 1b).

Secondly, 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 (the original version of 2001 had been too threatening to be credible). However, 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.

So during negotiations, the Council amended the reciprocity rules to make them tougher again, and the European Parliament insisted that they be tougher still. The revised Article 1(4) of the visa list Regulation (Article 1(5) was deleted; see also the new Article 4b); has therefore strengthened the rules to provide for a fast-track process of reimposing visa requirements upon countries like Canada. In fact, immediately after the new rules entered into force, Canada waived its visa requirement for Czech nationals again.

The negotiation of these provisions took some time because the European Parliament, the Council and Commission argued over the precise legal process that would govern the Commission's use of the revised reciprocity clause. Ultimately, the Commission was dissatisfied with the final results and so threatened to bring a legal challenge to the final Regulation before the EU courts. It has until the beginning of March to do so.

Finally, the amendments to the rules on exemptions (Article 4) drop a cross-reference to repealed legislation, add an exemption from the rules for the crew of ships who visit the shore, and provide for an optional waiver of the visa requirement for refugees and stateless persons residing in the UK and Ireland. The Commission had proposed bigger changes to these rules, including a specific clause relating to the visa waiver which some Member States must extend to Turkish service providers due to the EU's association agreement with Turkey, but these proposals were not accepted by the Council.

(b) the 2012 proposal

The 2012 proposal to amend the visa list, now agreed by the European Parliament and the Council, will amend the lists of States whose nationals require visas to enter most of the EU (see the Annexes to the Regulation). It will also insert into the Regulation a revised list of criteria to take into account when deciding which States will enjoy a visa waiver from the EU.

First of all, the new Regulation will waive the visa requirement for four categories of quasi-British citizens. This is in line with the Commission's proposal, and was not contested by either the European Parliament or the Council.

Next, it will waive the visa requirement for nineteen countries, subject to the negotiation of a visa waiver agreement between the EU and each of those countries. The Commission had proposed sixteen of the countries concerned – all of them small tropical islands. But the Council had insisted that the United Arab Emirates be added, and then the European Parliament had insisted that Peru and Colombia be added too. The UAE will be the first Muslim (or Arab) country to be on the EU's whitelist (countries whose nationals do not require visas). As for Peru and Colombia, this will be the first time that countries which the EU had previously moved to its 'blacklist' (countries whose nationals require visas) have returned to the whitelist (those States were moved to the blacklist back in 1995 and 2001 respectively). It seems that the European Parliament was particularly keen to reward these countries for signing a free trade agreement with the EU recently.

This brings us to the third change – the new clause in the main text of the Regulation spelling out the criteria for deciding which States' nationals must be subject to a visa requirement. This clause was already in the preamble to the Regulation (see recital 5), and has been added to the main text because the European Parliament insisted upon it. Also, the Parliament insisted upon changing the criteria, to add references to 'economic benefits' such as

'tourism and foreign trade', as well as 'respect of human rights and fundamental freedoms'.

(c) the 2013 proposal

The 2013 proposal has one purpose only – to exempt Moldova from the visa requirement. Along with most other States to the east of the EU (as well as Kosovo, and now also Turkey), Moldova has been participating in a 'visa dialogue' with the EU, in which the EU set a number of benchmarks and judged whether Moldova had met them before considering waiving the visa requirement. The Commission judged that Moldova had met all the requirements set out in this dialogue, although its proposal (just before the high-profile Eastern Partnership summit last November) was presumably timed for maximum political effect. Moldova is the first Eastern Partnership state to qualify for visa exemption – although the Western Balkans States had also qualified in 2009-10, following their own visa dialogue. Of course, the visa waiver for Moldova must be seen in light of the new rules, discussed above, which allow for a fast-track reimposition of visa requirements.

Assessment

Following the upcoming amendments, the visa Regulation will have been amended fourteen times: eleven times by legislation and three times by accession agreements. In the interest of public transparency, an official codification of these rules is therefore obviously urgent.

As for the substance of the amendments, the decision to apply or waive a visa obligation is an important part of the external relations policy of both the EU and its Member States. So this explains Member States' desire to retain their remaining discretion as regards visa policy for various categories of persons. It also explains their collective desire, bolstered by the European Parliament, 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 (as regards reciprocity and safeguards), while retaining a lot of political discretion when using such powers. In particular, the possible use of the safeguard power will likely entail many contacts between the Commission and the affected third States, perhaps entailing setting benchmarks for staying on the white list which might be compared to those benchmarks which are already set for getting on to that list.

Since the Member States wanted to ensure some control over the Commission in this area, it is not surprising that the European Parliament wanted to do so as well, via means of the use of 'delegated acts' which the EP could possibly block the Commission from adopting. The new amendments also demonstrate, for the first time in practice, the EP's important role as regards the substance of the EU's visa policy, given its successful demand to extend a visa waiver to Peru and Colombia and to change the grounds determining whether a visa requirement is waived or not.

Member States 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*; but see the later judgment in Case C-221/11 *Demirkan*, in which the Court of Justice deferred to Member States' desire to retain a visa requirement for Turkish tourists). However, as noted already, Turkey has now started a visa dialogue with the EU, in return for signing a readmission agreement.

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, as regards the new safeguard clause) and less upon discretion, power politics and gestures synchronised with certain Member States' election cycles.

Sources

December 2013 amendments, EU visa list:

<http://www.statewatch.org/news/2014/feb/eu-reg-visas.pdf>

Agreed text, 2012 proposal:

<http://www.statewatch.org/news/2014/jan/eu-council-tcn-visas-multicolumn-5306-14.pdf>

2013 proposal:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0853:FIN:EN: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, except in the Annexes]
[changes made by the new amendments in bold/underline or strikethrough]
[note that the final wording of the two 2014 amendments
might change slightly]

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 X

The purpose of this Regulation is to determine those third countries whose nationals are subject to or exempt from the visa requirement, based on a case-by-case assessment of a variety of criteria relating, inter alia, to illegal immigration, public policy and security, the economic

benefits, in particular in terms of tourism and foreign trade, and the Union's external relations with the relevant third countries including, in particular, respect of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity.

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]~~ **applies** a visa requirement for nationals of ~~[a]~~ **at least one** Member State, the following provisions shall apply:

(a) within ~~[90]~~ **30** days of ***the implementation by the third country of the visa requirement, or, in cases where the visa requirement existing on 9 January 2014 is maintained, within 30 days of that date,*** ~~[such introduction, or its announcement,]~~ the Member State concerned shall notify ***the European Parliament,*** the Council and the Commission in writing.~~[-]~~

That notification:

(i) shall specify the date of implementation of the visa requirement and the types of travel documents and visas concerned;

(ii) shall include a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to ensuring visa-free travel with the third country in question and all relevant information.

Information about that ~~[The]~~ notification shall be published ***without delay by the Commission*** in the ~~[C series of the]~~ *Official Journal of the European Union, including information on* ~~[-. The notification shall specify]~~ the date of implementation of the ~~[measure]~~ ***visa requirement*** and the types of travel documents and visas concerned.

If the third country decides to lift the visa ~~[obligation]~~ ***requirement*** before the expiry of ***the*** ~~[this]~~ deadline ***referred to in the first subparagraph of this point,*** the notification ~~[becomes superfluous]~~ ***shall not be made or shall be withdrawn and the information shall not be published;***

(b) the Commission shall, immediately ~~[after]~~ ***following the date of the publication referred to in the third subparagraph of point (a)*** ~~[of that notification]~~ and in consultation with the Member State concerned, take steps with the authorities of the third country ***in question, in particular in the political, economic and commercial fields,*** in order to restore ***or introduce*** visa-free travel ***and shall inform the European Parliament and the Council of these steps without delay;***

(c) ***if*** within 90 days ~~[after]~~ ***of the date of the publication*** ~~[of that notification]~~ ***referred to in the third subparagraph of point (a) and despite all the steps taken in accordance with point (b),*** ~~[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 requirement, 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. Where a Member State makes such a request, it shall inform the European Parliament and the Council thereof.

(d) 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.

(e) if the third country concerned has not lifted the visa requirement, the Commission shall, at the latest six months of the date of the publication referred to in the third subparagraph of point (a) and subsequently at intervals not exceeding six months within a total period which may not extend beyond the date on which the delegated act referred to in point (f) takes effect or is objected to:

(i) adopt, at the request of the Member State concerned or on its own initiative, 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. That implementing act shall determine a date, within 90 days of its entry into force, on which the suspension of the exemption from the visa requirement is to take effect, taking into account the available resources in the consulates of the Member States. When adopting subsequent implementing acts, the Commission may extend the period of that suspension by further periods of up to six months and may modify the categories of nationals of the third country in question for which the exemption from the visa requirement is suspended.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 4a(2). Without prejudice to the application of Article 4, during the periods of suspension all the categories of nationals of the third country referred to in the implementing act shall be required to be in possession of a visa when crossing the external borders of the Member States; or

(ii) submit to the committee referred to in Article 4a(1) a report assessing the situation and stating the reasons why it decided not to suspend the exemption from the visa requirement and inform the European Parliament and the Council thereof.

All relevant factors, such as those referred to in point (d), shall be taken into account in that report. The European Parliament and the Council may have a political discussion on the basis of that report;

(f) if within 24 months of the date of the publication referred to in the third subparagraph of point (a), the third country concerned has not lifted the visa requirement, the Commission shall adopt a delegated act in accordance with Article 4b temporarily suspending the application of Annex II for a period of 12 months for the nationals of that third country. The delegated act shall determine a date, within 90 days of its entry into

force, on which the suspension of the application of Annex II is to take effect, taking into account the available resources in the consulates of the Member States and shall amend Annex II accordingly. That amendment shall be made through inserting next to the name of the third country in question a footnote indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension.

As of the date when the suspension of the application of Annex II for the nationals of the third country concerned takes effect or when an objection to the delegated act is expressed pursuant to Article 4b(5), any implementing act adopted pursuant to point (e) concerning that third country shall expire.

Where the Commission submits a legislative proposal as referred to in point (h), the period of suspension referred to in the first subparagraph of this point shall be extended by six months. The footnote referred to in that subparagraph shall be amended accordingly.

Without prejudice to the application of Article 4, during the periods of that suspension the nationals of the third country concerned by the delegated act shall be required to be in possession of a visa when crossing the external borders of the Member States;

~~[(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.

(g) any subsequent notification made by another Member State pursuant to point (a) concerning the same third country during the period of application of measures adopted pursuant to point (e) or (f) with regard to that third country shall be merged into the ongoing procedures without the deadlines or periods set out in those points being extended;

(h) if within six months of the entry into force of the delegated act referred to in point (f) the third country in question has not lifted the visa requirement, the Commission may submit a legislative proposal for amending this Regulation in order to transfer the reference to the third country from Annex II to Annex I;

~~(i) the procedures referred to in [subparagraphs] points (e), (f) and (h) [(e) and (d) do] shall not affect **the right of the Commission**[’s right to present a] **to submit at any time a legislative proposal for** amending this Regulation in order to transfer the **reference to the** third country concerned to Annex I **at any time**. ~~[Where a temporary measure as referred to in subparagraphs (e) 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 (e) 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;]~~~~

~~[(f)] (j) where the third country in question [abolishes] lifts the visa requirement, the Member State **concerned** shall immediately notify **the European Parliament**, the Council and the Commission **thereof** [to that effect]. The notification shall be published **without delay by the Commission** in [the C series of] the *Official Journal of the European Union*.~~

Any ~~[temporary measure] implementing or delegated act decision [decided upon under subparagraph (d)] adopted pursuant to point (e) or (f) concerning the third country in question shall expire [terminate] seven days after the publication [in the Official Journal] referred to in the first subparagraph of this point. [In case] Where 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 or delegated act concerning that third country shall expire** [only terminate] **seven days** after the [last] publication **of the notification concerning the last Member State whose nationals were subject to visa requirement by that third country. The footnote referred to in the first subparagraph of point (f) shall be deleted upon expiry of the delegated act concerned. The information on that expiry shall be published without delay by the Commission in the Official Journal of the European Union.**~~

Where the third country in question lifts the visa requirement without the Member State concerned notifying it in accordance with the first subparagraph of this point, the Commission shall on its own initiative proceed without delay with the publication referred to in that subparagraph, and the second subparagraph of this point shall apply.

~~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.~~

Article 1a

1. By way of derogation from Article 1(2), the exemption from the visa requirement for nationals of a third country listed in Annex II shall be

temporarily suspended in emergency situations, as a last resort, in accordance with this Article.

2. A Member State may notify the Commission if it 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 circumstances leading to an emergency situation which it is unable to remedy on its own, namely a substantial and sudden increase in the number of:

(a) nationals of that third country found to be staying in the Member State's territory without a right thereto;

(b) asylum applications from the nationals of that third country for which the recognition rate is low, where such an increase is leading to specific pressures on the Member State's asylum system;

(c) rejected readmission applications submitted by the Member State to that third country for its own nationals.

The comparison with the six-month period prior to the implementation of the exemption from the visa requirement as referred to in the first subparagraph shall only be applicable during a period of seven years from the date of implementation of the exemption from the visa requirement for nationals of that third country.

The notification referred to in the first subparagraph shall state the reasons on which it is based and shall include relevant data and statistics as well as a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to remedying the situation. The Commission shall inform the European Parliament and the Council immediately of such notification.

3. The Commission shall examine any notification made pursuant to paragraph 2, taking into account:

(a) whether any of the situations described in paragraph 2 are present;

(b) the number of Member States affected by any of the situations described in paragraph 2;

(c) the overall impact of the increases referred to in paragraph 2 on the migratory situation in the Union as it appears from the data provided by the Member States;

(d) the reports prepared by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the European Asylum Support Office or the European Police Office (Europol) if circumstances so require in the specific case notified;

(e) the overall question of public policy and internal security, in consultations with the Member State concerned.

The Commission shall inform the European Parliament and the Council of the results of its examination.

4. Where the Commission, on the basis of the examination referred to in paragraph 3, and taking 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, while working in close cooperation with that third country to find alternative long-term solutions, decides that action is needed, it shall, within three months of receipt of the notification referred to in paragraph 2, adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of six months. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 4a(2). The implementing act shall determine the date on which the suspension of the exemption from the visa requirement is to take effect.

Without prejudice to the application of Article 4, during the periods of that suspension the nationals of the third country concerned by the implementing act shall be required to be in possession of a visa when crossing the external borders of the Member States.

5. Before the end of the period of validity of the implementing act adopted pursuant to paragraph 4, the Commission, in cooperation with the Member State concerned, shall submit a report to the European Parliament and to the Council. The report may be accompanied by a legislative proposal for amending this Regulation in order to transfer the reference to the third country concerned from Annex II to Annex I.

6. Where the Commission has submitted a legislative proposal pursuant to paragraph 5, it may extend the validity of the implementing act adopted pursuant to paragraph 4 by a period not exceeding 12 months. The decision to extend the validity of the implementing act shall be adopted in accordance with the examination procedure referred to in Article 4a(2).

Article 1b

By 10 January 2018, the Commission shall submit a report to the European Parliament and to the Council assessing the effectiveness of the reciprocity mechanism provided for in Article 1(4) and the suspension mechanism provided for in Article 1a and shall, if necessary, submit a legislative proposal for amending this Regulation. The European Parliament and the Council shall act on such a proposal by the ordinary legislative procedure.

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.] ‘visa’ means a 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 (Visa Code).~~

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 in performance 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;

~~(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 at least one Member State is a member, 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) without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by the United Kingdom or Ireland, which is recognised by the Member State concerned.

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 4b

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in point (f) of Article 1(4) shall be conferred on the Commission for a period of five years from 9 January 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in point (f) of Article 1(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to point (f) of Article 1(4) 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.

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
Colombia*
Costa Rica
Dominica*
Ecuador

Former Yugoslav Republic of Macedonia(*)

Grenada*

Guatemala

Holy See

Honduras

Israel

Japan

Kiribati*

Malaysia

Mauritius*

Marshall Islands*

Mexico

Micronesia*

Moldova, Republic of*

Monaco

Montenegro(*)

Nauru*

New Zealand

Nicaragua

Palau*

Panama

Paraguay

Peru

Saint Kitts and Nevis*

Saint Lucia*

Saint Vincent and the Grenadines*

Salvador

Samoa*

San Marino

Serbia (excluding holders of Serbian passports issued by the Serbian Coordination Directorate (in Serbian: *Koordinaciona uprava*)) (*)

Seychelles*

Singapore

Solomon Islands*

South Korea

Timor-Leste*

Tonga*

Trinidad and Tobago*

Tuvalu*

the United Arab Emirates*

United States of America

Uruguay

Vanuatu*

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 [**Union**].

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

*** The visa waiver will be limited to the holders of biometric passports issued in line with standards of the International Civil Aviation Organisation (ICAO). [this note will apply to Moldova only]**

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~~ UNION LAW:

British Nationals (Overseas)

British overseas territories citizens (BOTC)

British overseas citizen (BOC)

British protected persons (BPP)

British subjects (BS)

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.