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European Union

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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 (Kosovo*)

– Draft Statement of the Council's reasons

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

I. INTRODUCTION

1. On 4 May 2016, the Commission submitted a proposal¹ for a Regulation of the European Parliament and of the Council aimed at deleting the reference to ‘Kosovo*’ in Annex I (visa requirement) and at inserting the same reference in Annex II (visa free) to what is now Regulation (EU) 2018/1806. In its final report on the implementation of the visa liberalisation roadmap², the Commission confirmed that Kosovo had met the requirements, on the understanding that by the day of the adoption of the proposal by the European Parliament and the Council, Kosovo would have ratified the border/boundary agreement with Montenegro and strengthened its track record in the fight against organised crime and corruption.
2. In July 2018, the Commission issued a report³ which concluded that Kosovo had met those two remaining benchmarks, as a result of its ratifying the border demarcation agreement with Montenegro.
3. On 28 March 2019, the European Parliament adopted its first-reading position, by endorsing the Commission proposal. The original rapporteur, Ms Tanja Fajon (S&D, SI), was replaced in 2022 by Mr Thijs Reuten (S&D, NL).
4. In the Council, the preparatory bodies put the examination of the Commission proposal on hold in 2016, in view of the fact that the two remaining benchmarks had to be fulfilled *before* any new discussion on the file. Further discussions were also held in 2018 and 2020.
5. In 2022, the Commission agreed to report in writing on the further progress made by Kosovo. In so doing it responded to the Council's long-standing request. The Commission non-paper titled ‘Factual update on key developments in the areas of main interest for Member States’ concluded that Kosovo had continued to consolidate progress across key areas identified in the visa liberalisation roadmap and, consequently, the basis for the Commission's 2018 recommendation to exempt holders of Kosovo passports from visa requirements in respect of short stays remained fully valid.

¹ 8670/1/16 REV 1.

² 8764/16.

³ 11295/18 + ADD 1 REV 1.

6. Following the presentation of the Commission non-paper, work was resumed on the file in the Council. At its meeting on 30 November 2022, the Permanent Representatives Committee adopted a mandate to enter into negotiations with the European Parliament⁴.
7. The negotiations started soon thereafter. After a first technical meeting held on 12 December 2022, a political trilogue was convened on 14 December 2022 in Strasbourg. The two co-legislators reached a deal by finding a compromise on the few outstanding issues identified at technical level.
8. On 20 December 2022, the Permanent Representatives Committee analysed the final compromise text with a view to agreement and confirmed it⁵.
9. On 12 January 2023, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) confirmed the political agreement, and on 13 January 2023 the LIBE Chair sent a letter to the Chair of the Permanent Representatives Committee confirming that, should the Council approve the Regulation at first reading, after legal-linguistic revision, the Parliament would approve the Council's position in its second reading.
10. Ireland is not taking part in the adoption of the Regulation and is not bound by it or subject to its application, as it constitutes a development of the provisions of the Schengen *acquis*, in which Ireland does not take part.
11. As regards Iceland, Norway, Switzerland and Liechtenstein, the Regulation constitutes a development of the provisions of the Schengen *acquis*.
12. As regards Cyprus, Bulgaria and Romania, the Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of the respective Acts of Accession.

⁴ 15462/22.

⁵ 16276/22.

II. OBJECTIVE

13. The Regulation aims at transferring the reference to ‘Kosovo*’ from Annex I (list of countries subject to visa requirement) to Annex II (list of countries visa exempted) in Regulation (EU) 2018/1806. As a consequence, holders of Kosovo biometric passports will enjoy visa-free travel for short stays (i.e. up to 90 days in any 180-day period) in the European Union.

III. ANALYSIS OF THE COUNCIL’S POSITION AT FIRST READING

14. The European Parliament and the Council conducted negotiations with the aim of concluding an agreement on the basis of a position of the Council at first reading that the Parliament could approve without amendments at its second reading. The text of the Council Position at first reading fully reflects the compromise reached between the two co-legislators, assisted by the European Commission.
15. The Council Position at first reading seeks to reconcile the objective of making holders of Kosovo passports visa-free with a number of concerns related to the migratory and security risks.
16. In that perspective, the date of implementation of visa liberalisation has been linked to the entry into operation of the European Travel Information and Authorisation System (ETIAS), in order to take full advantage of the new EU IT system, which has as one of its objectives to contribute to a high level of security and to prevent illegal immigration by a thorough assessment of visa-exempted travellers, prior to their arrival at external border crossing points.
17. Acknowledging that the calendar for the entry into operation of EU IT systems is subject to revision, the Council Position at first reading makes clear that visa liberalisation will apply in any case from 1 January 2024 at the latest, should the start of operations of ETIAS be further delayed.

18. The Council Position at first reading further insists on two points. Firstly, the importance of Kosovo's cooperation on readmission, notably via the conclusion of agreements or arrangements in this area with Member States, where these do not exist already, and this in full compliance with the principle of *non-refoulement*. This invitation is without prejudice to the positions of Member States on the status of Kosovo. Secondly, the Council Position at first reading stresses the importance of the alignment of Kosovo's visa policy with that of the Union, in order to prevent irregular migration towards the Schengen area.

IV. CONCLUSION

19. The Council's Position at first reading fully reflects the compromise reached in the negotiations between the European Parliament and the Council, facilitated by the Commission.
20. This compromise is confirmed by the letter that the Chair of the LIBE Committee addressed to the Chair of the Permanent Representatives Committee on 13 January 2023. In that letter, the Chair of the LIBE Committee indicates that he will recommend to the members of his Committee, and subsequently to the plenary, that they accept the Council's position at first reading without amendments in the Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.
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