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

2016/0142(COD) - 01/03/2017 - Final act

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.

LEGISLATIVE ACT: Regulation (EU) 2017/371 of the European Parliament and of the Council of 1 March 2017 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (revision of the suspension mechanism).

CONTENT: Regulation (EC) No 539/2001 lists the third countries whose citizens are required to be in possession of visas when crossing the external borders of the Member States and the list of countries whose nationals are exempt from this requirement.

With this regulation, it is planned to strengthen the mechanism allowing the temporary suspension of the exemption from the visa requirement in regard to citizens of third countries on the list in Annex II of Regulation (EC) No 539/2001, by making it easier for the Member States to notify circumstances leading to a possible suspension and empowering the Commission to initiate the suspension mechanism on its own initiative.

Suspension of the exemption from the visa requirement: by way of derogation from Article 1(2) of Regulation (EC) No 539/2001, the exemption from the visa requirement for nationals of a third country listed in Annex II of the regulation shall be temporarily suspended as a last resort, based on strict and objective data, such as the following:

- a substantial increase, i.e. exceeding a threshold of 50% (or even less, if the Commission considers it necessary) 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 thereto;
- a substantial increase in the number of asylum applications from the nationals of that third country for which the recognition rate is low (around 3 or 4% maximum or less if the Commission considers this applicable);
- a decrease of 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;
- an increase of risks or imminent threat to public policy or internal security of Member States, in particular a substantial increase of serious criminal offences, related to nationals of that third country, substantiated by objective, concrete and relevant information and data provided by competent authorities.

Before taking any decision on suspension, the Commission should take into account the human rights situation in that third country and the possible consequences of a suspension of the visa exemption for that situation.

Notification: the notification of suspension 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. The Member State concerned may in its notification specify which categories of nationals of the third country should be covered, indicating the detailed reasons therefor. The Commission shall inform the European Parliament and the Council.

Justifying decisions: there are provisions allowing the Commission to take the necessary measures once it has concrete and reliable information taking into account relevant data, reports and statistics, of circumstances justifying the decision on exemption (e.g. (i) refusal or lack of timely processing of readmission requests, (ii) failure to issue travel documents for return, etc.).

The Commission shall inform the European Parliament and the Council promptly, of its analysis.

Monitoring the criteria used in the visa liberalisation with third countries scheme: the Commission shall monitor the continuous fulfilment of the specific requirements that were used to assess the appropriateness of a visa liberalisation by the third countries whose nationals are exempt from the visa requirement when travelling to the territory of Member States.

The Commission shall report regularly to the European Parliament and the Council at least once a year, for a period of seven years after the entry into force of visa liberalisation for that third country, or thereafter when the Commission considers it necessary or upon request by the European Parliament or the Council. The report shall focus on third countries for which the Commission considers, based on concrete and reliable information, that certain requirements are no longer fulfilled. Where a report of the Commission shows that one or more of the specific requirements is no longer fulfilled in relation to a particular third country, certain measures shall apply.

Mechanism for the application of the suspension of visa exemption: the Commission, on the basis of examination and analysis, 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, may take the prescribed measures while working in close cooperation with that third country to find alternative long-term solutions.

These measures may also be taken where a simple majority of Member States have notified the Commission of circumstances referred to above.

Implementing act: 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 information available, and the Commission will try to efficiently contribute to addressing the circumstances justifying the suspension, while respecting the principle of proportionality. It shall adopt the implementing act within one month of being made aware of the relevant information and in accordance with the criteria set out in the Regulation.

That implementing act shall be adopted in accordance with the examination procedure and shall determine 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.

Delegated act: to ensure the adequate involvement of the European Parliament and of the Council in the application of the suspension 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 listed in Annex II to Regulation (EC) No 539/2001 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 of the Functioning of the European Union is delegated to the Commission in respect of the temporary suspension of the exemption of the visa requirement for the nationals of the third countries concerned. The Commission should carry out appropriate consultations during its preparatory work, including at expert level, and the European Parliament and the Council should receive all documents at the same time and be informed before the decision is taken.

Accordingly, if the circumstances justifying the first suspension of nine months persist, the Commission may adopt a delegated act at the latest two months prior to the expiry of the nine-month period, temporarily suspending the application of Annex II for a period of 18 months for all the nationals of the third country concerned.

This may be extended by 6 months in the particular circumstances set out in the Regulation.

During the periods of the 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.

The Commissions power to adopt a delegated act will depend on:

- either the reciprocity mechanism provided for in Regulation (EC) No 539/2001 and will be conferred on the Commission until 9.1.2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of this 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;

- or the suspension mechanism: the power to adopt delegated acts shall be conferred on the Commission for a period of five years from 28.3.2017. 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.

The Council or the European Parliament may revoke the delegation of power at any time.

Specific provisions are envisaged for the entry into force of the various delegated acts.

Implementation reports:

- 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 the regulation and shall, if necessary, submit a legislative proposal for amending this Regulation which will be adopted according to the ordinary legislative procedure.
- 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 and shall, if necessary, submit a legislative proposal for amending this Regulation. The European Parliament and the Council shall act on such a proposal by the ordinary legislative procedure.

ENTRY INTO FORCE: 28.3.2017. The regulation is directly applicable in all Member States concerned by the measure.