Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 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 (codification)

REGULATION (EU) 2018/1806 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 November 2018

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

(codification)

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[(1)],

Whereas:

(1) Council Regulation (EC) No 539/2001[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) This Regulation provides for full harmonisation as regards the third countries whose nationals are subject to a requirement to be in possession of a visa for the crossing of Member States' external borders (also referred to herein as ‘the visa requirement’) and those whose nationals are exempt from that requirement.

(3) The determination of the third countries whose nationals are subject to, or exempt from, the visa requirement should be made on the basis of a considered, case-by-case assessment of a variety of criteria. That assessment should be made periodically and could lead to legislative proposals to amend Annex I to this Regulation, which lists the third countries whose nationals are required to be in possession of a visa when crossing the external borders of the Member States, and Annex II to this Regulation, which lists the third countries whose nationals are exempt from the requirement to be in possession of a visa when crossing the external borders of the Member States for stays of no more than 90 days in any 180-day period, notwithstanding the possibility of having country-specific amendments to those Annexes in particular circumstances, for instance as a result of a visa liberalisation process or as the ultimate consequence of a temporary suspension of the exemption from the visa requirement (also referred to herein as ‘the visa exemption’).

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2018/1806 of the European Parliament and of the Council. (See end of Document for details)*

(4) The composition of the lists of third countries in Annexes I and II should be, and should remain, consistent with the criteria set out in this Regulation. 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.

(5) Developments in international law entailing changes in the status or designation of certain States or entities should be reflected in Annexes I and II.

(6) As the Agreement on the European Economic Area[(4)] exempts nationals of Iceland, Liechtenstein and Norway from the visa requirement, those countries should not be included in the list in Annex II.

(7) Since the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, on the free movement of persons[(5)] provides for free movement without visas for nationals of Switzerland and of the Member States, Switzerland should not be included in the list in Annex II.

(8) As regards recognised refugees and stateless persons, without prejudice to obligations under international agreements signed by the Member States and in particular the European Agreement on the Abolition of Visas for Refugees of the Council of Europe, signed at Strasbourg on 20 April 1959, the decision as to the visa requirement or exemption should be based on the third country in which those persons reside and which issued their travel documents. However, given the differences in the national law applicable to recognised refugees and to stateless persons, Member States should be able to decide whether those categories of persons should be exempted, where the third country in which those persons reside and which issued their travel documents is a third country whose nationals are exempt from the visa requirement.

(9) In accordance with Regulation (EC) No 1931/2006 of the European Parliament and of the Council[(6)] an exemption from the visa requirement should be laid down for holders of a local border traffic permit.

(10) It should be possible for Member States to provide for exemptions from the visa requirement for holders of certain passports other than ordinary passports.

(11) In specific cases where special visa rules are warranted, it should be possible for Member States to exempt certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.

(12) It should be possible for Member States to exempt from the visa requirement recognised refugees, all stateless persons, both those covered by the United Nations Convention relating to the Status of Stateless Persons of 28 September 1954 and those outside of the scope of that Convention, and school pupils travelling on school excursions, where the persons of these categories reside in a third country that is included in the list in Annex II to this Regulation.

(13) The arrangements governing exemptions from the visa requirement should fully reflect actual practices. Certain Member States grant exemptions from the visa requirement for nationals of third countries included in the list of third countries whose nationals are required to be in possession of a visa when crossing the external borders of the

Member States and who are members of the armed forces travelling on North Atlantic Treaty Organization (NATO) or Partnership for Peace business. For reasons of legal certainty, those exemptions, which are based on international obligations external to Union law, should be referred to in this Regulation.

(14) Full visa reciprocity is an objective which the Union should pursue in a proactive manner in its relations with third countries, thus contributing to improving the credibility and consistency of the Union's external policy.

(15) Provision should be made for a Union mechanism enabling the principle of reciprocity to be implemented if one of the third countries included in the list in Annex II decides to make the nationals of one or more Member States subject to a visa requirement. That mechanism should provide for a Union response as an act of solidarity, if such a third country applies a visa requirement for nationals of at least one Member State.

(16) Upon receipt of a notification from a Member State that a third country included in the list in Annex II applies a visa requirement for nationals of that Member State, all Member States should react in common, thus providing a Union response to a situation which affects the Union as a whole and subjects its citizens to different treatment.

(17) In order to ensure the appropriate involvement of the European Parliament and of the Council in the second phase of application of the reciprocity mechanism, given the particularly sensitive political nature of the suspension of the exemption from the visa requirement for all the nationals of a third country included in the list in Annex II and its horizontal implications for the Member States, the Schengen associated countries and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of certain elements of the reciprocity mechanism. Conferring such power on the Commission takes into account the need for political discussion on the Union policy on visas in the Schengen area. It reflects also the need to ensure sufficient transparency and legal certainty in the application of the reciprocity mechanism to all the nationals of the third country concerned, in particular through the corresponding temporary amendment of Annex II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(7)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(18) This Regulation should provide for a mechanism for the temporary suspension of the exemption from the visa requirement for a third country included in the list in Annex II (‘the suspension mechanism’) in an emergency situation, where an urgent response is needed in order to solve the difficulties faced by at least one Member State, and taking the overall impact of the emergency situation on the Union as a whole into account.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2018/1806 of the European Parliament and of the Council. (See end of Document for details)*

(19) In order to ensure the efficient application of the suspension mechanism and of certain provisions of the reciprocity mechanism, and in particular in order to allow for all relevant factors and the possible implications of the application of those mechanisms to be adequately taken into account, implementing powers should be conferred on the Commission with regard to the determination of the categories of nationals of the third country concerned who should be subject to a temporary suspension of the exemption from the visa requirement within the framework of the reciprocity mechanism, and of the corresponding duration of that suspension, as well as with regard to the suspension mechanism. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[8]. The examination procedure should be used for the adoption of such implementing acts.

(20) It is necessary to avoid and counter any abuse resulting from an exemption from the visa requirement for short-stay visits for nationals of a third country where they pose a threat to the public policy (ordre public) and the internal security of the Member State concerned.

(21) The suspension mechanism should make it possible for Member States to notify circumstances leading to a possible suspension and for the Commission to trigger the suspension mechanism on its own initiative.

(22) In particular, the use of the suspension mechanism should be facilitated by short reference periods and deadlines, allowing for a fast procedure, and the possible grounds of suspension should include a decrease in cooperation on readmission as well as a substantial increase in risks to the public policy or internal security of Member States. That decrease in cooperation should cover a substantial increase in the refusal rate of readmission applications, including for third-country nationals having transited through the third country concerned, where a readmission agreement concluded between the Union or a Member State and that third country provides for such a readmission obligation. The Commission should also be able to trigger the suspension mechanism in the event that the third country fails to cooperate on readmission, in particular where a readmission agreement has been concluded between the third country concerned and the Union.

(23) For the purposes of the suspension mechanism, a substantial increase indicates an increase exceeding a threshold of 50 %. It could also indicate a lower increase if the Commission deemed it applicable in the particular case notified by the Member State concerned.

(24) For the purposes of the suspension mechanism, a low recognition rate indicates a recognition rate of asylum applications of around 3 or 4 %. It could also indicate a higher recognition rate if the Commission deemed it applicable in the particular case notified by the Member State concerned.

(25) It is necessary to avoid and counter any abuse of the visa exemption where it leads to an increase in migratory pressure, resulting from, for example, an increase in unfounded asylum applications, and also when it leads to unfounded applications for residence permits.

(26) With a view to ensuring that the specific requirements which were used to assess the appropriateness of a visa exemption, granted as a result of a successful conclusion of a visa liberalisation dialogue, continue to be fulfilled over time, the Commission should monitor the situation in the third countries concerned. The Commission should pay particular attention to the situation of human rights in the third countries concerned.

(27) The Commission should report regularly to the European Parliament and to the Council, at least once a year, for a period of seven years after the entry into force of visa liberalisation for a particular third country, and thereafter whenever the Commission considers it necessary, or upon request by the European Parliament or by the Council.

(28) The Commission should, before taking any decision to temporarily suspend the visa exemption for nationals of a third country, take into account the situation of human rights in that third country and the possible consequences of a suspension of the visa exemption for that situation.

(29) The suspension of the exemption from the visa requirement by an implementing act should cover certain categories of nationals of the third country concerned, by reference to the relevant types of travel documents and, where appropriate, to additional criteria, such as persons travelling for the first time to the territory of the Member States. The implementing act should determine the categories of nationals to which the suspension should apply, taking into account the specific circumstances notified by one or several Member States or reported by the Commission and the principle of proportionality.

(30) In order to ensure the appropriate involvement of the European Parliament and of the Council in the implementation of the suspension mechanism, given the politically sensitive nature of a suspension of an exemption from the visa requirement for all nationals of a third country included in the list in Annex II to this Regulation and its horizontal implications for the Member States and the Union itself, in particular for their external relations and for the overall functioning of the Schengen area, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the temporary suspension of the exemption from the visa requirement for the nationals of the third countries concerned. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(31) With a view to ensuring that the visa regime is administered openly and that the persons concerned are informed, Member States should communicate to the Commission and to the other Member States the measures which they take pursuant to this Regulation. For the same reasons, that information should also be published in the *Official Journal of the European Union*.