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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,

Proposal for a

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 of Member States and those whose nationals are exempt from that requirement

EXPLANATORY MEMORANDUM

The Commission proposal to amend Regulation (EC) No 539/2001,¹ as last amended by Regulation (EC) No 2414/2001,² pursues a number of distinct objectives:

- follow up the conclusions of the Seville European Council, which gave top priority to reviewing the visa Regulation No 539/2001 to ensure, notably in the light of recent developments, that the annexes to the Regulation comply with the criteria set out in the 5th recital to the Regulation, and in particular the criterion relating to the risk of illegal immigration;
- make a number of technical adaptations needed to respond to the evolution of the international and European legal context;
- embark on a process of reflection on the reciprocity principle and its implications.

Amendment of the annexes in response to the conclusions of the Seville European Council

The third countries whose nationals are subject to the visa requirement, and those exempt from it, are determined in accordance with the methodology defined in the 5th recital to Regulation No 539/2001. This consists of “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”.

The Seville European Council welcomed the fact that the European Union, through its comprehensive plan to combat illegal immigration, now had effective means of managing migratory flows. It called on the Council and the Commission, in their respective areas of competence, to give top priority to a number of measures, one of them being the review of the Annexes to Regulation No 539/2001 before the end of 2002. In July 2002 the Danish Presidency established a roadmap for the measures and initiatives to give effect to the conclusions of the Seville European Council. On 23.7.2002 the Commission sent the Member States a questionnaire to compile information to be used for updating the lists of non-member countries subject to and exempt from the visa requirement. The evaluation of the replies to the questionnaire, after a differentiated analysis of the criteria in the 5th recital to Regulation No 539/2001, produced the conclusion that Ecuador, currently in Annex II, should be transferred to Annex I. The Commission’s proposal to do so is based primarily on considerations relating to illegal immigration, underpinned by figures and statistics from a number of Member States. Data regarding refoulements, expulsions, arrests and criminal convictions are particularly relevant here.

The decision to transfer Ecuador to Annex I to Regulation No 539/2001 must reflect the bilateral visa exemption agreements between Ecuador and the Member States. The date for implementation of the visa requirement in relation to Ecuadorian nationals must therefore be set in such a way that they can abide by the time-limits set for denunciation of these agreements.

¹ OJ L 81, 21.3.2001, p.1.

² OJ L 327, 12.12.2001, p.1.

The purpose of Article 1(1)(b) and (2)(a) of the proposal is to make Ecuador nationals subject to the visa requirement, and Article 3(2) sets a uniform date for the Member States to give effect to the new rules.

Technical adaptations resulting from international law

A number of changes that have taken place since 2001 warrant adaptations that do not affect the fundamental substance of the Regulation or the content of the Annexes to it.

First, there has been a radical change in the international status of East Timor. When Regulation No 539/2001 was adopted, this was still an emerging State and it was quite logical to enter it among the territorial entities in Annex 1. Since then it has acquired full statehood, being admitted to the United Nations on 27.9.2002. East Timor should therefore now be in the first part of Annex I to Regulation No 539/2001 as a fully-fledged state.

The purpose of Article 1(1)(a) is to adapt the reference to East Timor to its status in international law.

There have also been developments in the legal framework for relations between Switzerland and the Union and its Member States as regards free movement of persons, with the free movement agreement that entered into force on 1.6.2002. This agreement is now the basis for free movement without visas for nationals of Switzerland and the Member States of the European Union. Switzerland should therefore no longer be in Annex II to Regulation No 539/2001. This technical adaptation is of the same nature as the one that left Iceland, Liechtenstein and Norway out of Annex II on the basis of the Agreement on the European Economic Area.

The purpose of Article 1(2)(b) is to delete Switzerland from Annex II, which does not reflect the current legal basis for the visa exemption for Swiss nationals.

Scope and implications of reciprocity

The 5th recital to Regulation No 539/2001 mentions reciprocity as one of the criteria for determining the lists of non-member countries whose nationals must be in possession of visas and those whose nationals are exempt from that requirement. Article 1(4) also determines in detail a reciprocity mechanism to be applied if a non-member country in the list in Annex II introduces the visa requirement for nationals of a Member State.

The replies to the Commission's questionnaire revealed that certain Member States' nationals are subject to the visa requirement in certain Annex II countries. Moreover, certain Annex II countries exempt certain Member States' nationals from the visa requirement for a period that is shorter than the period for which the Member States exempt those countries' nationals. These facts emerging from the replies to the questionnaire call for an in-depth review of the meaning and scope of reciprocity, in conjunction with the mechanism provided for by Article 1(4). But the effect of this in-depth review must not be to delay the review of the Annexes to Regulation No 539/2001, given top priority by the Seville European Council.

Article 2 provides that there will be a Commission report at a later date on the review of the reciprocity rule.

Proposal for a

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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

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,³

Having regard to the Opinion of the European Parliament,⁴

Whereas:

- (1) Following the European Council held in Seville on 21 and 22 June 2002, which considered as a top priority the review of Regulation (EC) No 539/2001 by the end of 2002,⁵ the Commission has evaluated the Member States' replies to the questionnaire it sent them in the light of the relevant criteria for the review of Regulation (EC) No 539/2001, namely illegal immigration, public policy and security, the European Union's external relations with third countries, regional coherence and reciprocity. It has found that Ecuador needs to be transferred from Annex II to Annex I to Regulation (EC) No 539/2001 on grounds of illegal immigration.
- (2) Developments in international law, entailing changes in the status or designation of certain States or entities, must be reflected in the Annexes to Regulation (EC) No 539/2001. In Annex I, *East Timor* must be removed from Part 2 (territorial entities) and added to Part 1 (States).
- (3) Since the Agreement on the Free Movement of Persons between the Union and its Member States provides for free movement without visas for nationals of Switzerland and the Union and its Member States, Switzerland should no longer be mentioned in Annex II to Regulation (EC) No 539/2001.
- (4) It is clear from the Member States' replies to the questionnaire that there needs to be an in-depth review of the reciprocity rule, on which the Commission will report at a later date.
- (5) The visa requirement for Ecuador must be applied uniformly by the Member States. A date must accordingly be set from which all Member States must apply the visa requirement,

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ L 81, 21.3.2001, p.1.

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) In Annex I:

(a) East Timor is moved from Part 2 (“Entities and territorial authorities that are not recognised as States by at least one Member State”) to Part 1 (“States”);

(b) Ecuador is added;

(2) In Annex II:

(a) Ecuador is deleted;

(b) Switzerland is deleted.

Article 2

The Commission shall report to the Council and the European Parliament no later than 30 June 2003 on the implications of reciprocity and, if necessary, shall present appropriate proposals.

Article 3

1. This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.
2. The Member States shall put the visa requirement into effect with regard to nationals of Ecuador by 1 April 2003.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President