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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 Republic of the Marshall Islands on the short-stay visa waiver

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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.

Regulation (EU) No 509/2014 of the European Parliament and of the Council² 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. In July 2014, the Commission presented a Recommendation to the Council to authorise it to start negotiations on visa waiver agreements with each of the following 17 countries: Dominica, Grenada, Kiribati, Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, the United Arab Emirates and Vanuatu³. On 9 October 2014, the Council addressed negotiating directives to the Commission.

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. The Council has authorised the signature of a second series of visa waiver agreements with Tonga (signed on 20 November 2015), Colombia (signed on 2 December 2015), Kiribati (date of signature to be determined) and Palau (signed on 7 December 2015). These four agreements provisionally apply from the day following the date of signature pending their entry into force.

The negotiations with the Marshall Islands were opened on 17 December 2014 and conducted by exchange of letters. During further exchanges agreement was reached on all aspects. The agreement was initialled by an exchange of letters between the chief negotiators on 11 December 2015 (Marshall Islands) and 13 January 2016 (Union). The Member States were informed during a meeting of the Visa Working Party of the Council held on 18 January 2016.

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) 467, 17.7.2014

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 the signature of the agreement. The Council will decide by qualified majority.

Taking into account the fact that the Marshall Islands will be able to complete its internal ratification procedure quickly and the long period of time since the Commission first proposed to exempt citizens of the Marshall Islands from the visa requirement (November 2012), the proposed decision on the signature sets out the provisional application of the agreement as from the 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.

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 the Marshall Islands 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 the Marshall Islands 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

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 the Marshall Islands remains 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 the Marshall Islands 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 the Marshall Islands 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 the Marshall Islands to stay only in those Member States' European territories.

Declarations

In addition to the joint declarations 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 full dissemination of information about the content and consequences of the visa waiver agreement and related issues, such as the entry conditions.

4. 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) Regulation (EU) No 509/2014 of the European Parliament and the Council⁴ transferred the reference to the Republic of the Marshall Islands from Annex I to Annex II of Council Regulation (EC) No 539/2001⁵.
- (2) That reference to the Republic of the Marshall Islands is accompanied by a footnote indicating 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.
- (3) On 9 October 2014, the Council adopted a decision authorising the Commission to open negotiations with the Republic of the Marshall Islands for the conclusion of an agreement between the European Union and the Republic of the Marshall Islands on the short-stay visa waiver (the ‘Agreement’).
- (4) Negotiations on the Agreement were opened on 17 December 2014 and were successfully finalised by the initialling thereof on 13 January 2016.
- (5) 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 day following the date of signature thereof, pending the completion of the procedures for its formal conclusion.
- (6) 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

⁴ 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.

⁵ 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.

2000/365/EC⁶; 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.

- (7) 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/EC⁷; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the Union of the Agreement between the European Union and the Republic of the Marshall Islands on the short-stay visa waiver (the ‘Agreement’) is hereby authorised, 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 day following the date of signature thereof, pending the completion of the procedures for conclusion.

Article 5

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

Done at Brussels,

*For the Council
The President*

⁶ 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).

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).