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2013/0415 (COD)

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**

## EXPLANATORY MEMORANDUM

### 1. Context of the proposal

In proposing this amendment to Regulation (EC) No 539/2001<sup>1</sup> as last amended by Regulation (EU) No 1211/2010<sup>2</sup>, the Commission is pursuing the objective of adjusting the annexes to the Regulation, taking into consideration the progress made by the Republic of Moldova in its visa liberalisation dialogue during the last three years, and transferring this country from Annex I (the list of third countries whose nationals must be in possession of visas when crossing the external borders of Member States) to Annex II (the list of those third countries whose nationals are exempt from that requirement) of the Regulation; this transfer is in line with the political commitment taken by the European Union in the Joint Declaration approved at the Prague Eastern Partnership Summit on 7 May 2009, underlying the importance of citizens' mobility and visa liberalization in a safe environment. The EU committed to undertake gradual steps towards full long-term visa liberalisation for partner countries, provided that conditions for well-managed and secure mobility are in place. In the Joint Declaration on the occasion of the EU-Republic of Moldova Cooperation Council meeting on 21 December 2009, it was agreed to launch a dialogue examining the conditions for future visa-free travel of Moldovan citizens to the EU.

#### **General context and grounds for the proposal**

In 2001, in accordance with Article 62 (2) (b) (i) of the Treaty Establishing the European Community, the Council adopted Council Regulation (EC) No 539/2001 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.

As stated in Recital 5 of Regulation 539/2001, "the determination of those third countries whose nationals 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, 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 concerned.

As the criteria set out in Regulation (EC) No 539/2001 can evolve over time in relation to third countries, the composition of the negative and positive lists should be reviewed when appropriate.

Regulation (EC) No 539/2001 was last amended in 2010 (twice) reflecting, on the one hand, the outcome of the visa liberalisation dialogues with the Western Balkan countries by transferring Albania and Bosnia Herzegovina to Annex II; and, on the other hand, the regular revision of the lists of countries by transferring Taiwan to Annex II. The Commission proposed in November 2012<sup>3</sup> another regular revision of the lists of countries. Negotiations are on-going on this proposal. The next regular revision is planned for early 2014 and will

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

<sup>2</sup> OJ L 339, 22.12.2010, p. 6.

<sup>3</sup> COM (2012) 650 final

take into consideration economic impacts of visa liberalisation, as announced by the Commission in its November 2012 Communication about visas and growth<sup>4</sup>.

The present review of the Regulation aims at ensuring that the composition of the lists of third countries complies with the criteria set out in recital (5) of the Regulation in the light of progress achieved by the Republic of Moldova in the framework of its visa liberalisation dialogue.

## 2. Elements of the proposal

Following explanatory talks in Chisinau on 2 March 2010, a Visa Dialogue was formally opened on 15 June 2010, at the margins of the EU-Republic of Moldova Cooperation Council meeting in Luxembourg. During September 2010, expert visits to the Republic of Moldova have been carried out to conduct a detailed "gap analysis" which provided a comprehensive assessment of the situation in each block of issues covered by the Visa Dialogue (Document security, including biometrics; Irregular immigration, including readmission; Public order and security; External relations and fundamental rights) and was presented to the Council, at working group level, in October 2010. In line with the Council (Foreign Affairs) Conclusions of 25 October 2010 on the Republic of Moldova and on the Eastern Partnership, a draft Action Plan on Visa Liberalisation for the Republic of Moldova (VLAP) has been discussed and was endorsed by the Council on 16 December 2010.

The Moldovan Government adopted the National Annotated Action Plan on 17 February and presented it at the Senior Officials Meeting on 18 February 2011.

The First Progress Report<sup>5</sup> on the implementation by the Republic of Moldova of the Visa Liberalisation Action Plan was presented on 16 September 2011.

The Second Progress Report<sup>6</sup> on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation was issued on 9 February 2012. A Senior Officials Meeting took place on 27 February 2012 during which the Second Progress Report was presented and the next steps in the process were discussed.

The Third Progress Report<sup>7</sup> on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation was issued on 22 June 2012. It was the third and final progress report on the first phase of the VLAP and it presented a consolidated assessment by the Commission of the progress made by the Republic of Moldova in meeting the first phase benchmarks of the VLAP related to the establishment of the legislative, policy and institutional framework.

The wider assessment of possible migratory and security impacts of future visa liberalisation for Moldovan citizens travelling to the EU was issued on 3 August 2012 by the Commission involving relevant EU agencies and stakeholders.<sup>8</sup>

On 19 November 2012 the Council adopted Conclusions in line with the Commission's assessment that the Republic of Moldova has fulfilled all the benchmarks under the first phase of the Action Plan on Visa Liberalisation. The required legislative, policy and institutional framework has been put in place. Subsequently, the assessment of the benchmarks set out under the second phase was launched.

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<sup>4</sup> COM (2012) 649 final

<sup>5</sup> SEC (2011) 1075 final

<sup>6</sup> SWD (2012) 12 final

<sup>7</sup> COM (2012) 348 final

<sup>8</sup> COM(2012) 443 final

A Senior Officials Meeting took place on 28 January 2013 during which the objectives of the second phase were presented alongside the preparation of the next evaluation missions. Evaluation missions on Blocks 1, 2, 3 and 4 of the VLAP were organised from 18 February to 15 March 2013. The evaluation missions were unparalleled in terms of scope and details of the assessment – 4 weeks involving 12 experts from Member States accompanied by officials of the Commission and the EEAS. The purpose of these expert missions was to assess the state of fulfilment of the second phase benchmarks of the Action Plan on Visa Liberalisation and assess the state of implementation of the legislative, policy and institutional framework, in compliance with the European and international standards. The expert reports were finalised in May 2013. The Fourth Progress Report was issued on 21 June 2013<sup>9</sup> and it presented the state of the implementation of the legislative and institutional framework, the functioning of the institutions and the level of inter-agency coordination.

The Fifth Progress Report<sup>10</sup> adopted on 15 November 2013 presents the level to which recommendations issued in the Fourth Report have been implemented and the overall fulfilment of the second phase VLAP benchmarks. Special attention was paid to the sustainability of the reforms and the results achieved, including through meaningful staffing, capacity and funding. It includes an assessment on the state of the fulfilment of the recommendations addressed to the Republic of Moldova contained in the Assessment of Impacts Report of August 2012. The Commission concluded in the report that the Republic of Moldova met all the benchmarks set in the four blocks of the second phase of the VLAP, and that the Republic of Moldova has allocated appropriate financial and human resources to ensure that the reforms are sustainable.

Since the launching of the EU-Republic of Moldova Visa Dialogue in June 2010 and the presentation to the Moldovan authorities of the Action Plan on Visa Liberalisation in January 2011, the Commission has been regularly reporting to the European Parliament and to the Council on the progress made by the Republic of Moldova in fulfilling the benchmarks identified under the four blocks of the first and second phase of the VLAP.

Over and above this extensive reporting process related to the VLAP, the Commission has also continued to monitor the progress made by the Republic of Moldova in relevant areas of the VLAP through:

- the Senior Officials Meeting of the EU-Republic of Moldova Visa Dialogue;
- the EU-Republic of Moldova Joint Sub-Committee n°3;
- the Senior Officials Meeting of the EU-Republic of Moldova Mobility Partnership;
- the EU-Republic of Moldova Human Rights Dialogue;
- the EU-Republic of Moldova Joint Readmission Committee; and
- the EU-Republic of Moldova Joint Visa Facilitation Committee.

In each of these committees and dialogues the state of the cooperation between the EU and the Republic of Moldova is regularly addressed. During the last Visa Facilitation and Readmission Joint Committees that took place on 12 June 2013 in Brussels, with the participation of Member States, the Commission registered an overall very satisfactory implementation of both agreements.

The original EU-Republic of Moldova Visa Facilitation Agreement entered into force on 1 January 2008. It provided all the citizens of the Republic of Moldova (hereinafter 'Moldovan citizens') with a reduced visa fee and accelerated issuing procedures and specific categories of Moldovan applicants with a visa fee waiver, wider issuance of multiple-entry visas with a

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<sup>9</sup> COM(2013) 459 final

<sup>10</sup> *Not published yet, a reference to be added at a later stage*

long period of validity, and simplified supporting document requirements to prove the purpose of travel. It also contained a visa waiver for holders of diplomatic passports.

On 1 July 2013, an upgraded Visa Facilitation Agreement with the Republic of Moldova entered into force. This new agreement offers additional facilitations and tangible benefits to Moldovan citizens: in particular, (1) more categories of visa applicants benefit from the facilitations foreseen in the initial agreement, (2) the provisions on the issuing of multiple-entry visas with a long period of validity to certain categories of bona fide travellers leave less discretion to the consuls, (3) the cooperation of Member States with external service providers is subjected to a clear legal framework, and (4) holders of biometric service passports are exempted from the visa obligation.

The Mobility Partnership with the Republic of Moldova was officially launched in September 2008 in Chisinau. It involves 15 Member States (Bulgaria, Czech republic, Germany, Greece, France, Italy, Cyprus, Latvia, Hungary, Poland, Portugal, Romania, Slovenia, Slovakia and Sweden) and two EU agencies (FRONTEX and the European Training Foundation), who have worked together to present a coherent approach to cooperation with a partner country. There is a wide range of initiatives implemented in the context of the Partnership and it fully reflects the four dimensions of the Global Approach to Migration and Mobility (GAMM): enhancing legal migration and facilitating mobility, preventing and combatting irregular migration and trafficking in human beings, maximising the development impact of migration and mobility, and promoting international protection.

The settlement of the Transnistrian issue is not a condition for visa liberalisation under the VLAP. Furthermore, in the VLAP there is no reference to territorial application. Visa liberalisation will benefit the citizens that are holders of a biometric passport of the Republic of Moldova.

The present proposal reflects the outcome of the above-mentioned processes: taking into account also that the Visa Facilitation and Readmission Agreements with the Republic of Moldova have been implemented in a satisfactory way, the Commission proposes to transfer the Republic of Moldova, which is meeting all the VLAP benchmarks, from the negative to the positive list, however with a limitation of this visa waiver to the holders of biometric passports issued in accordance with ICAO standards.

### 3. Next Steps

The EU-Republic of Moldova Visa Dialogue proved to be an important and particularly effective tool for advancing far-reaching and difficult reforms in the Justice and Home Affairs area, but also beyond impacting areas such as rule of law and justice reform, including sound party financing, review of immunities and administrative modernisation. The progress achieved by the Republic of Moldova during the last three years in all the areas covered by the four blocks of the VLAP is steady and effective. It demonstrates the commitment and the constant efforts made by the successive Moldovan governments and all State institutions in making the fulfilment of the VLAP benchmarks a national top priority.

It is relevant to recall that the reforms in several key areas covered by the VLAP were achieved in the first half of 2013 despite an unstable political situation that lasted for several months, which indicate an appropriate level of good governance and maturity of the public administration.

Imminent amendments to the EU visa rules introduce a new visa waiver suspension mechanism, which contributes to preserving the integrity of the visa liberalisation process and ensures as a measure of last resort that visa free travel shall not lead to irregularities or abuse.

The Commission considers that since last June the Republic of Moldova has made the necessary progress to ensure the effective and sustainable implementation of the reforms it had to conduct in order to meet the VLAP benchmarks. All actions required following the 4<sup>th</sup> VLAP progress report have been accomplished. The functioning of the legislative and policy framework, the set-up of the institutional and organisational principles, and the implementation of the procedures throughout the four blocks are in compliance with the relevant European and international standards.

Building upon the present assessment, and referring to the outcome of the continuous monitoring and reporting made since the launch of the EU-Republic of Moldova Visa Dialogue, the Commission considers that the Republic of Moldova meets all the benchmarks set in the four blocks of the second phase of the VLAP. Taking into account the overall relations between the EU and the Republic of Moldova and their dynamics, the Commission therefore presents the necessary legislative proposal to amend EC Regulation 539/2001, in accordance with the agreed methodology under the VLAP.<sup>11</sup>

In this context, it is also worth looking at the available statistical data. About 230,000 Moldovans were legally residing at the end of 2012 in the EU<sup>12</sup>, according to data on valid residence permits. Statistical data show that the risk of irregular migration to the EU from Moldovan citizens has decreased in recent years: since 2008, when 6,830 irregular Moldovan immigrants were apprehended, the number of apprehensions has decreased every year, to reach 3,070 in 2012, i.e. a decrease of 55%. Asylum applications have also halved (- 48%) over that period: 435 asylum applications were made by Moldovan citizens in 2012 down from 837 in 2008. The ratio of effected returns compared to the number of return decisions issued is improving and reached 73% in 2012, compared to about 50% over the four previous years. Finally, while the number of short-stay Schengen visa applications has remained stable over the past three years (oscillating between 50,000 and 55,000), the refusal rate for visa applications has decreased sharply from 11.4% in 2010 to 6.5% in 2012. These data confirm altogether that the migratory risk represented by Moldovan citizens has substantially decreased. The amendments to the EU visa rules will introduce a new visa waiver suspension mechanism in Regulation 539/2001, which contributes to preserving the integrity of the visa liberalisation process and ensures, as a measure of last resort, that visa-free travel will not lead to irregularities or abuse.

The Commission will continue actively to monitor the continuous implementation by the Republic of Moldova of all benchmarks under the four blocks of the VLAP in the framework of the existing Partnership and Cooperation structures and dialogues, and, if necessary, through ad hoc follow-up mechanisms.

As with the transfers of Western Balkan countries to the visa-free regime, there is no reason to condition the implementation of the visa waiver for the Republic of Moldova on the conclusion of a visa waiver agreement with the EU, taking into account the fact that the Republic of Moldova has already exempted all EU citizens from the visa requirement and that, should the visa-free regime be abused, the suspension mechanism would provide an effective solution.

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<sup>11</sup> (\*) *The text of the Fifth Progress Report is currently under the ISC, should the wording of the conclusions change, the text will have to be aligned accordingly*

<sup>12</sup> The data presented in this section cover all the EU countries except UK, Ireland and Croatia; and include also data for Switzerland, Norway, Iceland and Lichtenstein. All data are from Eurostat, except the data on visa applications and refusals, collected by DG HOME.

4. Main organisations/experts consulted

Member States were consulted.

5. Impact assessment

Not necessary.

6. Legal basis

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

7. Proportionality and subsidiarity principles

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

8. Choice of instruments

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

9. Budgetary implication

The proposed amendment has no implication on the European Union 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,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The composition of the lists of third countries in Annexes I and II to Council Regulation (EC) N° 539/2001<sup>13</sup> should be, and should remain, consistent with the criteria laid down therein. Third countries for which the situation has changed as regards these criteria, should be transferred from one Annex to the other.
- (2) In line with the Joint Declaration approved at the Prague Eastern Partnership Summit on 7 May 2009, and the completion by the Republic of Moldova of its Visa Liberalisation Action Plan, the Commission considers that the Republic of Moldova meets all the benchmarks set out in the Visa Liberalisation Action Plan.
- (3) Meeting all the benchmarks, the Republic of Moldova should be transferred to Annex II of Regulation (EC) No 539/2001. This visa waiver should apply to holders of biometric passports issued by the Republic of Moldova in line with standards of the International Civil Aviation Organisation (ICAO).
- (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>14</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>15</sup>.
- (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

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<sup>13</sup> 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, 21.3.2001, p. 1).

<sup>14</sup> OJ L 176, 10.7.1999, p. 36.

<sup>15</sup> OJ L176, 10.7.1999, p. 31.



the Schengen *acquis*<sup>16</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>17</sup>.

- (6) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis*, as provided for by 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*<sup>18</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>19</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>20</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>21</sup>; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (9) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise apply before they join the Schengen area related to, the Schengen *acquis*, within the meaning of Article 3(1) of the 2003 Act of Accession.
- (10) As regards Bulgaria and Romania, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(1) of the 2005 Act of Accession.
- (11) As regards Croatia, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(1) of the 2011 Act of Accession,

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<sup>16</sup> OJ L 53, 27.2.2008, p.52.

<sup>17</sup> OJ L 53, 27.2.2008, p. 1.

<sup>18</sup> OJ L 160, 18.6.2011, p. 21.

<sup>19</sup> OJ L 160, 18.6.2011, p. 19.

<sup>20</sup> OJ L 131, 1.6.2000, p. 43.

<sup>21</sup> OJ L 64, 7.3.2002, p. 20.

HAVE ADOPTED THIS REGULATION:

*Article 1*

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

1. in Annex I Part 1, the reference to Moldova is deleted.
2. in Annex II, Part 1, the following is inserted:

"Moldova, Republic of\*

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\* The visa waiver will be limited to the holders of biometric passports issued in line with standards of the International Civil Aviation Organisation (ICAO)."

*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*  
*The President*

*For the Council*  
*The President*