COMMISSION OF THE EUROPEAN COMMUNITIES

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2009/0017 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and the Federation of Saint Kitts and Nevis on the short-stay visa waiver

Proposal for a

COUNCIL DECISION

on the signature and provisional application of the Agreement between the European Community and the Federation of Saint Kitts and Nevis on the short-stay visa waiver

EXPLANATORY MEMORANDUM

1. POLITICAL AND LEGAL BACKGROUND

Council Regulation (EC) No 1932/2006[1] amended Council Regulation (EC) No 539/2001[2] listing the third countries whose nationals must be in possession of visas when crossing the external borders of the European Union (negative list), and those whose nationals are exempt from that requirement (positive list) by - inter alia - transferring six third countries from the negative to the positive list. These are Antigua and Barbuda, the Bahamas, Barbados, Mauritius, Saint Kitts and Nevis and the Seychelles. The Regulation also points out that the exemptions from the visa requirement for nationals of these countries should not come into force before a bilateral visa waiver agreement between the European Community and the countries in question has been concluded and entered into force. This Regulation was adopted on 21 December 2006 and entered into force in January 2007.

In the meantime, as from 15 January 2007 (later shifted to 1 February) the CARICOM countries introduced a special visa regime for the nationals of several EU Member States (EU nationals were treated unequally as the citizens of the other Member States remained exempted from the visa obligation) due to the Cricket World Cup 2007 taking place in the Caribbean Community. The introduction of this visa requirement despite the favourable provisions of the new Community Regulation led to the postponement of the preparation of the draft mandates for negotiations with these third countries on the visa waiver.

Having regard to the expiry of the temporary visa regime on 15 May 2007, the mandates for negotiation with the six countries have been adopted by the Council on 5 June 2008. Meanwhile, a preliminary meeting with the representatives of the six countries concerned on certain institutional and technical issues took place in Brussels on 13 March 2008.

The formal negotiations on the visa waiver were opened in July 2008 separately with each of the six countries. The second round of negotiations was held on 16 October 2008 in the format of a joint meeting.

The Member States have been informed and consulted three times in the Visa Working Party of the Council.

The Agreements were initialled with four out of the six countries concerned on 12 November 2008 and with the two others on 19 November.

On the part of the Community, the legal basis for the Agreement is Article 62(2)(b)(i), in conjunction with Article 300 of the TEC.

The attached proposals constitute the legal instruments for the signature and conclusion of the Agreement. The Council will decide by qualified majority. The European Parliament will have to be formally consulted on the conclusion of the Agreement, in accordance with Article 300(3) of the TEC.

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[1] OJ L 405, 30.12.2006, p.23

[2] OJ L 81, 21.3.2001, p.1

Taking into account the time period elapsed between the transfer of the Federation of Saint Kitts and Nevis (hereinafter referred to as "Saint Kitts and Nevis") to the positive list by amending Council Regulation (EC) No 539/2001 and the conclusion of the visa waiver Agreement, the fact that Saint Kitts and Nevis will be able to complete its internal ratification procedure within a short period of time, and also having regard to the situation of Switzerland who will apply the Schengen acquis in full as from December 2008 and already exempts Saint Kitts and Nevis from the visa requirement the proposed decision on the signature sets out the provisional application of the Agreement as from the date of its signature in accordance with Article 300 (2) of the TEC.

The proposed decision concerning the conclusion sets out the necessary internal arrangements for the practical application of the Agreement. In particular, it specifies that the European Commission, assisted by experts from Member States, represents the Community within the Joint Committee set up by Article 6 of the Agreement.

Under Article 6 (4), the Joint Committee will adopt its own rules of procedure. The Community position in this regard shall be established by the Commission in consultation with a special committee designated by the Council.

2. 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 Community.

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 Saint Kitts and Nevis when travelling to the territory of the other Contracting Party for a maximum period of three months during a six months period.

The citizens of certain Member States are already exempt from the visa obligation by Saint Kitts and Nevis, while those of other Member States are still under the visa requirement. In order to safeguard equal treatment of all EU citizens, a provision has been included in the Agreement stating that Saint Kitts and Nevis may suspend or terminate the Agreement only in respect of all the Member States of the European Community and, reciprocally, the Community may also suspend or terminate the Agreement only 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 (ordinary, diplomatic or service/official passport holders) 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 Saint Kitts and Nevis remain free to impose the visa requirement on the citizens of the other Party in accordance with the applicable Community 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 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 Saint Kitts and Nevis to stay for three months on the territory of each of those Member States (Cyprus, Bulgaria, 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 six countries to stay only in those Member States' European territories.

Declarations

Other joint declarations are attached to the Agreement:

- on the full dissemination of information about the content and consequences of the visa waiver agreement and related issues, such as the entry conditions, and

- on the interpretation of the period of three months during a six month-period in the Schengen area.

The close association of Norway, Iceland, Switzerland and Liechtenstein to the implementation, application and development of the Schengen acquis is likewise reflected in a joint declaration to the Agreement.

3. CONCLUSIONS

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

– decide that the Agreement be signed on behalf of the Community and authorise the President of the Council to appoint the person(s) duly empowered to sign on behalf of the Community;

– approve the provisional application of the Agreement pending its entry into force;

– approve, after consultation of the European Parliament, the attached Agreement between the European Community and Saint Kitts and Nevis on the short-stay visa waiver.

Proposal for a

COUNCIL DECISION

on the signature and provisional application of the Agreement between the European Community and the Federation of Saint Kitts and Nevis on the short-stay visa waiver

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(b)(i), in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission[3],

Whereas:

(1) Council Regulation (EC) No 1932/2006 amended Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of the European Union (negative list), and those whose nationals are exempt from that requirement (positive list) by - inter alia - transferring the Federation of Saint Kitts and Nevis (hereinafter referred to as "Saint Kitts and Nevis") from the negative to the positive list. The Regulation also points out that the exemptions from the visa requirement should not come into force before a bilateral visa waiver agreement between the European Community and Saint Kitts and Nevis has been concluded and entered into force.

(2) By its decision of 5 June 2008, the Council authorised the Commission to negotiate an agreement between the European Community and Saint Kitts and Nevis on the short-stay visa waiver.

(3) Negotiations on the agreement were opened on 15 July 2008 and concluded on 16 October 2008.

(4) Subject to its possible conclusion at a later date, the Agreement initialled in Brussels on 12 November 2008, should be signed…..

(5) This decision on the signature should provide for the provisional application of the Agreement in accordance with Article 300 (2) of the TEC.

(6) In accordance with the Protocol on the position of the United Kingdom and Ireland, and the Protocol integrating the Schengen acquis into the framework of the European Union, the United Kingdom and Ireland do not take part in the adoption of this Decision and are therefore not bound by it or subject to its application.

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[3] ……..

HAS DECIDED AS FOLLOWS:

Article 1

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person(s) empowered to sign, on behalf of the European Community, the Agreement between the European Community and the Federation of Saint Kitts and Nevis on the short-stay visa waiver, consisting of the text of the agreement and the related declarations.

Article 2

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

Done at Brussels,

For the Council
The President

2009/0017 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and the Federation of Saint Kitts and Nevis on the short-stay visa waiver

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(b)(i), in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission[4],

Having regard to the opinion of the European Parliament[5]

Whereas:

(1) The Commission has negotiated on behalf of the European Community an Agreement with the Federation of Saint Kitts and Nevis on the short-stay visa waiver.

(2) This Agreement has been signed, on behalf of the European Community, on …….2009 subject to its possible conclusion at a later date, in accordance with Decision……../……/EC of the Council of [……].

(3) The Agreement establishes a Joint Committee for the management of the Agreement, which shall adopt its rules of procedure. It is appropriate to provide for a simplified procedure for the establishment of the Community position in this case.

(4) In accordance with the Protocol on the position of the United Kingdom and Ireland, and the Protocol integrating the Schengen acquis into the framework of the European Union, the United Kingdom and Ireland do not take part in the adoption of this Decision and are therefore not bound by it or subject to its application.

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Federation of Saint Kitts and Nevis on the short-stay visa waiver is hereby approved on behalf of the Community.

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4 ……

5 OJ C…

The text of the agreement is attached to this Decision.

Article 2

The President of the Council shall give the notification provided for in Article 8 (1) of the Agreement[6].

Article 3

The Commission, assisted by experts from Member States, shall represent the Community in the Joint Committee of experts established by Article 6 of the Agreement.

Article 4

The position of the Community within the Joint Committee of experts with regard to the adoption of its rules of procedure as required under Article 6(4) of the Agreement shall be taken by the Commission after consultation with a special committee designated by the Council.

Article 5

This Decision shall be published in the Official Journal of the European Union.

Done at Brussels,

For the Council
The President

[6] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* [by the General Secretariat of the Council].

ANNEX

AGREEMENT

between

the European Community and the Federation of Saint Kitts and Nevis

on the short-stay visa waiver

The European Community, hereinafter referred to as "the Community"

and

the Federation of Saint Kitts and Nevis, hereinafter referred to as "Saint Kitts and Nevis"]

hereinafter referred to as the Contracting Parties;

1) With a view to further developing friendly relations between the Contracting Parties and desiring to facilitate travel by ensuring visa-free entry and short stay for their citizens;

2) Having regard to Council Regulation (EC) No 1932/2006[7] of 21 December 2006, amending Council Regulation (EC) No 539/2001[8] 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 by – inter alia – transferring six third countries, including Saint Kitts and Nevis to the list of third countries whose nationals are exempt from the visa requirement for short stays in the EU Member States;

3) Bearing in mind that Article 2 of Council Regulation (EC) No 1932/2006 states that for these six countries, the exemption from the visa requirement is to be applied only from the date of entry into force of an agreement on visa exemptions which is to be concluded by the European Community with the country in question;

4) Recognising that the citizens of several Member States are exempted from the visa requirement when travelling to Saint Kitts and Nevis for a period not exceeding 3 months, while those of other Member States are under the visa requirement;

5) Desiring to safeguard the principle of equal treatment of all EU citizens;

6) Taking into account that persons travelling for the purpose of carrying out a paid activity during their short stay are not covered by this Agreement and therefore for this category the relevant rules of Community and national law of the Member States and the national law of Saint Kitts and Nevis continue to apply on the visa obligation or exemption and on the access to employment;

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[7] OJ L 29, 3.2.2007, p. 10.

[8] OJ L 81, 21.3.2001, p. 1.

7) Taking into account the Protocol on the position of the United Kingdom and Ireland and the Protocol integrating the Schengen acquis into the framework of the European Union, annexed to the Treaty on European Union and the Treaty establishing the European Community and confirming that the provisions of this agreement do not apply to the United Kingdom and Ireland;

HAVE AGREED AS FOLLOWS:

Article 1 – Purpose

This agreement provides for visa-free travel for the citizens of the European Union and for the citizens of Saint Kitts and Nevis when travelling to the territory of the other Contracting Party for a maximum period of three months during a six months period.

Article 2 – Definitions

For the purpose of this Agreement:

(a) "Member State" shall mean any Member State of the European Union, with the exception of the United Kingdom and Ireland;

(b) " a citizen of the European Union" shall mean a national of a Member State as defined in point (a);

(c) "a citizen of Saint Kitts and Nevis" shall mean any person who holds the citizenship of Saint Kitts and Nevis;

(d) "Schengen area" shall mean the area without internal borders comprising the territories of the Member States as defined in point (a) applying the Schengen acquis in full;

Article 3 – Scope of application

1. The citizens of the European Union holding a valid ordinary, diplomatic or service/official passport issued by a Member State may enter and stay without a visa in the territory of Saint Kitts and Nevis for the period of stay as defined in Article 4 (1).

   The citizens of Saint Kitts and Nevis holding a valid ordinary, diplomatic or service/official passport issued by Saint Kitts and Nevis may enter and stay without a visa in the territory of the Member States for the period of stay as defined in Article 4 (2).

2. Paragraph 1 does not apply to persons travelling for the purpose of carrying out a paid activity.

   For this category of persons, each Member State individually may decide to impose the visa requirement on the citizens of Saint Kitts and Nevis or to withdraw it according to Article 4 (3) of Council Regulation (EC) No 539/2001.

Saint Kitts and Nevis may decide on the visa requirement or the visa waiver for this category of persons for the citizens of each Member State individually in accordance with its national law.

3. The visa waiver provided by this Agreement shall apply without prejudice to the laws of the Contracting Parties relating to the conditions of entry and short stay. The Member States and Saint Kitts and Nevis reserve the right to refuse entry into and short stay in their territories if one or more of these conditions are not met.

4. The visa waiver applies regardless of the mode of transport used to cross the borders of the Contracting Parties.

5. Issues not covered by this Agreement shall be governed by Community law, national law of the Member States or by national law of Saint Kitts and Nevis.

Article 4 - Duration of stay

1. The citizens of the European Union may stay in the territory of Saint Kitts and Nevis for a maximum period of three months during a six months period following the date of first entry into the territory of the country.

2. The citizens of Saint Kitts and Nevis may stay in the Schengen area for a maximum period of three months during a six months period following the date of first entry into the territory of any Member State fully applying the Schengen acquis. This period of three months during a period of six months shall be calculated independently of any stay in a Member State which does not yet apply the Schengen *acquis* in full.

The citizens of Saint Kitts and Nevis may stay for a maximum period of three months during a six months period following the date of first entry in the territory of each of the Member States that do not yet apply the Schengen *acquis* in full, independently of the period of stay calculated for the Schengen area.

3. This Agreement does not affect the possibility for Saint Kitts and Nevis and the Member States to extend the period of stay beyond three months in accordance with national law and Community law.

Article 5 – Territorial application

1. As regards the French Republic, the provisions of this Agreement shall apply only to the European territory of the French Republic.

2. As regards the Kingdom of the Netherlands, the provisions of this Agreement shall apply only to the European territory of the Kingdom of the Netherlands.

Article 6 – Joint Committee for the management of the Agreement

1. The Contracting Parties shall set up a Joint Committee of experts (hereinafter referred to as the "Committee"), composed of representatives of the European Community and of Saint Kitts and Nevis. The Community shall be represented by the European Commission.

2. The Committee shall – inter alia – have the following tasks:

(a) monitoring the implementation of the present Agreement;

(b) suggesting amendments or additions to the present Agreement;

(c) settling disputes arising from the interpretation or application of the provisions of this Agreement.

3. The Committee shall be convened whenever necessary at the request of one of the Contracting Parties.

4. The Committee shall establish its rules of procedure.

Article 7 – Relation between this agreement and existing bilateral visa waiver agreements between the Member States and Saint Kitts and Nevis

This Agreement shall take precedence over the provisions of any bilateral agreements or arrangements concluded between individual Member States and Saint Kitts and Nevis, in so far as their provisions cover issues falling within the scope of this Agreement.

Article 8 – Final provisions

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective internal procedures and shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures referred to above have been completed.

2. This Agreement is concluded for an indefinite period of time, unless terminated in accordance with paragraph 5 of this article.

3. This Agreement may be amended by written agreement of the Contracting Parties. Amendments shall enter into force after the Contracting Parties have notified each other of the completion of their internal procedures necessary for this purpose.

4. Each Contracting Party may suspend in whole or in part this Agreement, in particular, for reasons of public policy, protection of national security or protection of public health, illegal immigration or the reintroduction of the visa requirement by either Contracting Party. The decision on suspension shall be notified to the other Contracting Party not later than 2 months before its entry into force. The Contracting Party that has suspended the application of this Agreement shall immediately inform the other Contracting Party once the reasons for suspension no longer exist.

5. Each Contracting Party may terminate this Agreement by giving written notice to the other Party. This Agreement shall cease to be in force 90 days after the date of such notification.

6. Saint Kitts and Nevis may suspend or terminate this Agreement only in respect of all the Member States of the European Community.

7. The Community may suspend or terminate this Agreement only in respect of all of its Member States.

Done at Brussels,

in duplicate each in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

For the European Community

For Saint Kitts and Nevis

JOINT DECLARATION WITH REGARD TO ICELAND, NORWAY, SWITZERLAND AND LIECHTENSTEIN

The Contracting Parties take note of the close relationship between the European Community and Norway, Iceland, Switzerland and Liechtenstein, particularly by virtue of the Agreements of 18 May 1999 and 26 October 2004 concerning the association of these countries with the implementation, application and development of the Schengen acquis.

In such circumstances it is desirable that the authorities of Norway, Iceland, Switzerland, Liechtenstein, on the one hand, and Saint Kitts and Nevis, on the other hand, conclude, without delay, bilateral agreements on visa waiver for short stay in similar terms as this Agreement between the European Community and Saint Kitts and Nevis.

JOINT DECLARATION ON THE INTERPRETATION OF THE CATEGORY OF PERSONS TRAVELLING FOR THE PURPOSE OF CARRYING OUT A PAID ACTIVITY AS PROVIDED IN ARTICLE 3 (2) OF THIS AGREEMENT

Desiring to ensure a common interpretation, the Contracting Parties agree that, for the purpose of this agreement, the category of persons carrying out a paid activity covers persons entering for the purpose of carrying out a gainful occupation/remunerated activity in the territory of the other Contracting Party as an employee or as a service provider.

This category should not cover:

– businesspersons, i.e. persons travelling for the purpose of business deliberation (without being employed in the country of the other Contracting Party),

– sportspersons and artists performing an activity on an ad hoc basis,

– journalists sent by the media of their country of residence and

– intra-corporate trainees.

The implementation of this Declaration shall be monitored by the Joint Committee within its responsibility under Article 6 of this Agreement, which may propose modifications when – on the basis of the experiences of the Contracting Parties – it considers it necessary.

JOINT DECLARATION ON THE INTERPRETATION OF THE PERIOD OF THREE MONTHS DURING A SIX MONTHS PERIOD FOLLOWING THE DATE OF FIRST ENTRY AS SET OUT IN ARTICLE 4 OF THIS AGREEMENT

The Contracting Parties agree that the maximum period of three months during a six months period following the date of first entry into the territory of Saint Kitts and Nevis or the Schengen area as provided by Article 4 of this Agreement means either a continuous visit or several consecutive visits, the duration of which does not exceed three months in any six months period in total.

JOINT DECLARATION ON THE INFORMATION OF THE CITIZENS ABOUT THE VISA WAIVER AGREEMENT

Recognising the importance of transparency for the citizens of the European Union and Saint Kitts and Nevis, the Contracting Parties agree to ensure full dissemination of information

about the content and consequences of the visa waiver agreement and related issues, such as the entry conditions.