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| From: | General Secretariat of the Council |
| To: | Delegations |
| No. prev. doc.: | 5430/19 |
| Subject: | Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union - Mandate for negotiations with the European Parliament |

At its meeting on 1 February 2019, the Permanent Representatives Committee agreed on the mandate for negotiations with the European Parliament, as set out in the Annex.

Changes to the Commission proposal are marked in ***bold/italics*** for additions and in ~~strikethrough~~ for deletions.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 539/2004 ~~2018/1806~~ listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union

THE EUROPEAN PARLIAMENT AND 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) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. Consequently, the United Kingdom will become a third country and Union law will cease to apply to it from 30 March 2019, unless another date is established in a withdrawal agreement, or the European Council, in agreement with the United Kingdom, unanimously establishes another date.
- (2) Under Article 21 of the Treaty on the Functioning of the European Union and Directive 2004/38/EC of the European Parliament and of the Council¹ citizens of the Union have the right to move and reside freely within the territory of the Member States, including the right to enter the Member States without a visa or equivalent formalities.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (3) As a consequence of the United Kingdom's withdrawal from the Union, the Treaty and Directive 2004/38/EC will cease to apply to nationals of the United Kingdom who are British citizens and with these also their right to enter the Member States without a visa. It is therefore necessary to include the United Kingdom in one of the annexes to ~~[Council Regulation (EC) No 539/2001]~~² **Regulation (EU) 2018/1806**³. Annex I lists the third countries whose nationals must be in possession of visas when crossing the external borders and Annex II lists those third countries whose nationals are exempt from that requirement.
- (3a) ***Gibraltar is not part of the United Kingdom. Union law has been applicable to Gibraltar to the extent provided in the 1972 Act of Accession only by virtue of Article 355(3) TFEU. The addition of the United Kingdom to Part 1 of Annex II to Regulation (EU) 2018/1806 will not cover British overseas territories citizens who have acquired their citizenship from a connection with Gibraltar. Gibraltar should thus be listed along with other British overseas territories in Part 3 of Annex II to Regulation (EU) 2018/1806.***
- (4) The criteria which should be taken into account when determining – based on a case-by-case assessment – the third countries whose nationals are subject to, or exempt from, the visa requirement are laid down in ~~[Article 1 of Regulation (EC) No 539/2001]~~⁴ **Article 1 of Regulation (EU) 2018/1806**. They include illegal immigration, public policy and security, economic benefit, in particular in terms of tourism and foreign trade, and the Union's external relations with the relevant third countries, including in particular, considerations of human rights and fundamental freedoms, as well as the implications of regional coherence and reciprocity.
- (5) Taking account of all the criteria listed in ~~[Article 1 of Regulation (EC) No 539/2001]~~⁵ **Article 1 of Regulation (EU) 2018/1806**, it is appropriate to exempt nationals of the United Kingdom who are British citizens from the visa requirement when travelling to the territory of the Member States. Considering the geographical proximity, the link between economies, the level of trade and the extent of short-term movements of persons between the United Kingdom and the Union for business, leisure or other purposes, visa-free travel should facilitate tourism and economic activity, thereby bringing benefits to the Union.

²— ~~Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1), currently subject to codification (see COM(2018) 139 final of 14.3.2018). Reference to be updated following entry into force of the codified Regulation.~~

³ ***Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39).***

⁴— See footnote 23.

⁵— See footnote 23.

- (6) ~~The United Kingdom government has stated its intention not to require a visa from citizens of the EU-27 when travelling to the United Kingdom for short stays for business or tourism as from the date on which Union law ceases to apply to the United Kingdom.~~ In case the United Kingdom introduces a visa requirement for nationals of at least one Member State in the future, the reciprocity mechanism provided for in ~~[Article 1(4) of Regulation (EC) No 539/2001]~~⁶ **Article 7 of Regulation (EU) 2018/1806** should apply. The European Parliament, the Council, the Commission and the Member States should act without delay in applying the mechanism.
- (7) The United Kingdom should thus be included in Annex II to ~~[Regulation (EC) No 539/2001]~~⁷ **Regulation (EU) 2018/1806** as regards British citizens.
- (8) As regards Iceland and the Kingdom of Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*⁸, which fall within the area referred to in point B of Article 1 of Council Decision 1999/437/EC⁹.
- (9) As regards the Swiss Confederation, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹⁰, which fall within the area referred to in points (B) and (C) of Article 1 of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC¹¹.

⁶ ~~See footnote 23.~~

⁷ ~~See footnote 23.~~

⁸ OJ L 176, 10.7.1999, p. 36.

⁹ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

¹⁰ OJ L 53, 27.2.2008, p. 52.

¹¹ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

- (10) As regards the Principality of Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹², which fall within the area referred to in points (B) and (C) of Article 1 of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2011/350/EU¹³.
- (11) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC¹⁴; the United Kingdom is therefore not taking part in its adoption.
- (12) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹⁵. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (13) This Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.
- (14) This Regulation should enter into force on 30 March 2019, the day of the United Kingdom's withdrawal from the Union.

¹² OJ L 160, 18.6.2011, p. 21.

¹³ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

¹⁴ 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 *acquis* (OJ L 131, 1.6.2000, p. 43).

¹⁵ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

- (15) *In accordance with Article 4(3) of Regulation 1182/71 (EEC, Euratom), cessation of application of acts fixed at a given date shall occur on the expiry of the last hour of the day falling on that date. This Regulation should therefore apply from the day following that on which the Treaties will cease to apply to the United Kingdom. This Regulation should apply from the day on which Union law ceases to apply to the United Kingdom.*
- (16) [~~Regulation (EC) No 539/2001~~]¹⁶ **Regulation (EU) 2018/1806** should therefore be amended,

HAVE ADOPTED THIS REGULATION:

Article 1

[~~Regulation (EC) No 539/2001~~]¹⁷ **Regulation (EU) 2018/1806** is amended as follows:

1. In [~~Article 4(2)~~]¹⁸ **Article 6(2)**, point (d) is replaced by the following:

“(d) without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in Ireland and are holders of a travel document issued by Ireland, which is recognised by the Member State concerned.”;
2. in Part 1 of Annex II, the following is inserted:

“United Kingdom (excluding British nationals referred to in Part 3)”;
3. the title of Part 3 of Annex II is replaced by the following:

“BRITISH NATIONALS WHO ARE NOT BRITISH CITIZENS”;
4. *in Part 3 of Annex II, the following is added after the words “British overseas territories citizens (BOTC)”:*

“These territories include Anguilla, Bermuda, Cayman Islands, Falkland Islands, South Georgia and South Sandwich Islands, Gibraltar, Montserrat, Pitcairn, Saint Helena and Dependencies, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands and British Virgin Islands.”.*

¹⁶— See footnote 23.

¹⁷— See footnote 23.

¹⁸— See footnote 23.

* *Gibraltar is a colony of the British Crown. There is a controversy between Spain and the United Kingdom concerning the sovereignty over Gibraltar, a territory for which a solution has to be reached in light of the relevant resolutions and decisions of the General Assembly of the United Nations.*

Article 2

In case the United Kingdom introduces a visa requirement for nationals of at least one Member State, the reciprocity mechanism provided for in [~~Article 1(4) of Regulation (EC) No 539/2001~~]⁴⁹ **Article 7 of Regulation (EU) 2018/1806** shall apply. The European Parliament, the Council, the Commission and the Member States shall act without delay in applying the mechanism.

Article 3

1. This Regulation shall enter into force on 30 March 2019.

It shall apply from the day following that on which ~~Union law~~ **the Treaties** ceases to apply to the United Kingdom.

2. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

⁴⁹ ~~See footnote 23.~~