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INFORMATION NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

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

- Outcome of the European Parliament's first reading,
(Brussels, 3 to 4 April 2019)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading.

¹ OJ C 145, 30.6.2007, p.5

In this context, a compromise amendment (amendment number 3) to the proposal for a Regulation was presented by Claude MORAES (S&D, UK), on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment had been agreed during the informal contacts referred to above.

In addition 38+ MEPs tabled an amendment (amendment 4).

II. VOTE

When it voted on 4 April 2019, the plenary adopted the compromise amendment (amendment number 3) to the proposal for a Regulation. No other amendment was either voted or adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

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 UK's withdrawal from the EU *I**

European Parliament legislative resolution of 4 April 2019 on the 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 (COM(2018)0745 – C8-0483/2018 – 2018/0390(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0745),
 - having regard to Article 294(2) and Article 77(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0483/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 2 April 2019 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0047/2019),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 4 April 2019 with a view to the adoption of Regulation (EU) 2019/... of the European Parliament and of the Council amending Regulation (EU) 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 procedure³,

³ *Position of the European Parliament of 4 April 2019.*

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 (*TEU*). ***On 21 March 2019, the European Council agreed to extend the period provided for in Article 50(3) TEU to 22 May 2019, provided that the United Kingdom House of Commons approves the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community⁴ ('Withdrawal Agreement'). In the event the United Kingdom House of Commons does not approve the Withdrawal Agreement, the European Council agreed to an extension until 12 April 2019.***
- (2) Under Article 21 of the Treaty on the Functioning of the European Union (*TFEU*) and Directive 2004/38/EC of the European Parliament and of the Council⁵, 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 territory of*** the Member States without a visa or equivalent formalities.

⁴ ***OJ C 66I, 19.2.2019, p. 1.***

⁵ 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 *Treaties* and Directive 2004/38/EC, *along with the right to enter the territory of the Member States without a visa or equivalent formalities*, will cease to apply to nationals of the United Kingdom who are British citizens **■**. It is therefore necessary to include the United Kingdom in one of the annexes to **■** Regulation (EU) 2018/1806 of the European Parliament and of the Council⁶. Annex I lists the third countries whose nationals *are required to* be in possession of *a visa* when crossing the external borders *of the Member States* and Annex II lists those third countries whose nationals are exempt from that requirement.
- (4) *Gibraltar is not part of the United Kingdom. Union law has been applicable to Gibraltar to the extent provided for 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.*

⁶ 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).

- (5) The criteria which should be taken into account when determining ■, on *the basis of* 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 *(EU) 2018/1806*. *Those criteria* 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.
- (6) Taking account of all the criteria listed in 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.

■

- (7) The United Kingdom should thus be included in Annex II to Regulation **(EU) 2018/1806** as regards British citizens.
- (8) ***This Regulation is based on the expectation that, in the interest of maintaining close relations, the United Kingdom will grant full visa reciprocity to the nationals of all Member States. In the event that*** 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 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 ***reciprocity*** mechanism. ***The Commission should monitor the respect of the principle of reciprocity on a continuous basis and immediately inform the European Parliament and the Council of any developments which could endanger the respect of that principle.***

■

- (9) As regards Iceland and ■ Norway, this Regulation constitutes a development of *the* 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 *latters'* association ■ with the implementation, application and development of the Schengen *acquis*⁷, which fall within the area referred to in point B of Article 1 of Council Decision 1999/437/EC⁸.

⁷ OJ L 176, 10.7.1999, p. 36.

⁸ 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) As regards *Switzerland*, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning 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*⁹ 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/EC¹⁰.

⁹ OJ L 53, 27.2.2008, p. 52.

¹⁰ 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).

- (11) As regards ■ 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*¹¹ 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/EU¹².

¹¹ OJ L 160, 18.6.2011, p. 21.

¹² 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).

- (12) 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/EC¹³; the United Kingdom 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 a development of ***the*** provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹⁴; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (14) 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.

¹³ 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).

¹⁴ 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) This Regulation should enter into force ■ *on* the day *following that* on which Union law ceases to apply to the United Kingdom.

(16) Regulation *(EU) 2018/1806* should therefore be amended,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation **(EU) 2018/1806** is amended as follows:

(1) In Article 6(2) **1**, 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 *of the Council of Europe* 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 *as* 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, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Saint Helena, Ascension and Tristan da Cunha, South Georgia and South Sandwich Islands and Turks and Caicos Islands.*

** 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

Where the United Kingdom introduces a visa requirement for nationals of at least one Member State, the reciprocity mechanism provided for in 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 *reciprocity* mechanism.

Article 3

■ This Regulation shall enter into force on ■ the day following that on which Union law ceases to apply to the United Kingdom.

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

Done at ...,

For the European Parliament

For the Council

The President

The President
