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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 March 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018)139 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 (codification)

Delegations will find herewith attached the Commission codification proposal referred to in the subject (COM(2018)139 final - 2018/0066 (COD) and Annexes 1 to 4).

Delegations are invited to send their comments on the codification proposal by Monday 16 April 2018 to the following addresses:

SECRETARIAT.Codification@consilium.europa.eu **AND** sj-codification@ec.europa.eu

Delegation's attention is drawn to the Practical Guide on Codification (doc. 14722/14 + COR1).

Encl.: COM(2018)139 final

EUROPEAN
COMMISSION

Brussels, 14.3.2018
COM(2018) 139 final

2018/0066 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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 (codification)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

   This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

   For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided[1] to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this[2], stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

   Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

   Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification 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[3]. The new Regulation will supersede the various acts incorporated in it[4]; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 24 official languages, of Regulation (EC) No 539/2001 and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex IV to the codified Regulation.

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1 COM(87) 868 PV.
2 See Annex 3 to Part A of the Conclusions.
3 Entered in the legislative programme for 2017.
4 See Annex III to this proposal.

↓ 539/2001 (adapted)

2018/0066 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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 (codification)

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 Article ⌦ 77(2)(a) ⌫ thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[5],

Acting in accordance with the ordinary legislative procedure,

Whereas:

↓

(1) Council Regulation (EC) No 539/2001[6] has been substantially amended several times[7]. In the interests of clarity and rationality, that Regulation should be codified.

↓ 2414/2001 Art. 1.1

(2) 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.

↓ 509/2014 recital 2 (adapted)

(3) The determination of the third countries whose nationals are subject to, or exempt from, the visa requirement should be made on the basis of a considered, case-by-case assessment ⌦ of a variety of criteria ⌫. This assessment should be made periodically and could lead to legislative proposals to amend Annexes I and II to this Regulation, notwithstanding the possibility of having country-specific amendments to those Annexes in particular circumstances, for instance as a result of a visa

[5] OJ C […], […], p. […].

[6] 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, 21.3.2001, p. 1).

[7] See Annex III.

liberalisation process or as the ultimate consequence of a temporary suspension of the visa exemption.

↓ 509/2014 recital 3 (adapted)

(4) The composition of the lists of third countries in Annexes I and II should be, and should remain, consistent with the criteria set out in this Regulation. 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.

↓ 509/2014 recital 8 (adapted)

(5) Developments in international law entailing changes in the status or designation of certain States or entities should be reflected in Annexes I and II.

↓ 539/2001 recital 6 (adapted)

(6) As the Agreement on the European Economic Area exempts nationals of Iceland, Liechtenstein and Norway from the visa requirement, these countries ⌦ should ⌫ not ⌦ be ⌫ included in the list ⌦ of third countries whose nationals are exempt from the visa requirement ⌫.

↓ 453/2003 recital 3 (adapted)

(7) Since the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons provides for free movement without visas for nationals of Switzerland and of the Member States, Switzerland should ⌦ not ⌫ be ⌦ included in the list of third countries whose nationals are exempt from the visa requirement ⌫.

↓ 539/2001 recital 7 (adapted)

(8) 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 ⌦ should be able to ⌫ decide whether these categories of persons ⌦ should ⌫ be ⌦ exempted ⌫, 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.

↓ 1932/2006 recital 7 (adapted)

(9) ⌦ In accordance with ⌫ Regulation (EC) No 1931/2006 of the European Parliament and of the Council[8] ⌦ an ⌫ exemption from the visa requirement ⌦ should be laid down ⌫ for holders of a local border traffic ⌦ permit ⌫.

↓ 1932/2006 recital 5 (adapted)

(10) ⌦ It should be possible for ⌫ Member States ⌦ to ⌫ provide for exemptions from the visa requirement for holders of certain passports other than ordinary passports.

↓ 539/2001 recital 8 (adapted)

(11) In specific cases where special visa rules are warranted, ⌦ it should be possible for ⌫ Member States ⌦ to ⌫ exempt certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.

↓ 1932/2006 recital 6 (adapted)

(12) ⌦ It should be possible for ⌫ Member States ⌦ to ⌫ exempt from the visa requirement recognised refugees, all stateless persons, both those ⌦ covered by ⌫ the Convention relating to the Status of Stateless Persons of 28 September 1954 and those outside of the scope of that Convention, and school pupils travelling on school excursions where the persons of these categories reside in a third country ⌦ included in the list of third countries whose nationals are exempt from the visa requirement ⌫.

↓ 1932/2006 recital 8 (adapted)

(13) The arrangements governing exemptions from the visa requirement should fully reflect actual practices. Certain Member States grant ⌦ exemptions ⌫ from the visa requirement for nationals of third countries ⌦ included in the list of third countries whose nationals are required to be in possession of a visa when crossing the external borders of the Member States ⌫ who are members of the armed forces travelling on NATO or Partnership for Peace business. For reasons of legal certainty, these exemptions, which are based on international obligations external to ⌦ Union ⌫ law, should be referred to in ⌦ this ⌫ Regulation.

↓ 1289/2013 recital 3

(14) Full visa reciprocity is an objective which the Union should pursue in a proactive manner in its relations with third countries, thus contributing to improving the credibility and consistency of the Union's external policy.

[8] 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 (OJ L 405, 30.12.2006, p. 1).

↓ 539/2001 recital 5, 1289/2013 recital 1 (adapted)

(15) Provision should be made for a ⌦ Union ⌫ mechanism enabling ⌦ the ⌫ principle of reciprocity to be implemented if one of the third countries included in ⌦ the list of third countries whose nationals are exempt from the visa requirement ⌫ decides to make the nationals of one or more Member States subject to the visa obligation. That mechanism ⌦ should ⌫ provide for a Union response as an act of solidarity, if ⌦ such ⌫ a third country applies a visa requirement for nationals of at least one Member State.

↓ 1289/2013 recital 2 (adapted)

(16) Upon receipt of a notification from a Member State that a third country ⌦ included in the list of third countries whose nationals are exempt from the visa requirement ⌫ applies a visa requirement for nationals of that Member State, all Member States should react in common, thus providing a Union response to a situation which affects the Union as a whole and subjects its citizens to ⌦ different treatments ⌫.

↓ 1289/2013 recital 11 (adapted)

(17) In order to ensure the ⌦ appropriate ⌫ involvement of the European Parliament and of the Council in the second phase of application of the reciprocity mechanism, given the particularly sensitive political nature of the suspension of the exemption from the visa requirement for all the nationals of a third country ⌦ included in the list of third countries whose nationals are exempt from the visa requirement ⌫ and its horizontal implications for the Member States, the Schengen associated countries and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of certain elements of the reciprocity mechanism. Conferring such power on the Commission takes into account the need for political discussion on the Union policy on visas in the Schengen area. It reflects also the need to ensure ⌦ sufficient ⌫ transparency and legal certainty in the application of the reciprocity mechanism to all the nationals of the third country concerned, in particular through the corresponding temporary amendment of Annex II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level ⌦ , and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[9] ⌫. ⌦ In particular, to ensure equal participation in the preparation of delegated acts, ⌫ the European Parliament and the Council ⌦ receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts ⌫.

[9] OJ L 123, 12.5.2016, p. 1.

↓ 1289/2013 recital 4 (adapted)

(18) This Regulation should ⌦ provide for ⌫ a mechanism for the temporary suspension of the exemption from the visa requirement for a third country ⌦ included in the list of third countries whose nationals are exempt from the visa requirement ⌫ ('the suspension mechanism') in an emergency situation, where an urgent response is needed in order to resolve the difficulties faced by at least one Member State, and taking account of the overall impact of the emergency situation on the Union as a whole.

↓ 1289/2013 recital 12 (adapted)

(19) In order to ensure the efficient application of the suspension mechanism and of certain provisions of the reciprocity mechanism and in particular in order to allow for all relevant factors and the possible implications of the application of those mechanisms to be adequately taken into account, implementing powers should be conferred on the Commission with regard to the determination of the categories of nationals of the third country concerned who should be subject to a temporary suspension of the exemption from the visa requirement within the framework of the reciprocity mechanism, and of the corresponding duration of that suspension, as well as the powers to implement the suspension mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[10]. The examination procedure should be used for the adoption of such implementing acts.

↓ 1289/2013 recital 7 (adapted)

(20) It is necessary to avoid and ⌦ oppose ⌫ any abuse resulting from ⌦ an ⌫ exemption from the visa requirement for short-stay visits for nationals of a third country where they pose a threat to the public policy (ordre public) and ⌦ the ⌫ internal security of the Member State concerned.

↓ 2017/371 recital 2 (adapted)

(21) The suspension mechanism should ⌦ make ⌫ it ⌦ possible ⌫ for Member States to notify circumstances leading to a possible suspension and ⌦ for ⌫ the Commission to trigger the suspension mechanism on its own initiative.

↓ 2017/371 recital 3 (adapted)

(22) In particular, the use of the suspension mechanism should be facilitated by short reference periods and deadlines, allowing for a fast procedure, and the possible grounds of suspension ⌦ should ⌫ include a decrease in cooperation on readmission as well as a substantial increase in risks to the public policy or internal security of Member States. That decrease in cooperation should cover a substantial increase in the refusal rate of readmission applications, including for third-country nationals having

[10] 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 (OJ L 55, 28.2.2011, p. 13).

transited through the third country concerned, where a readmission agreement concluded between the Union or a Member State and that third country provides for such a readmission obligation. The Commission should also be able to trigger the suspension mechanism ⌦ in the event that ⌫ the third country fails to cooperate on readmission, in particular where a readmission agreement has been concluded between the third country concerned and the Union.

↓ 2017/371 recital 4

(23) For the purposes of the suspension mechanism, a substantial increase indicates an increase exceeding a threshold of 50 %. It may also indicate a lower increase if the Commission deems it applicable in the particular case notified by the Member State concerned.

↓ 2017/371 recital 5

(24) For the purposes of the suspension mechanism, a low recognition rate indicates a recognition rate of asylum applications of around 3 or 4 %. It may also indicate a higher recognition rate if the Commission deems it applicable in the particular case notified by the Member State concerned.

↓ 2017/371 recital 6 (adapted)

(25) It is necessary to avoid and ⌦ oppose ⌫ any abuse of the visa exemption where it leads to an increase in migratory pressure, resulting from, for example, an increase in unfounded asylum applications, also when leading to unfounded applications for residence permits.

↓ 2017/371 recital 7 (adapted)

(26) With a view to ensuring that the specific requirements which were used to assess the appropriateness of a visa exemption, granted as a result of a successful conclusion of a visa liberalisation dialogue, continue to be fulfilled over time, the Commission should monitor the situation in the third countries concerned. The Commission should pay particular attention to the situation of human rights in the third countries concerned.

↓ 2017/371 recital 8 (adapted)

(27) The Commission should report regularly to the European Parliament and ⌦ to ⌫ the Council, at least once a year, for a period of seven years after the entry into force of visa liberalisation for ⌦ a particular ⌫ third country, and thereafter ⌦ whenever ⌫ the Commission considers it necessary, or upon request by the European Parliament or ⌦ by ⌫ the Council.

↓ 2017/371 recital 9

(28) The Commission should, before taking any decision to temporarily suspend the visa exemption for nationals of a third country, take into account the situation of human

rights in that third country and the possible consequences of a suspension of the visa exemption for that situation.

↓ 2017/371 recital 11

(29) The suspension of the exemption from the visa requirement by an implementing act should cover certain categories of nationals of the third country concerned, by reference to the relevant types of travel documents and, where appropriate, to additional criteria, such as persons travelling for the first time to the territory of the Member States. The implementing act should determine the categories of nationals to which the suspension should apply, taking into account the specific circumstances notified by one or several Member States or reported by the Commission and the principle of proportionality.

↓ 2017/371 recital 12 (adapted)

(30) In order to ensure the ⌦ appropriate ⌫ involvement of the European Parliament and of the Council in the implementation of the suspension mechanism, given the politically sensitive nature of a suspension of an exemption from the visa requirement for all nationals of a third country ⌦ included in the list of third countries whose nationals are exempt from the visa requirement ⌫ and its horizontal implications for the Member States and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the temporary suspension of the exemption ⌦ from ⌫ the visa requirement for the nationals of the third countries concerned.

↓ 539/2001 recital 9 (adapted)

(31) With a view to ensuring that the ⌦ visa regime ⌫ is administered openly and that the persons concerned are informed, Member States should communicate to the ⌦ Commission ⌫ and to the ⌦ other Member States ⌫ 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* ⌦ *Union* ⌫.

↓ 539/2001 recital 10 (adapted)

(32) The conditions governing entry into the territory of the Member States or the issue of visas ⌦ should ⌫ not affect the rules governing ⌦ the ⌫ recognition of the validity of travel documents.

↓ 539/2001 recital 11 (adapted)

(33) In accordance with the principle of proportionality ⌦ as set out ⌫ in Article 5 of the Treaty ⌦ on European Union ⌫, ⌦ to have recourse to ⌫ 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 ⌦ policy on visas operates ⌫ efficiently.

↓ 1289/2013 recital 10 (adapted)

(34) ⌦ This ⌫ Regulation should be without prejudice to ⌦ the ⌫ application of international agreements concluded by the European Community before the entry into force of Regulation ⌦ (EC) No 539/2001 ⌫ which ⌦ give rise to ⌫ the need to derogate from the common ⌦ policy on visas ⌫, while taking into account the case-law of the Court of Justice of the European Union.

↓ 509/2014 recital 9

(35) As regards Iceland and Norway, this Regulation constitutes a development of the 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 latters' association with the implementation, application and development of the Schengen *acquis*[11], which fall within the area referred to in point (B) of Article 1 of Council Decision 1999/437/EC[12].

↓ 509/2014 recital 10

(36) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by 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*[13], which fall within the area referred to in points (B) and (C) of Article 1 of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC[14].

↓ 509/2014 recital 11

(37) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning 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*[15], which fall within the area referred to in

11 OJ L 176, 10.7.1999, p. 36.

12 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).

13 OJ L 53, 27.2.2008, p. 52.

14 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).

15 OJ L 160, 18.6.2011, p. 21.

points (B) and (C) of Article 1 of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2011/350/EU[16].

↓ 509/2014 recital 12

(38) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[17]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

↓ 509/2014 recital 13

(39) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[18]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application,

↓ 539/2001

HAVE ADOPTED THIS REGULATION:

↓ 509/2014 Art. 1.1 (adapted)

Article 1

This Regulation ⌦ establishes ⌫ the third countries whose nationals are subject to, or exempt from, the visa requirement, on the basis of a case-by-case assessment of a variety of criteria relating, *inter alia*, to 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.

16 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).

17 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).

18 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).

↓ 610/2013 Art. 4.2

Article 2

For the purposes of this Regulation, '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[19].

↓ 539/2001 (adapted)

Article 3

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

↓ Corrigendum, OJ L 29, 3.2.2007, p. 10 (adapted)

2. 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 ⌦ where ⌫ they are resident and which has issued them with their travel document is a third country listed in Annex I to this Regulation.

↓ 539/2001 (adapted)
→1 610/2013 Art. 4.1

Article 4

1. →1 Nationals of third countries ⌦ listed ⌫ in Annex II shall be exempt from the requirement set out in Article 3(1) for stays of no more than 90 days in any 180-day period. ←

↓ Corrigendum, OJ L 29, 3.2.2007, p. 10 (adapted)

2. The following shall also be exempt from the visa requirement:

(a) the nationals of third countries listed in Annex I to this Regulation who are holders of a local border traffic ⌦ permit ⌫ issued by the Member States pursuant to Regulation (EC) No 1931/2006 when these holders exercise their right within the context of the Local Border Traffic regime;

[19] 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) (OJ L 243, 15.9.2009, p. 1).

(b) school pupils who are nationals of a third country listed in Annex I to this Regulation and who reside in a Member State applying Council Decision 94/795/JHA[20] and ⌦ who ⌫ 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;

(c) 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.

↓ 539/2001 (adapted)

Article 5

Nationals of new third countries formerly part of ⌦ third ⌫ countries ⌦ listed ⌫ in Annexes I and II shall be subject respectively to the provisions of Articles 3 and 4 unless and until the Council decides otherwise under the procedure laid down in the relevant provision of the Treaty ⌦ on the Functioning of the European Union ⌫.

Article 6

↓ 1289/2013 Art. 1.3(a) (adapted)

1. A Member State may provide for exceptions from the visa requirement provided for ⌦ in ⌫ Article 3 or from the exemption from the visa requirement provided for ⌦ in ⌫ Article 4 as regards:

(a) holders of diplomatic passports, service/official passports or special passports;

(b) civilian air and sea crew members in the 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;

(d) crew and members of emergency or rescue missions in the event of ⌦ a ⌫ disaster or ⌦ an ⌫ accident;

(e) civilian crew of ships navigating in international inland waters;

(f) holders of travel documents issued by 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 officials of those organisations or entities.

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[20] 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 (OJ L 327, 19.12.1994, p. 1).

↓ Corrigendum, OJ L 29, 3.2.2007, p. 10 (adapted)

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 ⌦ who ⌫ 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;

↓ 1289/2013 Art. 1.3(b)

(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.

↓ 539/2001 (adapted)

3. A Member State may provide for exceptions from the exemption from the visa requirement ⌦ referred to ⌫ in Article 4 as regards persons carrying out a paid activity during their stay.

↓ 1289/2013 Art. 1.1(a) (adapted)

Article 7

Where a third country listed in Annex II applies a visa requirement for nationals of at least one Member State, the following provisions shall apply:

(a) within 30 days of the implementation by the third country of the visa requirement, the Member State concerned shall notify the European Parliament, the Council and the Commission thereof in writing.

That notification ⌦ shall ⌫:

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

(ii) 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 ⌦ relating to ⌫ that notification shall be published without delay by the Commission in the *Official Journal of the European Union*, including information on the date of implementation of the visa requirement and the types of travel documents and visas concerned.

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

(b) the Commission shall, immediately following the date of the publication referred to in the third subparagraph of point (a) 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 those steps without delay;

(c) if within 90 days of the date of the publication referred to in the third subparagraph of point (a) and despite all the steps taken in accordance with point (b), 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, when considering further steps in accordance with point (e), (f) or (h), take into account the outcome of the measures taken by the Member State concerned with a view to ensuring visa-free travel with the third country in question, the steps taken in accordance with point (b), and the consequences of the suspension of the exemption from 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, ⌦ within ⌫ six months ⌦, at the latest, ⌫ 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) ⌦ enters into force ⌫ 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 ⌦ fix ⌫ 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 11(2). Without prejudice to the application of Article 6, 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 11(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 10 temporarily suspending the ⌦ exemption from the visa requirement ⌫ for a period of 12 months for the nationals of that third country. The delegated act shall ⌦ fix ⌫ 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 and shall amend Annex II accordingly. That amendment shall be made ⌦ by ⌫ 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.

⌦ From ⌫ the date when the suspension of the ⌦ exemption from the visa requirement ⌫ for the nationals of the third country concerned takes effect or when an objection to the delegated act is expressed pursuant to Article 10(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 ⌦ of the exemption from the visa requirement ⌫ 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 6, 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;

(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 points (e), (f) and (h) shall not affect the right of the Commission to submit at any time a legislative proposal for amending this Regulation in order to transfer the reference to the third country concerned from Annex II to Annex I;

(j) where the third country in question lifts the visa requirement, the Member State concerned shall immediately notify the European Parliament, the Council and the Commission thereof. The notification shall be published without delay by the Commission in the *Official Journal of the European Union*.

Any implementing or delegated act adopted pursuant to point (e) or (f) concerning the third country in question shall expire seven days after the publication referred to in the first subparagraph of this point. Where the third country in question has introduced a visa requirement for nationals of two or more Member States, the implementing or delegated act concerning that third country shall expire seven days after the 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 ⌦ concerning ⌫ 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.

↓ 2017/371 Art. 1(1) (adapted)

Article 8

1. By way of derogation from Article 4, the exemption from the visa requirement for nationals of a third country listed in Annex II shall be temporarily suspended, based on relevant and objective data, in accordance with this Article.

2. A Member State may notify the Commission if it is confronted, over a two-month period, ⌦ compared ⌫ with the same period in the ⌦ preceding ⌫ year or ⌦ compared ⌫ with the last two 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:

(a) a substantial increase in the number of nationals of that third country refused entry or found to be staying in the Member State's territory without a right ⌦ to do so ⌫;

(b) a substantial increase in the number of asylum applications from the nationals of that third country for which the recognition rate is low;

(c) a decrease in cooperation on readmission with that third country, substantiated by adequate data, in particular a substantial increase in the refusal rate of readmission applications submitted by the Member State to that third country for its own nationals or, where a readmission agreement concluded between the Union or that Member State and that third country so provides, for third-country nationals having transited through that third country;

(d) an increased risk or imminent threat to the public policy or internal security of Member States, in particular a substantial increase in serious criminal offences, ⌦ linked ⌫ to ⌦ the ⌫ nationals of that third country, substantiated by

objective, concrete and relevant information and data provided by ⌦ the ⌫ competent authorities.

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. In its notification, ⌦ the Member State concerned may ⌫ specify ⌦ the ⌫ categories of nationals of the third country concerned ⌦ which ⌫ are to be covered by an implementing act under paragraph 6(a), ⌦ specifying ⌫ the detailed reasons ⌦ for doing so ⌫ . The Commission shall inform the European Parliament and the Council immediately of such notification.

3.Where the Commission, taking into account ⌦ the ⌫ relevant data, reports and statistics, has concrete and reliable information ⌦ that the ⌫ circumstances referred to in paragraph 2(a), (b), (c) or (d) ⌦ are occurring ⌫ ~~arising~~ in one or more Member States, or that the third country is not cooperating on readmission, in particular where a readmission agreement has been concluded between that third country and the Union, ⌦ the Commission shall inform the European Parliament and the Council promptly of its analysis, and the provisions of paragraph 6 shall apply ⌫.

⌦ For the purposes of the first subparagraph, non-cooperation on readmission may consist in, for instance: ⌫

– refusing or failing to process readmission applications in due time;

– failing to issue travel documents in due time for the purposes of ⌦ returning ⌫ within ⌦ the ⌫ deadlines ⌦ set out ⌫ in the readmission agreement or ⌦ refusing to accept ⌫ European travel documents issued following the ⌦ expiry ⌫ of ⌦ the ⌫ deadlines ⌦ set out ⌫ in the readmission agreement; or

terminating or suspending the readmission agreement.

4. The Commission shall monitor the continuous ⌦ compliance with ⌫ the specific requirements, which are based on Article 1 and which were used to assess the appropriateness of granting visa liberalisation, by the third countries whose nationals have been exempted from the visa requirement when travelling to the territory of Member States as a result of ~~a~~ ⌦ the ⌫ successful conclusion of a visa liberalisation dialogue conducted between the Union and that third country.

In addition, the Commission shall report regularly to the European Parliament and to the Council, at least once a year, for a period of seven years after the date of entry into force of visa liberalisation for that third country, and thereafter ⌦ whenever ⌫ the Commission considers it to be necessary, or upon request by the European Parliament or ⌦ by ⌫ the Council. The report shall focus on ⌦ the ⌫ third countries which the Commission considers , based on concrete and reliable information, ⌦ are no longer complying with ⌫ certain requirements.

⌦ Paragraph 6 shall apply where ⌫ a report of the Commission shows that one or more of the specific requirements is no longer ⌦ complied with as regards ⌫ a particular third country.

5. The Commission shall examine any notification made pursuant to paragraph 2, taking ⌦the following matters ⌫ into account:

(a) whether any of the ⌦ circumstances referred to ⌫ in paragraph 2 ⌦ exist ⌫ ;

(b) the number of Member States affected by any of the ⌦ circumstances referred to ⌫ in paragraph 2;

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

(d) the reports prepared by the European Border and Coast Guard, the European Asylum Support Office or the European Police Office (Europol) or any other institution, body, office or agency of the Union or international organisation competent in matters covered by this Regulation, if ⌦ the ⌫ circumstances so require in the specific case;

(e) the ⌦ information which ⌫ the Member State concerned may have given in its notification in relation to possible measures under paragraph 6(a);

(f) 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.

6. Where, on the basis of the analysis referred to in paragraph 3, the report referred to in paragraph 4, or the examination referred to in paragraph 5, 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, the Commission decides that action is needed, or where a simple majority of Member States have notified the Commission of the existence of circumstances referred to in paragraph 2(a), (b), (c) or (d), the following provisions shall apply:

(a) the Commission shall adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of nine months. The suspension shall apply to certain categories of nationals of the third country concerned, by reference to the relevant types of travel documents and, where appropriate, to additional criteria. When ⌦ deciding ⌫ to which categories the suspension ⌦ is to apply ⌫ , the Commission shall, based on the information available, include categories that are-⌦ broad enough in order ⌫ to efficiently contribute to ⌦ remedying ⌫ the circumstances referred to in paragraphs 2, 3 and 4 in each specific case, while respecting the principle of proportionality. The Commission shall adopt the implementing act within one month of:

(i) receiving the notification referred to in paragraph 2;

(ii) being made aware of the information referred to in paragraph 3;

(iii) presenting the report referred to in paragraph 4; or

(iv) receiving the notification from a simple majority of Member States of the existence of circumstances referred to in paragraph 2 (a), (b), (c) or (d).

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 11(2). It shall ⌦ fix ⌫ the date on which the suspension of the exemption from the visa requirement is to take effect.

During the period of suspension, the Commission shall establish an enhanced dialogue with the third country concerned with a view to remedying the circumstances in question.

(b) Where the circumstances referred to in paragraphs 2, 3 and 4 persist, the Commission shall adopt, at the latest two months before the expiry of the nine-month period referred to in point (a) of this paragraph, a delegated act in accordance with Article 10, temporarily suspending the application of Annex II for a period of 18 months for all nationals of the third country concerned. The delegated act shall take effect from the date of expiry of the implementing act referred to in point (a) of this paragraph and shall amend Annex II accordingly. That amendment shall be made by inserting a footnote next to the name of the third country in question, indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension.

Where the Commission has submitted a legislative proposal pursuant to paragraph 7, the period of suspension ⌦ of the exemption from the visa requirement ⌫ provided for in the delegated act shall be extended by six months. The footnote shall be amended accordingly.

Without prejudice to the application of Article 6, during the period of suspension, the nationals of the third country concerned shall be required to be in possession of a visa when crossing the external borders of the Member States.

A Member State which, in accordance with Article 6, provides for new exemptions from the visa requirement for a category of nationals of the third country covered by the act suspending the exemption from the visa requirement shall communicate those measures in accordance with Article 12.

7. Before the end of the period of validity of the delegated act adopted pursuant to of paragraph 6(b), the Commission 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.

8. Where the Commission has submitted a legislative proposal pursuant to paragraph 7, it may extend the validity of the implementing act adopted pursuant to paragraph 6 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 11(2).

↓ 2017/371 Art. 1(2) (adapted)

Article 9

1. 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 7 and shall, if necessary, submit a legislative proposal for amending this Regulation. The European Parliament and the Council shall act on ⌦ any ⌫ such proposal ⌦ in accordance with ⌫ the ordinary legislative procedure.

↓ 2017/371 Art. 1(3) (adapted)

2. By 29 March 2021, the Commission shall submit a report to the European Parliament and to the Council assessing the effectiveness of the suspension mechanism provided for in Article 8 and shall, if necessary, submit a legislative proposal for amending this Regulation. The European Parliament and the Council shall act on ⌦ any ⌫ such proposal ⌦ in accordance with ⌫ the ordinary legislative procedure.

↓ 2017/371 Art. 1(4)

Article 4b=10

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 7 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 power to adopt delegated acts referred to in Article 8(6)(b) shall be conferred on the Commission for a period of five years from 28 March 2017. 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.

4. The delegation of power referred to in point (f) of Article 7 and in Article 8(6)(b) 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.

5. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

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

7. A delegated act adopted pursuant to point (f) of Article 7 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.

8. A delegated act adopted pursuant to Article 8(6)(b) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to 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.

↓ 1289/2013 Art. 1.4

Article 11

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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.

↓ 539/2001 (adapted)

Article 12

1. Member States shall communicate to the other Member States and the Commission the measures they take pursuant to Article 6, within five working days ⌦ of the adoption of those measures ⌫.

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

Article 13

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 14

↓

Regulation (EC) No 539/2001 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

↓ 2414/2001 Art. 1.3 (adapted)

Article 15

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

↓ 539/2001 (adapted)

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	*For the Council*
The President	*The President*