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ANNEX 1

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to the

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 Kiribati on the short-stay visa waiver

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AGREEMENT

between the European Union and the Republic of Kiribati on the short-stay visa waiver

THE EUROPEAN UNION, hereinafter referred to as "the Union" or "the EU", and

THE REPUBLIC OF KIRIBATI, hereinafter referred to as "Kiribati",

hereinafter referred to jointly as the "Contracting Parties",

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,

HAVING REGARD to 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[1] by, *inter alia*, transferring 19 third countries, including Kiribati, to the list of third countries whose nationals are exempt from the visa requirement for short stays in the Member States,

BEARING IN MIND that Article 1 of Regulation (EU) No 509/2014 states that for those 19 countries, 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 Union,

DESIRING to safeguard the principle of equal treatment of all EU citizens,

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 that category the relevant rules of Union law and national law of the Member States and the national law of Kiribati on the visa obligation or exemption and on the access to employment continue to apply,

TAKING INTO ACCOUNT the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice and the Protocol on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and confirming that the provisions of this Agreement do not apply to the United Kingdom and Ireland,

[1] OJEU L 149, 20.5.2014, p. 67.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Purpose

This Agreement provides for visa-free travel for the citizens of the Union and for the citizens of Kiribati when travelling to the territory of the other Contracting Party for a maximum period of 90 days in any 180-day period.

ARTICLE 2

Definitions

For the purpose of this Agreement:

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

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

(c) "a citizen of Kiribati" shall mean any person who holds the citizenship of Kiribati;

(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. Citizens of the Union holding a valid ordinary, diplomatic, service, official or special passport issued by a Member State may enter and stay without a visa in the territory of Kiribati for the period of stay as defined in Article 4(1).

Citizens of Kiribati holding a valid ordinary, diplomatic, service, official or special passport issued by Kiribati 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 of this Article does not apply to persons travelling for the purpose of carrying out a paid activity.

For that category of persons, each Member State individually may decide to impose a visa requirement on the citizens of Kiribati or to withdraw it inaccordance with Article 4(3) of Council Regulation (EC) No 539/2001[1].

For that category of persons, Kiribati may decide on the visa requirement or the visa waiver for the citizens of each Member State individually in accordance with its national law.

3. The visa waiver provided for 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 Kiribati reserve the right to refuse entry into and short stay in their territories if one or more of these conditions is 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 Union law, the national law of the Member States and by the national law of Kiribati.

[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 (OJEU L 81, 21.3.2001, p. 1).

ARTICLE 4

Duration of stay

1. Citizens of the Union may stay in the territory of Kiribati for a maximum period of 90 days in any 180-day period.

2. Citizens of Kiribati may stay in the territory of the Member States fully applying the Schengen *acquis* for a maximum period of 90 days in any 180-day period. That period shall be calculated independently of any stay in a Member State which does not yet apply the Schengen *acquis* in full.

Citizens of Kiribati may stay for a maximum period of 90 days in any 180-day period 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 territory of the Member States fully applying the Schengen *acquis*.

3. This Agreement does not affect the possibility for Kiribati and the Member States to extend the period of stay beyond 90 days in accordance with their respective national laws and Union law.

ARTICLE 5

Territorial application

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

2. As regards the Kingdom of the Netherlands, 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 Union and representatives of Kiribati. The Union shall be represented by the European Commission.

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

(a) monitoring the implementation of this Agreement;

(b) suggesting amendments or additions to this Agreement;

(c) settling disputes arising from the interpretation or application 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

Relationship of this Agreement to existing bilateral visa waiver agreements between the Member States and Kiribati

This Agreement shall take precedence over any bilateral agreements or arrangements concluded between individual Member States and Kiribati, in so far as they cover issues falling within the scope hereof.

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 of the later of the two notifications by which the Contracting Parties notify each other that those procedures have been completed.

This Agreement shall be applied on a provisional basis as from the day following the date of signature hereof.

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

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, the protection of national security or the protection of public health, illegal immigration or upon 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 two months before its planned entry into force. A Contracting Party that has suspended the application of this Agreement shall immediately inform the other Contracting Party should the reasons for that suspension cease to exist and shall lift that suspension.

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 thereafter.

6. Kiribati may suspend or terminate this Agreement only in respect of all the Member States.

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

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

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

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

In such circumstances it is desirable that the authorities of Norway, Iceland, Switzerland, and Liechtenstein, on the one hand, and Kiribati, on the other hand, conclude, without delay, bilateral agreements on the short-stay visa waiver in terms similar to those of this Agreement.

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

Desiring to ensure a common interpretation, the Contracting Parties agree that, for the purposes of this Agreement, the category of persons carrying out a paid activity covers persons entering for the purpose of carrying out a gainful occupation or 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 deliberations (without being employed in the country of the other Contracting Party),
– sportspersons or 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 90 DAYS IN ANY 180-DAY PERIOD AS SET OUT IN ARTICLE 4 OF THIS AGREEMENT

The Contracting Parties understand that the maximum period of 90 days in any 180-day period as provided for by Article 4 of this Agreement means either a continuous visit or several consecutive visits, the total duration of which does not exceed 90 days in any 180-day period.

The notion of "any" implies the application of a moving 180-day reference period, looking backwards at each day of the stay into the last 180-day period, in order to verify if the 90 days in any 180-day period requirement continues to be fulfilled. *Inter alia*, it means that an absence for an uninterrupted period of 90 days allows for a new stay for up to 90 days.

JOINT DECLARATION ON INFORMING CITIZENS ABOUT THE VISA WAIVER AGREEMENT

Recognising the importance of transparency for the citizens of the European Union and the citizens of Kiribati, 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.