



SEMDOC compilation no 1

The draft External Frontiers Convention

Supplement to: “Key texts on justice and home affairs in the
European Union, Volume 1 (1976-1993)”

**Statewatch European Monitoring and Documentation Centre on
justice and home affairs in the European Union (SEMDOC)**

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Convention between the member states of the European Communities on the crossing of their external frontiers

Introduction

The text of this draft Convention was agreed in June 1991. However, it still remains on the table due to a dispute between the UK and Spain over the status of Gibraltar. Another unresolved issue is over the role of the European Court of Justice.

Convention between the member states of the European Communities on the crossing of their external frontiers

AD HOC GROUP IMMIGRATION
SN 2528/91 WGI 822

HIS MAJESTY THE KING OF THE BELGIANS,
HER MAJESTY THE QUEEN OF DENMARK,
THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,
THE PRESIDENT OF THE HELLENIC REPUBLIC,
HIS MAJESTY THE KING OF SPAIN,
THE PRESIDENT OF THE FRENCH REPUBLIC,
THE PRESIDENT OF IRELAND,
THE PRESIDENT OF THE ITALIAN REPUBLIC,
HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,
HER MAJESTY THE QUEEN OF THE NETHERLANDS,
THE PRESIDENT OF THE PORTUGUESE REPUBLIC,
HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND.

Having regard to the common objective of an area without internal frontiers in which the free movement of persons is ensured in accordance with the provisions of Article 8a of the Treaty establishing the European Economic Community;

Whereas attainment of this objective requires that progress be made in solidarity and co-operation between the different Member States of the European Communities, in particular by conducting effective controls, in line with common criteria, on persons at the external frontiers of those States and by implementing a common visa policy;

Whereas the aim of such controls is to enable risks to public order and public security to be eliminated in those States and to combat illegal immigration, while preserving the openness of those States to the rest of the world and their intensive exchanges with other countries, particularly in the cultural, scientific and economic spheres;

Whereas the introduction of a system of controls at external frontiers for the purposes of this Convention and in the context of the application of Article 8a of the Treaty requires that particular attention be paid to the questions of infrastructure and frontier surveillance on the part of countries which, because of their geographical configuration, are exposed to increased migratory pressure;

Whereas the Member States of the European Communities intend to conduct these controls in compliance with their common international commitments, in particular the Geneva Convention of 23 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees as well as with more favourable constitutional

provisions on asylum;

Whereas the controls conducted by each Member State at its external frontiers must be carried out according to rules which should be adopted in common, having regard to the interest of all Member States,

HAVE DECIDED TO CONCLUDE THIS CONVENTION AND TO THIS END HAVE DESIGNATED AS THEIR PLENIPOTENTIARIES:

HIS MAJESTY THE KING OF THE BELGIANS,
HER MAJESTY THE QUEEN OF DENMARK,
THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,
THE PRESIDENT OF THE HELLENIC REPUBLIC,
HIS MAJESTY THE KING OF SPAIN,
THE PRESIDENT OF THE FRENCH REPUBLIC,
THE PRESIDENT OF IRELAND,
THE PRESIDENT OF THE ITALIAN REPUBLIC,
HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,
HER MAJESTY THE QUEEN OF THE NETHERLANDS,
THE PRESIDENT OF THE PORTUGUESE REPUBLIC,
HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND.

WHO, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention:

- (a) residence permit shall mean any authorization issued by the authorities of a Member State authorizing a person who is not a national of a Member State of the European Communities to stay in its territory, with the exception of visas and the provisional residence permit referred to in Articles 8 and 15;
- (b) entry visa shall mean authorization or decision by a Member State to enable a person who is not a national of a Member State to enter its territory, subject to other entry conditions being fulfilled;
- (c) transit visa shall mean authorization or decision by a Member State to enable a person who is not a national of a Member State to transit through its territory or through the transit zone of a port or airport, subject to other transit conditions being fulfilled;
- (d) re-entry visa shall mean authorization or decision by a Member State to enable a person who is not a national of that State and who is present in its territory to re-enter within a specified period without re-obtaining an entry visa to that State;
- (e) short stay shall mean an uninterrupted stay or successive stays in the territories of the Member States the length of which does not exceed three months, calculated over six months from the date of first entry;
- (f) external frontiers shall mean:
 - (i) a Member State's land frontier which is not adjacent to a frontier of another Member State, and maritime frontiers;
 - (ii) airports, except where internal flights are concerned;
 - (iii) ports, except where internal connections within a Member State and regular ferry connections between Member States are concerned;
- (g) internal flight shall mean any flight arriving exclusively from or departing exclusively for Member States' territories which does not involve a stopover in the territory of a third State;
- (h) local frontier traffic shall mean the movement, within a limited geographical area defined in a convention concluded by a Member State with a contiguous State which is not a Member of the European

Communities, of persons who come within the scope of that convention and are thereby entitled to cross the external land frontier of the Member State concerned under special conditions.

ARTICLE 2

1. All persons crossing the external frontiers of Member States of the European Communities shall do so at authorized crossing points permanently controlled by the Member States.

2. Persons crossing external frontiers at any point other than authorized crossing points shall be liable to sanctions as defined by each Member State.

3. Each Member State shall determine the location and opening conditions of authorized crossing points on its external frontiers and shall communicate this information and any modifications thereof to the General Secretariat of the Council, which shall inform the other Member States accordingly. Crossing at crossing points outside their opening hours shall not be permitted.

4. The provisions of this Article shall also be applicable to nationals of a Member State who cross the external frontiers of that State, unless otherwise stipulated in its national law.

5. The Committee provided for in Article 26 shall adopt the exceptions and specific rules applicable to particular categories of maritime traffic for the crossing of external frontiers, and the arrangements for local frontier traffic.

ARTICLE 3

External frontier stretches other than authorized crossing points shall be kept under effective surveillance by mobile units or by other appropriate means. Member States shall undertake to provide surveillance yielding similarly effective results along all their external frontiers; their surveillance services shall consult and co-operate to that end.

ARTICLE 4

The crossing of external frontiers shall be subject to control by the competent authorities of the Member States concerned. Controls shall be carried out in accordance with national law, in compliance with the provisions of this Convention.

ARTICLE 5

1. When crossing an external frontier upon entering or leaving the territories of a Member State, all persons shall be subject to a visual control under conditions which permit their identity to be established by examination of their travel documents.

2. Upon entry, persons who are not nationals of a Member State shall also be subject to a control to ensure that they fulfil the conditions listed in Article 7.

3. The Committee provided for in Article 26 shall lay down the detailed rules for applying the controls.

4. Certain controls may, exceptionally, be relaxed, due regard being had for any conditions that the Committee provided for in Article 26 may have laid down. Controls upon entry shall take precedence over controls upon departure.

5. The controls on persons and their vehicles and baggage shall take account of the requirements of

- detection and prevention of threats to national security and public policy;
- combating illegal immigration.

These controls shall be carried out in accordance with the laws of the Member States and without prejudice to Community baggage inspection measures.

6. When effecting these controls, Member States shall take account of the interests of other Member States.

ARTICLE 6

1. Member States shall ensure that as from 1 January 1995 passengers on flights from third States who transfer to internal flights will be subject to an entry control, together with their hand baggage, at the airport at which the external flight arrives. Passengers on internal flights who transfer to flights bound for third States will be subject to a departure control, together with their hand baggage, at the airport from which the external flight departs.

Such hand baggage inspections must be carried in accordance with Member States' laws.

2. The provisions of paragraph 1 shall apply without prejudice to Community baggage inspection measures.

3. Member States shall also take any measures necessary to ensure that:

- passengers who embark in a Member State on a flight coming from a third State and bound for a destination in a Member State are subject at the airport of destination to the controls specified for passengers coming from third countries;

- passengers who embark in a Member State on a flight bound for a destination in a third State and who disembark in another Member State are subject at the airport of embarkation to the controls specified for passengers going to third countries;

- passengers who embark in a Member State to go to another Member State on a flight coming from and bound for one or more third states are subject at the airports of the Member States to the controls specified for passengers coming from or bound for third countries, depending on whether they are departing from or arriving in a Member State.

4. Until the date laid down in paragraph 1, airports shall, by way of derogation from the definition of external frontiers, continue to be regarded as external frontiers for internal flights.

ARTICLE 7

1. Any person who is not a national of a Member State may be authorized to enter the territories of the Member States for a short stay provided that he meets the following requirements:

- (a) that he present a valid travel document which authorizes the crossing of frontiers; a list and description of such documents shall be drawn up by the Committee provided for in Article 26.

- (b) where applicable, that he be in possession of a visa valid for the length of stay envisaged

- (c) that he does not represent a threat to public policy, national security or international relations of Member States and, in particular, that his name does not appear on the joint list provided for in Article 10;

- (d) that he produce, if necessary, documents justifying the purpose and conditions of the intended stay or transit, in particular the required work permits if there is reason to believe that he intends to work;

- (e) that he have sufficient means of subsistence, both for the period of the intended stay or transit and for him to return to his country of origin or travel to a third State into which he is certain to be admitted, or is in a position to acquire such means lawfully.

2. Any person who is not a national of a Member State may also be refused entry:

(a) if his name appears on the national list of persons who are not to be admitted to the Member State to which he seeks entry;

(b) in all the circumstances in which a national of a Member State may be refused entry to a Member State in accordance with Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.

ARTICLE 8

1. A Member State shall not require the visa of a person who is not a national of a Member State who wishes to enter its territory for a short stay or to transit through it, provided that that person:

(a) fulfils the conditions in Article 7, except that in paragraph 1(b), and

(b) hold a residence permit issued by another Member State permitting him to reside in that State and, the period of validity of which, at the time of entry, still has more than four months to run.

2. In exceptional cases the provisions of paragraph 1 may also apply to persons who are not nationals of a Member State who hold a provisional residence permit issued by a Member State and a travel document issued by that Member State.

3. Member States shall, under conditions defined by the Committee provided for in Article 26, take back any person who is not a national of a Member State to whom they have issued a residence permit or provisional residence permit within the meaning of paragraphs 1 and 2 and who is illegally resident in the territory of another Member State.

4. In exceptional cases, a Member State may depart from the provisions of paragraphs 1 and 2 for urgent reasons of national security, but must take into consideration the interests of the other Member States.

The Member State concerned shall inform the other Member States in an appropriate manner, in accordance with procedures to be determined by the Committee provided for in Article 26.

Such measures must be used only to the extent that and for as long as it is strictly necessary to achieve the purpose referred to in the first subparagraph.

5. For the purposes of implementing this Article, the Committee provide for in Article 26 shall:

- draw up a list of the residents permits and provisional residence permits referred to in paragraphs 1 and 2 which shall be accepted as equivalent to visas;

- draw up an indicative list of the exceptional circumstances in which Member States' authorities shall accept the provisional residence permits and the travel documents referred to in paragraph 2 as equivalent to visas.

ARTICLE 9

Persons who are not nationals of Member States who propose to stay other than for a short time in a Member State shall enter that State under the conditions laid down in the latter's national law. In that case access shall be restricted to the territory of that State.

ARTICLE 10

1. A joint list of persons to whom the Member States shall refuse

entry to their territories shall be drawn up on the basis of national notifications.

2. The list, which shall be continually updated, shall contain the names submitted for this purpose by each Member State. No nationals of Member States may, however, be put on the list.

3. The decision to put a person on the joint list shall be based on the threat which that person may represent to the public policy or national security of a Member State. It shall be based on a decision taken in compliance with the rules of procedure laid down by national law by the administrative or competent legal authorities of the Member States on account of:

- a custodial sentence of one year or more in the Member State concerned;

- information to the effect that the person concerned has committed a serious crime;

- serious grounds for believing that he is planning to commit a serious crime or that he represents a threat to the public policy or national security of a Member State;

- a serious offence or repeated offences against the law relating to the entry and residence of persons who are not nationals of a Member State.

4. The Committee provide for in Article 26 shall establish the detailed rules for applying the criteria referred to in paragraph 3.

ARTICLE 11

1. Where a person who is not a national of a Member State and whose name is on the joint list applies for a residence permit, the Member State to which the application is made shall first consult the Member State who entered the name on the list and shall take into account the interests of that State; the residence permit shall be issued for substantive reasons only, notably on humanitarian grounds or by reason of international commitments.

If the residence permit is issued, the Member State which entered the name on the joint list shall delete the entry.

2. If it becomes apparent that the name of a person who is not a national of a Member State and who is in possession of a valid residence permit issued by one of the Member States is on the joint list, the Member State which entered the name and the Member State which issued the residence permit shall consult each other in order to determine whether there are sufficient grounds for withdrawing the residence permit.

If the residence permit is not withdrawn the Member State which made the entry shall delete it.

3. The detailed rules for the application of this Article shall be adopted by the Committee provided for in Article 26.

ARTICLE 12

1. Entry into the territories of the Member States shall be refused to persons who are not nationals of Member States who fail to fulfil one or more of the conditions set out in Article 7(1) and Article 9.

2. A Member State may, however, on humanitarian grounds or in the national interest or because of international commitments, allow persons who are not nationals of Member States and who fail to fulfil those conditions to enter its territory. In such a case, permission to enter shall be restricted to the territory of the Member State concerned, which, if the person concerned is on the joint list, shall inform the other Member States in a suitable manner in accordance with the procedures to be laid down by the Committee provided for in Article 26.

ARTICLE 13

1. The exchange of information on data contained in the joint list shall be computerized.
2. The creation, organization and operation of this computerized system shall be the subject of a special agreement between the States party to this Convention. It shall include guarantees based on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data.
3. The joint list may be consulted by the competent authorities of the Member States which, in accordance with their national laws, are concerned with:
 - processing visa applications;
 - frontier controls;
 - police checks;
 - the admissions and regulation of stay of persons who are not nationals of a Member State.
4. The Member States shall inform the Committee provided for in Article 26 of the agencies authorized, in pursuance of this Article, to consult the joint list.

ARTICLE 14

1. Without prejudice to Article 27, the Member States undertake to incorporate into their national legislation relating to airlines and shipping companies and to public service international carriers transporting groups overland by coach, with the exception of local frontier traffic.
2. The purpose of such measures shall be:
 - to oblige the carrier to take all necessary measures to ensure that persons who are not nationals of Member States coming from third countries are in possession of valid travel documents and of the necessary visas, and to impose appropriate sanctions on carriers failing to fulfil this obligation;
 - to oblige the carrier, where required by the control authorities, to assume responsibility without delay (this may include covering the costs of accommodation until departure), and to return to the State from which he was transported or to the State which issued his passport or to any State to which he is certain to be admitted, a person who is not a national of a Member State coming from a third country and who is refused admission at the first control on entry into Community territories.

ARTICLE 15

1. A person who is not a national of a Member State who illegally crosses an external frontier without a residence permit or who does not fulfil, or who no longer fulfils the conditions of residence in a Member State must in principle leave the territories of the Member States without delay, unless his stay is regularized.

If such a person holds a valid residence permit or provisional residence permit issued by another Member State, he must go to the territory of that Member State without delay, unless he is authorized to go to another country to which he is certain to be admitted.

2. Where such a person has not left voluntarily or where it may be assumed that he will not so leave or if his immediate departure is required for reasons of national security or public policy, he shall be expelled as laid down in the legislation of the Member State in which he was found. He shall be expelled from the territory of that Member State to his country of origin. He may equally be expelled to any other

country to which he may be admitted, in particular under the provisions of the readmission agreements concluded between Member States.

3. The Committee provided for in Article 26 shall draw up a list of the residence permits or provisional residence permits issued by the Member States.
4. Should one of them so request, Member States shall conclude agreements amongst themselves on the readmission of persons who are not nationals of Member States.

ARTICLE 16

Subject to the definition of the appropriate criteria and practical arrangements by the Committee provided for in Article 26, the Member States shall compensate each other for any financial imbalances which may result from the obligation to expel provided for in Article 15 where such expulsion cannot be effected at the expense of the person who is not a national of a Member State or of a third party.

ARTICLE 17

The Member States undertake to harmonize their visa policies progressively. Pending such harmonization, the Member States shall agree, by entry into force of this Convention at the latest, on the countries in respect of which there exist common visa arrangements. These arrangements, as part of a common visa policy, shall determine for each of those countries whether or not its nationals are subject to the visa requirement. Amendments to these common arrangements and their application to other countries shall be decided upon by the Committee provided for in Article 26. A Member State may exceptionally derogate from these common visa arrangements for overriding reasons of national policy. The Member State concerned shall first consult the other Member States and, in its decision, shall take account of their interests and of the consequences of that decision. As regards countries which are not referred to in the common arrangements, the Member States shall regularly examine the situation with a view to harmonizing their visa policies.

ARTICLE 18

1. A Member State may not require a visa issued by its own authorities of a person applying to stay for a short time within its territory and who holds a visa issued by another Member State stating that the conditions laid down in Articles 19, 20 and 21 are fulfilled.
2. Visas shall have a common form, the description and timetable for the introduction of which shall be drawn up by the Committee provided for in Article 26.
3. Pending agreement on such a common form of visa the Member States shall inform each other of the forms of visa to be recognized for the purposes of this Article, and the Committee provided for in Article 26 shall decide on the common form which the statement referred to in paragraph 1 must take.
4. Those provisions of the following Articles which relate to uniform visas shall apply both to visas having a common form and to visas which are mutually recognized in accordance with paragraph 3.

ARTICLE 19

1. A uniform visa may be issued only where a person who is not a national of a Member State fulfils the conditions for entry laid down in Article 7(1) with the exception of subparagraph (b).
2. Uniform Visas shall be issued on the basis of the following common conditions and criteria:
 - travel documents presented on application for a visa must be checked to ensure that they are in order and authentic;

- the expiry date of the travel document must be at least three months later than the final date for stays stated on the visa, taking into account the time within which the visa must be used;
 - the travel document must be recognized by all Member States;
 - the travel document must be valid in all Member States;
 - the travel must allow for the return of the traveller to his country of origin or his entry into a third country;
 - the existence and validity of an authorization or a re-entry visa for the traveller to return to the country of departure must be checked if such formalities are required by the authorities of that country. The same shall apply to any authorization required for entry to a third country.
3. The Committee provided for in Article 26 shall lay down the arrangements for attaching the visa to the travel document.

ARTICLE 20

1. Where in certain cases a Member State makes the issue of visas subject to prior consultation of its central authorities and where it wishes to be consulted on the issue, in such cases, of a uniform visa by another Member State, this visa shall not be issued unless the central authorities of the Member State have been consulted in advance and have expressed no objection.

The absence of a reply from these authorities within a period to be fixed by the Committee provided for in Article 26 shall be regarded as indicating that there is no objection to the issue of a visa. The period shall be 14 days at most.

If there is an objection or if the consultation procedure referred to in the first paragraph has not been implemented for reasons of urgency, only a national visa with restricted territorial validity may be issued.

2. The rules for implementing this article shall be established by the Committee provided for in Article 26.

Having particular regard for Member States' security, the Committee may specify cases in which the issue of a uniform visa must be made subject to prior consultation of the central authorities of Member States or States requiring consultation, but this shall be without prejudice to Member States' option to hold prior consultation with their own central authorities in other cases.

ARTICLE 21

1. The uniform visa shall state the maximum length of stay authorized together with the earliest day on which its holder may enter the territories of the Member States and the final date for leaving.

2. The uniform visa may be a visa valid for one or more entries. Neither the length of any continuous stay nor the total length of successive stays may exceed three months in a six-month period starting on the date of entry.

3. The uniform visa may be a transit visa. The transit period may not exceed five days.

4. The Committee provided for in Article 26 shall lay down the arrangements for implementing this Article. The Committee shall in particular determine the criteria and procedures for issuing uniform multiple-entry visas.

ARTICLE 22

1. The uniform visa shall be issued by the diplomatic and consular authorities of the Member States or, in exceptional cases, by other authorities determined in accordance with national legislation under the

conditions to be laid down by the Committee provided for in Article 26.

2. In principle, the Member State which is the main destination shall be responsible for issuing the visa. If it is not possible to determine that destination, the Member State of first entry shall be responsible.

3. The Committee provided for in Article 26 shall specify the implementing arrangements and, in particular, the criteria for determining the main destination.

ARTICLE 23

The provisions of Article 21 shall not prevent a Member State from issuing, if necessary, a visa, the validity of which is restricted to its own territory to the holder of a uniform visa in the course of any one six-month period.

These provisions shall not prevent Member States either from authorizing a person who is not a national of a Member State holding a uniform visa to remain in their territories for more than three months.

ARTICLE 24

1. Member States may issue visas valid only in their respective territories in the cases provided for in Articles 20, 23 and 25.

2. In addition, a Member State may, for humanitarian reasons or for reasons of national interest or because of other international commitments, issue a person who is not a national of a Member State and who does not meet all or some of the conditions laid down in Article 7(1)(a), (c), (d) and (e) with a visa valid only in their own territory.

3. A Member State which has issued a visa to a person who is not a national of a Member State with a visa pursuant to paragraph 2 shall so inform the other Member States if that person is on the joint list or if the State consulted pursuant to Article 20 has objected. This information shall be supplied in accordance with procedures established under Article 12(2) by the Committee provided for in Article 26.

4. Visas issued in accordance with paragraphs 1 and 2 shall indicate their distinct nature and be different in appearance from the uniform visa.

ARTICLE 25

Visas for stays longer than three months shall be national visas issued by each Member State in accordance with its national law.

The issue of such visas shall be subject to consultation of the joint list.

ARTICLE 26

1. A Committee shall be set up comprising one representative of the Government of each Member State.

The Committee shall be chaired by the Member State holding the Presidency of the Council of the European Communities.

The Commission of the European Communities may participate in the discussions of the Committee and the working parties referred to in paragraph 6.

2. The Committee shall examine, at the request of any Member State, any question of a general nature concerning the application or interpretation of this Convention.

3. In addition to the other duties entrusted to it under this Convention, the Committee may, taking into account the interests of all the Member States, take the decisions necessary for the proper application of this Convention.

4. (a) The Committee shall take its decisions unanimously.

(b) The Committee may however, acting unanimously, draw up a list of cases in which it shall take decisions by a majority of two thirds of the votes of its members.

5. At the request of the representative of a Member State, the Committee may defer its decision for up to two months after establishing a common position on a proposal put to the Committee.

6. The Committee shall determine its own rules of procedure and may, in preparation for taking a decision, set up working parties.

7. The secretariat of the Committee and of the working parties shall be provided by the General Secretariat of the Council of the European Communities.

ARTICLE 27

1. The provisions of this Convention shall apply subject to the provisions of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees and without prejudice to more favourable constitutional provisions of Member States on asylum.

2. The provisions of this Convention shall apply subject to those of the Treaty establishing the European Economic Community and of the acts adopted or to be adopted in pursuance thereof.

3. The provisions of this Convention shall not affect bilateral conventions on local frontier traffic.

ARTICLE 28

1. A Member State which envisages conducting negotiations on frontier controls with a third State shall achieve the other Member States accordingly in good time.

2. No Member State shall conclude with one or more third States agreements simplifying or abolishing frontier controls without the prior agreement of the other Member States.

This paragraph shall apply to agreements on local frontier traffic where such agreements comply with the arrangements to be laid down by the Committee provided for in Article 26 pursuant to article 2.

ARTICLE 29

This Convention may not be the subject of any reservations.

ARTICLE 30

1. In the case of the Kingdom of Denmark, this Convention shall not apply to the Faroe Islands or Greenland unless the Kingdom of Denmark makes a declaration to the contrary. Such a declaration may be made at any time and shall be communicated to the Grand Duchy of Luxembourg which shall inform the other Member States accordingly.

This Convention shall not affect the arrangements for persons moving between the Faroe Islands, Greenland and Denmark.

2. The provisions of this Convention shall apply, as regards France, to the European territories of the French Republic.

3. This Convention shall not affect the arrangements for persons moving between Italy and San Marino, Campione d'Italia or the Vatican.

4. As regards the Kingdom of the Netherlands, the provisions of this Convention shall apply only to its European territory.

5. As regards the United Kingdom, the provisions of this

Convention shall apply to the United Kingdom of Great Britain and Northern Ireland and to the European territories for the external relations of which the United Kingdom is responsible, with the exception of those territories where the right of free movement of persons does not apply.

In the context of the application of this Convention to Gibraltar, the Kingdom of Spain and the United Kingdom will apply appropriate controls in accordance with this Convention.

6. This Convention shall not affect the arrangements for persons moving between Jersey, Guernsey, the Isle of Man and, respectively, the United Kingdom and Ireland.

ARTICLE 31

1. This Convention shall be subject to ratification, acceptance or approval. Ratification, acceptance or approval shall take place only after this Convention has been signed by the twelve Member States of the European Communities. The instruments of ratification, acceptance or approval shall be deposited with the Government of the Grand Duchy of Luxembourg.

2. The Government of the Grand Duchy of Luxembourg shall notify the Governments of the other Member States of the deposit of the instruments of ratification, acceptance or approval.

3. This Convention shall enter into force on the first day of the second month following the deposit of the instrument of ratification, acceptance or approval by the last Member State to take this step.

The provisions relating to the establishment of activities and powers of the Committee provided for in Article 26 shall apply as from the entry into force of this Convention. The other provisions shall apply as from the first day of the third month following the entry into force of this Convention.

4. The Government of the Grand Duchy of Luxembourg shall notify the Member States of the date of entry into force of this Convention.

ARTICLE 32

1. This Convention shall be open for the accession of any State which becomes a Member of the European Communities. The instruments of accession shall be deposited with the Government of the Grand Duchy of Luxembourg.

2. It shall enter force in respect of any State which accedes thereto on the first day of the third month following the deposit of its instruments of accession.

ARTICLE 33

1. Any Member State may submit to the other Member States proposals for the revision of this Convention.

2. The text of revisions or of amendments to this Convention shall be drawn up unanimously by the Member States. Such revisions and amendments shall:

- be subject to ratification, acceptance or approval;
- enter into force in accordance with Article 31.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Convention.

Done at Luxembourg, this ... day of July, in the year one thousand nine hundred and ninety-one, in a single original in the Danish, Dutch,

English, French, German, Greek, Irish, Italian, Spanish and Portuguese languages, each text being equally authentic and deposited in the archives of the Government of the Grand Duchy of Luxembourg which shall transmit a certified copy to each of the other Member States.

[Signatures of the Heads of State of the twelve members of the European Communities]

2

Declaration for inclusion in the final Act

Introduction

Sets out a number of reservations by Member States such as the UK and Spain and by Denmark over relations within the Nordic Union.

Declaration for inclusion in the final Act

Source: SN 2529/91 WGI 823

The Plenipotentiaries

OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

meeting in Luxembourg on ... July one thousand nine hundred and ninety-one to sign the Convention between the Member States of the European Communities on the crossing of their external frontiers,

when signing this Convention, adopted the joint declarations and took cognizance of the unilateral declarations annexed to this Final Act.

1. The Member States hereby declare that this Treaty, that deals with the crossing of their external frontiers

- is being signed with a view to achieving the objectives of Article 8a of the Treaty establishing the EEC and constitutes a stage towards achieving an area without internal frontiers in which the free movement of goods, persons, services and capital is assured in accordance with the provisions of the aforementioned Treaty;

- does not contain any express or implicit obligation upon Member States concerning controls at intra-Community frontiers;

- does not affect agreements between Member States on the movements of persons which provide for greater freedom of movement or more extensive co-operation than that resulting from the provisions of this Convention.

2. The Member States declare that this Convention does not prejudice the deepening of their co-operation within the framework of the Political Union.

3. The Member States declare that this Convention will enter into force simultaneously with the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data. That Convention will take into account Recommendation R(37)15 of 17 September 1987 of the Council of Europe's Committee of Ministers to Member States regulating the use personal data in the police sector, insofar as police data are recorded.

4. Re Article 19

The Member States declare that the provisions of this Convention do not prevent any Member State from issuing to persons who are not nationals of a Member State and whose travel documents are not recognized by all the Member States visas valid only in its territory.

5. The Member States declare that effective entry into force of this Convention implies certain prior arrangements, in particular with respect to the conditions for the issues of visas.

As a result, the Member States undertake to endeavour, as from the signing of this Convention, to ensure that the measures necessary for its application can be formally adopted by the Committee provided for in Article 26 as rapidly as possible after it has been appointed. To that end, they entrust the ad hoc Group on Immigration with the task of undertaking discussions without delay in order to draw up the said measures.

6. Re Article 6

The Member States declare that they undertake to use their best endeavours in order to comply with the time limit referred to in Article 6(1). The Committee provided for in Article 26 will, before 1 January 1995, assess the situation and any difficulties that certain Member States might encounter.

The Kingdom of Denmark declares that it cannot be excluded that it will encounter difficulties, with respect to a specific airport, in complying with the timetable referred to in Article 6(1).

The other Member States will take into account this temporary situation, and Denmark, in co-operation with the other Member States, will take the necessary measures to ensure that this will not give rise to any shortcomings in security.

7. The Member States take note that:

- the application of this Convention to Gibraltar is without prejudice to the respective positions of the Kingdom of Spain and the United Kingdom on the dispute over the sovereignty of the isthmus on which the airport is built;

- the Kingdom of Spain and the United Kingdom, who reaffirm their commitment to their early implementation of the joint declaration made at London on 2 December 1987, will consult together to overcome any difficulties that might arise in the application of this Convention to Gibraltar, having regard to the implementation of that declaration.

XXXXXXXXXXXXX would prevent the Kingdom of Spain and the united Kingdom from carrying out systematic controls on persons transferring between Gibraltar and Spain.

8. (a) The Kingdom of Denmark declares that controls at Denmark's external Community frontiers will be carried out with due regard for the obligations incumbent upon Denmark within the framework of the Nordic Passport Union.

During a transitional period, controls will be conducted as a combination of the effective controls that the other Nordic countries carry out at their external Nordic frontiers and the controls that can be made within the framework of the Nordic Passport Union at the internal Nordic frontiers between Denmark and the other Nordic countries.

These combined controls will be carried out with regard both to the interests of the Nordic countries and to those of the Community Member States and they will be as effective as the controls that will be established at the external frontiers of the other Community Member States.

Moreover, the Kingdom of Denmark does not undertake to carry out controls on nationals of Finland, Iceland, Norway or Sweden entering Denmark via an external Community frontier according to standards for such controls that are stricter than the regulations that apply to nationals of Member States entering Denmark via an external Community frontier.

(b) In the light of the explanatory note drawn up by the Kingdom of Denmark (WGI 798) the other Member States have agreed to this declaration.

9. The Kingdom of Denmark declares that the controls at the frontiers of the Faroe Islands and of Greenland are carried out effectively so the controls take full account of the requirements of public policy and public security and of the need to combat illegal immigration.

10. The Kingdom of Spain declares that the application of this Convention by Spain to the entire national territory of Spain will not prevent the continuing existence, in accordance with Article 12 and taking into account Articles 9 and 23, of specific entry and stay arrangements territorially confined to the cities of Ceuta and Melilla, in the application of which account will be taken of the interests of the other Member States (Articles 5 and 7), in particular through prior consultation of the joint list (Articles 7, and 10 and other related Articles).

Pursuant to its national legislation, in order to ensure passengers continue to meet the conditions laid down in Article 7 which provided the basis for allowing them admission to the territory upon arrival at passport control at the external frontier, Spain will maintain controls (controls on identity and documentation) on sea and air journeys from Ceuta and Melilla having as their sole destination any other place on Spanish territory.

For the same purpose Spain will maintain controls on domestic flights and regular ferry connections leaving the cities of Ceuta and Melilla for destinations in another State party to the Convention.

11. The Federal Republic of Germany declares that this Convention does not affect the arrangements agreed in the Exchange of Letters between Germany and Austria of 20 August 1984 providing for a relaxation of controls at common frontiers for the nationals of the two States. Those arrangements must, however, be applied taking into account of the Member States' security and immigration requirements so that the facilities in question are in practise restricted to Austrian nationals.

In witness whereof, the undersigned Plenipotentiaries have signed the present Final Act.

3

Commission proposal for establishing a Convention on Controls on Persons Crossing External Frontiers

Introduction

In an attempt to break the deadlock the European Commission produced a new draft of the Convention in December 1993. This substituted the European Court of Justice for the executive committee as the body charged with the application, interpretation and resolution of disputes arising out of the Convention. If and when the Council of Ministers reopens the issue it may well use its own original draft.

PROPOSAL FOR COUNCIL DECISION NO..... of

establishing a Convention on Controls on Persons Crossing External Frontiers
THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K. 3(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the rules governing crossings by persons at the external frontiers of the Member States and the exercise of controls on such crossings are, by virtue of Article K.1 of the Treaty on European Union and without prejudice to the powers of the European Community, matters of common interest which may be the subject of cooperation under Title VI;

Whereas the rules governing crossings at the external frontiers of the Member States by citizens of the Union and other persons entitled under Community law fall within the scope of the Treaty establishing the European Community; whereas this Convention primarily defines the rules applicable to persons not entitled under Community law; whereas controls on crossings at external frontiers must cover all persons arriving at a frontier to the extent necessary to distinguish those entitled under Community law from other persons;

Whereas Article 7a of the Treaty establishing the European Community sets the common objective of an area without internal frontiers in which the free movement of persons is ensured;

Whereas attainment of this objective requires effective controls, in line with common criteria, on persons at the external frontiers of those States and closer cooperation on implementing a common visa policy;

Whereas the controls on persons conducted by each Member State at its external frontiers must be carried out according to rules which should be adopted in common, with due regard for the interests of all Member States;

Whereas the aim of such controls is to enable threats to public policy and public security to be eliminated in the Member States of the European Union and to combat illegal immigration, while preserving the openness of those States to the rest of the world and their intensive exchanges with other countries, particularly in the cultural, scientific and economic spheres;

Whereas the introduction of a system of controls at external frontiers requires that particular attention be paid to the questions of infrastructure and frontier surveillance on the part of countries which, because of their geographical position and configuration, are exposed to increased migratory pressure;

Whereas the Member States intend to conduct these controls in compliance with their common international commitments, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees as well as with more favourable constitutional provisions on asylum,

HAS DECIDED AS FOLLOWS:

Article 1

1. It is recommended that the Member States adopt the Convention on Controls on Persons Crossing External Frontiers established by this Decision, the text of which is annexed hereto, in accordance with their respective constitutional requirements by 31 December 1994.

2. The Member States shall notify the General Secretariat of the Council of the instruments attesting completion of the procedures for the adoption of the Convention in accordance with their respective

constitutional requirements, and deposit them with it.

Article 2

1. The Convention shall enter into force on the first day of the second month following the deposit of the instrument of adoption with the General Secretariat of the Council by the last Member State to take that step.

The provisions concerning the adoption of measures in implementation of the Convention shall apply from the date of its entry into force. The other provisions shall apply from the first day of the third month following that date.

2. The Secretary-General of the Council shall inform the Member States of the date of entry into force of this Convention.

Article 3

This Decision shall enter into force on the day of its publication in the Official Journal of the European Communities.

Done at Brussels
For the Council
The President

Convention on Controls on Persons Crossing External Frontiers

TITLE I

GENERAL

ARTICLE 1

Definitions

For the purposes of this Convention:

(a) "persons entitled under Community law" means:

(i) citizens of the Union within the meaning of Article 8(1) of the Treaty establishing the European Community;

(ii) members of the family of such citizens who are nationals of a third State and have the right of entry and residence in a Member State by virtue of an instrument enacted under the Treaty establishing the European Community;

(iii) nationals of third States who, by agreement between the European Community and its Member States and such countries, have rights of entry and residence in a Member State which are identical with those enjoyed by citizens of the Union, and members of the family of such persons who are nationals of a third State and have the right of entry and residence in a Member State under any such agreement.

(b) "residence permit" means any authorization issued by the authorities of a Member State authorizing a person not entitled under Community law to stay in its territory, with the exception of visas and the provisional residence permit referred to in Articles 8 and 15;

(c) "entry visa" means authorization or decision by a Member State, given in accordance with decisions adopted under Article 100c of the Treaty establishing the European Community, to enable a person to enter its territory who is required to hold a visa to do so, subject to other entry conditions being fulfilled;

(d) "transit visa" means authorization or decision by a Member State, given in accordance with decisions adopted under Article 100c of the Treaty establishing the European Community, to enable a person to transit through its territory or through the transit zone of a port or airport who is required to hold a visa to do so, subject to other transit conditions being fulfilled; the time taken to transit shall not exceed five days;

(e) "re-entry visa" means authorization by a State enabling a person who is not a national of that State and who is present in the territory of that State to re-enter within a specified period without re-obtaining an entry visa to that State;

(f) "uniform visa" means entry, transit or re-entry visa of the uniform format provided for in Article 100c(3) of the Treaty establishing the European Community, issued under the rules specified in Articles 19 to 22 of this Convention;

(g) "short stay" means an uninterrupted stay or successive stays in the territories of the Member States the length of which does not exceed three months, calculated over six months from the date of first entry;

(h) "external frontiers" means:

(i) a Member State's land frontier which is not contiguous with a frontier of another Member State, and maritime frontiers;

(ii) airports and seaports, except where they are considered to be internal frontiers for purposes of instruments enacted under the Treaty establishing the European Community;

(iii) local frontier traffic means the movement, within a limited geographical area defined in a convention concluded by a Member State with a contiguous State which is not a member of the European Communities, of persons who come within the scope of that convention and are thereby entitled to cross the external land frontier of the Member State concerned under special conditions.

2. This Convention applies, except where there is an express statement to the contrary, to all persons other than those entitled under Community law.

TITLE II

GENERAL PRINCIPLES

ARTICLE 2

Crossing external frontiers

1. All persons crossing the external frontiers shall do so at authorized crossing points permanently controlled by the Member states.

2. Persons crossing external frontiers at any point other than authorized crossing points shall be liable to penalties as determined by each Member State.

3. Each Member State shall determine the location and opening conditions of authorized crossing points on its external frontiers and shall communicate this information and any changes thereto to the General Secretariat of the Council, which shall inform the other Member States accordingly. Crossing at crossing points outside their opening hours shall not be permitted.

4. By way of exception, as provided in Article 1(2), this Article also applies to persons entitled under Community law who cross the external frontiers, unless otherwise stipulated in the law of the Member State concerned.

5. The exceptions and specific rules applying to particular categories of maritime traffic for the crossing of external frontiers, and the arrangements for local frontier traffic, shall be determined by measures to give effect to this Convention.

ARTICLE 3

Surveillance of external frontiers

External frontier stretches other than authorized crossing points shall be kept under effective surveillance by mobile units or by other

appropriate means. Member States undertake to provide surveillance yielding similarly effective results along all their external frontiers; their surveillance agencies shall consult and cooperate to that end.

ARTICLE 4

Controls at external frontiers

The crossing of external frontiers shall be subject to control by the competent authorities of the Member State concerned. Controls shall be carried out in accordance with national law, with due regard for the provisions of this Convention.

ARTICLE 5

Nature of controls at external frontiers

When crossing an external frontier upon entering or leaving the territories of the Member States, all persons shall be subject to a visual control under conditions which permit their identity to be established by examination of their travel documents.

2. Upon entry, persons shall also be subject to a control to ensure that they fulfil the conditions set out in Article 7. By way of exception, as provided in Article 1(2), persons entitled under Community law who are third-country nationals shall be subject to the condition in Article 7(1) (b) if they are required to hold a visa by virtue of instruments enacted under Article 100c of the Treaty establishing the European Community.

3. Detailed rules for applying the controls shall be determined by measures to give effect to this Convention.

4. Certain controls may, exceptionally, be relaxed, due regard being had for any conditions that may be laid down by measures to give effect to this Convention. Controls upon entry shall take precedence over controls upon departure.

5. Without prejudice to Community provisions regulating controls on baggage carried by travellers and on their vehicles, controls on persons and their vehicles and baggage may be performed where necessary for the purposes of:

detecting and preventing threats to national security and public policy; or

combating illegal immigration.

6. When effecting these controls, Member States shall take account of the interests of the other Member States.

ARTICLE 6

Specific arrangements for airports

1. Member States shall ensure that passengers on flights from third States who transfer onto internal flights will be subject to an entry control at the airport at which the external flight arrives. Passengers on internal flights who transfer onto flights bound for third States will be subject to a departure control at the airport from which the external flight departs.

2. Paragraph 1 is without prejudice to Community baggage inspection measures.

3. Member States shall also take any measures necessary to ensure that passengers who embark in a Member State on a flight coming from a third State which is bound for a destination in a Member State are subject at the airport of destination to the controls specified for passengers coming from third countries;

passengers who embark in a Member State on a flight bound for a destination in a third State and who disembark in another Member State are subject at the airport of embarkation to the controls specified

for passengers going to third countries;

passengers who embark in a Member State to go to another Member state on a flight coming from and bound for one or more third States are subject at the airports of the Member States to the controls specified for passengers coming from or bound for third countries, depending on whether they are departing from or arriving in a Member State.

TITLE III

CONTROL ARRANGEMENTS AT EXTERNAL FRONTIERS

ARTICLE 7

Controls on persons not entitled under Community law

Any person may be authorized to enter the territories of the Member States for a short stay provided that he meets the following requirements:

(a) that he present a valid travel document which authorizes the crossing of frontiers; a list and description of such documents shall be drawn up by measures to give effect to this Convention;

(b) where applicable, that he be in possession of a visa valid for the length of stay envisaged;

(c) that he does not represent a threat to the public policy, national security or international relations of Member States and, in particular, that his name does not appear on the joint list provided for in Article 10;

(d) that he produce, if necessary, documents justifying the purpose and conditions of the intended stay or transit, in particular the required work permits if there is reason to believe that he intends to work;

(e) that he have sufficient means of subsistence, both for the period of the intended stay or transit and for him to return to his country of origin or travel to a third State into which he is certain to be admitted, or be in a position to acquire such means lawfully.

2. Any person may also be refused entry:

(a) if his name appears on the national list of persons who are not to be admitted to the Member State to which he seeks entry;

(b) in all the circumstances in which a national of a Member State may be refused entry to another Member State.

ARTICLE 8

Crossing of external frontiers by third-country nationals residing in a Member State

1. A Member State shall not require a visa of a person who wishes to enter its territory for a short stay or to transit through it provided that that person:

(a) fulfils the conditions in Article 7, except that in paragraph 1(b); and

(b) holds a residence permit issued by another Member State permitting him to reside in that State, the period of validity of which, at the time of entry, still has more than four months to run.

2. In exceptional cases, paragraph 1 may also apply to persons who hold a provisional residence permit issued by a Member State and a travel document issued by that Member State.

3. Member States shall, under conditions determined by measures to give effect to this Convention, take back any person to whom they have issued a residence permit or provisional residence permit within the meaning of paragraphs 1 and 2 and who is illegally resident in the territory of another Member State.

4. In exceptional cases, a Member State may depart from the provisions of paragraphs 1 and 2 for urgent reasons of national security, but must take into consideration the interests of the other Member States.

The Member State concerned shall inform the other Member States in an appropriate manner, determined by measures to give effect to this Convention.

Such measures shall be used only to the extent that and for as long as is strictly necessary to achieve the purposes referred to in the first subparagraph.

5. For the purposes of implementing this Article,

a list of the residence permits and provisional residence permits referred to in paragraphs 1 and 2 which shall be accepted as equivalent to visas; and

an indicative list of the exceptional circumstances in which Member States' authorities shall accept the provisional residence permits and the travel documents referred to in paragraph 2 as equivalent to visas shall be drawn up by measures to give effect to this Convention.

ARTICLE 9

Stays other than for a short time

Persons who propose to stay in a Member State other than for a short time shall enter that State under the conditions laid down in its national law. In that case access shall be restricted to the territory of that State.

TITLE IV

NOTIFICATIONS FOR REFUSING ENTRY

ARTICLE 10

List of persons to be refused entry

1. A joint list of persons to whom the Member States shall refuse entry to their territories shall be drawn up on the basis of national notifications by measures to give effect to this Convention.

2. The list, which shall be continually updated, shall contain the names submitted for this purpose by each Member State.

3. The decision to put a person on the joint list shall be based on the threat which that person may represent to the public policy or national security of a Member State. It shall be based on a decision taken with due regard for the rules of procedure laid down by national law by the administrative or competent judicial authorities of the Member States on account of:

- a custodial sentence of one year or more in the Member State concerned; or

- information to the effect that the person concerned has committed a serious crime; or

- serious grounds for believing that he is planning to commit a serious crime or that he represents a threat to the public policy or national security of a Member State; or

- a serious offence or repeated offences against the law relating to the entry and residence of foreigners.

4. Detailed rules for applying the criteria set out in paragraph 3 shall be determined by measures to give effect to this Convention.

ARTICLE 11

Issue of residence permit

1. Where a person whose name is on the joint list provided for in Article 10 applies for a residence permit, the Member State to which application is made shall first consult the Member State which entered the name on the list and shall take into account the interests of that State; the residence permit shall be issued for substantive reasons only, notably on humanitarian grounds or by reason of international commitments.

If the residence permit is issued, the Member State which entered the name on the joint list shall delete the entry.

2. If it becomes apparent that the name of a person who is in possession of a valid residence permit issued by one of the Member States is on the joint list, the Member State which entered the name and the Member State which issued the residence permit shall consult each other in order to determine whether there are sufficient grounds for withdrawing the residence permit.

If the residence permit is not withdrawn, the Member State which made the entry shall delete it.

3. Detailed rules for the application of this Article shall be determined by measures to give effect to this Convention.

ARTICLE 12

Refusal of entry to a Member State

1. Entry into the territories of the Member States shall be refused to persons who fail to fulfil one or more of the conditions set out in Article 7(1) and Article 9.

2. A Member State may, however, on humanitarian grounds or in the national interest or by reason of international commitments, allow persons who fail to fulfil those conditions to enter its territory. In such a case, permission to enter shall be restricted to the territory of the Member State concerned, which, if the person concerned is on the joint list, shall inform the other Member States in an appropriate manner, determined by measures to give effect to this Convention.

ARTICLE 13

Exchange of information

1. The exchange of information on data contained in the joint list shall be computerized.

2. The creation, organization and operation of this computerized system will be the subject of the Convention on the European Information System. The Convention will include guarantees for the protection of individuals with regard to the processing of personal data.

3. The joint list may be consulted by the competent authorities of the Member States which, in accordance with their national laws, are concerned with:

- processing visa applications;

- frontier controls;

- police checks;

- the admission and regulation of the stay of persons who are not nationals of a Member State.

4. Each Member State shall inform the Commission and the other Member States of the agencies authorized, in pursuance of this Article, to consult the joint list.

TITLE V

ACCOMPANYING MEASURES

ARTICLE 14

Responsibilities of carriers

1. Without prejudice to Article 27 and instruments enacted under the Treaty establishing the European Community, the Member States undertake to incorporate in their national legislation measures relating to airlines and shipping companies and to public-service international carriers transporting groups overland by coach, with the exception of local frontier traffic.

2. The purpose of such measures will be:

to oblige the carrier to take all necessary measures to ensure that persons coming from third countries are in possession of valid travel documents and of the necessary visas, and to impose appropriate penalties on carriers failing to fulfil this obligation;

to oblige the carrier, where required by the control authorities, to assume responsibility without delay (this may include covering the costs of accommodation until departure), and to return to the State from which he was transported or to the State which issued his passport or to any State to which he is certain to be admitted, a person coming from a third country who is refused admission at the first control on entry into Community territory.

ARTICLE 15

Illegal crossing of an external frontier

1. A person who illegally crosses an external frontier without a residence permit or who does not fulfil, or no longer fulfils, the conditions of residence in a Member State shall normally be required to leave the territory of the Member State without delay, unless his stay is regularized.

If such a person holds a valid residence permit or provisional residence permit issued by another Member State, he shall go to the territory of that Member State without delay, unless he is authorized to go to another country to which he is certain to be admitted.

2. Where such a person has not left voluntarily or where it may be assumed that he will not so leave or if his immediate departure is required for reasons of national security or public policy, he shall be expelled as laid down in the legislation of the Member State in which he was found. He shall be expelled from the territory of that Member State to his country of origin. He may equally be expelled to any other country to which he may be admitted, notably under the relevant provisions of readmission agreements between Member States.

3. A list of the residence permits or provisional residence permits issued by the Member State shall be drawn up by measures to give effect to this Convention.

4. Should one of them so request, Member States shall conclude bilateral agreements between themselves on the readmission of persons who are not entitled under Community law.

ARTICLE 16

Compensation for financial imbalances

Subject to determination of the appropriate criteria and practical arrangements by measures to give effect to this Convention, Member States shall compensate each other for any financial imbalances which may result from the obligation to expel provided in Article 15 where such expulsion cannot be effected at the expense of the person concerned or of a third party.

TITLE VI

VISAS

ARTICLE 17

Common visa policy

Member States undertake to harmonize their visa policies progressively, without prejudice to decisions adopted under Article 100c of the Treaty establishing the European Community.

ARTICLE 18

Uniform visa

A Member State shall not require a visa issued by its own authorities of a person applying to stay for a short time within its territory who holds a uniform visa.

ARTICLE 19

Conditions for issue of uniform visa

1. A uniform visa may be issued only where a person fulfils the conditions for entry laid down in Article 7(1), except that in subparagraph (b).

2. Uniform visas shall be issued on the basis of the following common conditions and criteria:

travel documents presented upon application for a visa must be checked to ensure that they are in order and authentic;

the expiry date of the travel document must be at least three months later than the final date for stays stated on the visa, account being taken of the time within which the visa must be used;

- the travel document must be recognized by all Member States;

- the travel document must be valid in all Member States;

- the travel document must allow for the return of the traveller to his country of origin or his entry into a third country;

- the existence and validity of an authorization or a re-entry visa for the traveller to return to the country of departure must be checked if such formalities are required by the authorities of that country. The same shall apply to any authorization required for entry to a third country.

ARTICLE 20

Prior consultation of central authorities

1. Where in certain cases a Member State makes the issue of visas subject to prior consultation of its central authorities and where it wishes to be consulted on the issue, in such cases, of a uniform visa by another Member State, this visa shall not be issued unless the central authorities of the Member State concerned have been consulted in advance and have expressed no objection.

The absence of a reply from these authorities within a period to be determined by measures to give effect to this Convention shall be regarded as indicating that there is no objection to the issue of a visa. The period shall be fourteen days at most.

If there is an objection, or if the consultation procedure referred to in the first subparagraph has not been implemented for reasons of urgency, only a national visa with restricted territorial validity shall be issued.

2. Rules for implementing this Article shall be determined by measures to give effect to this Convention, having particular regard for Member States' security; they may specify cases in which the issue of a uniform

visa must be made subject to prior consultation of the central authorities of the Member State or States requiring such consultation, but this shall be without prejudice to Member States' option to hold prior consultations with their own central authorities in other cases.

ARTICLE 21

Multiple-entry uniform visa

1. The uniform visa may be a visa valid for one or more entries. Neither the length of any continuous stay nor the total length of successive stays may exceed three months in a six-month period starting on the date of entry.

2. The conditions and criteria for issuing multiple-entry uniform visas shall be determined by measures to give effect to this Convention.

ARTICLE 22

Issue of uniform visa

1. The uniform visa shall be issued by the diplomatic and consular authorities of the Member States or, in exceptional cases, by other authorities determined in accordance with national legislation.

2. The Member State which is the main destination shall normally be responsible for issuing the visa. If it is not possible to determine that destination, the Member State of first entry shall be responsible.

3. The principles stated in this Article shall be implemented by measures to give effect to this Convention.

ARTICLE 23

Extension of stay

A Member State may, if necessary, issue a visa the validity of which is restricted to its own territory to the holder of a uniform visa in the course of any one six-month period.

A Member State may also authorize a person holding a uniform visa to remain in its territory for more than three months.

ARTICLE 24

National visas

1. Member States may issue visas valid only in their respective territories in the cases provided for in Articles 20, 23 and 25.

2. In addition, a Member State may, on humanitarian grounds or in the national interest or by reason of international commitments, issue a person who does not meet any or some of the conditions laid down in Article 7(1) (a), (c), (d) and (e) with a visa valid only in its own territory.

3. A Member State which has issued a person with a visa pursuant to paragraph 2 shall so inform the other Member States if that person is on the joint list or if the State consulted pursuant to Article 20 has objected. This information shall be supplied in accordance with the procedures established under Article 12(2) in accordance with the measures to give effect to this Convention.

4. Visas issued in accordance with paragraphs 1 and 2 shall indicate their distinct nature and be different in appearance from the uniform visa.

ARTICLE 25

Long-stay visas

Visas for stays of more than three months shall be national visas issued by each Member State in accordance with its national law.

The issue of such visas shall be subject to consultation of the joint list.

TITLE VII

IMPLEMENTATION

ARTICLE 26

Implementing measures

Decisions needed to give effect to this Convention, other than those expressly provided therein, shall be adopted by the Council, acting unanimously on a proposal from the Commission or on the initiative of a Member State.

ARTICLE 27

Primacy of instruments

1. This Convention shall be subject to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and to the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees and without prejudice to more favourable constitutional provisions of Member States on asylum.

2. This Convention shall not affect bilateral conventions on local frontier traffic.

ARTICLE 28

Relations with third States

1. A Member State which envisages conducting negotiations on frontier controls with a third State shall inform the other Member States and the Commission accordingly in good time.

2. No Member State shall conclude with one or more third States agreements simplifying or removing frontier controls without the prior agreement of the Council.

This paragraph does not apply to agreements on local frontier traffic where such agreements conform to the arrangements laid down pursuant to Article 2 and is without prejudice to Article 27(2).

ARTICLE 29

Jurisdiction of the Court of Justice

The Court of Justice of the European Communities shall have jurisdiction:

to give preliminary rulings concerning the interpretation of this Convention; references shall be made as provided in the second and third paragraphs of Article 177 of the Treaty establishing the European Community;

in disputes concerning the implementation of this Convention, on application by a Member State or the Commission.

TITLE VIII FINAL PROVISIONS

ARTICLE 30

Extent

[text to be inserted later]