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VISA 266
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NOTE

From:	Presidency
To:	Visa Working Party
No. prev. doc.:	7924/18 + COR 1, 7922/18
Subject:	<p>Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Federative Republic of Brazil amending the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports</p> <p>Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Federative Republic of Brazil amending the Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports</p> <p>- Declaration of the Union</p>

The visa waiver agreements (VWAs) that the EU has concluded with 26 third countries generally contain the following wording: *“For the purposes of this Agreement the citizens of [third country] may stay in the territory of the Member States fully applying the Schengen acquis for a maximum period of 90 days in any 180-day period. That period shall be calculated independently of any stay in a Member State which does not yet apply the Schengen acquis in full.”*

As of entry into operations of the Entry/Exit System (EES)¹, the 90-day limit will include stays in Member States “*which do not yet apply the Schengen acquis in full but operate the EES*”. It should be noted that the determination as to which Member States apply the Schengen acquis - and to what extent - and which Member States operate the EES - is an internal EU matter which should not be subject to interpretation by third countries.

In order to clarify the calculation of the duration of authorised stay as provided for by the EES Regulation (territorial scope) with regards to the pending Agreement between the EU and Brazil amending the Agreement on short-stay visa waiver for holders of diplomatic, service or official passports and the Agreement between the EU and Brazil amending the Agreement on short-stay visa waiver for holders of ordinary passports, the Presidency suggests to attach the declaration in the Annex to the decisions on their signing.

In the future, the same declaration needs to be adopted for the other VWAs in force to ensure their consistency with the EES Regulation.

¹ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20–82.

**DECLARATION OF THE UNION CONCERNING THE ENTRY INTO FORCE
OF REGULATION 2017/2226 ESTABLISHING THE ENTRY/EXIT SYSTEM (EES)
AND THE MEMBER STATES APPLYING THE SCHENGEN ACQUIS IN FULL**

Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the Entry/Exit System for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 entered into force on 29 December 2017.

As a consequence, as from the date of application of Regulation (EU) 2017/2226² for the purposes of this Agreement Member States applying the Schengen *acquis* in full will mean Member States operating the Entry/Exit System at the external borders. The maximum period of 90 days in any 180-day period will be calculated taking into account the period of stay in all the Member States operating the Entry/Exit System at the external borders.

² The date of application will be decided by the Commission in accordance with Article 73 of Regulation (EU) 2017/2226.