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RECOMMENDATION

on the draft Council decision on the conclusion 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 (16362/2010 – C7-0399/2010 – 2010/0222(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Ioan Enciu

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council decision on the conclusion 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
(16362/2010 – C7-0399/2010 – 2010/0222(NLE))**

(Consent)

The European Parliament,

- having regard to the draft Council decision (16362/2010),
 - having regard to the draft agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports (13708/2010),
 - having regard to the request for consent submitted by the Council in accordance with Article 77(2), point (a) and Article 218(6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union (C7-0399/2010),
 - having regard to Rules 81 and 90(8) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0010/2011),
1. Consents to conclusion of the agreement;
 2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and the Federative Republic of Brazil.

EXPLANATORY STATEMENT

Under Regulation (EC) 539/2001, Brazil is part of the so-called "positive list" of countries whose nationals are exempt from visa requirements when crossing the external borders of the European Union. According to the principle of reciprocity that underlies this regulation, all EU citizens should enjoy a similar right when travelling to Brazil.

Until now, the reciprocity principle has been put in practice through bilateral visa waiver agreements concluded between Brazil and individual Member States. However, four EU countries - Estonia, Latvia, Malta and Cyprus - have not signed such agreements. Therefore, their citizens are still required to be in possession of visas in order to travel to Brazil, which violates the principle of reciprocity.

In this context and taking into account the fact that, according to the Lisbon Treaty, the common visa policy in relation to third countries is the EU's exclusive competence, only the EU and not individual Member States may negotiate and conclude a visa waiver agreement with Brazil.

In this regard, the Council adopted on 18 April 2008 a decision authorizing the Commission to negotiate such an agreement on behalf of the European Union. The two sides have agreed to sign two separate agreements: one for holders of ordinary passports and another for holders of diplomatic, official and service passports. The reason for this choice is the fact that the latter agreement will not require ratification of the Brazilian Congress and could come into force faster.

The negotiations with Brazil over the agreement for holders of diplomatic, official and service passports started on 2 July 2008 and were concluded on 19 November. The agreement was initialed on 28 April 2010 and the formal signature on behalf of the Union and Brazil took place in Brussels on 8 November 2010.

The EU-Brazil visa waiver will not replace other bilateral agreements signed with various Member States but will complete them. However, the agreement concluded by the Union will prevail over the bilateral ones in areas covered by these, namely the visits for tourism and business purposes.

The final text of the agreement can be summarized as follows:

Objective

The agreement gives reciprocal access to short-stay visa-free travel for all EU and Brazilian citizens holding a diplomatic, service or official passport. To ensure equal treatment of all EU citizens, Article 8 of the Agreement provides that Brazil can only suspend or terminate the agreement only in respect of all Member States of the Union and, reciprocally, the EU may suspend or terminate the agreement only with respect to all Member States.

The agreement takes into account in the preamble the special situation of Great Britain and Ireland.

Scope and duration of stay

The visa waiver covers the holders of diplomatic, service or official passports that are travelling in purposes of tourism or business. 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 two Contracting Party. The visa exemption for travel purposes other than those stipulated in the agreement can still be realized under the provisions of bilateral agreements signed by Brazil with 23 of the 27 Member States.

The agreement takes into account the situation of Member States that do not fully apply yet the Schengen acquis. As long as these Member States (Cyprus, Bulgaria, Romania) are not part of Schengen area, the visa waiver confers a right to the citizens of Brazil to stay for three months on the territory of each of those Member States independently of the period calculated for the whole Schengen area.

Other provisions

The agreement provides for the establishment of a committee of experts to settle disputes that may arise from the interpretation or application of its provisions. The agreement also provides for the exchange of passports specimens between Brazil and the Member States.

The rapporteur approves, therefore, the conclusion of this agreement.

Nevertheless, as specified in the exchange of letters between the vice president of the Commission, Jacques Barrot, and the Brazilian authorities, the safeguarding of existing bilateral agreements should remain of utmost importance for the European Union as these are providing a short stay visa waiver for categories of travelers not covered by the EU-Brazil agreement. In this regard, it should be recalled that the European Union might apply the suspension clause of the EU-Brazil visa waiver if Brazil were to denounce the bilateral agreements.

The current visa waiver agreement for holders of diplomatic, service or official passports represents a step forward in the establishment of full reciprocal visa exemption in accordance with Regulation 539/2001.

However, as specified by the Commission in the sixth report on visa reciprocity (COM (2010) 620), two other third countries - Canada and the United States of America - continue to maintain visa requirement for three respectively four member states, thus violating the principle of reciprocity. The rapporteur considers that sustained and proactive efforts should be conducted by the Commission in order to lift visa requirements for these countries. The conclusion of specific agreements for holders of diplomatic, official and service passports based on the current example could be the first step in the direction of the full visa liberalization with Canada and USA.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.1.2011
Result of final vote	+: 44 -: 2 0: 3
Members present for the final vote	Sonia Alfano, Roberta Angelilli, Rita Borsellino, Emine Bozkurt, Simon Busuttill, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Tanja Fajon, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Clemente Mastella, Véronique Mathieu, Louis Michel, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Daniël van der Stoep, Axel Voss, Renate Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Edit Bauer, Ioan Enciu, Monika Hohlmeier, Stanimir Ilchev, Ádám Kósa, Wolfgang Kreissl-Dörfler, Jean Lambert, Petru Constantin Luhan, Norica Nicolai, Raül Romeva i Rueda, Ernst Strasser, Marie-Christine Vergiat