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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 September 2015
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the conclusion of the Agreement between the European Union and the Republic of Peru on the short-stay visa waiver

Delegations will find attached document COM(2015) 439 final.

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2015/0199 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union and the Republic of Peru on the short-stay visa waiver

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Council Regulation (EC) No 539/2001[1] 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 (EC) No 539/2001 is applied by all Member States, with the exception of Ireland and the United Kingdom.

Regulation (EU) No 509/2014 of the European Parliament and of the Council[2] amended Regulation (EC) No 539/2001 by transferring 19 countries to Annex II, which lists the third countries whose nationals are exempt from the visa requirement. Those 19 countries are: Colombia, Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Peru, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu. The reference to each of those countries in Annex II is accompanied by a footnote which specifies that "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".

Regulation (EU) No 509/2014 was adopted on 20 May 2014 and entered into force on 9 June 2014. The first series of visa waiver agreements were signed on 6 May 2015 (United Arab Emirates), 26 May 2015 (Timor-Leste) and 28 May 2015 (Dominica, Grenada, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Trinidad and Tobago and Vanuatu) and provisionally apply from the date of signature pending their entry into force.

Colombia and Peru were, according to Recital 5 of Regulation (EU) No 509/2014 and the joint declaration issued at the time of adoption, subject to a specific procedure which required a further assessment of those countries against the relevant criteria, before the Commission could present to the Council recommendations for decisions authorising the opening of negotiations on visa waiver agreements with those two countries. In October 2014, the Commission adopted a report[3] broadly assessing the situation of Peru against the criteria listed in Article 1 of Regulation (EC) No 539/2001, as amended by Regulation (EU) No 509/2014; a report about Colombia was adopted in parallel[4]. The report examined data and developments in migration and mobility (Schengen visas, legal migration, irregular migration, travel document security and fraud), crime and security, economy, trade and tourism, external relations and human rights issues, regional coherence and reciprocity. It also assessed the risk scenarios possibly resulting from visa liberalisation. The Commission concluded that the significant improvement of the Peruvian economic and social situation in recent years provided justification that Peruvians should be granted visa-free access to the Member States' territory, while the risks related to visa liberalisation were considered to be manageable, *inter alia* by reinforced cooperation on return and correctly implemented border controls. In

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1 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, 21.03.2001, p. 1

2 Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 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, OJ L 149, 20.05.2014, p. 67

3 COM (2014) 663, 29.10.2014

4 COM (2014) 665, 29.10.2014

addition, the visa waiver agreement contains the necessary safeguards to suspend or terminate the agreement should this be required to avoid security or migration risks for the Union.

In March 2015, the Commission presented a Recommendation to the Council to authorise it to start negotiations on visa waiver agreements with Colombia and Peru[5]. On 19 May 2015, the Council addressed negotiating directives to the Commission. The negotiations with Peru were opened on 20 May 2015 in Brussels. During that meeting the entire draft text could be reviewed, a few modifications were suggested and agreement was reached on all aspects. A minor change was added in the following days.

The agreement was initialled by the chief negotiators on 9 June 2015; an official ceremony was held in the margins of the EU-CELAC Summit on 10 June 2015. The text of the agreement had been circulated to Member States on 27 May 2015 and further information was provided during a meeting of the Visa Working Party of the Council on 15 June 2015.

2. LEGAL BASIS

On the part of the Union, the legal basis for the agreement is point (a) of Article 77(2) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218 thereof.

The attached proposal constitutes the legal instrument for concluding the agreement. The Council will decide by qualified majority after the signing of the agreement, on behalf of the Union, by a person designated by the presidency of the Council and after having obtained the consent of the European Parliament in accordance with point (a) of the second subparagraph of Article 218(6) TFEU.

3. OUTCOME OF THE NEGOTIATIONS

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft visa waiver agreement is acceptable to the Union.

The final content of it can be summarised as follows:

Purpose

The agreement provides for visa-free travel for the citizens of the European Union and for the citizens of Peru when travelling to the territory of the other Contracting Party for a maximum period of 90 days in any 180-day period.

In order to safeguard equal treatment of all EU citizens, a provision has been included in the agreement stating that Peru may suspend or terminate the agreement only in respect of all the Member States of the European Union and that the Union may also only suspend or terminate the agreement in respect of all of its Member States.

The specific situation of the United Kingdom and Ireland is reflected in the preamble.

Scope

[5] COM (2015) 119, 11.3.2015

The visa waiver covers all categories of persons (holders of ordinary, diplomatic, service/official and special passports) travelling for all kinds of purposes, except for the purpose of carrying out a paid activity. For this latter category, each Member State and also Peru remain free to impose the visa requirement on the citizens of the other Party in accordance with the applicable Union or national law. In order to ensure harmonised implementation, a joint declaration is attached to the agreement on the interpretation of the category of persons travelling for the purpose of carrying out a paid activity.

Duration of stay

The agreement provides for visa-free travel for the citizens of the European Union and for the citizens of Peru when travelling to the territory of the other Contracting Party for a maximum period of 90 days in any 180-day period. A joint declaration on the interpretation of this period of 90 days in any 180-day period is attached to the agreement.

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 Peru to stay for 90 days in any 180-day on the territory of each of those Member States (currently Bulgaria, Croatia, Cyprus and Romania), independently of the period calculated for the whole Schengen area.

Territorial application

The agreement contains provisions related to its territorial application: in the case of France and the Netherlands, the visa waiver would entitle nationals of Peru to stay only in those Member States' European territories.

Declarations

In addition to the joint declarations referred to above, four other joint declarations are attached to the agreement:

- on the association of Norway, Iceland, Switzerland and Liechtenstein to the implementation, application and development of the Schengen acquis;
- on the full dissemination of information about the content and consequences of the visa waiver agreement and related issues, such as the entry conditions;
- on the introduction of biometric passports by the Republic of Peru, declaring that Peru commits to issuing biometric passports by 31 December 2015 at the latest and that failure to introduce biometric passports by that date constitutes sufficient grounds for suspension of the agreement; and
- on cooperation concerning irregular migration. This declaration recalls the commitment pursuant to Article 49(3) of the Political Dialogue and Cooperation Agreement between the Union and the Andean Community with regard to the readmission of their irregular migrants. The Parties will closely monitor this commitment and agree to conclude a readmission agreement upon request by either Party, in particular in case of an increase of irregular migration and in problems regarding the readmission of irregular migrants. Failure to conclude a readmission agreement upon request constitutes sufficient grounds for suspension of the agreement.

4. CONCLUSION

In the light of the above-mentioned results, the Commission proposes that the Council approve, after obtaining the consent of the European Parliament, the Agreement between the European Union and Peru on the short-stay visa waiver.

2015/0199 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union and the Republic of Peru on the short-stay visa waiver

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (a) of Article 77(2), in conjunction with point (a) of the second subparagraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) The Commission has negotiated on behalf of the European Union an Agreement with the Republic of Peru (hereinafter 'Peru) on the short-stay visa waiver (hereinafter 'the Agreement').

(2) This Agreement was signed, on behalf of the European Union, on …….2015 and has been provisionally applied from the day following that date, subject to its possible conclusion at a later date, in accordance with Decision……../……/EU of the Council of [……].

(3) The Agreement should be approved.

(4) The Agreement establishes a Joint Committee for the management of the Agreement, which shall adopt its rules of procedure. It is appropriate to provide for a simplified procedure for the establishment of the Union position in this case.

(5) In accordance with the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice and the Protocol on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and confirming that the provisions of the Agreement do not apply to the United Kingdom and Ireland,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and Peru on the short-stay visa waiver is hereby approved on behalf of the Union.

Article 2

The President of the Council shall give the notification provided for in Article 8(1) of the Agreement[6].

Article 3

The Commission, assisted by experts from Member States, shall represent the Union in the Joint Committee of experts established by Article 6 of the Agreement.

Article 4

The position of the Union within the Joint Committee of experts with regard to the adoption of its rules of procedure as required under Article 6(4) of the Agreement shall be taken by the Commission after consultation with a special committee designated by the Council.

Article 5

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

[6] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.