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REPORT

on the proposal for a Council regulation 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
(COM (2000) 27 – C5-0166/2000 – 2000/0030(CNS))

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

Rapporteur: Klaus-Heiner Lehne

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)

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PROCEDURAL PAGE

By letter of 16 March 2000 the Council consulted Parliament, pursuant to Article 62(2)b)(i) of the EC Treaty, on the proposal for a Council regulation 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 (COM (2000) 27 - 2000/0030 (CNS)).

At the sitting of 29 March 2000 the President of Parliament announced that she had referred this 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 and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0166/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Klaus-Heiner Lehne rapporteur at its meeting of 10 April 2000.

The committee considered the Commission proposal and draft report at its meetings of 5-6 June and 21-22 June 2000.

At the last meeting it adopted the draft legislative resolution by 28 votes to 2, with 2 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Klaus-Heiner Lehne, rapporteur; Mary Elizabeth Banotti, Alima Boumediene-Thiery, Marco Cappato, Michael Cashman, Carmen Cerdeira Morterero (for Anna Karamanou), Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Olivier Duhamel, Evelyne Gebhardt (for Margot Keßler), Daniel J. Hannan, Adeline Hazan (for Gerhard Schmid), Timothy Kirkhope, Ewa Klamt, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, Minerva Melpomeni Malliori (for Sérgio Sousa Pinto), Hartmut Nassauer, Elena Ornella Paciotti, Ana Palacio Vallelersundi (for Charlotte Cederschiöld), Hubert Pirker, Martin Schulz, Joke Swiebel, Fodé Sylla, Anna Terrón i Cusí, Gianni Vattimo, Christian von Boetticher and Jan-Kees Wiebenga.

The Committee on Legal Affairs and Internal Market and the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy decided on 25 May and 15 June 2000 respectively not to deliver an opinion.

The report was tabled on 21 June 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a Council regulation on 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 (COM (2000) 27 – C5-0166/2000 – 2000/0030(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1)
Recital 3

(3) The circumstances of third-country nationals residing lawfully in a Member State and holding a residence permit issued by that State are such that further visa requirements are superfluous when they cross external borders. The principle that a residence permit is equivalent to a visa should be laid down for this category of persons, without prejudice to other conditions for entry or to other rules applying to travel within the Community by holders of residence permits.

Deleted

Justification:

This recital deals with the rights of third country nationals legally resident within the Member States and therefore goes beyond the scope of Article 62(2)(b)(i), the legal basis of the Commission proposal.

(Amendment 2)
Recital 6

With a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States should communicate to the other Member States and to the Commission the measures which they take pursuant to this Regulation. For the same reasons, that information should also be published in the

With a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States should communicate to the other Member States and to the Commission the measures which they take pursuant to this Regulation. ***To minimise the restrictions of movement it is essential that the procedure***

¹ Not yet published in OJ.

Official Journal of the European Communities.

and conditions for issuing visas by Member States are as smooth and simple as possible and do not cause unreasonable expenditure for the applicants. For the same reasons, that information should also be published in the *Official Journal of the European Communities* ".

Justification:

The regulation should try to restrict as little as possible regional cross-border contacts (e.g. the contacts between the City of Narva and the Kaliningrad region). In order to avoid obstacles it is important to simplify visa procedures.

(Amendment 3)
Article 2, preamble

For the purposes of this Regulation, 'visa' shall mean an authorisation issued or a decision taken by a Member State ***which is required for entry into its territory*** with a view to:

For the purposes of this Regulation, 'visa' shall mean an authorisation issued or a decision taken by a Member State with a view to:

Justification:

The aim here is to secure coherence with the existing Schengen rules.

(Amendment 4)
Article 2, second indent

- transit through the territory of that Member State or several Member States, except for ***transit through the international zones of airports and transfers between airports in a Member State.***

- transit through the territory of that Member State or several Member States, except for ***airport transit visas.***

Justification:

The aim here is to secure coherence with the existing Schengen rules.

(Amendment 5)
Article 3

For nationals of third countries listed in Annex I, a valid residence permit issued by one of the Member States shall be equivalent to a visa for the purposes of crossing external borders. Deleted

Justification:

This Article deals with the rights of third country nationals legally resident within the Member States and therefore goes beyond the scope of Article 62(2)(b)(i), the legal basis of the Commission proposal.

(Amendment 6)
Article 5(2a) (new)

2a. A Member State may exempt from the visa requirement young people who take part in EU youth programmes.

Justification:

Organising common seminars and camps would be easier and it could improve the image of the EU. The EU should do everything to enhance these crossborder contacts.

(Amendment 7)
Article 6a (new)

This Regulation shall not affect Member States' powers concerning the recognition of states and territorial units or of passports and travel and identity documents issued by the authorities of the latter.

Justification:

The areas not affected by this Regulation need to be defined.

(Amendment 8)

Article 7a (new)

Notwithstanding Article 7(2), this Regulation shall not affect the Member States' obligations deriving from the Schengen agreements and related agreements or the rules adopted on the basis of those agreements, as defined in Annex A to Council Decision 1999/435/EC of 20 May 1999, determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis.

Justification:

The areas not affected by this Regulation need to be defined.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council regulation on 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 (COM (2000) 27 – C5-0166/2000 – 2000/0030(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM (2000) 27²),
 - having been consulted by the Council pursuant to Article 62(2)(b)(i) of the EC Treaty (C5-0166/2000),
 - 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 (A5-0179/2000),
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 should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

² Not yet published in OJ.

EXPLANATORY STATEMENT

Background and timetable

This proposal from the Commission is for a regulation to replace Regulation 574/99. This report does not set out the background to adoption of Regulation 574/99, including the judgment of the European Court of Justice (case C-392/95), as this is set out in the Parliament report on that proposal (A4-00043/1999).

Regulation 574/99 only lays down the list of third countries whose nationals are subject to a visa requirement for intended stays of no more than three months and leaves Member States free to determine whether or not to impose a visa requirement for the nationals of third countries that are not on the list. The current Commission proposal seeks to achieve full harmonisation of the lists by, in addition, establishing a list of third countries whose nationals are exempt from visa requirements when crossing the external borders.

The Parliament notes that, with the entry into force of the Amsterdam Treaty, all aspects of visa policy are integrated into the Community pillar under Title IV of the EC Treaty entitled "Visas, Asylum, Immigration and other policies related to free movement of persons". Article 62 sets a limit of five year from the date of entry into force of the Amsterdam Treaty for the adoption of rules on visas for stays of no more than three months, including "the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement". The Vienna Action Plan³ set a deadline of two years for determining such lists.

The Parliament welcomes the Commission's submission of a proposal for full harmonisation of the lists less than a year after the entry into force of the Amsterdam Treaty. The Parliament also urges the Council not to delay its decision on this proposal.

Issues covered by the proposed regulation

The current proposal deals with the determination of the list of third countries whose nationals must be in possession of visas when crossing the external borders for stays of no more than three months and those whose nationals are exempt from that requirement and is based on Article 62(2)(b)(i) of the EC Treaty. However, the Parliament believes that Article 3 of the Commission proposal, combined with Recital 3, goes beyond the scope of the existing legal basis of the Commission proposal because it deals with the rights of third country nationals legally resident within the Member States. This issue should therefore be dealt with in a separate proposal.

Article 62 in Title IV of the EC Treaty provides the legal basis for the adoption of measures relating to other aspects of visa policy and the five year deadline also applies. However, given that the proposed regulation replaces an existing regulation, the Parliament agrees with the Commission's decision to limit this regulation to the full harmonisation of the lists of third countries.

³ OJ C 19, 23.1.1999, p. 1.

The Parliament nonetheless urges the Commission to submit proposals on the harmonisation of visa policy, in particular, on a uniform visa and on the procedure and conditions for issuing visas by Member States as soon as possible and, in any event, so that the measures can be adopted in compliance with the timetable in the Vienna Action Plan.

Geographic scope

Further harmonisation of visa policy was achieved by the Schengen States and, since the entry into force of the Amsterdam Treaty, the Schengen acquis has been integrated into EU law. This proposal is part of the process of the communitarisation of the Schengen acquis. Therefore, in accordance with the Protocols attached to the Amsterdam Treaty, this proposal applies to Denmark, but not to the United Kingdom and Ireland (as they have not to date made a request to participate in the visa aspects of the Schengen acquis or in this specific proposal).

The Parliament notes that with the repeal of Regulation 574/99 the United Kingdom and Ireland will cease to be bound by Community obligations in relation to visa requirements. The Parliament therefore urges the United Kingdom and Ireland to align their visa policies as far as possible with those set out in the new Council Regulation and to take steps to participate fully in the adoption of future measures for realisation of the objective of the free movement of persons within the EU.

The Commission Proposal

The Parliament approves this proposal with few amendments, as this proposal is broadly consistent with the main demands of the Parliament:

- 1) the proposal introduces full harmonisation of the lists of third countries and consequently abolishes the "grey list";
- 2) the proposal requires Member States to treat stateless persons and recognised refugees on the same terms as nationals of the non-Member State in which they reside and which issued their travel documents;
- 3) Bulgaria and Romania are included on the list of countries whose nationals are exempt from visa requirements;
- 4) the proposal permits the exemption of school pupils from the visa requirements when they are travelling as a member of a school excursion; and
- 5) the lists of countries once adopted may only be amended by a new legislative proposal on which the Parliament must be consulted in accordance with Article 67(3).

However, the Parliament has deleted the proposal to introduce a principle of equivalence between visas and valid residence permits issued by a Member State (see (6) below).

Each of the above points is examined in more detail below.

1) *The proposal introduces full harmonisation of the lists and consequently abolishes the "grey list"*

Regulation 574/99, which is to be replaced by the proposed regulation, lays down the list of third countries whose nationals are subject to a visa requirement. However, under that Regulation, Member States remained free to determine the visa requirements of nationals of countries not on the common list (i.e. on the "grey list") (although additional harmonisation was achieved in the

context of Schengen). In addition, Member States could unilaterally determine the visa requirements of stateless persons and recognised refugees.

The current Commission proposal seeks to achieve full harmonisation with the establishment of two lists: one list of third countries whose nationals must be in possession of visas when crossing the external borders (Annex I) and one list of those countries whose nationals are exempt from that requirement (Annex II). With the adoption of the proposed regulation there will be no third countries in respect of which the participating Member States will be free to decide unilaterally the visa requirements of nationals of that country.

Article 5(1) of the proposed regulation permits Member States to provide for exceptions from both lists in relation to those who carry special travel documents by reason of their functions (such as holders of diplomatic passports). This possibility was included in Regulation 574/99 (though of course only in relation to those nationals which were subject to a visa requirement). The list of possible exceptions is extended to cover waterway navigation and international organisations.

The Parliament accepts that Member States should retain some degree of flexibility as set out in Article 5(1) (although it questions whether it is necessary to permit the Member States to require visas from such persons where the nationals of that country are not subject to visa requirements).

Under Article 5(2) the Member States may also introduce exceptions in relation to school pupils travelling on a school excursion (see further point (4) below).

The Parliament also notes that the Member States do not retain any flexibility in relation to those entities and territorial authorities that are not recognised as states by at least one Member State (notably Hong Kong SAR and Macao SAR) and welcomes this. However, the Parliament has adopted an amendment to clarify that this does not affect the power of Member States to recognise states or territorial authorities or the documents issued by their authorities.

The Parliament has also introduced an amendment clarifying that the regulation does not affect the existing obligations of the Member States deriving from the Schengen acquis.

The Parliament in its previous report on this issue sought greater harmonisation and therefore welcomes the fact that the participating Member States are no longer free to determine unilaterally the visa requirements of third country nationals for stays of no more than three months.

2) The proposal requires Member States to treat stateless persons and recognised refugees on the same terms as nationals of the non-Member State in which they reside and which issued their travel documents

In Regulation 574/99 the Member States remained free to determine the visa requirements for stateless persons and recognised refugees. In its amendments the Parliament proposed (in a limited form) that stateless persons and recognised refugees were treated as nationals of the third country in which they reside. The Parliament therefore welcomes the Commission proposal that Member States treat stateless persons and recognised refugees on the same terms as nationals of the non-Member State in which they reside and which issued their travel documents.

3) *Bulgaria and Romania are included on the list of countries whose nationals are exempt from visa requirements*

In the Annex to Regulation 574/99 Bulgaria and Romania were included as countries whose nationals were required to be in possession of a visa when crossing the external borders of the EU. As the Parliament has made clear in its report of 1 February 1999 the Parliament considered that the nationals of these two countries should not be subject to visa requirements given that these two countries are eventually to become members of the EU and in the light of the progress made by these two countries to address the concerns of the Member States.

The Parliament notes that, since the adoption of that report by the Parliament in 1999, these countries have continued to take steps to address the concerns of the Member States, and have made substantial progress in this respect. The Parliament strongly urges the Council to maintain Bulgaria and Romania on the list of third countries whose nationals are exempt from visa requirements when crossing the external borders of the EU.

4) *The proposal permits the possible exemption of school pupils from the visa requirements when they are travelling as a member of a school excursion*

The Parliament welcomes the proposed Article 5(2) under which Member States may exempt from the requirement to have a visa school pupils who would normally require a visa but who reside in a country whose nationals are exempt from the visa requirement and who are travelling with a school excursion. The Parliament hopes that Member States will make use of this possibility and that there may be further harmonisation at a later stage.

The Parliament has added an amendment to allow Member States to make an exemption to enable young people to participate in EU youth programmes more easily.

5) *The lists of countries once adopted may only be amended by a new legislative proposal on which the Parliament must be consulted in accordance with Article 67(3)*

The proposal does not contain any specific provision concerning the revision of the Annexes to the proposed regulation. Therefore, the only means to amend the regulation once adopted will be through another Commission proposal adopted on the basis of Article 62(2)(b)(i) in accordance with the procedure in Article 67(3), which requires consultation of the Parliament. The Parliament believes that a Member State which seeks a revision of the lists should submit its proposal to the Commission which will examine it in the Community interest and decide whether or not to submit a proposal to the Council. Therefore, the Parliament believes that it is not necessary to adopt a specific procedure for the revision of the regulation and that the existing Treaty rules are sufficient and respect the existing institutional balance.

6) *Principle of equivalence between visas and valid residence permits issued by one Member State*

Article 3 of the proposed regulation requires Member States to treat as equivalent to a visa a valid residence permit issued by another Member State. This Article, combined with Recital 3, has been deleted because it deals with the rights of third country nationals legally resident within the Member States. The Parliament considers that Article 3 goes beyond the scope of the legal basis in the Commission proposal, Article 62(2)(b)(i), which only deals with the lists of third

countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.