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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 and those whose nationals are exempt from that requirement

(Kosovo*)

*This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The European Commission launched a visa liberalisation dialogue with Kosovo on 19 January 2012. On 14 June 2012, it presented to Kosovo a roadmap, which identified all the legislation and other measures that Kosovo needed to adopt and implement to advance towards visa liberalisation. The Commission committed to propose visa-free travel for persons from Kosovo for short stays (i.e. up to 90 days in any 180-day period) in the European Union once Kosovo had met all the requirements and other measures set out in the visa liberalisation roadmap.

The Commission insisted on sufficient progress in readmission and reintegration as necessary elements to be put in place before launching a visa liberalisation dialogue with Kosovo. With a set of important reforms implemented since 2011, Kosovo made satisfactory progress in establishing a functional policy framework for the reintegration of returnees in Kosovo, as it had already done in the case of readmission. The Commission continued to monitor and assess, in its regular reports, Kosovo's progress in enhancing its readmission framework and the effective reintegration of returnees.

The visa liberalisation roadmap contained two sections: Section I addressed readmission and reintegration; Section II, four separate 'blocks' of the visa dialogue. The four blocks of the visa roadmap comprised specified requirements in document security; border/boundary and migration management, including asylum; public order and security; and fundamental rights related to the freedom of movement. Kosovo was first requested to adopt or amend in line with the *EU acquis* the legislation set out in the roadmap and then fully implement it.

The Commission conducted the visa dialogue with Kosovo in reinforced consultation with the Council, notably by involving the Council in developing the visa roadmap and with the full participation of Member States' experts in assessing Kosovo's progress in fulfilling the requirements of the roadmap.

The visa dialogue with Kosovo has been conducted without prejudice to Member States' position on status.¹

The European Union Rule of Law Mission in Kosovo (EULEX KOSOVO), in line with its mandate,² has played an important role in monitoring, mentoring and advising Kosovo on adopting and implementing the reforms and fulfilling the requirements set out in the roadmap. Effective cooperation by Kosovo with EULEX, including in discharging its executive mandate, has been essential.

Since launching the visa dialogue, the Commission has presented regular reports to the European Parliament and to the Council on its assessment of Kosovo's fulfilment of the requirements of the roadmap. These reports addressed requirements related both to readmission and reintegration and the different blocks of the visa roadmap. Each report drew upon information provided by Kosovo; assessment missions undertaken by the Commission

¹ The decision on amending Regulation 539/2001 and lifting the EU visa requirement for the persons of Kosovo does not affect the individual positions of the Member States on status.

² Council Decision 2014/349/CFSP of 12 June 2014 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo (), EULEX Kosovo, OJ L 174, 13.6.2014, p. 42.

and Member States' experts to assess Kosovo's progress in the different blocks of the visa dialogue and data provided by EUROPOL, FRONTEX, EASO and EULEX.

The Commission has adopted until now three reports on Kosovo's progress in the visa dialogue — the first one on 8 February 2013,³ the second on 24 July 2014;⁴ the third on 18 December 2015⁵, complemented by the fourth one adopted today.⁶ These reports contained an assessment of progress by Kosovo in fulfilling the requirements of the visa roadmap, recommendations addressed to Kosovo and an assessment of the potential migratory and security impacts of visa liberalisation.

In its third report, the Commission set out eight recommendations corresponding to eight outstanding requirements of the visa roadmap, including four key priorities. It noted the border/boundary delineation agreement with Montenegro should be ratified by Kosovo before visa free status is granted to persons from Kosovo.

In its report accompanying the present proposal, the Commission observed that Kosovo had taken important steps towards fulfilling the requirement of ratifying its border/boundary agreement with Montenegro and fulfilled sufficient elements of building up its track record in the fight against organised crime and corruption.

Based on this assessment and given the outcome of the continuous monitoring and reporting that had been carried out since the launch of the visa liberalisation dialogue with Kosovo, the Commission confirms that Kosovo **has met the requirements of its visa liberalisation roadmap** on the understanding that by the day of the adoption of this proposal by the European Parliament and the Council, Kosovo will have ratified the border/boundary agreement with Montenegro and strengthened its track record in the fight against organised crime and corruption.

Taking account of all the criteria which should be considered when determining on a case-by-case basis the third countries whose nationals are subject to, or exempt from, the visa requirement as laid down in Article -1 of Regulation (EC) No 539/2001 (as introduced by Regulation (EU) No 509/2014), the Commission has decided to present a legislative proposal to amend Regulation (EC) No 539/2001, transferring Kosovo from Annex I, Part 2 to Annex II, Part 4 of this Regulation. As indicated in the roadmap, this amendment only covers the individuals from Kosovo who are holders of a biometric passport issued in compliance with International Civil Aviation Organisation (ICAO) standards and EU standards for security features and biometrics in travel documents⁷.

- **Consistency with existing policy provisions in the policy area**

Council Regulation (EC) No 539/2001 lists the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement. Regulation (EC) No 539/2001 is applied by all Member States – with the exception of Ireland and the United Kingdom – and also by Iceland,

³ COM(2013) 66 final.

⁴ COM(2014) 488 final.

⁵ COM(2015) 906 final, accompanied by SWD(2015) 706 final.

⁶ COM(2016) 276 final.

⁷ In particular Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1.

Liechtenstein, Norway and Switzerland. The Regulation is part of the EU's common visa policy for short stays of 90 days in any 180-day period.

Kosovo is currently listed in Annex I, Part 2 of Regulation (EC) No 539/2001, i.e. among those entities and territorial authorities that are not recognised as states by at least one Member State. Persons from those entities are required to hold a visa when travelling to the territory of EU Member States.

Regulation (EC) No 539/2001 was last amended by Regulation (EU) No 259/2014⁸ when Moldova was transferred to the visa-free list after successfully implementing its Visa Liberalisation Action Plan; and by Regulation (EU) No 509/2014⁹ when five Caribbean¹⁰ and eleven Pacific countries¹¹, as well as Colombia, Peru and the United Arab Emirates were exempted from the visa requirement – subject to the conclusion of visa waiver agreements between the EU and the respective third countries – following a periodical review of the visa lists. On 9 March 2016 and 20 April 2016, the Commission made proposals to amend Regulation (EC) No 539/2001, transferring – respectively - Georgia¹² and Ukraine¹³ to the visa-free list.

The criteria which should be taken into account when determining – based on a case-by-case assessment – the third countries whose nationals are subject to, or exempt from, the visa requirement are laid down in Article -1 of Regulation (EC) No 539/2001. They include “illegal immigration, public policy and security, economic benefit, in particular in terms of tourism and foreign trade, and the Union's external relations with the relevant third countries, including in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity”¹⁴. Particular attention should be paid to the security of travel documents issued by the third countries concerned.

Kosovo has already exempted all EU citizens from the visa requirement for stays of up to 90 days within 6 months. Should this decision be revoked or should the visa-free regime be abused, the reciprocity and suspension mechanisms of Regulation (EC) No 539/2001, as amended by Regulation xxx can be activated.

- **Consistency with other Union policies**

On 6 April 2016, the Commission proposed setting up an EU Entry/Exit System (EES) to strengthen the Schengen area's external borders¹⁵. The main objectives of this proposal are to

⁸ Regulation (EU) No 259/2014 of the European Parliament and of the Council of 3 April 2014 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, OJ L 105, 8.4.2014, p. 9.

⁹ Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 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, OJ L 149, 20.5.2014, p. 67.

¹⁰ Dominica, Grenada, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago.

¹¹ Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, Vanuatu.

¹² COM(2016) 142 final.

¹³ COM(2016) 236 final.

¹⁴ Council Regulation (EC) No 539/2001 of 15 March 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.

¹⁵ Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing

improve the quality of border checks for third country nationals and to ensure a systematic and reliable identification of overstayers. The future EES will thus be an important element to ensure lawful use of the visa-free stays in the Schengen area by third country nationals and to contribute to preventing irregular migration of nationals from visa-free countries.

Furthermore, in its Communication of 6 April 2016¹⁶, the Commission announced that it will assess the need, feasibility and proportionality of the establishment of an EU Travel Information and Authorisation System (ETIAS). The Commission has committed to explore still in 2016 whether such an alternative layer of control for visa-free nationals is feasible and proportional, and will effectively contribute to maintaining and strengthening the security of the Schengen area.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

As the proposal will amend the EU's common visa policy, the legal basis for the proposal is point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation will constitute a development of the Schengen *acquis*.

• Subsidiarity, proportionality and choice of the instrument

As Regulation (EC) No 539/2001 is a legal act of the EU, it can only be amended by way of an equivalent legal act. Member States cannot act individually to achieve the policy objective. No other (non-legislative) options to achieve the policy objective are available.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

Regular discussions with Member States in the Council Working Party on the Western Balkans (COWEB), as well as regular exchanges with the European Parliament on the visa liberalisation process have taken place.

• Collection and use of expertise

The Commission has collected comprehensive data on Kosovo's implementation of all requirements of the visa liberalisation roadmap. The Commission's fourth report is accompanied by a Commission staff working document setting out the potential migratory and security impacts of visa liberalisation for Kosovo, as well as the set of measures that Kosovo has implemented since December 2015 to prevent an irregular migration crisis.¹⁷

• Impact assessment

In the above staff working document, the Commission provided an updated analysis and statistical information on the possible migratory and security impacts of visa liberalisation for persons from Kosovo, as well as the set of measures that Kosovo has implemented since

the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes, COM(2016) 194 final.

¹⁶ Communication from the Commission to the European Parliament and Council, "Stronger and Smarter Information Systems for Borders and Security", COM(2016) 205 final.

¹⁷ SWD(2016) 160 final.

December 2015 to prevent an irregular migration crisis, based on input provided by relevant EU agencies and other stakeholders. No further impact assessment is necessary.

- **Fundamental rights**

This proposal has no negative consequences for the protection of fundamental rights in the European Union. The fulfilment of the benchmarks of the visa liberalisation roadmap will improve the protection of human rights in Kosovo.

4. BUDGETARY IMPLICATIONS

n/a

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The amended Regulation will be directly applicable from the date of its entry into force and will be implemented immediately by Member States. No implementation plan is necessary.

The Commission will continue to actively monitor Kosovo's process of ratifying its border/boundary agreement with Montenegro and the development of its track record in the fight against organised crime and corruption.

The ongoing implementation by Kosovo of all requirements set out in the four blocks of the visa roadmap, as well as reintegration and readmission, will be monitored in the post-visa liberalisation monitoring mechanism,¹⁸ the Stabilisation and Association Process and, if necessary, through *ad hoc* follow-up mechanisms. Kosovo should ensure that effective measures remain in place to prevent abuse of the visa-free scheme. Among others, Kosovo should organise targeted information campaigns aiming to clarify the rights and obligations of visa-free travel to the Schengen area and the rules regulating access to the EU labour market. The Commission will continue to monitor and do its utmost to support Kosovo in the continuous fulfilment of the requirements of the visa roadmap.

- **Detailed explanation of the specific provisions of the proposal**

Regulation (EC) No 539/2001 will be amended, transferring Kosovo from Annex I, Part 2 (visa-required list) to Annex II, Part 4 (visa-free list). A footnote will be added specifying that the visa exemption will be limited to holders of biometric passports issued in line with the standards of International Civil Aviation Organisation (ICAO) and EU standards for security features and biometrics in travel documents (Council Regulation (EC) No 2252/2004).

¹⁸ Commission Statement on a Monitoring Mechanism of 8 November 2010, 2010/0137 (COD).

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(Kosovo*)

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 point (a) of Article 77(2) 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) Council Regulation (EC) No 539/2001¹⁹ lists the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement. The composition of the lists of third countries in Annexes I and II should be, and should remain, consistent with the criteria set out therein. References to third countries in respect of which the situation has changed as regards those criteria should be transferred from one annex to the other, as appropriate.
- (2) The criteria which should be taken into account when determining – based on a case-by-case assessment – the third countries whose nationals are subject to, or exempt from, the visa requirement are laid down in Article -1 of Regulation (EC) No 539/2001. They include “illegal immigration, public policy and security, economic benefit, in particular in terms of tourism and foreign trade, and the Union’s external relations with the relevant third countries, including in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity”.
- (3) [Kosovo has met the requirements of its visa liberalisation roadmap. On the basis of this assessment and taking account of all the criteria listed in Article -1 of Regulation (EC) No 539/2001, it is appropriate to exempt persons from Kosovo from the visa requirement when travelling to the territory of the Member States.]

¹⁹ Council Regulation (EC) No 539/2001 of 15 March 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, OJ L 81, 21.03.2001, p. 1.

- (4) Kosovo should thus be transferred from Annex I, Part 2 to Regulation (EC) No 539/2001 to Annex II, Part 4 thereof. This visa waiver should apply only to holders of biometric passports issued in line with the standards of International Civil Aviation Organisation (ICAO) and Council Regulation (EC) No 2252/2004²⁰.
- (5) The visa exemption is dependent upon the continued implementation of the requirements of the visa liberalisation roadmap. The Commission will actively monitor the implementation of these requirements through the post-visa liberalisation mechanism. The visa exemption may be suspended by the EU in line with the suspension mechanism established by Article 1a of Regulation (EC) No 539/2001, as amended by Regulation xxx should the conditions set out therein be met.
- (6) 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/EC²¹. The United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (7) 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/EC²². Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (8) As regards Iceland and Norway, this Regulation constitutes a development of 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 association of those two States with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in point B of Article 1, of Council Decision 1999/437/EC²³.
- (9) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning 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*, which fall within the area referred to in point B of Article 1, of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC²⁴.
- (10) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed between the

²⁰ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1.

²¹ 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*, OJ L 131, 1.6.2000, p. 43.

²² 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*, OJ L 64, 7.3.2002, p. 20.

²³ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*, OJ L 176, 10.7.1999, p. 31.

²⁴ 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.

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 point B of Article 1, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU²⁵,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(a) in Annex I, Part 2 ("ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE"), the reference to Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 is deleted.

(b) in Annex II, Part 4 ("ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE"), the following reference is inserted:

“Kosovo* (**)”

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

** The exemption from the visa requirement is limited to the holders of biometric passports issued in line with Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1.

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.

²⁵ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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*, relating to the abolition of checks at internal borders and movement of persons, OJ L 160, 18.6.2011, p. 19.

Done at Brussels,

For the European Parliament
The President

For the Council
The President