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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL OF THE EUROPEAN UNION**

**amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement**

## EXPLANATORY MEMORANDUM

### **1. Context of the proposal**

In proposing this amendment to Regulation (EC) No 539/2001<sup>1</sup> as last amended by Regulation (EC) No 1244/2009<sup>2</sup>, the Commission is pursuing the objective of adjusting the annexes to the Regulation, taking into consideration the progress made in the visa liberalisation dialogues with Albania and Bosnia and Herzegovina during the last seven months and transferring these two countries from Annex I (the list of third countries whose nationals must be in possession of visas when crossing the external borders of Member States) to the Annex II (the list of those third countries whose nationals are exempt from that requirement) of the Regulation; this transfer is in line with the political commitment taken by the European Union on the liberalisation of the short-stay visa requirement for all Western Balkan citizens as part of the Thessaloniki agenda.

#### **General context and grounds for the proposal**

In accordance with Article 62 (2) (b) (i) of the Treaty Establishing the European Community, the Council has adopted Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders (the so-called negative list) and those whose nationals are exempt from that requirement (the so-called positive list). Article 61 of the EC Treaty cited those lists among the flanking measures which are directly linked to the free movement of persons in an area of freedom, security and justice.

The determination of those third countries whose nationals are subject to the visa requirement, and those exempt from it, is governed by a considered, case-by-case assessment of a variety of criteria relating inter alia to illegal immigration, public policy and security, and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity. In view of the criteria of public order and illegal immigration, particular attention should be paid also to the security of travel documents issued by the third countries concerned.

As the criteria set out in Regulation (EC) No 539/2001 can evolve over time in relation to third countries, the composition of the negative and positive lists should be reviewed when appropriate.

Regulation (EC) No 539/2001 has been amended most recently with regard to the outcome of the visa liberalisation dialogues by transferring the former Yugoslav Republic of Macedonia, Montenegro and Serbia to the positive list.

The present review of the Regulation aims at ensuring that the composition of the lists of third countries complies with the criteria set out in recital (5) of the Regulation in the light of progress achieved by Albania and Bosnia and Herzegovina in the framework of their respective visa liberalisation dialogues.

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<sup>1</sup> OJ L 81, 21.3.2001, p. 1.

<sup>2</sup> OJ L 336, 18.12.2009, p. 1.

## 2. Elements of the proposal

Since the Thessaloniki Summit in June 2003, the European Union reaffirmed several times its political commitment towards visa liberalisation for the Western Balkan countries, stressing that this goal is linked to the progress made by the countries concerned in implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration and the strengthening of their administrative capacity in border control and security of documents. As a first concrete step towards the establishment of a visa-free travel regime, the European Union concluded in 2007 Visa Facilitation Agreements with Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia<sup>3</sup> (in parallel with readmission agreements) and started structured dialogues on visa liberalisation based on detailed roadmaps setting clear benchmarks to be met by the five countries in the region in order to gradually advance towards visa liberalisation.

This result-oriented visa-free dialogue was formally launched with Albania in March 2008 and with Bosnia and Herzegovina in May 2008; it was based on tailor-made roadmaps established by the Commission in agreement with the Member States and in consultation with the respective country. In particular, the roadmaps were divided into four sets of issues: document security, illegal immigration, public order and security as well as external relations items linked to the movement of persons.

In its proposal dated 15 July 2009<sup>4</sup> the Commission presented in detail the methodology followed in the visa liberalisation process followed for the Western Balkan countries and proposed to transfer from the negative to the positive list the former Yugoslav Republic of Macedonia, Montenegro and Serbia. Based on the Commission proposal and after consultation of the European Parliament, the Council decided on 30 November 2009 to lift the visa obligation on citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia from 19 December 2009.

Regarding Albania and Bosnia and Herzegovina it was considered that despite the important progress made a series of benchmarks were still open. In a joint Declaration adopted in November 2009, the European Parliament and the Council underlined their political support for a quick abolition of the visa regime for the citizens of these two countries and urged the authorities of Albania and Bosnia and Herzegovina to intensify efforts to comply with all the benchmarks set out in the Commission's roadmaps.

In addition, the European Parliament and the Council invited the Commission to present a legislative proposal for amending the Regulation (EC) No 539/2001 as soon as it has assessed that each country meets the benchmarks of the roadmaps, and took the commitment to examine the Commission proposal as a matter of urgency.

In this context, the Commission continued since November 2009 to ensure a close monitoring of the visa liberalisation process for Albania and Bosnia and Herzegovina. Based on detailed readiness reports provided by these two countries and on the results of a six expert missions

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<sup>3</sup> See the preamble of these agreements : with Albania (OJ L 334, 19.12.2007, p. 85), Bosnia and Herzegovina (OJ L 334, 19.12.2007, p. 97), the former Yugoslav Republic of Macedonia (OJ L 334, 19.12.2007, p. 125), Montenegro (OJ L 334, 19.12.2007, p. 169) and Serbia (OJ L 334, 19.12.2007, p. 109).

<sup>4</sup> COM(2009)366 final

conducted between December 2009 and February 2010 (in which Member States' experts were actively involved), the Commission presented in April 2010 to the European Parliament and the Council, before transmission to the countries concerned, its assessment of the progress made by these two countries in the implementation of the remaining open benchmarks of the roadmaps towards visa liberalisation.

When presenting these assessments, the Commission announced its intention to undertake for all Western Balkan countries appropriate monitoring, after the lifting of the visa requirement, on the effective and sustainable implementation of the measures taken by these countries within the framework of the visa liberalisation process.

The assessment reports for Albania and Bosnia and Herzegovina were presented to the respective authorities of Albania and Bosnia and Herzegovina on 6 May 2010.

In particular, the assessment reports concluded that Albania and Bosnia and Herzegovina made important progress and only a very limited number of benchmarks remain open.

The present proposal reflects the outcome of the above-mentioned process: taking into account also, that the Visa Facilitation and Readmission Agreements with these two countries are been implemented in a satisfactory way, the Commission proposes to transfer Albania and Bosnia and Herzegovina, which are very close to meeting all the benchmarks, from the negative to the positive list, it being understood that by the day of adoption of the proposal by the European Parliament and the Council, these countries should fulfil all benchmarks.

Considering the introduction of biometric passports by the Western Balkan countries as an element of fundamental importance for the successful completion of the regional visa liberalisation process and as in Regulation (EC) No 1244/2009, the present proposal, for reasons relating to security and prevention of illegal migration, limits the visa waiver for the citizens of Albania and Bosnia and Herzegovina to those persons holding the new biometric passports issued by these countries.

### **3. Next Steps**

In parallel with the examination of its proposal in the European Parliament and the Council, the Commission will continue to assess the implementation of the open benchmarks for Albania and Bosnia and Herzegovina and it will share its assessment in a timely manner with the European Parliament and the Council.

For Albania, the remaining open benchmarks relate to:

- the development of a strategy and policy to support the reintegration of Albanian returnees;
- the strengthening of capacities of law enforcement and the effective implementation of the legal framework for the fight against organised crime and corruption, including through the allocation of adequate human and financial resources;
- the effective implementation of the legal framework in the area of the confiscation of organised crime assets.

For Bosnia and Herzegovina, the remaining open benchmarks relate to:

- the strengthening of capacities of law enforcement and the effective implementation of the legal framework for the fight against organised crime and corruption, including through the allocation of adequate human and financial resources;
- the progressive implementation of the action plan from March 2010 on establishment of electronic data exchange between police and prosecution bodies ;
- the harmonisation of the criminal codes of the entity level and Brcko district with the state-level criminal code.

As in Regulation (EC) No 1244/2009, there is no reason to condition the implementation of the visa waiver for Albania and Bosnia and Herzegovina on the conclusion of visa waiver agreements with the EU, taking into account the European vocation of these two countries and the fact that they have already exempted all EU citizens from the visa requirement.

#### **4. Main organisations/experts consulted**

Member States were consulted.

#### **5. Impact assessment**

Not necessary.

#### **6. Legal basis**

In view of the TFEU, this proposal constitutes a development of the common visa policy in accordance with Article 77 (2) (a) of the TFEU.

#### **7. Proportionality and subsidiarity principles**

Regulation (EC) No 539/2001 lists the third countries whose nationals must be in possession of visas when crossing the external borders (the negative list) and those whose national are exempt from that requirement (the positive list).

The decision to change the lists, to transfer countries from the negative to the positive list or vice versa falls within the exclusive competence of the European Union in accordance with Article 77 (2) (a) of the TFEU.

#### **8. Choice of instruments**

Regulation (EC) No 539/2001 is to be amended by a Regulation.

#### **9. Budgetary implication**

The proposed amendment has no implication on the European Union budget.

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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,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The composition of the lists of third countries in Annexes I and II to Council Regulation (EC) N° 539/2001<sup>5</sup> should be, and should remain, consistent with the criteria laid down in recital 5 thereto. Third countries for whom the situation has changed as regards these criteria, should be transferred from one Annex to the other.
- (2) In line with the political commitment taken by the European Union on the liberalisation of the short term visa requirement for the citizens of all Western Balkan countries as part of the Thessaloniki agenda and taking into consideration the progress made since December 2009 in the visa liberalisation dialogues with Albania and Bosnia and Herzegovina, the Commission considers that these two countries have met the large majority of the benchmarks of their respective roadmaps.
- (3) Therefore Albania and Bosnia and Herzegovina [meeting all the benchmarks by the date of adoption of the present Regulation], should be transferred to Annex II of Regulation (EC) No 539/2001. This visa waiver should only apply to holders of biometric passports issued by each of these two countries.
- (4) 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<sup>6</sup>, which falls within the area referred to in Article

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<sup>5</sup> OJ L 81, 21.3.2001, p. 1.

<sup>6</sup> OJ L 176, 10.7.1999, p. 36.

1, point (B), of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement<sup>7</sup>.

- (5) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded 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<sup>8</sup>, which fall within the area referred to in Article 1, point (B) and (C), of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>9</sup>.
- (6) 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 Article 1, points (B) and (C) of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC<sup>10</sup>.
- (7) 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/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<sup>11</sup>; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (8) 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/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis<sup>12</sup>; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (9) This Regulation constitutes a development of the Schengen acquis, in accordance with the Protocol integrating the Schengen acquis into the framework of the European Union, as defined in Annex A to Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis<sup>13</sup>,

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<sup>7</sup> OJ L176, 10.7.1999, p. 31.

<sup>8</sup> OJ L 53, 27.2.2008, p.52.

<sup>9</sup> OJ L 53, 27.2.2008, p. 1.

<sup>10</sup> OJ L 83, 26.3.2008, p. 3.

<sup>11</sup> OJ L 131, 1.6.2000, p. 43.

<sup>12</sup> OJ L 64, 7.3.2002, p. 20.

<sup>13</sup> OJ L 176, 10.7.1999, p. 1.

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 539/2001 is hereby amended as follows:

1. Annex I shall be amended as follows:
  - (a) in Part 1, the references to Albania and Bosnia and Herzegovina shall be deleted;
2. In Annex II, Part 1, the following references shall be inserted:

"Albania (\*)  
Bosnia and Herzegovina (\*)"

(\*) The exemption from the visa requirement only applies to holders of biometric passports".

*Article 2*

This Regulation shall enter into force on the 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*