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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 – C5-0442/2003 – 2003/0193(CNS))

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

Rapporteur: Carmen Cerdeira Morterero

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 – 2003/0193(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 (C5-0442/2003).

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

The committee considered the Commission proposal and draft report at its meetings of 25 November 2003 and 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-Chairman), Giacomo Santini (Vice-Chairman), 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, the Earl of Stockton (for Giuseppe Brienza), 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 – C5-0442/2003 – 2003/0193(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2003) 502)¹,
 - having regard to Article 62 of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0442/2003),
 - 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 (A5-0142/2004),
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 2, paragraph 2 a (new)

2a. This Regulation does not affect the provisions of the final Act of the Agreement on the Accession of the

¹ Not yet published in OJ.

***Kingdom of Spain to the Convention
implementing the Schengen Agreement of
14 June 1985 in respect of the towns of
Ceuta and Melilla.***

Amendment 2
Article 3, point (h)

(h) “Transfrontier workers” means third-country nationals resident in the border area of a neighbouring third country who are employed in the border area of an adjacent Member State and who return to the border area of the neighbouring country each day or at least once **a week**.

“Transfrontier workers” means third-country nationals resident in the border area of a neighbouring third country who are employed in the border area of an adjacent Member State and who **regularly** return to the border area of the neighbouring country **while pursuing their economic activities**, each day or at least once **every two weeks**.

Justification

The requirement to return once a week would disproportionately restrict those engaged in transfrontier work.

Amendment 3
Article 6, introductory part

Documents authorising border residents not requiring a visa to cross the external land border of a neighbouring Member State for the purpose of local border traffic **may be**:

Documents authorising border residents not requiring a visa to cross the external land border of a neighbouring Member State for the purpose of local border traffic **are**:

Justification

The conditions whereby border residents not requiring a visa may benefit from facilities in the framework of local border traffic must be more strictly formulated, so abuses can be limited as much as possible.

Amendment 4
Article 6, point (a)

(a) an identity card specifying the residence in the border area. In *case* this latter condition is not fulfilled, border residents **may** be requested to carry a

(a) an identity card specifying the residence in the border area. In *cases where* this latter condition is not fulfilled, border residents **shall** be requested to carry

residence certificate jointly with the travel document;

a residence certificate jointly with the travel document;

Justification

See Amendment 2.

Amendment 5
Article 6, point (b)

(b) a specific border crossing permit, issued by the State of residence.

Deleted

Justification

There is no need to create a new type of document permitting border crossings; furthermore it should not be the responsibility of the State of residence to issue such documents.

Amendment 6
Article 7, paragraph 2 a (new)

Member State authorities may withdraw documents authorising local border traffic if the beneficiary seriously breaches national legislation or the rules laid down in this Regulation.

Amendment 7
Article 9, paragraph 2

The territorial validity of the visa shall be limited to the border area of the issuing Member State.

The territorial validity of the visa shall be limited to the border area of the issuing Member State. ***Member States may deviate from the 50 km territorial validity rule if this is justified and the neighbouring state agrees.***

Justification

There is a need for more flexibility that takes account of local conditions (population, administrative borders, etc.).

Amendment 8
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 a stay within the border area of that Member State for up to seven consecutive days. The total duration of the successive visits in that Member State shall not exceed three months within any half- year period.

The visa shall entitle the holder to multiple crossings of the external land border of the issuing Member State and to a stay within the border area of that Member State for up to seven consecutive days. The total duration of the successive visits in that Member State shall not exceed three months within any half-year period. ***More favourable treatment shall be given to transfrontier workers, pupils, students and those engaged in vocational training, non-remunerated training or voluntary service.***

Justification

This amendment is in line with Amendment 13 to Article 15, listing the same categories of individuals.

Amendment 9
Article 15

The time-limits established in Article 7 and in Article 9 shall not apply to transfrontier workers.

The time-limits established in Article 7 and in Article 9 shall not apply to transfrontier workers, ***pupils, students or those engaged in vocational training, non-remunerated training or voluntary service.***

Justification

Individuals belonging to these categories are not employed and therefore they do not come into the category of transfrontier workers. However, owing to the nature of their activity, they should enjoy similar rights and their mobility should not be hindered.

Amendment 10
Article 16, title

Entry and exit ***stamps***

Entry and exit ***controls***

Amendment 11
Article 16

Entry and exit stamps shall *not* be affixed on the travel documents of border residents crossing the external land border of a Member State for the purpose of local border traffic.

Crossing of the border shall be controlled by electronic or magnetic means, to ensure compliance with authorised time-limits. In the absence of such measures, until they are introduced, entry and exit stamps shall be affixed on the travel documents of border residents crossing the external land border of a Member State for the purpose of local border traffic.

Justification

This amendment is intended to remove an inconsistency in relation to Article 9, which lays down the time-limit for a stay. There is no point in imposing limits if there are no controls on compliance. The rapporteur does not claim to have the ideal solution but, by this amendment, wishes to express doubts about the lack of controls and to encourage the Commission and Member States to set up an operational system, which is outside the rapporteur's remit.

Amendment 12
Article 18, point (c)

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

Deleted

Justification

If controls are introduced, there has to be a means of carrying them out..

EXPLANATORY STATEMENT

Origin of the proposal

In its communication to the Council and European Parliament entitled *Wider Europe – Neighbourhood: a new framework for relations with our eastern and southern neighbours*, the Commission states that ‘The EU and the partner countries have a common interest in ensuring the new external border is not a barrier to trade, social and cultural interchange or regional cooperation. The impact of ageing and demographic decline, globalisation and specialisation means the EU and its neighbours can profit from putting in place mechanisms that allow workers to move from one territory to another where skills are needed most. [...] *An efficient and user-friendly system for small border traffic is an essential part of any regional development policy. The EU is currently looking at ways of facilitating 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

In fact the current situation is characterised by the bilateral agreements on local border traffic that some Member States have concluded with neighbouring third countries. As the Commission pointed out in a working document on developing the Community legal framework on local border traffic², these agreements present numerous differences in respect of geographical application, the categories of persons covered and the documents required to cross the border.

This proposal for a Commission regulation is thus intended to harmonise the local border traffic rules to some extent. It is also intended to prevent the next enlargement causing excessive complications in the daily lives of border residents who need to cross the border frequently for family, professional, social or cultural reasons.

Objectives and content of the proposal

The Commission regulation sets out to regulate 'local border traffic', i.e. the regular crossing of the external land border of a Member State by persons lawfully resident in the border area of a neighbouring third country, in order to stay in the border area of that Member State (restricted to 50 km) for a period limited by the regulation (seven consecutive days maximum and, in any case, for no longer than three months within any half-year period).

The regulation's objective is to facilitate border crossing for bona fide border residents. Consequently the Commission proposes that third-country nationals who have been living for at least a year in the border area of a neighbouring Member State should be able to cross the border frequently under simplified procedures.

So far as border residents *not requiring a visa* are concerned, the facilitation envisaged mainly concerns the travel documents to cross the border (an identity card or a specific border

¹ COM (2003) 104 final.

² SEC (2002) 947, p. 3.

crossing permit is sufficient). Border residents *who do require a visa* can obtain a special visa with the following characteristics:

- its territorial validity will be limited to the border area of the issuing Member State. The maximum duration of the stay in that area will be seven consecutive days and will not, in any case, exceed three months within any half-year period;
- it will entitle the holder to multiple crossings of the border of the issuing Member State;
- the minimum validity of such a visa would be one year and the maximum validity five years;
- it will have the same security features as the normal short-term visa;
- the visa fees could be reduced or waived.

In view of the local nature of small-scale border traffic, the details of application are delegated to the Member States, which can negotiate the specific conditions of local border traffic with the third countries concerned, in accordance with general Community rules and bearing in mind the need for reciprocal treatment for EU citizens.

Assessment of the proposal

The Commission introduced its proposal for a regulation by stating ‘Efficient rules for local border traffic will ... help in promoting the development of border regions and facilitating the crossing of the border by bona fide border residents, while at the same time taking into account the need to prevent illegal immigration, as well as potential threats to security posed by criminal activities.’¹

One can only endorse the objective of simplifying the life of border residents by laying down common basic rules for the bilateral agreements on local border traffic concluded by Member States with neighbouring states, to guarantee minimum consistency in the provisions adopted.

However, it is astonishing that, having recognised the need to prevent clandestine immigration, the Commission has not made provision for any controls over authorised length of stay and starts from the principle of bona fide border residents. Article 16 of Section 3 states that entry and exit stamps will not be affixed on the travel documents of border residents crossing the external land border of a Member State for the purpose of local border traffic. It seems that this omission could easily give rise to abuses and it is all the more astonishing in that a proposal for a Council regulation currently in the process of adoption requires the competent authorities of the Member States to stamp systematically the travel documents of third-country nationals when they cross the external borders of the Member States².

Admittedly there are difficulties in stamping the documents of people who regularly cross the border. However, it should be possible to devise a control system other than one based on entry and exit stamps. This is what is suggested in the amendment on this subject, which does

¹ COM (2003) 502 final, p. 2.

² See COM (2003) 664 final.

not claim to find a solution, but is intended to encourage the Commission to consider this question again.

Similarly there is no way of checking that people who cross borders under the local traffic scheme remain within the 50 km border area to which they have access. There again, the Commission is starting from the principle of bona fide border residents. One might wonder, however, whether the bona fide principle is a sufficient guarantee or whether there should be penalties for those who move or make a stay outside the authorised local border traffic area.

In general it seems that certain conditions enabling people to benefit from local border traffic facilities must be more rigorously formulated. Thus for example, border workers who do not require a visa should be authorised simply to present an identity card only if their residence in the border area is specifically mentioned. If it does not, the person concerned must provide alternative proof of residence.

One might also query the logic of giving border residents the option of crossing the border 'at places other than authorised border crossing points and outside the fixed hours' (Article 18(c)). If border residents are allowed to enter neighbouring countries by crossing fields in the middle of the night, without any controls, there is no need to regulate the crossing of the border and the length of the stay. It seems therefore more consistent either to remove any form of control or to provide the means of carrying out controls, in particular by removing Article 18(c). Your rapporteur favours the latter option.

With these reservations, which nevertheless relate to crucial aspects, it is possible to support the Commission's proposal for a regime of local border traffic at the Member States' external land borders.