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REPORT

on the Commission proposal for adoption of a Council regulation on the establishment of a regime of local border traffic at the temporary external land borders between Member States
(COM(2003) 502 – C5-0443/2003 – 2003/0194(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: The Earl of Stockton

PE 339.603

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position
- *** Assent procedure
majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 18 September 2003 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the Commission proposal for adoption of a Council regulation on the establishment of a regime of local border traffic at the temporary external land borders between Member States (COM(2003) 502 – 2003/0194(CNS)).

At the sitting of 22 September 2003 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy for its opinion (C5-0443/2003).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed The Earl of Stockton rapporteur at its meeting of 30 September 2003.

The committee considered the Commission proposal and draft report at its meetings of 25 November 2003, 18 February and 9 March 2004.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Johanna L.A. Boogerd-Quaak (vice-chairwoman), Giacomo Santini (vice-chairman), The Earl of Stockton (rapporteur), Alima Boumediene-Thiery, Marco Cappato (for Maurizio Turco), Massimo Carraro (for Ozan Ceyhun pursuant to Rule 153(2)), Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Giovanni Claudio Fava (for Martin Schulz pursuant to Rule 153(2)), Timothy Kirkhope, Eva Klant, Jean Lambert (for Heide Rühle), Kurt Lechner (for Hubert Pirker), Ana Miranda de Lage (for Carmen Cerdeira Morterero pursuant to Rule 153(2)), Pasqualina Napoletano (for Walter Veltroni pursuant to Rule 153(2)), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Mary Elizabeth Banotti), Bernd Posselt, Martine Roure, Gerhard Schmid, Olle Schmidt (for Baroness Ludford), Ingo Schmitt (for Ian Twinn), Ole Sørensen (for Francesco Rutelli), Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Elena Valenciano Martínez-Orozco (for Adeline Hazan pursuant to Rule 153(2)), Gianni Vattimo (for Sérgio Sousa Pinto) and Christian Ulrik von Boetticher.

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy decided on 7 October 2003 not to deliver an opinion.

The report was tabled on 11 March 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Commission proposal for adoption of a Council regulation on the establishment of a regime of local border traffic at the temporary external land borders between Member States

(COM(2003) 502 – C5-0443/2003 – 2003/0194(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2003) 502)¹,
 - having regard to Article 62(2) of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0443/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0141/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Article 5, paragraph 2, introductory sentence

The agreements referred to in paragraph 1 **may** contain provisions for the facilitation of border crossing, whereby Member

The agreements referred to in paragraph 1 **shall** contain provisions for the facilitation of border crossing, whereby Member

¹ Not yet published in OJ.

States:

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Justification

Article 5 (2) of the draft regulation must ensure, rather than merely suggest that provisions provided for under (a) and (b) are implemented.

Amendment 2
Article 5, paragraph 2, letter c)

(c) authorise border residents to cross their border at places other than authorised border crossing points and outside the fixed hours. ~~deleted~~

Justification

Border residents should only use authorised crossing points during fixed hours.

Amendment 3
Article 7, paragraph 1

For the purposes of this Regulation, border residents not requiring a visa may stay in the border area of a neighbouring Member State for up to **seven** consecutive days. The total duration of their successive visits in that Member State shall not exceed three months within any half-year period.

For the purposes of this Regulation, border residents not requiring a visa may stay in the border area of a neighbouring Member State for up to **fourteen** consecutive days. The total duration of their successive visits in that Member State shall not exceed three months within any half-year period.

(This amendment was initiated by Hungarian ELDR observer István Szent-Iványi.)

Justification

The weekly demand of return would impose a disproportionate limitation on the beneficiary.

Amendment 4
Article 9, paragraph 3

The visa shall entitle the holder to multiple crossings of the external land border of the issuing Member State and to stay within the border area of that Member State for up to **seven** consecutive days. The total duration of the successive visits in that

The visa shall entitle the holder to multiple crossings of the external land border of the issuing Member State and to stay within the border area of that Member State for up to **fourteen** consecutive days. The total duration of the successive visits in that

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(This amendment was initiated by Hungarian ELDR observer István Szent-Ivanyi.)

Justification

The weekly demand of return would impose a disproportionate limitation on the beneficiary.

EXPLANATORY STATEMENT

The origins of the proposal

Out of a concern to 'facilitat[e] the crossing of external borders for bona fide third-country nationals living in the border areas that have legitimate and valid grounds for regularly crossing the border and do not pose any security threat'¹, the Commission has drafted a proposal for a regulation on local border traffic at the external borders, so as to ensure that, after enlargement, the new external border does not impede trade, social and cultural exchange or regional cooperation. However, being equally aware of the need to clarify the rules applicable to local border traffic within the enlarged Union itself, the Commission has also submitted a second proposal for a regulation applicable to the so-called '**temporary**' external land borders, i.e. those between the new Member States and the present Schengen States, as well as the borders between the new Member States themselves.

The intention is that, even after enlargement, border controls should remain in place for a certain time until the new Member States are fully applying the Schengen acquis. Until the actual lifting of controls at the temporary external borders, the Commission therefore intends to apply to third-country nationals who are legally resident in border areas at the temporary external borders the same arrangements as apply to people living near the external borders.

Aims and content of the proposal

At present the situation as regards local border traffic is characterised by the existence of numerous bilateral agreements between particular Member States and neighbouring third countries. As the Commission observes in a working document on the development of the acquis with regard to local border traffic², there are many differences among these agreements with regard to geographical scope, the categories of person covered and the documents required in order to cross the border.

The Commission therefore proposes harmonising to some extent the rules applied to local border traffic, the aim being essentially to ensure that the everyday life of people living in border areas who, whether for family, professional, social or cultural reasons, have occasion to cross the border frequently is not complicated excessively by the next enlargement. This issue is of particular importance in the context of enlargement, as very large numbers of people will continue to cross borders, particularly between the accession states and between them and the old Member States.

The regulation proposed by the Commission for the temporary external borders, Article 1 of which lays down that the 'regime of local border traffic' which applies at the external borders should also apply at the temporary external borders to local border traffic, i.e. regular crossing of the external land border of a Member State by persons legally resident in the border area of a neighbouring country with the aim of remaining in the border area of the Member State

¹ Communication to the Council and the European Parliament, 'Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours', COM(2003) 104 final.

² SEC(2004) 947, p. 3.

(limited to 50 km) for a period limited by the regulation (a maximum of seven consecutive days and, at all events, not more than three months per half-year).

The specific arrangements applicable to this local border traffic are as follows: for border residents *not requiring a visa*, it is intended that, as a rule, it should be possible to cross the borders without producing any travel document other than an identity card or a specific border crossing permit. As for border residents *requiring a visa*, they may obtain a specific visa intended for them, whose characteristics are as follows:

- its territorial validity will be limited to the border area of the issuing Member State. It will entitle the holder to stay within that area for up to seven consecutive days; the total duration of the successive visits to the area must not exceed three months within any half- year period;
- it will entitle the holder to multiple crossings of the border of the issuing Member State;
- it will be valid for a minimum of one year and a maximum of up to five years;
- the same security precautions will apply to it as to a normal short-stay visa;
- it will be possible for the visa fee to be reduced or waived.

An important point to be noted: these arrangements are applicable only to third-country nationals legally resident in the border area of a Member State. Community law already gives citizens of the Union rights of free movement which go beyond the specific arrangements proposed for local border traffic. These rights will be unaffected by the arrangements which the Commission proposes.

It may also be noted that, in view of the local nature of the traffic to which the proposal relates, the practical application of the rules is delegated to the Member States, which, by means of bilateral agreements, may negotiate specific conditions applicable to local border traffic with the countries concerned, while complying with the general rules laid down at Community level.

Assessment of the proposal

The Commission has put forward two proposals laying down rules on criteria and conditions for establishing a regime of local border traffic (CNS030193), and introducing a specific (local) visa for that purpose. The reasons for making two proposals are:

- unlike the present situation, most of the third countries neighbouring the new EU Member States are countries whose nationals must be in possession of a visa when entering the EU;
- as a consequence of the two-step implementation procedure of the Schengen acquis, the new Member States will have to apply the full Schengen external border regime at all their borders upon accession. This means that border controls will also remain in place, until the Council authorises the full application of the Schengen acquis, between the new Member States and present Schengen States, as well as between the new Member States themselves ('temporary external borders').

This is the reason why the Commission considers it appropriate - until the full implementation of the Schengen acquis by the new Member States, when internal border controls will actually be lifted - to apply the facilitated border crossing regime envisaged for border residents also to such 'temporary external borders'.

Consequently, two instruments are proposed:

- a Regulation laying down general rules on the criteria and conditions applicable for establishing a regime of local border traffic at the external land borders of the Member States, and introducing a specific visa for that purpose (see CNS030193);
- a second Regulation applying the rules laid down in the above instrument to the 'temporary external borders' between Member States.

The second of these instruments, which is the subject of this report, provides (Article 1) for the application at the **temporary** external borders of the provisions instituting a system for local border traffic at the external borders. Therefore, somewhat exceptionally, the rapporteur can only suggest amendments to the original Commission draft by way of proposing changes to the intrinsic provisions listed in the Cerdeira Morterero report.

The definition referring to the 'border area' within the Cerdeira Morterero report (Article 3b) has to be as flexible as possible; the introduction of a mechanical system would be unrealistic. When defining the individual 'border area' the following should be taken into account in order to attain the objective of the regulation:

- the boundaries of the single local administrative districts;
- the conditions of single settlements;
- the division (at the border) of large ethnic groups native to Member States within third countries.

In the interests of public policy, national security or the international relations of any of the Member States during the two-step implementation procedure, the rapporteur is opposed to the notion of derogation from the obligation of affixing an entry and exit stamp in the travel documents of border residents deemed to constitute local border traffic. It therefore follows that Article 5(2) of the draft regulation must ensure, rather than merely suggest, the following provisions:

- the establishment of specific border crossing points open only to border residents;
- the reservation of specific lanes to border residents at ordinary border crossing points;
- such crossing points should only be utilised during fixed hours agreed by the Member States.

With reference to the Cerdeira Morterero report, the rapporteur would like to reaffirm the terms of Article 13(2) (CNS030193) and urge Member States, by way of derogation, to reduce or waive the fees incurred by the administrative costs of processing the application for an L-visa.

The rapporteur requests that the exception regarding the total duration of successive visits by border residents granted to 'transfrontier workers', as stated in Article 15 of Commission proposal COM 502 (2003) (Cerdeira Morterero draft report), should be extended to those undertaking an apprenticeship and those in full-time education.

In conclusion, your rapporteur is in favour of applying at the temporary external borders the provisions of the regime instituted for local border traffic at the external borders of the Member States, albeit subject to the above remarks.