Basic information

2010/0228(NLE) NLE - Non-legislative enactments Decision	Procedure completed
EU/Brazil Agreement: short-stay visa waiver for holders of ordinary passports See also 2018/0084(NLE) **Subject** 7.10.04 External borders crossing and controls, visas **Geographical area** Brazil	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	MACOVEI Monica (PPE)	26/10/2010

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3071	2011-02-24
Justice and Home Affairs (JHA)	3034	2010-10-07
Justice and Home Affairs (JHA)	3043	2010-11-08

European Commission

Commission DG	Commissioner
Migration and Home Affairs	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
06/08/2010	Preparatory document	COM(2010)0420	Summary
08/11/2010	Debate in Council		Summary
26/11/2010	Legislative proposal published	16364/2010	Summary
13/12/2010	Committee referral announced in Parliament		
26/01/2011	Vote in committee		Summary
28/01/2011	Committee report tabled for plenary, 1st reading/single reading	A7-0011/2011	
15/02/2011	Decision by Parliament	T7-0049/2011	Summary

15/02/2011	Results of vote in Parliament		
24/02/2011	Act adopted by Council after consultation of Parliament		
24/02/2011	End of procedure in Parliament		
21/09/2012	Final act published in Official Journal		

Technical information

Procedure reference	2010/0228(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Decision
Amendments and repeals	See also 2018/0084(NLE)
Legal basis	Treaty on the Functioning of the European Union TFEU 077-p2 Treaty on the Functioning of the European Union TFEU 218-p6a
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/03558

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE454.471	09/12/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0011/2011	28/01/2011	
Text adopted by Parliament, 1st reading/single reading		T7-0049/2011	15/02/2011	Summary

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	13712/2010	28/09/2010	
Legislative proposal	16364/2010	26/11/2010	Summary

European Commission

Document type	Reference	Date	Summary
Preparatory document	COM(2010)0420	06/08/2010	Summary

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Decision 2012/0508 OJ L 255 21.09.2012, p. 0003	Summary

EU/Brazil Agreement: short-stay visa waiver for holders of ordinary passports

2010/0228(NLE) - 08/11/2010

In the sixth visa reciprocity report presented by the Commission, the Commission welcomes the short-stay visa waiver agreements (one for holders of ordinary passports and the other for holders of diplomatic, service or official passports) which were concluded with Brazil.

These two agreements were signed in the margins of the Council session.

To recall, these two agreements mark the end of negotiations started in April 2008. They do not replace, but supplement existing bilateral agreements between several EU Member States and Brazil. The United Kingdom and Ireland are not bound by the agreements. For citizens from these two countries, the respective bilateral agreements continue to apply.

A considerable improvement - mainly for four EU countries: the agreements constitute a considerable improvement for EU citizens - in particular those of Estonia, Cyprus, Malta and Latvia. While Brazilian nationals were able to travel to all EU member states without requiring a visa for short stays (in accordance with Council Regulation (EC) No 539/2001), the nationals from these four EU countries still required, up to now, a visa to enter or transit Brazil. This was also true for holders of diplomatic, service or official passports. With the two new agreements this right has now been reciprocated.

Most ordinary travellers covered: the European Commission estimates that the agreement on holders of ordinary passports covers 90-95 percent of all travelers since a wide range of activities are included: tourist travels, visiting relatives, prospection of commercial opportunities, attending meetings, conferences and seminars as well as the participation in sports competitions and artistic contests, provided that the participants do not receive any remuneration.

Some exceptions: citizens who wish to engage in research, traineeships, studies and social work, as well as undertake technical assistance, missionary, religious or artistic activities, are not covered by the agreement. For these categories of travellers existing bilateral visa waiver agreements between EU member states and Brazil apply.

Travellers who wish to carry out a paid activity or be employed are also excluded from the agreement. Each Member State and also Brazil remains free to impose a visa requirement in accordance with the applicable Union or national law or in accordance with bilateral agreements which cover this category of travellers.

Other provisions: in order to safeguard equal treatment of all EU citizens, a provision has been included in the agreements stating that Brazil may suspend or terminate them only in respect of all the EU Member States. Reciprocally, the Union may also suspend or terminate the agreements only in respect of all of its Member States.

The Agreement sets up a Committee of experts for the management of the agreements and provides for the exchange of specimen of the different passports. Lastly, a joint declaration has been made to inform citizens concerned so as to assure a smooth implementation of the agreements.

EU/Brazil Agreement: short-stay visa waiver for holders of ordinary passports

2010/0228(NLE) - 15/02/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution in which it gives its consent to the conclusion of the Agreement between the European Union and Brazil on short-stay visa waiver for holders of ordinary passports. Under this agreement, all EU citizens - including nationals of Estonia, Latvia, Malta and Cyprus, who until now needed a visa to enter Brazil - will be allowed to travel without a visa for tourism and business purposes.

EU/Brazil Agreement: short-stay visa waiver for holders of ordinary passports

2010/0228(NLE) - 06/08/2010 - Preparatory document

PURPOSE: to conclude an Agreement between the EU and Brazil on short-stay visa waiver for holders of ordinary 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. The negotiations started on 2 July 2008 and have been finalised on 1 October 2009.

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.

After the talks have stalled in July 2009 due to the disagreement between the parties on the personal scope of the visa waiver for ordinary passport holders, on 23 September 2009 COREPER adapted the mandate to negotiate the visa waiver agreement with Brazil.

According to the conclusions of COREPER, the Commission had to negotiate a visa waiver agreement with Brazil which provides:

- short-stay visa-free travel for visits of up to three months in a six months period to the Schengen area and to Romania, Bulgaria and Cyprus for Brazilian nationals and to Brazil for EU citizens on a reciprocal basis with a more limited scope than the existing visa regime at present under Regulation 539/2001, i.e. the agreement would basically only apply to tourists and business people;
- a clause maintaining the existing bilateral visa waiver agreements in so far as they establish visa-free travel to Brazil for the categories of persons not covered by the EU agreement;
- and that as far as Brazilian nationals are concerned, the agreement can only cover visits to the Schengen area and to Romania, Bulgaria and Cyprus, and should apply irrespective of their point of departure and their place of residence. As far as EU citizens are concerned, the agreement should apply irrespective of their point of departure and their place of residence when travelling to Brazil.

At the fourth round of negotiations, the text of a short-stay visa-waiver agreement for ordinary passport holders between the EU and Brazil could be finalised and thus the negotiations were concluded.

With regard to the visa waiver agreement for ordinary passport holders, preserving the bilateral agreements, in so far as they establish visa-free travel for categories of persons not covered by the EU-Brazil agreement, is part of the overall package deal with Brazil, which was agreed in Brasilia, in accordance with the mandate.

Given the specific circumstances, in order to pass a clear message to Brazil and to safeguard the existing bilateral agreements, a unilateral declaration has been made by the EU and sent to Brazil in form of a letter on 5 February 2010 that the **European Union might suspend the agreement if Brazil starts denouncing the existing bilateral agreements**. This approach has been endorsed by Member States as well at the Visa Working Party of 20 January 2010.

In its reply dated 14 April 2010 to the EU's letter, Brazil confirmed its intention to renegotiate some of the old bilateral agreements with the Member States. The two letters are attached to this proposal in Annexes II and III.

The Member States have been informed and consulted several times in the Visa Working Party of the Council and at COREPER. The Agreement was initialled on 28 April 2010.

IMPACT ASSESSMENT: no impact assessment was carried out.

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

CONTENT: the final content of the visa waiver agreement for ordinary passport holders can be summarised as follows:

The Commission considers that the objectives set by the Council in its negotiating directives – including the adaptation of the mandate by COREPER on 23 September 2009 – were attained and that the draft visa waiver agreement is acceptable to the Union.

The final content of the visa waiver agreement for ordinary passport holders can be summarised as follows.

Purpose and Scope: the EU-Brazil agreement gives a reciprocal visa waiver for travel for the purpose of tourism and business for all Brazilian and EU citizens, including the nationals of the four Member States not enjoying visa-free travel to Brazil at present. The two purposes "tourism" and "business" are widely defined in the agreement, including e.g. sportsmen and artists provided that no remuneration is received for their activity, and also certain disputed categories, such as family visits or official meetings, which will also be covered by the categories of "tourists" and "business people" respectively. These two categories covered by the EU-Brazil agreement would cover 90-95 % of all the travellers.

Categories excluded from the scope: a series of categories (e.g. **students, researchers, artists, religious people** etc., which are defined by the Brazilian national law) are excluded from the scope of the agreement. The agreement provides that the bilateral agreements concluded between Brazil and the Member States covering such other categories not covered by the EU-Brazil agreement continue to apply insofar as they provide for visa waiver for those categories. This way EU citizens falling under other categories (than tourism and business) covered by the bilateral agreements, can continue to benefit from the visa waiver under these bilateral agreements.

The category of **persons travelling for the purpose of carrying out a paid activity** is also excluded from the scope of the Agreement. For this category, each Member State and also Brazil remain free to impose the visa requirement on the citizens of the other Party in accordance with the applicable Union or national law, or in accordance with bilateral agreements, which cover this category.

In consequence, the EU-Brazil agreement does not reduce the access to visa free travel to Brazil for the citizens of Member States having a bilateral agreement with Brazil, but basically maintains the status quo for these citizens.

Duration of stay: the duration of stay is limited by the agreement to three months during a six-month period in the Schengen area. Thus, this agreement puts an end to the possibility provided to Brazilian nationals by the bilateral agreements to cumulate the three months stays per Member State in the Schengen area. 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.

Territorial application: as the overseas territories of France and the Netherlands do not form part of the Schengen area and the visa rules (e.g. Regulation 539/2001) do not apply there, the EU-Brazil agreement cannot cover these territories. On the other hand, EU nationals residing in any third country or an overseas territory of a Member State should be covered by the visa waiver (eg. a Dutch national residing in the USA or in Aruba, or a French residing in French Polynesia) in accordance with their nationality. The Agreement provides for visa-free travel for the citizens of Brazil when travelling to the European territories of the Member States and should apply irrespective of their point of departure and their place of residence.

As far as EU citizens are concerned, the agreement provides for visa-free travel when travelling to Brazil, irrespective of their point of departure and their place of residence.

Nevertheless, such rules on the territorial application are not pronounced explicitly in the Agreement, but the existing rules under Union law and Brazilian national law continue to apply, including bilateral agreements between Brazil and France and the Netherlands covering the non-European territories.

This approach has been accepted by Member States at the meeting of the JHA Counsellors of 5 October 2009.

Other provisions: 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 Agreement sets up a Committee of experts for the management of the Agreement. The specific situation of the United Kingdom and Ireland is reflected in the preamble. A clause on the exchange of specimen of the passports has been inserted to the agreement.

Joint declaration: a joint declaration has been made on full dissemination of information for the smooth implementation of 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.

EU/Brazil Agreement: short-stay visa waiver for holders of ordinary passports

2010/0228(NLE) - 26/11/2010 - Legislative proposal

PURPOSE: to conclude the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports.

PROPOSED ACT: Council Decision.

BACKGROUND: the Commission negotiated on behalf of the European Union an Agreement with the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports. That Agreement was signed, on behalf of the European Union, on 8 November 2010 subject to its conclusion at a later date.

It is now appropriate for this Agreement to be approved on behalf of the Union.

IMPACT ASSESSMENT: no impact assessment was carried out.

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

CONTENT: with this proposed Decision, the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports.

For further information on the content of this Agreement, please refer to the summary of the previous initial legislative document dated 06/08/2010.

Territorial application: this proposal constitutes a development of provisions of the Schengen aqcuis in which the United Kingdom and Ireland do not take part. They shall not take part in its adoption and shall not be bound by or subject to its application.

BUDGETARY IMPLICATION: this proposal has no implication for the Union's budget.

EU/Brazil Agreement: short-stay visa waiver for holders of ordinary passports

2010/0228(NLE) - 24/02/2011 - Final act

PURPOSE: the conclusion of an agreement with Brazil that exempts ordinary passport holders from visa requirements for short-stay visits.

NON-LEGISLATIVE ACT: Council Decision 2012/508/EU on the conclusion of the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports.

BACKGROUND: the Commission has negotiated on behalf of the European Union an Agreement with the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports. That Agreement was signed, on behalf of the European Union, on 8 November 2010 subject to its conclusion at a later date, in accordance with Council Decision 2010/622/EU. It is now appropriate to approve this agreement on behalf of the European Union.

CONTENT: with this decision, the agreement between the European Union and Brazil on short-stay visa waiver for holders of ordinary passports is approved on behalf of the Union.

The main points of this agreement may be summarised as follows:

Objective of the agreement: the agreement will enable EU and Brazilian citizens to travel on each other's territory without a visa for **stays of a maximum of 3 months during a six-month period**.

Scope: the agreement covers **holders of ordinary passports**, around 90-95% of travellers, given that it covers a wide range of activities, i.e. tourism, family visits, search for commercial opportunities, attendance at meetings, conferences and seminars, as well as participation in sporting or artistic competitions, on condition that the participants do not receive remuneration.

Travellers not covered: there are, nevertheless, exceptions: citizens who want to undertake research, internships, study, work in the social area or undertake technical assistance activities, religious missionaries, artistic activities are not covered by the agreement. The bilateral visa waiver agreements concluded between the EU Member States and Brazil will continue to apply to these categories of travellers.

Travellers wishing to undertake remunerated or salaried activities are also excluded from the scope of the agreement. Each Member State, as well as Brazil, will remain free to impose the visa requirement on the citizens of the other Party in accordance with the applicable Union or national law, or in accordance with bilateral agreements, which cover this category.

It should be noted that, for four EU Member States, this agreement represents a considerable improvement (Estonia, Cyprus, Malta and Latvia). In fact, although Brazilian nationals could enter all EU Member States without needing a visa for short-term stays (under the terms of Council Regulation (EC) No 539/2001) nationals of these four Member States were required to meet visa requirements prior to entering Brazil or going there in transit. With this agreement, the reciprocity of this right is now total.

Equality of treatment and reciprocity: in order to maintain freedom of treatment of all EU citizens, the agreement includes a provision that stipulates that Brazil may suspend or terminate this Agreement only in respect of all the Member States of the Union.

Other provisions: the agreement establishes a Committee of experts responsible for the management of this agreement and the parallel agreement on diplomatic passports and provides for the exchange of specimens of the different types of passports. Lastly, the agreement includes a joint declaration on the information of the citizens about the visa waiver agreement in order to ensure the correct implementation of this agreement.

Territorial measures: the United Kingdom and Ireland will not participate in the adoption of this decision and shall not be bound by it or subject to its application, in accordance with the relevant provisions of the Treaty.

ENTRY INTO FORCE: he decision enters into force on 24 February 2011. The date of entry into force of the agreement shall be published at a later date in the Official Journal of the European Union.