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2018/0390(COD)**

NOTE

From: Presidency

To: Permanent Representatives Committee

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

- Confirmation of the final compromise text with a view to agreement

I. Content and context of the proposal

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. On 21 March 2019 the European Council agreed to an extension of the period provided for in Article 50(3) TEU until 22 May 2019, provided the Withdrawal Agreement is approved by the House of Commons. If that is not the case, the European Council agreed to an extension until 12 April 2019¹.

¹ European Council decision (EU) 2019/476, taken in agreement with the United Kingdom, of 22 March 2019, extending the period under Article 50(3) TEU, OJ L 80 I of 22.3.2019, page 1.

2. In the framework of Brexit preparedness, on 13 November 2018 the Commission submitted a legislative proposal amending Regulation (EC) No 539/2001 - now, after codification, Regulation (EU) No 2018/1806² - 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 proposal aims at granting UK nationals who are British citizens visa-free travel to the EU after the United Kingdom's withdrawal, upon the condition that the UK also grants reciprocal and non-discriminatory visa-free travel to EU citizens travelling to the UK after the latter's withdrawal from the EU.
3. The amending Regulation should enter into force (and apply) from the day following that on which Union law ceases to apply to the United Kingdom.

II. States of play

4. The Austrian Presidency started the examination of the proposal in the Council preparatory bodies soon after its presentation, on 28 November 2018. After several rounds of discussion at working party level and at JHA Counsellors level, on 1 February 2019, Coreper granted the Romanian Presidency a mandate to enter into interinstitutional negotiations³.
5. The legislative proposal was assigned to the Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), which, on 26 November 2018, designated Claude MORAES (S&D, UK - Chair of LIBE) as rapporteur. The LIBE Committee adopted a mandate to enter into interinstitutional negotiations on 29 January 2019⁴. The interinstitutional negotiations started on 6 February 2019. Five trilogues took place.
6. On 1st April 2019, the EP rapporteur was replaced by Mr Sergei STANISHEV (S&D, BG - vice-Chair of LIBE).
7. At the 6th trilogue on 2nd April 2019 the co-legislators found a political agreement, which includes the amendments of both institutions to the Commission's proposal.

² OJ L 303 of 28.11.2018, page 39.

³ 5960/19.

⁴ A8-0047/2019.

8. The LIBE Committee is expected to vote to confirm the political agreement at its meeting on 2 April 2019.
9. Given the time pressure, the legal-linguistic revision of the text has been done in parallel to the negotiations. The changes made by the lawyer-linguists are already integrated in the text attached to this note.

III. Conclusion

10. In light of the above, COREPER is invited to:
 - approve the text set out in the Annex to this note, and
 - agree that the Chair of Coreper will send a letter to the Chair of the LIBE Committee accordingly, confirming that, should the European Parliament, in accordance with Article 294(3) of the Treaty on the Functioning of the European Union, adopt its position at first reading in the form of the text as contained in the Annex to this letter, the Council would, in accordance with Article 294(4) of that Treaty, approve the European Parliament's position and adopt the act.

PE-CONS 71/19 - 2018/0390(COD)

REGULATION (EU) 2019/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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 procedure¹,

¹ *Position of the European Parliament of ... [(OJ ...)/(not yet published in the Official Journal)] and decision of the Council of*

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 Community² ('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 Council³, 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.

² ***OJ C 66 I, 19.2.2019, p. 1.***

³ 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 Council*⁴. 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.*

⁴ 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*⁵, which fall within the area referred to in point B of Article 1 of Council Decision 1999/437/EC⁶.

⁵ OJ L 176, 10.7.1999, p. 36.

⁶ 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*⁷ 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/EC⁸.

⁷ OJ L 53, 27.2.2008, p. 52.

⁸ 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*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 2011/350/EU¹⁰.

⁹ OJ L 160, 18.6.2011, p. 21.

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 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/EC¹¹; 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/EC¹²; 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.

¹¹ 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).

¹² 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) **■**, 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
