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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and the People's Republic of China on the short-stay visa waiver for holders of diplomatic passports

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

In the context of the EU-China Mobility and Migration Dialogue, the European Union and the People's Republic of China agreed on a cooperation package comprising measures in the area of irregular migration and visa policy that would be negotiated or implemented in two interdependent phases. In the first phase, a reciprocal visa waiver agreement for holders of diplomatic passports would be negotiated and Member States would be authorised by the Chinese authorities to open visa application centres in 15 designated Chinese cities. Regular expert meetings on combating irregular migration, including the identification and readmission of irregular migrants, would also be established in the first phase. In the second phase, both sides would negotiate visa facilitation and readmission agreements. This package was finalised and endorsed by both sides' political leaders at the 17th EU-China Summit on 29 June 2015.

On 14 September 2015 the Council authorised the opening of negotiations with China for a short-stay visa waiver agreement for holders of diplomatic passports and addressed negotiating directives to the Commission. The negotiations were opened on 21 September and conducted by exchange of written notes. The agreement was initialled by the chief negotiators of the EU and China respectively on 3 and 4 November 2015. Member States were regularly kept informed of the negotiations during meetings of the Visa Working Party of the Council.

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

Council Regulation (EC) No 539/2001¹ 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, as well as by Iceland, Liechtenstein, Norway and Switzerland.

China is among those countries whose nationals are required to hold a visa when travelling to the Schengen area. EU citizens also need a visa to enter China.

- **Consistency with other Union policies**

The Migration and Mobility Dialogue between the EU and China was established in October 2013 and aims at exchanging views on respective migration policies along the four pillars of Global Approach to Migration and Mobility as well as at discussing possibilities for cooperation on issues of mutual interest.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

For 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 the signing of the agreement. The Council will decide by qualified majority.

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

Taking into account the fact that both parties have committed themselves in the EU-China Summit statement to complete the first phase by the end of 2015 (which also includes the entry into effect of this agreement), the proposed decision on the signing sets out the provisional application of the agreement as from the third day following the date of its signature in accordance with Article 218(5) TFEU. Considering the need for the European Parliament's consent before the agreement is concluded, the Commission will inform the European Parliament of the provisional application of the agreement.

- **Subsidiarity (for non-exclusive competence)**

While Article 4(1)(a) of Regulation (EC) No 539/2001 enables individual Member States to conclude bilateral agreements with third countries exempting holders of diplomatic passports, service/official passports or special passports from the visa requirement, only an EU-level agreement can achieve that effect for all Member States and thereby offer leverage for agreements with third countries in related areas, such as readmission of irregular migrants.

- **Proportionality**

Only an international agreement can derogate from the general visa requirement for Chinese citizens, which is necessary to achieve the above-mentioned objectives.

- **Choice of the instrument**

See above.

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

- **Ex-post evaluations/fitness checks of existing legislation**

n/a

- **Stakeholder consultations**

Member States were consulted both in the Council's High-Level Working Group on Asylum and the Visa Working Party.

- **Collection and use of expertise**

n/a

- **Impact assessment**

No Impact Assessment has been carried out, as the initiative is not expected to have any measurable economic or social benefits. It is essentially a political agreement.

- **Regulatory fitness and simplification**

n/a

- **Fundamental rights**

n/a

4. BUDGETARY IMPLICATIONS

n/a

5. OTHER ELEMENTS

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

The agreement establishes a Joint Committee for the management of the agreement whose tasks include, among others, the monitoring of its implementation as well as suggesting amendments or additions.

- **Explanatory documents (for directives)**

n/a

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

The Commission considers that the objectives set by the Council in its negotiating directives were fully attained. Its main provisions can be summarised as follows:

Purpose and scope

The agreement provides for visa-free travel for citizens of the European Union holding a valid diplomatic passport or an EU *laissez-passer*² and for citizens of China holding a valid diplomatic passport when travelling to the territory of the other Contracting Party.

In order to safeguard equal treatment of all EU Member States, a provision has been included in the agreement stating that China 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.

Duration of stay

The agreement provides for visa-free travel 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 Chinese holders of diplomatic passports to stay for 90 days in any 180-day period 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.

Visits by high officials

The agreement stipulates that officials at or above vice-ministerial level of the central government and officers of or above the rank of major general of the armed forces must inform the competent authorities of the country to be visited through diplomatic channels before they travel to its territory for official purposes.

Exchange of specimens

The agreement provides for the exchange of specimens of diplomatic passports and the EU *laissez-passer* no later than 90 days after the date of signature of the agreement.

Territorial application

² Issued in accordance with Council Regulation (EU) No 1417/2013 of 17 December 2013 laying down the form of the *laissez-passer* issued by the European Union, OJ L 353, 28.12.2013, p. 26-39.

The agreement clarifies that the visa waiver for Chinese holders of diplomatic passports only applies to the European territories of France and the Netherlands.

Joint declarations

In addition to the joint declaration referred to above, two 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 relationship of this agreement to other fields of cooperation in the framework of the EU-China Mobility and Migration Dialogue.

Conclusion

In the light of the above-mentioned results, the Commission proposes that the Council

- decide that the agreement be signed on behalf of the Union and authorise the President of the Council to appoint the person(s) duly empowered to sign on behalf of the Union;
- approve the provisional application of the agreement pending its entry into force.

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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 Article 218(5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In the context of the EU-China Mobility and Migration Dialogue, the Union and the People's Republic of China agreed on a cooperation package of measures in the area of irregular migration and visa policy, including a reciprocal visa waiver agreement for holders of diplomatic passports.
- (2) On 14 September 2015, the Council adopted a decision authorising the Commission to open negotiations with the People's Republic of China for the conclusion of an agreement on the short-stay visa waiver for holders of diplomatic passports (the 'Agreement').
- (3) Negotiations on the Agreement were opened on 21 September 2015 and were successfully finalised by the initialling thereof, by exchange of letters, on 3 November 2015 by the Union and on 4 November 2015 by the People's Republic of China.
- (4) The Agreement should be signed, and the declarations attached to the Agreement should be approved, on behalf of the Union. The Agreement should be applied on a provisional basis as from the third day following the date of signature thereof, pending the completion of the procedures for its formal conclusion.
- (5) This Decision 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/EC³; the United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (6) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC⁴; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application,

³ 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).

⁴ 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).

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and the People's Republic of China on the short-stay visa waiver for holders of diplomatic passports (the 'Agreement') is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The declarations attached to this Decision shall be approved on behalf of the Union.

Article 3

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 4

The Agreement shall be applied on a provisional basis as from the third day following the date of signature thereof⁵, pending the completion of the procedures for its conclusion.

Article 5

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

Done at Brussels,

*For the Council
The President*

⁵ The date of signature of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.