

## Third countries whose nationals are subject to or exempt from a visa requirement: suspension mechanism

2016/0142(COD) - 04/05/2016 - Legislative proposal

**PURPOSE:** to revise the suspension mechanism of 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.

**PROPOSED ACT:** Regulation of European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** [Council Regulation \(EC\) No 539/2001](#) 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 Regulation is part of the EU's common visa policy for short stays of up to 90 days in any 180-day period.

**Suspension mechanism:** the suspension mechanism in Article 1a of Regulation (EC) No 539/2001 allows the temporary suspension of the visa exemption for nationals of a third country in certain emergency situations, as a last resort. It can be triggered by any Member State by notifying the Commission that it is confronted, over a six-month period, in comparison with the same period in the previous year or with the last six months prior to the visa liberalisation of that country, with circumstances leading to an emergency situation which the Member State in question cannot remedy on its own. These circumstances are namely a substantial and sudden increase in the number of:

- nationals of that third country found to be illegally overstaying in the Member State in question;
- unfounded asylum applications from the nationals of that third country, where such increase is leading to specific pressures on the Member States asylum system;
- rejected readmission applications submitted by the Member State to that third country for its own nationals.

The Commission may decide that action is needed, taking into account the consequences of the suspension of the visa exemption 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.

In that case, the Commission has three months from the receipt of the notification to adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned, for a period of six months.

Before the expiry of this six-month period, the Commission must submit a report to the European Parliament and the Council. This report may be accompanied by a legislative proposal to amend Regulation (EC) No 539/2001 to transfer the third country in question to the list of visa-required countries (Annex I), and thus to put its citizens permanently under the visa requirement. In such case, the temporary suspension of the visa waiver may be extended by a maximum period of 12 months.

**Migration crisis:** in the context of the current migratory situation in the European Union and of the successful conclusion of several visa liberalisation dialogues with neighbouring countries ([Georgia](#), [Ukraine](#), [Kosovo](#), [Turkey](#)), several Member States have questioned whether the existing visa suspension mechanism provides for the necessary flexibility to act in certain situations of urgency.

In particular they have argued that:

- the possible grounds for suspension are too limited, and for instance do not include the failure of a third country to cooperate on readmission of third-country nationals having transited through that third country, where a readmission agreement concluded between the Union or a Member State and the third country concerned provides for such a readmission obligation;
- the initiative to trigger the suspension mechanism by means of a notification, which in the Regulation lies solely with Member States, should be extended to Commission;
- the reference periods and the deadlines are too long, which does not allow for a fast reaction in emergency situations. Taking into account the Commission's recent proposals for visa liberalisation of Georgia, Ukraine, Turkey and Kosovo and the recent discussions with Member States, the Commission has decided to present a proposal to amend Regulation (EC) No 539/2001 to revise the current suspension mechanism.

This is the aim of this proposal.

**CONTENT:** the main objective is to strengthen the suspension mechanism by making it easier for Member States to notify circumstances leading to a possible suspension and by enabling the Commission to trigger the mechanism on its own initiative.

This proposal for the revision of the suspension mechanism includes the following elements:

The definition of the circumstances which Member States can notify to the Commission has been amended to clarify that the suspension mechanism cannot only be used in "emergency situations, as a last resort", but more generally in case the visa liberalisation leads to a serious increase of irregular migration, unfounded asylum applications or rejected readmission applications.

The reference period for comparing this situation with the situation of the previous year or before visa liberalisation, is shortened from six to two months. It is sufficient for the increase of irregular migration, unfounded asylum applications or rejected readmission applications to be "substantial", whereas the increase must currently be "sudden and substantial".

The grounds for possible suspension which can be notified should include rejected readmission applications for nationals of another third country having transited through that third country, where a readmission agreement concluded between the Union or a Member State and the

third country concerned provides for such a readmission obligation.

Other salient issues:

- the limitation in time (to seven years) of the possibility to compare the current situation with the situation before visa liberalisation is abolished;
- the Commission is given the possibility to trigger the suspension mechanism on its own initiative if it has concrete and reliable information of any of the circumstances which Member States can notify or that the third country is in a more general manner not cooperating on readmission, in particular where an EU-level readmission agreement has been concluded with that third country. This failure to cooperate can, for instance, consist in: (i) rejecting or not replying to readmission applications, (ii) failing to issue travel documents for the purposes of return within deadlines specified in the agreement or not accepting European travel documents issued following the lapse of deadlines specified in the agreement, (iii) terminating or suspending the agreement. Where the Commission, after having examined the circumstances notified (or of which it has received concrete and reliable information), decides that action is needed, the deadline for the adoption of the implementing act temporarily suspending the visa exemption for the third country concerned is reduced from three to one month.

Territorial provisions: the proposed Regulation constitutes a development of provisions of the Schengen acquis. Therefore, the United Kingdom and Ireland shall not participate in the adoption of the Regulation, nor shall it be bound or subject to its application.

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