EU/Brazil Agreement: short-stay visa waiver for holders of diplomatic, service or official passports

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PURPOSE: to conclude an Agreement between the EU and Brazil on short-stay visa waiver for holders of diplomatic, service or official passports.

PROPOSED ACT: Council Decision.

BACKGROUND: in accordance with Council Regulation (EC) No 539/2001, 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 authorising the Commission to open negotiations on the conclusion of a short-stay visa-waiver agreement between the European Union and Brazil.

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. The Agreement was initialled on 28 April 2010. It is now necessary to approve this Agreement on behalf of the European Union.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 77 (2) (a) in conjunction with Article 218 (6) (a) (v) of the Treaty on the Functioning of the European Union (TFEU).

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

Purpose: 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.

This proposal constitutes the legal instruments for the 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.

BUDGETARY IMPLICATION: this proposal has no implications for the EU budget.