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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
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. 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<sup>1</sup> 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 or territories whose citizens 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 or territories, 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 or territories concerned.

As the criteria set out in Regulation (EC) No 539/2001 can evolve over time in relation to third countries or territories, the composition of the negative and positive lists should be reviewed regularly. The Action Plan to combat illegal immigration and trafficking of human beings adopted by the European Union in 2002 at the Seville European Council also highlighted for the first time the need to review annually the two lists of third countries and territories annexed to the Regulation.

Hence, since its adoption, Regulation (EC) No 539/2001 has been amended six times<sup>2</sup>, most recently with regard to the outcome of the visa liberalisation dialogues by transferring three Western-Balkan countries to the positive list. Slightly more than two years after the adoption of Council Regulation (EC) No 1932/2006<sup>3</sup>, the lists annexed to Regulation (EC) No 539/2001 need to be reassessed in general in the light of the relevant, above mentioned criteria defined in the Regulation.

The present periodical review of the Regulation aims at:

ensuring that the composition of the lists of third countries and territories complies with the criteria set out in recital 5 of the Regulation, in particular as regards the illegal immigration and public policy criteria and the external relations criterion, and transferring countries from one annex to another as appropriate;

ensuring that, in accordance with Article 77 (2) (a) of the TFEU, the Regulation determines exhaustively whether a third-country or territory citizen is to be subject to or exempt from the visa requirement.

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

<sup>2</sup> Council Regulations (EC) N° 2414/2001 of 7 December 2001 OJ L 327, 12.12.2001, p.1, N° 453/2003 of 6 March 2003 L 69 13.3.2003, p. 10, N° 851/2005 of 2 June 2005 L 141 4.6.2005, p. 3, N° 1791/2006 of 20 November 2006 L 363 20.12.2006, p. 1, N° 1932/2006 of 21 December 2006 L 405 30.12.2006, p. 23 and N° 1244/2009 of 30 November 2009 L 336 18.12.2009

<sup>3</sup> OJ L 405 30.12.2006, p. 23

A further proposal amending Regulation 539/2001 may be presented by the Commission at the appropriate moment in order to integrate possible results of the ongoing visa dialogues with Albania and Bosnia-Herzegovina.

## **2. Elements of the proposal**

In line with the approach followed in view of earlier changes to Regulation (EC) No 539/2001, for the purposes of the periodic review the Commission has questioned the Member States to check whether the annexes to the Regulation as they stand still correspond to the criteria determined by the Regulation. Member States made no suggestions to transfer third countries or territories from the positive to the negative list. The Commission only received suggestions for transfers from the negative to the positive list (Taiwan, Trinidad and Tobago, Saint Lucia, Saint Vincent and the Grenadines, Belize, Dominica, Grenada, the Marshall Islands, Micronesia and Palau). The information transmitted by the Member States (the Commission received 25 replies) has been analysed, together with other information and statistics supplied under the CIREFI. On the basis of the analysis, the Commission has come to the following conclusions.

### **2.1. Transfer of Taiwan to the positive list**

Taiwan is characterised by a high per capita income (US\$ 30,100) and political stability (4<sup>th</sup> Presidential direct election held in March 2008 since the lifting of martial law in 1987). Despite the fact that the EU does not recognise Taiwan as a sovereign state and has no diplomatic or formal relations with Taiwan, the EU has developed regular contacts and cooperation in economic, trade, research, science and technology, education and culture as well as environmental issues with the Taiwanese authorities. As a result, the EU is the largest foreign investor in Taiwan.

As regards the political aspects, the discussions within the relevant political groups in the Council during March 2009 gave a clear political signal of the EU's support for Taiwan's request to grant visa free travel to its citizens in the next revision of the Regulation. It has been considered that Taiwan's transfer to the positive list would have a positive economic impact on EU-Taiwanese relations, as Taiwan is a major trading partner of the EU (the 19<sup>th</sup> largest trade partner). Currently the EU is an important destination of Taiwanese citizens travelling overseas. The United Kingdom also granted visa-free travel to Taiwan in March 2009 and Ireland in July 2009.

Transferring Taiwan to the positive list would reinforce regional coherence as the EU grants visa free regime to other countries and entities of the region having a similar level of economic development, such as Hong Kong, Macao, Japan, South Korea and Singapore.

As regards migration, the risk of illegal immigration from Taiwan is very low (45 persons staying illegally on average per year for the period of 2006-2008), as also confirmed by the refusal rate at the border (38 persons on average per year for the period of 2006-2008) and the visa refusal rate (0,25 % in 2008). On that basis, imposing a visa requirement on the nationals of Taiwan is no longer justified.

Concerning document security, Taiwan adopted measures ensuring highly secured ID cards and introduced a new, more secure passport recently. As from the end of 2008, Taiwan issues biometric passports and carries out an improved personalisation process for issuance of the new passports.

In their replies to the Commission questionnaire in view of the regular revision of the Regulation, ten Member States explicitly proposed Taiwan to be transferred to the positive list.

Any visa waiver granted to the citizens of Taiwan should be reciprocated by Taiwan. On this issue Taiwan has expressed the political will to grant a full visa free regime for all EU citizens and has progressively eliminated the visa requirement for nationals of a large majority of EU Member States; currently a visa is still required for citizens of Cyprus, Romania and Bulgaria, although by official letter, Taiwan has clearly indicated its commitment to offer full visa waiver regime for the nationals of these three Member States as well during 2010.

## **2.2. Transfer of other third countries or territories**

The Commission analysed the available information, including CIREFI statistics, gathered on each third country or territory proposed by Member States. Particular attention was paid also to the countries' or territories' level of economic and social development, the risk of illegal immigration to the EU linked to it, to the external relations and the criteria of regional coherence.

The Commission came to the conclusion that other third countries or territories, whose transfer to the positive list had been suggested only by one or in a few cases by two Member States, are not considered at this stage to fulfil the criteria set out by Regulation (EC) No 539/2001. Other third countries or territories could be subject to a future amendment of Regulation (EC) No 539/2001 in the light of the progress they will reach in various areas and the fulfilment of the criteria set out by the Regulation.

## **2.3. Northern Mariana Islands**

Member States drew the attention to the status of the Northern Mariana Islands and suggested it to be removed from Annex I of Regulation (EC) No 539/2001.

The Northern Mariana Islands are a commonwealth in political union with the United States of America, and the head of the state of Northern Mariana is the president of the United States. The territory is represented in the US House of Representatives. In general, United States federal law applies to the country. The Northern Mariana Islands have similar status to that of Guam or Puerto Rico. The citizens of the Islands have US passports.

Following from the above information, the reference to the Northern Mariana Islands should be deleted from Annex I. This will entail that the citizens of the Northern Mariana Islands, as US nationals, enjoy visa-free travel.

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

Member States were consulted.

## **4. Impact assessment**

Not necessary.

## **5. Legal basis**

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

#### **6. Proportionality and subsidiarity principles :**

Regulation (EC) No 539/2001 lists the third countries and territories whose nationals must be in possession of visas when crossing the external borders (the negative list) and those whose nationals 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 EC in accordance with Article 77 (2) (a) of the TFEU.

#### **7. Choice of instruments**

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

#### **8. Budgetary implication**

The proposed amendment has no implication on the EU 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,<sup>4</sup>

After transmission of the proposal to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The composition of the lists of third countries and territories 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 or territories for whom the situation has changed as regards these criteria, should be transferred from one Annex to the other.
- (2) The imposition of the visa requirement on the citizens of Taiwan is no longer justified, as in particular the territory does not represent any risk of illegal immigration or public policy for the EU and in the light of external relations, in accordance with the criteria set out in recital 5 of the Regulation. Consequently this territory should be transferred to Annex II.
- (3) A reference to Northern Mariana should be deleted from Annex I of Regulation (EC) No 539/2001, as the citizens of the territory in question are, as holders of US passports, citizens of the United States which is listed in Annex II.
- (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 latter's association with the implementation, application and development of the Schengen acquis<sup>6</sup>, which falls 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 Agreement<sup>7</sup>.

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<sup>4</sup> OJ C [...], [...], p. [...].

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

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

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

- (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, point (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>,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

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

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<sup>8</sup> OJ L53, 27.2.2008, p.52.  
<sup>9</sup> OJ L53, 27.2.2008, p. 1.  
<sup>10</sup> OJ L83, 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. 1–16.



1. Annex I shall be amended as follows:
  - (a) in Part I, the reference to Northern Mariana shall be deleted;
  - (b) in Part II, the reference to Taiwan shall be deleted.
2. In Annex II the following Part 4 is added:

"4. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE:

Taiwan".

*Article 2*

This Regulation shall enter into force on the twentieth 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*

*For the Council*

*The President*

*The President*