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EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

on the signature of the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports

EXPLANATORY MEMORANDUM

1. POLITICAL AND LEGAL BACKGROUND

In accordance with Council Regulation (EC) No 539/2001¹, Brazilian nationals can travel to all Member States of the European Union without requiring a visa for short stays. This should be reciprocated by Brazil, however the country still requires a visa from the nationals of four Member States: Estonia, Cyprus, Malta and Latvia.

For constitutional reasons, Brazil cannot grant a visa waiver for these Member States unilaterally; it is necessary to conclude a visa waiver agreement to be ratified by its Parliament.

Brazil has bilateral visa waiver agreements with the Member States, except the four concerned. These bilateral agreements differ from each other considerably as regards their personal scope of application (i.e. as regards the categories of persons benefiting from the visa waiver).

It stems from the nature of the common visa policy and the exclusive external competence of the European Union in this area that only the Union can negotiate and conclude a visa waiver agreement, and not the individual Member States. Therefore, on 18 April 2008, the Council adopted a decision authorizing the Commission to open negotiations on the conclusion of a short-stay visa-waiver agreement between the European Union and Brazil.

The negotiations started on 2 July 2008.

During the negotiations, the Contracting Parties agreed to conclude two separate agreements: one on ordinary passport holders and the other on diplomatic and service passport holders, since the agreement on diplomatic and service passport holders does not need to be ratified by the Brazilian Congress, thus its ratification can go quicker and separately from the agreement on ordinary passport holders.

The negotiations on the visa waiver agreement for holders of diplomatic and service passports were finalized on 19 November 2009.

Member States have been informed and consulted several times in the Visa Working Party of the Council.

The Agreement was initialled on 28 April 2010.

On the part of the Union, the legal basis for the Agreement is Article 77 (2) (a), in conjunction with Article 218 of the TFEU².

The attached proposals constitute the legal instruments for the signature and conclusion of the Agreement. The Council will decide by qualified majority. The European Parliament will have to give its consent on the conclusion of the Agreement, in accordance with Article 218 (6) (a) (v) of the TFEU.

¹ OJ L 81, 21.3.2001, p.1

² Treaty on the Functioning of the European Union, OJ C 115, 9.5.2008, p. 47

2. OUTCOME OF THE NEGOTIATIONS

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft visa waiver agreement is acceptable to the Union.

The final content of the visa waiver agreement for diplomatic, service or official passport holders can be summarised as follows.

Purpose and Scope

The EU-Brazil agreement gives reciprocal access to visa-free travel for short stays for all Brazilian and EU citizens holding a diplomatic, service or official passport.

European citizens are already exempt from the visa obligation by Brazil, with the exception of the citizens of Estonia, Cyprus, Malta and Latvia. In order to safeguard equal treatment of all EU citizens, a provision has been included in the Agreement stating that Brazil may suspend or terminate the Agreement only in respect of all the Member States of the European Union and, reciprocally, the Union may also suspend or terminate the Agreement only in respect of all of its Member States.

The specific situation of the United Kingdom and Ireland is reflected in the preamble.

Scope

The visa waiver covers the travelling of persons holding a diplomatic, service or official passport.

Duration of stay

The citizens of the Contracting Parties may stay in each other's territory for a maximum period of three months during a six months period following the date of first entry into the territory of the Contracting Party.

The agreement takes into account the situation of the Member States that do not yet apply the Schengen *acquis* in full. As long as they are not part of the Schengen area without internal borders, the visa waiver confers a right for the nationals of Brazil to stay for three months on the territory of each of those Member States (Cyprus, Bulgaria, Romania), independently of the period calculated for the whole Schengen area.

Other provisions

To settle disputes arising from the interpretation or application of the provisions, this agreement shall be managed by the Committee of Experts set up by the Agreement between the European Union and the Federative Republic of Brazil on the short-stay visa waiver for holders of ordinary passports.

A clause on the exchange of specimen of the passports has been inserted into the agreement.

3. CONCLUSIONS

In the light of the above-mentioned results, the Commission proposes that the Council

- decides that the Agreement be signed on behalf of the European Union and authorise the President of the Council to appoint the person(s) duly empowered to sign on behalf of the Union.

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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), in conjunction with Article 218 (5) thereof,

Having regard to the proposal from the Commission³,

Whereas:

- (1) In order to harmonise their visa policy with the provisions of Regulation (EC) No 539/2001, Member States granted visa waiver to the nationals of the Federative Republic of Brazil (hereinafter: Brazil) prior to their accession to the European Union, as Brazil figures on the list of third countries whose nationals are exempt from the visa requirement.
- (2) For constitutional reasons, Brazil cannot grant visa waiver for the Member States unilaterally; it is necessary to conclude a visa waiver agreement to be ratified by its Parliament.
- (3) Brazil has bilateral visa waiver agreements with most of the Member States, concluded prior to their accession to the European Union or prior to the establishment of the common visa policy. However, there are still four Member States, with whom a bilateral visa waiver agreement was not concluded in the past, consequently Brazil still requires a visa from the nationals of these Member States for short stays.
- (4) It stems from the nature of the common visa policy and the exclusive external competence of the European Union in this area that only the Union can negotiate and conclude a visa waiver agreement, and not the individual Member States.
- (5) In view of the non-reciprocal treatment of Brazil towards certain Member States, by its decision of 18 April 2008, the Council authorised the Commission to negotiate an agreement between the European Union and Brazil on short-stay visa waiver in order to restore reciprocal visa waiver.

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- (6) Negotiations on the agreement were opened on 2 July 2008 and concluded on 19 November 2009.
- (7) Subject to their possible conclusion at a later date, the Agreements initialled in Brussels on 28 April 2010, should be signed.
- (8) This Decision 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 acquis⁴. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (9) This Decision 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 acquis⁵. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports (hereinafter referred to as the Agreement) is hereby approved on behalf of the Union, subject to its conclusion.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Union, subject to its conclusion.

Done at Brussels,

*For the Council
The President*

⁴ OJ L 131, 1.6.2000, p. 43.

⁵ OJ L 64, 7.3.2002, p. 20.

ANNEX
AGREEMENT

between

the European Union and the Federative Republic of Brazil

on short-stay visa waiver for holders of diplomatic, service or official passports

The European Union, hereinafter referred to as "Union"

and

the Federative Republic of Brazil, hereinafter referred to as "Brazil"

hereinafter referred to as the Contracting Parties;

- (1) Desiring to safeguard the principle of reciprocity and to facilitate travel by ensuring visa free entry and short stay for the citizens of all Member States of the European Union and for the nationals of Brazil who are holders of valid diplomatic, official or service passports
- (2) Reiterating their commitment to ensure reciprocal visa-free travel swiftly, fully respecting the completion of the respective parliamentary and other internal procedures;
- (3) With a view to further developing friendly relations and continuing to strengthen close ties between the Contracting Parties;
- (4) Taking into account the Protocol on the position of the United Kingdom and Ireland and the Protocol integrating the Schengen acquis into the framework of the European Union, annexed to the Treaty on European Union and the Treaty establishing the European Community and confirming that the provisions of this agreement do not apply to the United Kingdom and Ireland;

Have agreed as follows:

Article 1 – Purpose and scope

Citizens of the European Union and citizens of Brazil, holders of a valid diplomatic, service or official passport, are allowed to enter, transit through and stay without a visa in the territory of the other Contracting Party for a maximum period of stay of three months during a six months period in accordance with the provisions of this Agreement.

Article 2 – Definitions

For the purpose of this Agreement:

(a) "Member State" shall mean any Member State of the European Union, with the exception of the United Kingdom and Ireland;

(b) " a citizen of the European Union" shall mean a national of a Member State as defined in point (a);

(c) "a national of Brazil" shall mean any person who holds the Brazilian nationality;

(d) "Schengen area" shall mean the area without internal borders comprising the territories of the Member States as defined in point (a) applying the Schengen *acquis* in full;

(e) Schengen *acquis* shall mean all measures aimed at ensuring the free movement of persons in an area without internal borders, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration and measures to prevent and combat crime.

Article 3 – Conditions of visa waiver and stay

1. The visa waiver provided by this Agreement shall apply without prejudice to the laws of the Contracting Parties relating to the conditions of entry and short stay. The Member States and Brazil reserve the right to refuse entry into and short stay in their territories if one or more of these conditions are not met.

2. The citizens of the European Union benefiting from this Agreement shall comply with the laws and regulations in force in the territory of Brazil during their stay.

3. The nationals of Brazil benefiting from this Agreement shall comply with the laws and regulations in force in the territory of each Member State during their stay.

4. The visa waiver applies regardless of the mode of transport used to cross the borders open to international passenger traffic of the Contracting Parties.

5. Without prejudice to Article 6, visa issues not covered by this Agreement shall be governed by Union law, national law of the Member States and by national law of Brazil.

Article 4 - Duration of stay

1. The citizens of the European Union holding a valid diplomatic, official or service passport may stay in the territory of Brazil for a maximum period of three months during a six months period following the date of first entry into the territory of the country.

2. The citizens of Brazil holding a valid diplomatic, official or service passport may stay in the Schengen area for a maximum period of three months during a six months period following the date of first entry into the territory of any Member State fully applying the Schengen *acquis*. This period of three months during a period of six months shall be calculated independently of any stay in a Member State which does not yet apply the Schengen *acquis* in full.

The citizens of Brazil holding a valid diplomatic, official or service passport may stay for a maximum period of three months during a six months period following the date of first entry in the territory of each of the Member States that do not yet apply the Schengen *acquis* in full, independently of the period of stay calculated for the Schengen area.

3. This Agreement does not affect the possibility for Brazil and the Member States to extend the period of stay beyond three months in accordance with national law and Union law.

Article 5 – Management of the Agreement

1. The Contracting Parties shall make use of the Committee of Experts (hereinafter referred to as the "Committee") mentioned in the Agreement between the European Union and the Federative Republic of Brazil on the short-stay visa waiver for holders of ordinary passports to settle disputes arising from the interpretation or application of the provisions of this Agreement.

2. The Committee shall be convened, whenever necessary, at the request of one of the Contracting Parties.

Article 6 – Relation between this Agreement and existing bilateral visa waiver agreements between the Member States and Brazil

This Agreement shall take precedence over the provisions of any bilateral agreements or arrangements concluded between individual Member States and Brazil, in so far as their provisions cover issues falling within the scope of this Agreement.

Article 7– Exchange of specimen of passports

1. If they have not done so already, Brazil and the Member States shall exchange, through diplomatic channels, specimens of their valid diplomatic, official or service passports no later than thirty (30) days after the date of signature of this Agreement.

2. In case of introduction of new diplomatic, official or service passports or modification of the existing ones, the Parties shall convey to each other, through diplomatic channels, specimens of these new or modified passports, accompanied by detailed information on their specifications and applicability, not later than thirty (30) days prior to its application.

Article 8 – Final provisions

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective internal procedures and shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures referred to above have been completed.

2. This Agreement is concluded for an indefinite period of time, unless terminated in accordance with paragraph 5 of this article.

3. This Agreement may be amended by written agreement of the Contracting Parties. Amendments shall enter into force after the Contracting Parties have notified each other of the completion of their internal procedures necessary for this purpose.

4. Each Contracting Party may suspend in whole or in part this Agreement. The decision on suspension shall be notified to the other Contracting Party not later than 2 months before its entry into force. The Contracting Party that has suspended the application of this Agreement shall immediately inform the other Contracting Party once the reasons for suspension no longer exist.

5. Each Contracting Party may terminate this Agreement by giving written notice to the other Party. This Agreement shall cease to be in force 90 days after the date of such notification.

6. Brazil may suspend or terminate this Agreement only in respect of all the Member States of the European Union.

7. The Union may suspend or terminate this Agreement only in respect of all of its Member States.

Done in Brussels, on..... 2008, in duplicate each in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

For the European Union For the Federative Republic of Brazil