



Ad-Hoc Query on exemption from the visa requirement for "other persons" within the meaning of Article 1 para. 2 of Council Regulation (EC) Nr. 539/2001

Requested by DE EMN NCP on 16 September 2010

Compilation produced on 11th November 2010

Responses from [Austria](#), [Belgium](#), [Estonia](#), [Finland](#), [Germany](#), [Latvia](#), [Lithuania](#), [Netherlands](#), [Slovenia](#), [Sweden](#), (10 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.







1. Background Information

Pursuant to Article 1 para. 2 3rd subparagraph of Council Regulation (EC) No 539/2001 "...other persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State" are exempt from the visa requirement when crossing the external borders of the European Union for intended stays of no longer than three months.

This group of persons, just like recognised refugees and stateless persons, were incorporated into Council Regulation (EC) No 539/2001 by virtue of Article 1 para. 1 subparagraph b of Council Regulation (EC) No 1932/2006. The backdrop to and recital for the provision governing "other persons" is a specific feature of the Nationality Law in a Member State.

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2. Responses¹

| | | Wider Dissemination? ² | How do public authorities and Border Police agencies of the Member States construe the provision set forth in Article 1 para. 2, 3rd subparagraph of Council Regulation (EC) No 539/2001 in relation to “other persons” who are exempt from the visa requirement? N.B. This group of persons who are exempt from the visa requirement could be construed narrowly against the backdrop of the justification given in relation to Article 1 para. 1 subparagraph b of Council Regulation (EC) No 1932/2006. Alternatively, groups of persons who are exempt from the visa requirement could be construed broadly as meaning “all other persons” who fulfil the requirements of Article 1 para 2, 3rd subparagraph of Council Regulation (EC) No 539/2001 (which also includes, inter alia, persons who have been granted a residence permit in a Member State having been eligible for subsidiary protection in implementing Article 2 (e) of Council Directive 2004/83/EC). |
|---|---------|-----------------------------------|---|
|  | Austria | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Belgium | Yes | The scope of art. 1(2), 3 rd indent, of regulation 539/2001 is in our view very limited: the persons concerned usually have a residence permit for a Schengen country, so they don't need a visa anyway on the basis of article 21(1) of the Convention implementing the Schengen Agreement. The added value of article 1(2), 3 rd indent, is mainly for the situation where the person concerned is residing in a member state who is not yet applying Schengen (RO, BG, CY). Keeping in mind the rare application of this provision, we have no specific interpretation for “other persons who do not hold the nationality of any country”, this is in our view the same as stateless persons. As for persons who have been granted subsidiary protection: they maintain their original nationality (contrary to refugees), so they fall outside the scope of this article. |
|  | Estonia | Yes | This group of persons was added to the regulation at the suggestion of EE and LV. EE and LV both have a number of residents who do not hold the citizenship of any country (but are not stateless persons) and are described in EE by the term “persons with undetermined citizenship”. So, Estonia interprets “other persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State” as persons with undetermined citizenship living in EE and LV. |
|  | Finland | Yes | The Finnish Border Guard is of the opinion that Article 1 para. 2, 3 rd subparagraph of Council Regulation (EC) No 539/2001 covers “all other persons” who fulfil the specified requirement without any restriction to the situation prevailing in any specific Member State. |
|  | Germany | Yes | In the Federal Ministry of the Interior's view, Article 1 para. 2, 3 rd subparagraph of Council Regulation (EC) No 539/2001 covers “all other persons” who fulfil the specified requirement without any restriction to the situation prevailing in any specific Member State. |
|  | Latvia | Yes | In the experts view, Article 1 Paragraph 2, 3 rd subparagraph of Council Regulation (EC) No 539/2001 covers “all other persons” who fulfil the specified requirement without any restriction to the situation prevailing in any specific Member State -they are "persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State". In |

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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| | | | Latvia's case such persons are, for example, non-citizens of Latvia, whose judicial status is defined with a special law and who are holders of Latvian non-citizen passports information is included in the Visa Code Handbook II appendix and Schengen Practical Handbook for Border Guards 22.appendix; besides the Latvian non-citizen passport's specimen has been sent to the EC for inclusion into the 23.annex of the Schengen Practical Handbook for Border Guards. |
|  | Lithuania | Yes | If the "other person" has a travel document issued by a Member State and this travel document is mentioned in the annexes to the Schengen handbook, the person is allowed to enter, regardless of his/her situation in the Member State. |
|  | Netherlands | Yes | Article 1 para. 2 3 rd subparagraph of Council Regulation (EC) No 539/2001 encloses all "other persons" who have been issued - in accordance with national law of a member state- a travel document. Note that -in our opinion- all travel documents issued by Member States to this specific category have to be included in annex 34 of the Handbook Schengen Border Code. |
|  | Slovenia | Yes | Relevant provisions of Council Regulation (EC) 539/2001 are in power in Slovenia as set above. Further provisions are set in our national legislation e.g. Aliens Act. |
|  | Sweden | Yes | Sweden covers all persons – including other persons - who meet the criteria in article 1:2 |
