

**STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION
LEGISLATION AND DOCUMENTS**

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ADD1
COM(2018) 177 final ANNEX**

Proposal for a 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

7922/18

ANNEX to the Proposal for a 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

7922/18

Proposal for a COUNCIL DECISION on the conclusion 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

7923/18

ANNEX to the Proposal for a Council Decision on the conclusion of the Agreement between the European Union and 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
7923/18 ADD1

Proposal for a 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
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7926/18

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7926/18 ADD1

Submitted by Home Office on 10th MAY ~~April~~ 2018

SUBJECT MATTER

1. This Explanatory Memorandum (EM) relates to proposals from the Commission to amend the Agreement between the European Union and the Federative Republic of Brazil on the short-stay visa waiver for holders of ordinary, diplomatic, service and official passports. These documents seek council approval to both conclude the agreements and empower a person to sign the agreements on behalf of the European Union.
2. Council Regulation (EC) No 539/2001 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 the requirement. Regulation (EC) No 539/2001 applies to all Member States with the exception of Ireland and the United Kingdom. Brazil is on the visa-free list.

3. Regulation (EU) No 610/2013 of 26 June 2013 of the European Parliament and of the Council re-defined the concept of 'short-stay' for third-country nationals in the Schengen area. The definition of 'short-stay' was changed from 'three months during a six-month period from the date of first entry' to '90 days in any 180-day period'. The old definition of 'short-stay' is, however, still referred to in the visa waiver agreements the European Union concluded with a number of countries, including Brazil. The Commission is proposing an agreement to amend the definition of 'short-stay' in the EU/Brazil visa waiver agreement.

SCRUTINY HISTORY

4. None for this document.

MINISTERIAL RESPONSIBILITY

5. The Home Secretary has responsibility for policy on immigration issues.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

6. The Home Secretary retains overall responsibility for immigration control in the United Kingdom, which is a reserved matter under the UK's devolution settlement. We are not aware of any direct impact on the areas of responsibility of the Devolved Administrations. However, they have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

7.
 - i. Legal basis

The proposal is based on point (a) of Articles 77(2) of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218 thereof.
 - ii. European Parliament Procedure

Ordinary legislative procedure.
 - iii. Voting procedure

Qualified majority voting.
 - iv. Impact on United Kingdom Law

None. The UK does not participate in the immigration and border elements of the Schengen acquis, and we do not expect to make any changes to our visa regime as a result of changes to the EU's visa regime with Brazil. Brazil has visa-free access to the UK.
 - v. Application to Gibraltar

None.

vi. Fundamental rights analysis

Not applicable.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

8. The associated Member States of the EU (currently Iceland, Norway, Liechtenstein and Switzerland) which apply the Visa Code and Schengen provisions will have a direct interest in visa waiver agreements.
9. However, the EU has no power to amend visa waiver agreements that would bind the four countries (Iceland, Norway, Switzerland and Liechtenstein). It is, however, desirable for these countries and Brazil to modify their existing agreements in line with the new definition of 'short-stay'.
10. A joint declaration is attached to the proposal stating the desirability of them doing so.

SUBSIDIARITY

11. The proposals comply with the principal of subsidiarity, as visa waiver agreements cannot be achieved by Member States (who are parties to the Immigration and Border aspects of the Schengen Acquis) acting alone.

POLICY IMPLICATIONS

12. On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
13. There are no direct policy implications for the UK as we do not participate in the immigration and border aspects of the Schengen acquis. We do not anticipate any impact on our borders, as Brazil already has visa-free access to the UK.
14. In July 2014 the Commission adopted a recommendation for a Council Decision for authorising the opening of negotiations for amending the short-stay visa waiver agreements with the EU and seven countries, including Saint Kitts and Nevis, whose visa waiver agreements referred to the old definition of 'short-stay'. The Council adopted this in October 2014. The purpose was to bring definitions in the agreements in line with Regulation (EU) No 610/2013. It was also considered that defining 'short-stay' in terms of days, rather than in months, is less complex for verification and calculation by electronic systems.
15. The negotiations with Brazil were successfully completed on 31 October 2017. Both parties agreed to adopt the new definition of 'short-stay' throughout the visa waiver agreement between the EU and Brazil. In addition, the agreement includes a few technical amendments (e.g. clarifying that, in the event that the visa waiver agreement has been suspended by one of the contracting parties, the suspension will be lifted if the reasons for it cease).

16. The conclusion proposal provides for visa-free travel for the citizens of the EU travelling to Brazil and vice versa for 90 days in any 180-day period. A joint declaration attached to the proposal on the interpretation of the maximum period of stay allowed, states that 90 days means either a continuous visit or several consecutive visits, the duration of which does not exceed 90 days in any 180-day period.

CONSULTATION

17. HM Government maintains close contact with non-governmental and voluntary organisations concerned with immigration and asylum and holds regular discussions with them.

IMPACT ASSESSMENT

18. Not applicable.

FINANCIAL IMPLICATIONS

19. None.

TIMETABLE

20. The agreement will enter into force on the first day of the 6th month following the date on which all Contracting Parties have ratified it. There will be a six-month transitional period to enable travellers to understand the law and comply with it.



**Rt. Hon. Caroline Nokes
Minister for Immigration
Home Office**

