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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	8670/1/16 REV 1
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 (Kosovo*) – Analysis of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 4 May 2016, the Commission submitted a proposal¹ for a Regulation of the European Parliament and of the Council aimed at deleting the reference to "Kosovo*" in Annex I (visa requirement) and at inserting the same reference in Annex II (visa free) to what is now Regulation (EU) 2018/1806. In its final report on the implementation of the visa liberalisation roadmap², the Commission confirmed that Kosovo had met the requirements, on the understanding that by the day of the adoption of the proposal by the European Parliament and the Council, Kosovo would have ratified the border/boundary agreement with Montenegro and strengthened its track record in the fight against organised crime and corruption.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

1 8670/1/16 REV 1.

2 8764/16.

2. In the Council, the Visa Working Party³ put the examination of the Commission on hold after two rounds of discussion in 2016, in view of the fact that the two remaining benchmarks had to be fulfilled *before* any further discussion on the file.
3. In July 2018, the Commission issued a report⁴ which concluded that Kosovo had met those two remaining benchmarks, as a result of its ratifying the border demarcation agreement with Montenegro. Discussions were held in the Visa Working Party in 2018 and 2020, under the Austrian and German Presidencies respectively, and a majority of delegations considered that it was premature to grant Kosovo visa liberalisation, as it needed to prove that the progress made was being sustained.
4. On 28 March 2019, the European Parliament adopted its first reading position, by taking over the Commission proposal. A new rapporteur, Mr Thijs Reuten (S&D, NL), has recently been appointed, as the original rapporteur has left the Parliament.
5. In 2022, the Commission accepted to report in writing on the further progress made by Kosovo. In so doing it responded to the Council's long-standing request. While stressing that it did not constitute a new report, the Commission issued a Non-Paper with a “Factual update on key developments in the areas of main interest for Member States”⁵. This paper concluded that Kosovo had continued to consolidate progress across key areas identified in the visa liberalisation roadmap and, consequently, the basis for the Commission’s 2018 recommendation to exempt holders of Kosovo passport from visa requirements in respect of short stays remained fully valid.
6. On the basis of the Commission Non-Paper the work on the file was resumed at technical level in the Council. After different rounds of discussions and bilateral consultations held with all delegations, the Presidency managed to secure the support of a qualified majority on a compromise text. Such compromise linked the start of the visa liberalisation for Kosovo to the start of operation of ETIAS. However, should the latter be delayed, Kosovo would become visa-free on 1 January 2024. In the recitals, the compromise also invited Kosovo to cooperate in the area of readmission and to align its visa policy to EU visa policy.

³ The Working Party on the Western Balkans Region (Coweb) has also had a number of discussions on Kosovo visa liberalisation over the years.

⁴ 11295/18 + ADD 1 REV 1.

⁵ 12981/22.

7. The compromise proposal was submitted to Coreper, which, on 30 November 2022, granted the Presidency a mandate to enter into interinstitutional negotiations⁶.
8. The negotiations started soon thereafter. After a first technical meeting held on 12 December 2022, a political trilogue was convened on 14 December 2022 in Strasbourg. The two co-legislators reached a deal by finding a compromise on the few outstanding issues identified at technical level.

II. ANALYSIS OF THE FINAL COMPROMISE TEXT WITH A VIEW TO AGREEMENT

9. The result of the negotiations is set out in the Annex to this note⁷.
10. The European Parliament accepted the main principles of the Council mandate, notably the link with ETIAS and the starting date of implementation of the visa liberalisation, should ETIAS be delayed. It also accepted the reference, in the recitals, to the readmission policy and the need for Kosovo to align its visa policy to EU visa policy.
11. Only three changes were requested by the Parliament and they could be provisionally agreed by the Council (and supported by the Commission).
12. In recital 5, the Parliament wanted a reference to the principle of *non refoulement* that Kosovo should respect when applying readmission agreements or arrangements.
13. In recital 6, in order to overcome the problem of one political group with the expression “migration management”, it was decided not to list explicitly all the blocks of Chapter II of the visa liberalisation roadmap.
14. In recital 12, the reference to Croatia was deleted, as this Member State will fully apply the Schengen *acquis*⁸ at the moment of the adoption of this amending Regulation.

⁶ 15462/22.

⁷ Changes to the Commission proposal are marked in **bold underline** for additions and ~~strikethrough~~ for deletions.

⁸ Council decision (EU) 2022/2451 of 8 December 2022 on the full application of the provisions of the Schengen *acquis* in the Republic of Croatia, OJ L 320, 14-12-2022, p. 41-46.

III. CONCLUSION

15. With a view to enabling an early second reading agreement between the Council and the European Parliament on this legislative text, the Permanent Representatives Committee is invited to analyse the consolidated version as set out in the Annex to this note, with a view to coming to an agreement.
 16. The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) is expected to vote in early January 2023, following which the LIBE Chair will transmit a letter to the Presidency confirming that, should the Council approve this text in first reading, after legal-linguistic revision, the Parliament would approve the Council's position in its second reading.
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (ECU) No ~~539/2001~~2018/1806 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

(Kosovo*)

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 (ECU) No 539/2001~~**2018/1806**¹ 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 out therein. References to third countries in respect of which the situation has changed as regards those criteria should be transferred from one annex to the other, as appropriate.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

¹ ~~Council Regulation (ECU) No 539/2001 of 15 March 2001~~ **2018/1806 of 14 November 2018** 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 ~~84~~**303**, ~~21.03.2001~~**28.11.2018**, p. ~~1~~**39**.

- (2) 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 (ECU) No 539/2001~~2018/1806~~. 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”.
- (3) ~~{Kosovo has met the requirements of its visa liberalisation roadmap. On the basis of this assessment and taking account of all the criteria listed in Article -1 of Regulation (ECU) No 539/2001~~**2018/1806**, it is appropriate to exempt ~~persons~~**holders of passports issued by Kosovo** from the visa requirement when travelling to the territory of the Member States.~~}~~
The exemption from the visa requirement will ensure that the whole Western Balkan region will be under the same visa regime.
- (4) Kosovo should thus be transferred from Annex I, Part 2 to Regulation (ECU) No 539/2001~~2018/1806~~ to Annex II, Part 4 thereof. This visa waiver should apply only to holders of biometric passports issued in line with the standards of International Civil Aviation Organisation (ICAO)~~and Council Regulation (EC) No 2252/2004~~². **It should not apply until the effective start of operation of the European Travel Information and Authorisation System (ETIAS)**³, but in any case no later than 1st January 2024.
- (5) **Without prejudice to the position of Member States on the status of Kosovo, in the period until the effective start of visa liberalisation and where applicable, readmission agreements or arrangements with the Member States not having such an agreement or arrangement yet should be concluded. These agreements or arrangements should be fully implemented by Kosovo, while respecting the principle of non-refoulement enshrined in the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.**
- (6) **Kosovo has made significant progress in all blocks of Chapter II of the roadmap for visa liberalisation. To ensure well-managed migration and a secure environment, Kosovo should seek to further align its visa policy with the visa policy of the Union.**

² Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1.

³ **Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226.**

- (57) The visa exemption is dependent upon the continued implementation of the requirements of the visa liberalisation roadmap. The Commission will actively monitor the implementation of these requirements, **including visa policy alignment**, through the post-visa liberalisation mechanism. The visa exemption may be suspended by the EU in line with the suspension mechanism established by Article 1a8 of Regulation (ECU) No 539/2001 **2018/1806**, as amended by Regulation xxx should the conditions set out therein be met.
- (6) ~~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 2000/365/EC⁴. 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.~~
- (78) 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/EC⁵. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (89) 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 those 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/EC⁶.
- (910) 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 **Council** Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC⁷.

⁴ ~~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.~~

⁵ 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.

⁶ 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.

⁷ 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.

(11) 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 Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁸,

(12) As regards Cyprus, Bulgaria and Romania, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession and Article 4(1) of the 2005 Act of Accession.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (ECU) No ~~539/2001~~ **2018/1806** is amended as follows:

- (a) in Annex I, Part 2 ("ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE"), the reference to Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 is deleted.
- (b) in Annex II, Part 4 ("ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE"), the following reference is inserted:

“Kosovo* (**)(***)”²²

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

⁸ 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.

**** The exemption from the visa requirement is limited to the holders of biometric passports issued in line with Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1 shall only apply to holders of biometric passports issued in line with the standards of the International Civil Aviation Organisation (ICAO).**

(*) The exemption from the visa requirement shall only apply from the date of the start of operation of the European Travel Information and Authorisation System (ETIAS⁹) and in any case no later than 1st January 2024.”**

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*

⁹ **Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226.**