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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a REGULATION 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 (Kuwait, Qatar)

Delegations will find attached document COM(2022) 189 final.

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EUROPEAN
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Proposal for a

REGULATION 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

(Kuwait, Qatar)

{SWD(2022) 129 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In the context of the strengthening of overall relations between the EU and the Gulf, the EU should pursue a more strategic orientation with this region by developing a stronger, comprehensive and multi-sector partnership. Visa-free status plays a key role in promoting the partnership between both regions by facilitating people-to-people contacts and strengthening the already dense political, economic, research, educational, cultural and societal exchanges. In view of this, the EU will continue engaging with the Gulf countries that are interested in visa-free travel to the EU, in view of reaching full regional coherence in the future based on the criteria and the procedure established in Regulation (EU) 2018/1806¹. In light of the procedural steps taken thus far and a first assessment made, the presently proposed exemptions from the visa requirement for nationals of Kuwait and Qatar are a step towards stronger regional coherence in the Gulf region, following the visa exemption granted to the United Arab Emirates in 2014 which has facilitated contacts with this country.

Both Kuwait and Qatar have proven to be key partners for the EU in handling recent crises. Notable examples of recent cooperation include the repatriation of EU citizens and vaccination efforts in the context of the COVID-19 pandemic, the evacuation of EU nationals via Doha following the Taliban's take-over of the government in Afghanistan, the financial support and 'good offices' provided by Kuwait to facilitate humanitarian assistance during the war in Syria, as well as the efforts to tackle recent hybrid threats against Europe. In addition, Kuwait and Qatar are important economic partners for the Union, in particular in the area of energy and in view of the EU's objectives to diversify its energy supplies².

The third countries whose nationals are exempt from the visa requirement are to be determined on the basis of a case-by-case assessment of a variety of criteria laid down in Article 1 of Regulation (EU) 2018/1806. The aforementioned criteria relate inter alia to "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".

Kuwait and Qatar present low irregular migration risks, are increasing cooperation with the EU on security matters and issue biometric passports, which is necessary for visa-free travel to the EU. Kuwait and Qatar are important economic and trading partners for the EU, and vital partners for Europe in a post-COVID 19 context, as well as amid the Russian aggression against Ukraine and its consequences in the area of energy supplies and global mobilisation in support of the UN charter. A visa exemption for citizens from Kuwait and Qatar travelling to the EU would benefit the EU economy, in particular the tourism industry. Although challenges remain in the area of human rights and fundamental freedoms, Kuwait and Qatar

¹ 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)

² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions 'Security of supply and affordable energy price' of 23 March 2022 (COM/2022/138 final), https://energy.ec.europa.eu/communication-security-supply-and-affordable-energy-prices_en

have been undergoing societal transformation processes as regards women's rights, labour rights, freedom of religion and interfaith dialogue. The prospect of sustainable visa-free travel is expected to reinforce positive trends in Kuwait and Qatar regarding progress and reforms in these areas.

As regards regional coherence, the continued engagement with the other remaining visa-required Gulf countries in the coming months, with a view to ultimately achieving visa exemption with the EU for all GCC countries, could also encourage similar positive reforms. In this regard, the Commission will shortly launch technical discussions with these partners on the fulfilment of criteria for visa exemption under the Visa Regulation. In addition, the adoption of more favourable rules concerning the issuance of multiple-entry visas with a long validity (valid for up to 5 years) with these partners will be pursued within local Schengen cooperation, in accordance with Article 24(2) of Regulation 810/2009 establishing a Community Code on Visas, as amended by Regulation 2019/1155. The proposal on digitalising the procedure for issuing Schengen visas will make the visa procedure largely paperless and contactless, and thereby more timesaving and cost-efficient for applicants.

The Commission is proposing to amend Regulation (EC) 2018/1806 to exempt nationals of Kuwait and Qatar from the requirement to be in possession of a visa when crossing the external borders of the Member States for stays of no more than 90 days in any 180-day period.

- **Consistency with existing policy provisions in the policy area**

Regulation (EU) 2018/1806 lists the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement. Regulation (EU) 2018/1806 is applied by all Member States – with the exception of Ireland – and also by Iceland, Liechtenstein, Norway and Switzerland. The Regulation is part of the EU's common visa policy for short stays of 90 days in any 180-day period.

Kuwait and Qatar are currently listed in Annex I of Regulation (EU) 2018/1806 among the third countries whose nationals are required to be in possession of a visa when crossing the external borders of the Member States. Thorough checks of all travellers against relevant databases at the external borders should be carried out³.

The composition of the lists of third countries in Annex I and II should be, and should remain, consistent with the criteria laid down in Article 1 of Regulation (EU) 2018/1806⁴, which relate inter alia to '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'.

Following the application of the proposed exemption from the visa requirement, the reciprocity and suspension mechanisms of Regulation (EU) 2018/1806 can be applied in case full visa reciprocity is not ensured or if the visa-free regime is abused or in case of abuse

³ Article 8 par.3 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) as amended by Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017, OJ L 74 18.3.2017 p.1

⁴ Recital 4 of Regulation (EU) 2018/1806.

resulting from the exemption from the visa requirement⁵. A visa waiver agreement, which will include safeguards in relation to the criteria of Regulation (EU) 2018/1806 having justified the visa exemption will have to be concluded between each of the two countries and the EU to make the exemption effective.

- **Consistency with other Union policies**

The proposed exemption from the visa requirement for Kuwait and Qatar is consistent with the EU efforts to pursue a stronger, more strategic, comprehensive and multi-sector partnership with the Gulf region. A Joint Communication on a strategic partnership with the Gulf is to be adopted to this aim.

The EU Entry/Exit System (EES), which is planned to enter into operation in September 2022, will contribute to ensuring a lawful use of the visa exemption by third country nationals. In addition, the European Travel Information and Authorisation System (ETIAS), which is planned to start operating in May 2023, will allow for the pre-travel screening for visa-free third country nationals, effectively contributing to maintaining and strengthening the security of the Schengen Area.

.2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation will constitute a development of the Schengen *acquis*.

- **Subsidiarity, proportionality and choice of the instrument**

The necessary amendment to Regulation (EU) No 2018/1806 is to be done by means of a regulation. Member States cannot act individually to achieve the policy objective. No other (non-legislative) options to achieve the policy objective are available.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Discussions with Member States on the possibility of a revision of the EU lists of visa-free and visa-required countries, as well as on the methodology and scope of such revision, have taken place at the Visa Working Party. The requirements for the EU visa exemption have been discussed with the countries concerned and both have stated their interest in securing visa-free travel to the EU on various occasions.

- **Fundamental rights**

This proposal has no negative consequences for the protection of fundamental rights in the European Union.

⁵ Articles 7 and 8 of Regulation (EU) 2018/1806, respectively.

4. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposed Regulation will be directly applicable from the date of its entry into force. The exemption from the visa requirement will apply from the date of entry into force of an agreement on visa exemption to be concluded between the European Union and Kuwait and Qatar. The Commission will continue to monitor closely the fulfilment of the requirements of Article 1 of Regulation (EU) 2018/1806 after the entry into force of the visa waiver agreements.

- **Detailed explanation of the specific provisions of the proposal**

It is proposed to amend Regulation (EU) 2018/1806 by, transferring Kuwait and Qatar from Annex I (list of third countries whose nationals are required to be in possession of a visa when crossing the external borders of the member states) to Annex II (list of third countries whose nationals are exempt from the requirement to be in possession of a visa when crossing the external borders of the member states for stays of no more than 90 days in any 180-day period).

Proposal for a

REGULATION 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

(Kuwait, Qatar)

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), point (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) Regulation (EU) 2018/1806 of the European Parliament and of the Council⁶ lists the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement.
- (2) The third countries whose nationals are exempt from the visa requirement are determined on the basis of a case-by-case assessment of a variety of criteria laid down in Article 1 of Regulation (EU) 2018/1806. Those criteria relate, inter alia, to “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”.
- (3) Kuwait and Qatar present low risks of irregular migration to the Union and issue biometric passports in line with standards of the International Civil Aviation Organisation. Security cooperation with those countries has intensified in recent years. As regards economic interests, Kuwait and Qatar are important economic partners for the Union, in particular in the area of energy. Although challenges remain in the area of human rights and fundamental freedoms, Kuwait and Qatar have undergone societal transformations and improvements regarding women’s rights, labour rights and freedom of religion and interfaith dialogue and are expected to continue making progress and reforms. The long-term benefits of visa-free travel to the EU can reinforce positive trends in these areas.

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. 39–58

- (4) Consequently, nationals of those countries should be exempt from the visa requirement for stays of no more than 90 days in any 180-day period, and references to those countries should be transferred to Annex II to Regulation (EU) 2018/1806.
- (5) The exemption from the visa requirement for nationals of Kuwait and Qatar is without prejudice to the application of EU restrictive measures adopted on the basis of Article 29 TEU and Article 215 TFEU.
- (6) The exemption from the visa requirement for nationals of Kuwait and Qatar should not apply until bilateral agreements on visa waiver between the Union and Kuwait and Qatar have been concluded, in order notably to ensure full reciprocity is maintained.
- (7) Regulation (EU) 2018/1806 should therefore be amended accordingly,
- (8) 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/EC⁷. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (9) As regards Iceland and 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*, which fall within the area referred to in point B of Article 1, of Council Decision 1999/437/EC⁸.
- (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*, which fall within the area referred to in point B of Article 1, of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC⁹.
- (11) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed 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*, which fall within the area referred to in point B of Article 1, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁰,

⁷ 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).

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).

⁹ 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 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

- (12) 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.

HAVE ADOPTED THIS REGULATION:

Article 1

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

(a) in point 1 of Annex I, (“STATES”) the references to Kuwait and Qatar are deleted.

(b) in Annex II, Point 1 (“STATES”), is amended as follows:

(i) between the references to ... and to, the following reference is inserted :

“Kuwait (*)(**)”

(*) The exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union.

(**) The exemption from the visa requirement shall only apply to holders of biometric passports issued in line with the standards of the International Civil Aviation Organisation (ICAO).’

(ii) between the references to ... and to, the following reference is inserted :

“Qatar (*)(**)”

(*) The exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union.

(**) The exemption from the visa requirement shall only apply to holders of biometric passports issued ’in line with the standards of the International Civil Aviation Organisation (ICAO).

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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.

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President