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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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<sup>1</sup> Document declassified by the European Commission on 16 January 2020.



Council of the  
European Union

Brussels, 12 March 2015  
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VISA 101  
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**COVER NOTE**

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
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EUROPEAN  
COMMISSION

Brussels, 11.3.2015  
COM(2015) 119 final

Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations on short-stay visa waiver agreements between  
the European Union and Colombia and Peru**

DECLASSIFIED

**EXPLANATORY MEMORANDUM****1. INTRODUCTION****1.1. Background**

Council Regulation (EC) No 539/2001<sup>2</sup> 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 by Iceland, Liechtenstein, Norway and Switzerland.

European Parliament and Council Regulation No 509/2014<sup>3</sup> amended Council Regulation 539/2001 transferring 19 countries to Annex II, which lists the third countries whose nationals are exempt from the visa requirement. These 19 countries are: Colombia, Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Peru, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu. The reference to each of these countries in Annex II is accompanied by a footnote that specifies that "the exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union".

On 17 July 2014 the Commission adopted a Recommendation to the Council for the opening of visa waiver negotiations with 17 of the countries listed above, i.e. all of them except Colombia and Peru. The latter two countries were, according to Recital 5 of European Parliament and Council Regulation No 509/2014 and the joint declaration issued at the time of adoption, subject to a specific procedure which required a further assessment of the fulfilment by them of the relevant criteria, before the Commission could present to the Council recommendations for decisions authorising the opening of negotiations on visa waiver agreements with these two countries. This assessment was contained in the reports<sup>4</sup> adopted by the Commission on 29 October 2014. The reports were discussed in the LIBE committee of the European Parliament on 5 November and in the visa working party of the Council on 21 November. The assessments were well received in both the committee and the working party, although some concerns were expressed related to the need to ensure that the visa-free regime be linked to the issuing of biometric passports in both countries and to improved cooperation on return of irregular migrants.

As a consequence of the positive assessment of the fulfilment by Colombia and Peru of the relevant criteria, the Commission is now recommending to the Council to authorise it to start visa waiver negotiations with both countries.

The legal provision that the visa waiver is subject to agreements between the European Union and Colombia and Peru is mainly intended to safeguard effectively the principle of reciprocity with regard to the visa waiver. The agreements between the European Union and Colombia

<sup>2</sup> OJ L 81, 21.03.2001, p. 1.

<sup>3</sup> OJ L 149, 20.05.2014, p. 67

<sup>4</sup> COM 2014 (663) for Peru and COM 2014 (665) for Colombia

and Peru should fully incorporate the principle of reciprocity by including failure to respect that principle among the grounds for suspension or termination.

The principle of a visa waiver for nationals of Colombia and Peru having been established by European Parliament and Council Regulation (EC) No 509/2014, and the Commission being satisfied that the two countries fulfil the criteria for the elimination of the visa requirement, the Commission is now seeking to give it practical effect by submitting to the Council a Recommendation to authorise the Commission to open negotiations for the conclusion of bilateral visa waiver agreements between the European Union and Colombia and Peru.

## 1.2. The negotiating directives

The agreements with Colombia and Peru will closely follow the precedents set by the existing EU visa waiver agreements, in particular with Antigua and Barbuda<sup>5</sup>, the Bahamas<sup>6</sup>, Barbados<sup>7</sup>, Mauritius<sup>8</sup>, Saint Kitts and Nevis<sup>9</sup> and Seychelles<sup>10</sup>, as well as the visa waiver agreements with the other 17 countries transferred to Annex II of Regulation 539/2001 by Regulation 509/2014.

The agreements should provide for and determine the period of stay authorised under the visa waiver, taking into account the existence of the Schengen area without internal borders in which the free movement of persons is ensured. Each of the agreements should provide for the lifting of the visa requirement only for intended stays of no more than 90 days in any 180-day period. Admission and immigration would not be covered.

In essence the agreements would confirm the lifting by the European Union of the visa requirement for Colombian and Peruvian citizens and the lifting by Colombia and Peru of the visa requirement for citizens of all the Member States.

The agreements should define the categories of citizens benefiting from the visa waiver, namely ordinary passport holders, diplomatic, service, official and special passport holders. They should also define the purposes of travel (such as tourism or business) for which the visa waiver is to apply.

Moreover, the agreements should also take into account the situation of the Member States that do not yet apply the Schengen *acquis* in full. As long as they are not part of the Schengen area without internal borders, the visa waiver should confer a right to stay for up to 90 days on the territory of each of those Member States, independently of the period calculated for the whole Schengen area.

<sup>5</sup> OJ L 169, 30.06.2009, p. 3–8

<sup>6</sup> OJ L 169, 30/06/2009, p. 24–29

<sup>7</sup> OJ L 169, 30/06/2009, p. 10–15

<sup>8</sup> OJ L 169, 30/06/2009, p. 17–22

<sup>9</sup> OJ L 169, 30/06/2009, p. 38–43

<sup>10</sup> OJ L 169, 30/06/2009, p. 31–36

**2. PURPOSE AND LEGAL BASIS**

This recommendation is submitted to the Council in order to authorise the Commission to negotiate with Colombia and Peru short-stay visa waiver agreements that contain clear, unambiguous and legally binding rights and obligations ensuring the lifting of the visa requirement for citizens of the Member States and of Colombia and Peru entering the territory of the other contracting party for a stay of no more than 90 days.

Council Regulation (EC) No 539/2001 is based on Article 77(2)(a) of the Treaty on the Functioning of the European Union. The negotiation of visa waiver agreements with third countries is within the exclusive competence of the Union.

The Union should exercise its exclusive competence with a view to concluding comprehensive agreements with Colombia and Peru on a reciprocal visa waiver. These agreements should prevail over bilateral agreements concluded by Member States and Colombia and Peru to the extent that their provisions concern matters within the scope of the Union agreement.

**3. APPLICABILITY TO THE ASSOCIATED COUNTRIES**

The Union has no power to conclude visa waiver agreements with Colombia and Peru that would bind the 4 countries associated with the implementation of the Schengen *acquis*, including the common visa policy.

In order to ensure a common approach towards Colombia and Peru on the issues regulated in the agreement, it would be advisable for the parties to the agreement between the Union and Colombia and Peru to attach a joint declaration stating the desirability for Colombia and Peru, on the one hand, and Iceland, Liechtenstein, Norway and Switzerland, on the other, to conclude separate bilateral visa waiver agreements, the provisions of which should be aligned on those of the agreement between the Union and Colombia and Peru.

Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations on short-stay visa waiver agreements between the European Union and Colombia and Peru**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission, following its positive assessment of the fulfilment of the relevant criteria by Colombia and Peru

Whereas:

- (1) European Parliament and Council Regulation 509/2014 has transferred from Annex I to Annex II of Council Regulation 539/2001 the references to Colombia and Peru.
- (2) The references to these countries are accompanied by a footnote indicating that the exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union.
- (3) The Commission has positively assessed the fulfilment by Colombia and Peru of the relevant criteria in view of the negotiation of visa waiver agreements between the European Union and both countries.
- (4) Negotiations should be opened with a view to concluding such agreements with Colombia and Peru.

HAS ADOPTED THIS DECISION:

*Article 1*

The Commission is hereby authorised to negotiate, on behalf of the Union, visa waiver agreements with Colombia and Peru.

*Article 2*

The negotiating directives are set out in the Annex.

*Article 3*

The negotiations shall be conducted in consultation with the Visa Working Party of the Council.

*Article 4*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*  
*The President*

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