



**COUNCIL OF
THE EUROPEAN UNION**

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Subject: COUNCIL REGULATION amending 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

COUNCIL REGULATION (EC) No.../2009

of

amending 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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(b)(i) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹,

¹ Opinion of 12 November 2009 (not yet published in the Official Journal).

Whereas:

- (1) The composition of the lists of third countries in Annexes I and II to Regulation (EC) No 539/2001¹ should be, and should remain, consistent with the criteria laid down in recital (5) thereto. Some third countries, for which the situation has changed as regards these criteria, should be transferred from one Annex to the other.
- (2) With five Western Balkan countries – Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia – Visa Facilitation Agreements entered into force on 1 January 2008, as a first concrete step forward along the path set out by the Thessaloniki agenda towards a visa free travel regime for the citizens of Western Balkan countries. With each of these countries, a visa liberalisation dialogue was opened in 2008 and roadmaps for visa liberalisation have been established. In its assessment of the implementation of the roadmaps of May 2009, the Commission considered that the former Yugoslav Republic of Macedonia had met all the benchmarks set out in its roadmap and, in its assessment of November 2009, that Montenegro and Serbia also meet all the benchmarks set out in their respective roadmaps.

¹ OJ L 81, 21.3.2001, p. 1.

- (3) Therefore the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be transferred to Annex II to Regulation (EC) No 539/2001. The visa requirement exemption should only apply to holders of biometric passports issued by each of the three countries concerned.
- (4) For persons residing in Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 (referred to as "Kosovo (UNSCR 1244)") and persons whose citizenship certificate has been issued for the territory of Kosovo (UNSCR 1244), a specific Coordination Directorate in Belgrade will be in charge of collecting their passport applications and the issuance of passports. However, in view of security concerns regarding in particular the potential for illegal migration, the holders of Serbian passports issued by that specific Coordination Directorate should be excluded from the visa free regime for Serbia.
- (5) For reasons of legal clarity and security, and in accordance with Article 1(3) of Regulation (EC) No 539/2001, Kosovo (UNSCR 1244) should be added to Annex I to that Regulation. This is without prejudice to the status of Kosovo (UNSCR 1244).

- (6) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*¹ which fall within the area referred to in Article 1, point B, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement².
- (7) 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*³, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 4(1) of Decision 2008/146/EC⁴.

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 176, 10.7.1999, p. 31.

³ OJ L 53, 27.2.2008, p. 52.

⁴ 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).

- (8) As regards Liechtenstein, this Regulation constitutes a development of 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*, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Decision 2008/261/EC¹.
- (9) 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 of 29 May 2000 concerning the request by the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*². The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

¹ Council Decision 2008/261/EC of 28 February 2008 on the signature, on behalf of the European Community, and on the provisional application of certain provisions 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* (OJ L 83, 26.3.2008, p. 3).

² OJ L 131, 1.6.2000, p. 43.

- (10) 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 of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*¹. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (11) This Regulation constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the 2003 Act of Accession.
- (12) This Regulation constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 4(1) of the 2005 Act of Accession,

HAS ADOPTED THIS REGULATION:

¹ OJ L 64, 7.3.2002, p. 20.

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 the former Yugoslav Republic of Macedonia, Montenegro and Serbia shall be deleted;
 - (b) in Part 2, the following reference shall be inserted:
"Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999".

- (2) in Annex II , Part 1, the following references shall be inserted:

"former Yugoslav Republic of Macedonia(*)

Montenegro(*)

Serbia (excluding holders of Serbian passports issued by the Serbian Coordination Directorate (in Serbian: *Koordinaciona uprava*))(*)

(*) The visa requirement exemption applies only 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*.

It shall apply from 19 December 2009.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council

The President
