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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Ukraine)

Delegations will find attached document COM(2016) 236 final.

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2016/0125 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 539/2001 listing the third countries whose nationals must
be in possession of visas when crossing the external borders and those whose nationals
are exempt from that requirement**

(Ukraine)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The EU-Ukraine Visa Liberalisation Dialogue was launched in October 2008. In November 2010, the European Commission presented the Ukrainian Government with an action plan on visa liberalisation (VLAP). The Commission committed itself to proposing visa-free travel for short stays in the European Union to Ukrainian nationals holding biometric passports, as soon as all the benchmarks set in the VLAP had been met by the Ukrainian Government.

Before the start of the Visa Liberalisation Dialogue, the EU and Ukraine had concluded in parallel a Visa Facilitation Agreement and a Readmission Agreement, which entered into force on 1 January 2008. The amended Visa Facilitation Agreement entered into force on 1 July 2013. The full and effective implementation of these agreements was a prerequisite for the launching of the visa dialogue and a condition for its continuation.

The VLAP is structured around four 'blocks': document security, including biometrics (block I), migration and integrated border management, including asylum (block II), public order and security (block III), and external relations and fundamental rights (block IV). The VLAP sets out a series of precise benchmarks for each of these four 'blocks' of technically relevant issues with a view to adopting a legislative, policy and institutional framework (phase 1) and ensuring its effective and sustainable implementation (phase 2).

Since the launch of the EU-Ukraine Visa Liberalisation Dialogue, the Commission has reported regularly to the European Parliament and to the Council on Ukraine's progress towards fulfilling the benchmarks identified under the four blocks under the VLAP's first and second phases. Progress made has been assessed on the basis of on-site evaluations by experts from EU Member States and detailed information provided by Ukraine.

On 16 September 2011, the Commission adopted its first progress report¹ on Ukraine's implementation of the VLAP and made several recommendations for completing the first (legislative and planning) phase. The Commission published its second progress report² on 9 February 2012, and the third³ on 15 November 2013. Following the Commission's fourth report⁴ on 27 May 2014 and its endorsement by the Council on 23 June 2014, Ukraine officially entered the second phase of the VLAP during which an assessment regarding the sustainable implementation of the legislative and policy framework was made.

The Commission adopted the fifth progress report⁵ on Ukraine's implementation of the VLAP on 8 May 2015. The report stated that the progress achieved by the Ukrainian authorities in the implementation of the second phase of the VLAP was noteworthy. In line with the methodology outlined in the VLAP, the Commission organised on-site evaluations involving experts from EU Member States. The report was accompanied by an assessment of the potential migratory and security impacts of future visa liberalisation for Ukrainian citizens travelling to the EU.

¹ SEC (2011) 1076 final.

² SWD (2012) 10 final.

³ COM (2013) 809 final.

⁴ COM (2014) 336 final.

⁵ COM (2015) 200 final.

In its sixth and final progress report⁶, adopted on 18 December 2015, the Commission considered that Ukraine had made the necessary progress and had undertaken all the required reforms to ensure effective and sustainable achievement of the remaining benchmarks.

Based on this assessment and given the outcome of the continuous monitoring and reporting that had been carried out since the launch of the EU-Ukraine Visa Liberalisation Dialogue, the Commission confirmed that Ukraine had met all the benchmarks for each of the four blocks of the second phase of the VLAP and that it would present, in early 2016, a legislative proposal to amend Regulation (EC) No 539/2001, transferring Ukraine to the list of visa-free countries (Annex II).

Moreover, since the adoption of the sixth report, the Commission took note of the progress made by the Ukrainian authorities to implement the required reforms under the VLAP. The National Anti-corruption Bureau is operational and started to work along with the specialised anti-corruption prosecution. After the successful adoption of the asset recovery laws and amendments to the Law on Prosecution Office relating to the Specialised Anti-Corruption Prosecutor's Office (18 February 2016), as well as the Law on electronic asset declarations (15 March 2016), further progress has been noted in mid-March 2016 with the appointment of two further members of the Board of the National Agency for Prevention of Corruption, enabling the Board to reach the quorum. On 28 March the Head of the Agency has been elected and on 30 March the Agency has been registered as legal entity. The Ukrainian authorities allocated in the State Budget for 2016 also financial resources to ensure a well-functioning institutional framework for anti-corruption, including the National Anti-Corruption Bureau.

In addition to reporting on the VLAP, the Commission has continuously monitored the implementation of the Visa Facilitation and Readmission Agreements, notably through the Joint Committees established under those agreements. The last meeting to date of the Joint Visa Facilitation Committee took place on 23 April 2015, and the Joint Readmission Committee met for the last time on 6 May 2014. In this context, the Commission noted that implementation of the agreements was overall very satisfactory.

- **Consistency with existing policy provisions in the policy area and other Union policies**

Council Regulation (EC) No 539/2001⁷ lists the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement. Regulation (EC) No 539/2001 is applied by all Member States – with the exception of Ireland and the United Kingdom – and also by Iceland, Liechtenstein, Norway and Switzerland. The Regulation is part of the EU's common visa policy for short stays of 90 days within any 180-day period.

Ukraine is currently listed on Annex I to Regulation (EC) No 539/2001, i.e. among those countries whose nationals are required to hold a visa when travelling to the territory of EU Member States.

⁶ COM(2015) 905 final.

⁷ Council Regulation (EC) No 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, OJ L 81, 21.03.2001, p. 1

Regulation (EC) No 539/2001 was last amended by Regulation (EU) No 259/2014⁸ when Moldova was transferred to the visa-free list as a result of the successful implementation of its VLAP, and Regulation (EU) No 509/2014⁹ when five Caribbean¹⁰, and eleven Pacific¹¹ countries, as well as Colombia, Peru and the United Arab Emirates were exempted from the visa requirement – subject to the conclusion of visa waiver agreements between the EU and the respective third countries – as a result of a periodical review of the visa lists.

The criteria which should be taken into account when determining, based on a case-by-case assessment, the third countries whose nationals are subject to, or exempt from, the visa requirement are laid down in Article -1 of Regulation (EC) No 539/2001 (as introduced by Regulation (EU) No 509/2014). They include “illegal immigration, public policy and security, economic benefit, in particular in terms of tourism and foreign trade, and the Union’s external relations with the relevant third countries, including in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity”¹². Particular attention should be paid to the security of travel documents issued by the third countries concerned.

There is no reason to condition the implementation of the visa exemption for Ukrainian citizens on the conclusion of a visa waiver agreement with the EU, as Ukraine has already exempted all EU citizens from the visa requirement for stays of up to a year. Should this decision be revoked or should the visa-free regime be abused, the existing reciprocity and suspension mechanisms of Regulation (EC) No 539/2001 would provide sufficient remedies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

As the proposal will amend the EU's common visa policy, the legal basis for the proposal is point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation will constitute a development of the Schengen *acquis*.

- **Subsidiarity**

As Regulation (EC) No 539/2001 is a legal act of the EU, it can only be amended by way of an equivalent legal act. Member States cannot act individually.

- **Proportionality**

See above – no other options to achieve the policy objective are available.

⁸ Regulation (EU) No 259/2014 of the European Parliament and of the Council of 3 April 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 105, 8.4.2014, p. 9

⁹ Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 149, 20.5.2014, p. 67

¹⁰ Dominica, Grenada, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago.

¹¹ Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, Vanuatu.

¹² Article -1 of Council Regulation (EC) No 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

- **Choice of the instrument**

See above.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n/a

- **Stakeholder consultations**

Regular discussions with Member States in the Council Working Party on Eastern Europe and Central Asia (COEST) and several presentations of the visa liberalisation process to the European Parliament have taken place.

- **Collection and use of expertise**

The Commission collected comprehensive data on Ukraine's implementation of all VLAP benchmarks. Its final progress report on Ukraine was accompanied by a Commission Staff Working Document¹³ which provided more detailed background information on the developments under each benchmark.

- **Impact assessment**

In the annex to the Staff Working Document, the Commission provided an updated factual analysis and statistics-based information on the possible migratory and security impacts of visa liberalisation for Ukrainian citizens travelling to the EU, based on inputs from relevant EU agencies and stakeholders. No further impact assessment is necessary.

- **Regulatory fitness and simplification**

n/a

- **Fundamental rights**

The proposal has no negative consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

n/a

5. OTHER ASPECTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The amended Regulation will be directly applicable from its entry into force and will be implemented immediately by Member States. No implementation plan is necessary.

¹³ Commission Staff Working Document SWD(2015) 705 final of 18.12.2015

The Commission will continue to actively monitor Ukraine's continuous implementation of all benchmarks under the four blocks of the VLAP through the existing association structures and dialogues, and, if necessary, through *ad hoc* follow-up mechanisms.

- **Explanatory documents (for directives)**

n/a

- **Detailed explanation of the specific provisions of the proposal**

Regulation (EC) No 539/2001 will be amended, transferring Ukraine from Annex I (list of visa-required countries) to Annex II (list of visa-free countries). A footnote will be added specifying that the visa waiver will be limited to holders of biometric passports issued in line with standards of the International Civil Aviation Organisation (ICAO).

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

(Ukraine)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (a) of Article 77(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 539/2001¹⁴ lists the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement. The composition of the lists of third countries in Annexes I and II should be, and should remain, consistent with the criteria set therein. References to third countries in respect of which the situation has changed as regards these criteria should be transferred from one annex to the other, as appropriate.
- (2) It is considered that Ukraine has met all the benchmarks set out in the Visa Liberalisation Action Plan presented to the Ukrainian Government in November 2010, and therefore fulfils the criteria for its citizens to be exempted from the visa requirement when travelling to the territory of the EU Member States.
- (3) Ukraine should thus be transferred from Annex I to Regulation (EC) No 539/2001 to Annex II thereof. This visa waiver should apply only to holders of biometric passports issued in line with the standards of the International Civil Aviation Organisation (ICAO).
- (4) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision

¹⁴ Council Regulation (EC) No 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, OJ L 81, 21.03.2001, p. 1

2000/365/EC¹⁵. The United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

- (5) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹⁶. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (6) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning 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 these two States with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Point B of Article 1, of Council Decision 1999/437/EC¹⁷.
- (7) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in point B of Article 1, of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁸.
- (8) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in point B of Article 1, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁹,

¹⁵ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*, OJ L 131, 1.6.2000, p. 43

¹⁶ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*, OJ L 64, 7.3.2002, p. 20

¹⁷ Council 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*, OJ L 176, 10.7.1999, p. 31

¹⁸ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, OJ L 53, 27.2.2008, p. 1

¹⁹ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons, OJ L 160, 18.6.2011, p. 19

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 539/2001 is amended as follows:

- (a) in Annex I, Part 1 ("STATES"), the reference to Ukraine is deleted.
- (b) in Annex II, Part 1 ("STATES"), the following reference is inserted:
"Ukraine"*

* The visa waiver is limited to the holders of biometric passports issued in line with standards of the International Civil Aviation Organisation (ICAO).

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President