

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0388/2000

6 December 2000

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REPORT

on the initiative of the French Republic with a view to adopting a Council Regulation on freedom of movement with a long-stay visa (9667/2000 – C5-0374/2000 – 2000/0810(CNS))

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

Rapporteur: Gérard M.J. Deprez

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)

CONTENTS

	Page
PROCEDURAL PAGE	4
LEGISLATIVE PROPOSAL	5
DRAFT LEGISLATIVE RESOLUTION	9
EXPLANATORY STATEMENT	10
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET	
OPINION OF THE COMMITTEE ON PETITIONS	

PROCEDURAL PAGE

By letter of 18 July 2000 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative of the French Republic with a view to adopting a Council Regulation on freedom of movement with a long-stay visa (11120/2000 - 2000/0810 (CNS)).

At the sitting of 4 September 2000 the President of Parliament announced that she had referred this initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0374/2000).

At the sitting of 27 October 2000 the President of Parliament announced that she had also referred the initiative to the Committee on Petitions for its opinion.

On 7 November 2000 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs decided to seek the opinion of the Committee on Legal Affairs and the Internal Market on the legal basis, pursuant to Rule 63(2) of the Rules of Procedure.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Gérard M.J. Deprez rapporteur at its meeting of 29 August 2000.

It considered the initiative of the French Republic and the draft report at its meetings of 2 October, 7 November and 5 December 2000.

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

The following were present for the vote: Graham R. Watson, chairman; Gérard M.J. Deprez, rapporteur; Maria Berger (for Ozan Ceyhun), Alima Boumediene-Thiery, Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Pernille Frahm, Anna Karamanou, Timothy Kirkhope, Ewa Klamt, Baroness Sarah Ludford, Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Anna Terrón I Cusí, Maurizio Turco (for Marco Cappato), Gianni Vattimo and Christian von Boetticher.

The opinion of the Committee on Petitions and the opinion of the Committee on Legal Affairs and the Internal Market on the legal basis are attached.

The report was tabled on 6 December 2000.

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

LEGISLATIVE PROPOSAL

Initiative of the French Republic with a view to adopting a Council Regulation on freedom of movement with a long-stay visa (9667/2000 – C5-0374/2000 – 2000/0810(CNS))

The proposal is amended as follows:

Text proposed by the French Republic¹

Amendments by Parliament

(Amendment 1)

First citation

Having regard to the Treaty establishing the European Community, and in particular **Articles 62(2)(b)(ii) and 63(3)(a)** thereof,

Having regard to the Treaty establishing the European Community, and in particular **Article 62(3)** thereof,

Justification:

The French initiative is intended to facilitate free movement on the territory of the Member States for holders of a national long-stay visa who have not yet received their residence permit, for a maximum period of three months.

(Amendment 2)

Recital 2a (new)

(2a) Steps must be taken to ensure that third-country nationals who are holders of a national long-stay visa issued by a Member State, pending the issue of their residence permits, are not penalised in terms of their freedom of movement by virtue of the unjustifiably cumbersome nature of the administrative procedures in force in the Member States as regards the issuing of residence permits.

¹ Not yet published in the OJ.

Justification:

This amendment is prompted by a situation which arises in practice: third-country nationals who require a visa and who are holders of a long-stay visa are in a less favourable position than any other alien. This is unjustifiable in legal terms.

(Amendment 3)

Recital 3

(3) Steps should be taken to facilitate the free movement of holders of national long-stay visas pending the issue of their residence permits, by stipulating that such visas, which currently enable their holders to transit only once through the territories of the other Member States in order to reach the territory of the State which issued the visa, ***are concurrently valid as uniform short-stay visas***, provided that the applicants fulfil the conditions of entry ***and residence laid down in*** the Convention implementing the Schengen Agreement of 14 June 1985 signed at Schengen on 19 June 1990.

(3) Steps should ***therefore*** be taken to facilitate the free movement of holders of national long-stay visas pending the issue of their residence permits, by stipulating that such visas, which currently enable their holders to transit only once through the territories of the other Member States in order to reach the territory of the State which issued the visa, ***have the same validity as a residence permit in terms of freedom of movement***, provided that the applicants fulfil the conditions of entry ***referred to in Article 5(1)(a), (c) and (e) of*** the Convention implementing the Schengen Agreement of 14 June 1985 signed at Schengen on 19 June 1990 ***and they do not appear on the national list of alerts of the Member States concerned.***

Justification:

Your rapporteur is proposing this amendment on the basis of the stated objective of the French initiative, which is to place on an equal footing, from the point of view of the right to freedom of movement, aliens who are holders of a residence permit and aliens who, whilst holding a long-stay visa, are still awaiting the issue of their residence permit.

(Amendment 4)

Recital 4

(4) This measure ***is a first step in the harmonisation of the conditions for the issue of national long-stay visas.***

(4) This measure ***seeks to facilitate freedom of movement for third-country nationals on the territory of the Member States for a maximum period of three months.***

Justification:

See the justification for Amendment 1 and the rapporteur's development of that argument in the explanatory statement.

(Amendment 5)

Article 1

Article **18** of the Convention implementing the Schengen Agreement shall be **replaced by the following:**

'Article **18**

Visas for stays exceeding three months shall be national visas issued by one of the Member States in accordance with its national law. For three months as from their initial date of validity such visas shall be valid concurrently as uniform short-stay visas, provided that their holders fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e).

Otherwise, such visas shall merely enable their holders to transit through the territories of the other Member States in order to reach the territory of the Member State which issued the visa, unless the holders do not fulfil the entry conditions referred to in Article 5(1)(a), (d) and (e) or are on the national list of alerts of the Member State through whose territory they seek to transit.'

Article **21** of the Convention implementing the Schengen Agreement shall be **amended as follows:**

Article **21**

After paragraph 2, add a paragraph 2a (new):

2a (new)

Paragraph 1 shall also apply to aliens who are holders of a long-stay visa issued by a Member State pending the issue of their residence permit.

Justification:

See the justification for Amendment 3 and the rapporteur's development of that argument in the explanatory statement.

(Amendment 6)

Article 2

Section 2.2 of Part I of the Common Consular Instructions on Visas shall be replaced by the following:

"2.2. Long-stay visas

Visas for visits exceeding three months

Section 2.2 of Part I of the Common Consular Instructions on Visas shall be replaced by the following:

"2.2. Long-stay visas

Visas for visits exceeding three months

shall be national visas issued by one of the Member States in accordance with its national legislation.

However, *such visas shall, for three months from their initial date of validity, be valid concurrently as uniform short-stay visas, provided that their holders fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e) of the Convention and reproduced in Part IV of these Instructions. Otherwise, such visas shall merely enable their holders to transit through the territories of the other Contracting Parties in order to reach the territory of the Member State which issued the visa, unless the holders do not fulfil the entry conditions referred to in Article 5(1)(a), (d) and (e) or are on the national list of alerts of the Member State through whose territory they seek to transit."*

shall be national visas issued by one of the Member States in accordance with its national legislation.

However, *they shall be valid as uniform transit visas authorising their holders to reach the territory of the Member State which issued the visa, on the understanding that the period of transit may not exceed five days from the date of entry, unless the holders do not fulfil the entry conditions or are reported as persons not to be permitted entry by the Member States through whose territory they seek to transit (see Annex 4). Once they are registered on the territory of the Member State which issued the visa, persons who are holders of a long-stay visa pending the issue of their residence permit shall enjoy, in terms of freedom of movement, the same rights as those guaranteed to holders of a residence permit.'*

Justification:

The change in the legal proposed by the rapporteur also dictates an amendment to the Common Consular Instructions. Paragraphs 1 and 2 of Section 2.2 of Part I remain unchanged by comparison with the text currently in force. In paragraph 3, your rapporteur outlines the procedure deriving directly from the amendment proposed to Article 21 of the Convention implementing the Schengen Agreement.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the initiative of the French Republic with a view to adopting a Council Regulation on freedom of movement with a long-stay visa (9667/2000 – C5-0374/2000 – 2000/0810(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the French Republic (9667/2000),
 - having regard to Articles 62(2)(b)(ii) and 63(3)(a) of the EC Treaty,
 - having been consulted by the Council, pursuant to Article 67 of the EC Treaty (C5-0374/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Legal Affairs and the Internal Market on the proposed legal basis,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Petitions (A5-0388/2000),
1. Approves the initiative of the French Republic, subject to Parliament's amendments;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the initiative of the French Republic;
 4. Instructs its President to forward this opinion to the Council, the Commission and the Government of the French Republic.

EXPLANATORY STATEMENT

1. Background

1.1. At whom is the initiative of the French Republic aimed?

Third-country nationals who are subject to a visa requirement, who are holders of a national long-stay visa, i.e. one valid for more than three months and issued by a Member State involved in the closer cooperation under the Schengen Agreement, and who are waiting for a residence permit to be issued to them in that Member State.

1.2. What is the current situation?

In accordance with current Community law, such third-country nationals may only transit through the territory of other Member States in order to reach the country which issued the long-stay visa (Article 18 of the Convention implementing the Schengen Agreement). Thereafter, they may no longer move around within the Schengen area until they have obtained a residence permit. However, several weeks, or even several months, may elapse before that permit is issued (red tape, poor coordination among the authorities concerned, performance of checks).

Accordingly, a third-country national who is subject to a visa requirement and who is the holder of a long-stay visa is in the least favourable position by comparison with other third-country nationals as far as freedom of movement within the Schengen area is concerned, given that, in principle:

1. third country nationals who is subject to a visa requirement and who are holders of a uniform short-stay visa are authorised to move freely within the Schengen area for a maximum period of three months during a six-month period following their date of entry;
2. simply by virtue of holding a passport, third-country nationals who are not subject to a visa requirement enjoy the same right;
3. third-country nationals who are holders of a long-stay visa and have their residence permit enjoy the same right.

1.3. What objective is being pursued?

The objective of the French initiative is simple and clearly stated in the explanatory memorandum: facilitating movement within the Schengen area for the holders of a national long-stay visa who have not yet received their residence permit.

1.4. What arrangements are being proposed?

With a view to achieving the stated objective, the initiative of the French Republic puts forward the argument that the simplest solution would consist of a stipulation that national long-stay visas should be concurrently valid as uniform short-stay visas. The third-country national concerned would then not only be able to transit through the territory of other

Member States, but would also be able to move freely within the Schengen area and cross the external borders of that area for a maximum period of three months from the date on which his or her long-stay visa takes effect. In the opposite case, the validity of the long-stay visa will remain unchanged.

2. The free movement option

2.1. The legal basis

The initiative of the French Republic takes as its legal basis Article 62(2)(b)(ii) of the EC Treaty, i.e. '*the procedures and conditions for issuing visas by Member States*', and Article 63(3)(a) of the EC Treaty, i.e. '*conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion*'.

However, the explanatory memorandum accompanying the initiative of the French Republic deals primarily with freedom of movement in the Schengen area and fixes as its objective that of '*[facilitating] the free movement, within the Schengen area, of holders of national long-stay visas pending the issue of their residence permits*'.

If that is the case, why not take as the legal basis Article 62(3), which stipulates that 'the Council [...] shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt [...] measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months'?

2.2. The arrangements

If the objective of the initiative of the French Republic is simply to facilitate free movement within the Schengen area for holders of national long-stay visas pending the issue of their residence permits, Article 62(3) should be taken as the legal basis.

In that case, it is not Article 18 of Chapter 3 of the Convention implementing the Schengen Agreement which should be amended, but Article 21 of Chapter 4 of that Convention, since that chapter lays down '*conditions governing the movements of aliens*'.

In order to satisfy the stated objective of the French initiative, it would be enough to add, in paragraph 2 of Article 21, a sentence stating that '*paragraph 1 shall also apply to aliens who are holders of a long-stay visa issued by a Member State pending the issue of their residence permit*'.

Aliens who are holders of a residence permit would thereby be placed on an equal footing, as far as freedom of movement is concerned, with holders of a long-stay visa-pending receipt of their residence permit which the Member States take weeks if not months to issue, for primarily administrative reasons.

It is surprising, therefore, that the French initiative should not have chosen the simplest and most obvious solution, as regards both the legal basis and, as a direct consequence, the legislative arrangements.

3. The actual implications of the initiative of the French Republic

Above and beyond the objective stated in the recitals and in the explanatory memorandum, a careful reading of the initiative shows that in fact it is pursuing a dual objective:

- the first objective is the one stated in the text: facilitating freedom of movement for holders of long-stay visas pending the issue of a residence permit (N.B.: without granting them exactly the same right as that afforded to holders of a residence permit, however)
- the second objective stems directly from the legal basis and legislative arrangements chosen: making the holders of a long-stay visa subject to all the conditions laid down by the Convention implementing the Schengen Agreement (Article 5(1)(a), (c), (d) and (e)).

In that connection, it must be borne in mind that under the Convention implementing the Schengen Agreement visas for a stay in excess of three months are national visas issued by a Member State in accordance with its own legislation.

In proposing that such visas should be concurrently valid as short-stay visas, provided that the holder fulfils the conditions of entry laid down in Article 5(1)(a), (c), (d) and (e), the initiative of the French Republic in fact amends the Convention implementing the Schengen Agreement in a significant respect: visas for a stay in excess of three months are no longer national visas in the strict sense of the term, but have been made 'uniform'.

As a result, in operational terms the procedure for the award of a long-stay visa will in practice be brought into line with the procedure applicable to the uniform short-stay visa.

In that case, the prior consultation procedure introduced by the Executive Committee on the basis of Article 17(2) of the Convention implementing the Schengen Agreement will also apply to the award of long-stay visas.

In accordance with that procedure, any Member State has the right to request the other Member States participating in the Schengen system to consult it on any application for a visa submitted by nationals from a given third country. If the requesting Member State raises an objection to the visa application, that visa may not be granted.

If that is indeed the case, the general economy of the initiative of the French Republic can be summarised as follows:

1. Applications for a 'national' long-stay visa will henceforth be processed in accordance with the procedure applicable to applications for a uniform short-stay visa;

2. If, during that procedure, no Member State raises an objection to the application, the 'national' long-stay visa will have concurrent validity as a uniform short-stay visa: the holder will enjoy freedom of movement within the Schengen area for three months, prior to obtaining his or her residence permit;
3. If, during the procedure, a Member State raises an objection, the national long-stay visa will, like today, entitle the holder only to transit within the Schengen area in order to reach the Member State which issued the visa (current Article 18).

4. Conclusion

In substantive terms, your rapporteur endorses the two objectives pursued by the initiative of the French Republic, i.e. those of:

1. facilitating freedom of movement within the Schengen area for third-country nationals who have legally entered the territory of a Member State
2. moving towards the harmonisation of the conditions governing the issue of long-stay visas, as provided for in Article 63(3) of the EC Treaty.

However, your rapporteur takes the view that each of the two objectives warrants a more comprehensive and more integrated approach: the French initiative is too piecemeal in its scope and there is a fundamental imbalance in its operative arrangements.

That is why your rapporteur is proposing to amend the French initiative on the basis of its stated objective, that of facilitating freedom of movement within the Schengen area for holders of a national long-stay visa who have not yet received their residence permit.

If, as your rapporteur hopes, the Member States decide to opt for a uniform long-stay visa, that decision should form part of a coherent, comprehensive initiative, which, moreover, should ideally be put forward by the Commission.

5. Final remark

Whether the arrangements proposed in the initiative of the French Republic or the alternative arrangements put forward by your rapporteur are taken up, changes should be made not only to the text of the Convention implementing the Schengen Agreement and to the Common Consular Instructions, but also to the Common Manual on checks at external borders.

Unfortunately, this document, although it represents an important component of the Schengen *acquis*, is confidential. Even the applicant countries with whom negotiations are under way with a view to their accession to the European Union, countries which will be required to accept the Schengen *acquis* in full, are denied access, unless an exception is granted in an individual case, to Annexes 6B, 6C and 14B of the Common Manual (decision of the Executive Committee of 16 September 1998, SCH/Com ex (98) 35 rev. 2, published in OJ L 239 of 22 September 2000, p. 202)!

Your rapporteur regards such a state of affairs as completely unacceptable in democratic terms. As things stand, pursuant to Article 67 of the EC Treaty the Council takes decisions on particularly delicate matters in the absence of any effective parliamentary scrutiny whatsoever, since the European Parliament is merely consulted and the national parliaments have no role to play. Taking this in conjunction with the secrecy surrounding certain documents and certain decisions and procedures, the only conclusion can be that in the areas concerned we are currently in a democratic no man's land.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

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

on the initiative of the French Republic with a view to adopting a Council Regulation on freedom of movement with a long-stay visa (9667/2000 – C5-0374/2000 – 2000/0810(CNS))

Draftsman: Diana Wallis

Dear Mr Watson,

By letter of 7 November 2000 you asked the Committee on Legal Affairs and the Internal Market to consider the legal basis for the above initiative. My committee discussed the issue at its meeting of 28 November 2000.

The initiative

The key provision of the initiative is worded as follows:

'Article 18 of the Convention implementing the Schengen Agreement shall be replaced by the following:

“Visas for stays exceeding three months shall be national visas issued by one of the Member States in accordance with its national law. For three months as from their initial date of validity such visas shall be *valid concurrently as uniform short-stay visas*, provided that their holders fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e). Otherwise, such visas shall merely enable their holders to transit through the territories of the other Member States in order to reach the territory of the Member State which issued the visa, unless the holders do not fulfil the entry conditions referred to in Article 5(1)(a), (d) and (e) or are on the national list of alerts of the Member State through whose territory they seek to transit”.

The legal bases at issue

The initiative is based on *Articles 62(2)(b)(ii) and 63(3)(a)* of the EC Treaty.

The first of these provisions applies to *visas* for intended stays of *no more than three months*, and, in particular, ‘the procedures and conditions for issuing visas by Member States’. The Council must (*still*) take decisions *unanimously* (see Article 67(1) and (4)).

The second provision applies to measures on immigration policy, and, in particular, ‘conditions of entry and residence, and standards on procedures for the issue by Member States of *long-term visas and residence permits*, including those for the purpose of family

reunion'. The Council must take decisions *unanimously* (Article 67(1)).

The amendment by Mr Deprez advocates that the initiative should be based *solely* on **Article 62(3)** of the EC Treaty. This provision is the appropriate legal basis for 'measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States *during a period of no more than three months*'. The Council must take decisions *unanimously* (see Article 67(1)).

Why does the initiative invoke Articles 62(2)(b)(ii) and 63(3)(a) as the legal bases?

The Convention implementing the Schengen Agreement was an agreement under international public law, i.e. one outside the system of the EC and EU Treaties.

The second subparagraph of Article 2(1) of the Protocol integrating the Schengen *acquis* into the framework of the European Union (protocol annexed to the Treaty on European Union *and* to the Treaty establishing the European Community) gave the Council, acting unanimously, the task of determining, in conformity with the relevant provisions of the Treaties, the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*.

In its Decision 1999/436/EC of 20 May 1999, the Council decided that the legal bases for Article 18 of the Convention implementing the Schengen Agreement were Articles 62(2) and 63(3) of the EC Treaty (OJ L 176, 10 July 1999). The decision of 20 May 1999 is thus not itself the legal basis for Article 18. It is an act of secondary law and therefore subject to judicial review by the Court of Justice (see Articles 220 and 311 of the EC Treaty).

The initiative proposes an amendment to Article 18 of the Convention implementing the Schengen Agreement.

It is thus understandable that the initiative should refer to Articles 62(2) and 63(3).

It is also understandable why the initiative should seek to be more specific by making a reference to Article 63(3)(a).

In contrast, it is difficult to understand why the initiative sought to be more specific by making a reference to Article 62(2)(b)(ii). This provision applies only to *visas* for intended stays of *no more than three months*, and, in particular, 'the procedures and conditions for issuing visas by Member States'. It should be borne in mind that, under the terms of the initiative, *visas for a stay in excess of three months* shall be 'for three months as from their initial date of validity...*valid concurrently as uniform short-stay visas*'. This in no way implies that a visa for a stay in excess of three months *is* a uniform short-stay visa, i.e. a visa for a stay of less than three months. Moreover, any such claim would be absurd.

The reference to Article 62(2)(b)(ii) is thus not justified.

The error in determining the legal basis for the current Article 18

The Council Decision of 20 May 1999 is incorrect in laying down Article 62(2) as one of the two legal bases for Article 18 of the Convention implementing the Schengen Agreement. Article 18 concerns visas for *long-term* stays, whereas Article 62(2)(a) concerns the procedures for carrying out *checks on persons* at external borders and Article 62(2)(b) concerns rules on visas for intended stays of *no more than three months*. Article 63(3) on its own would have been a perfectly adequate legal basis for Article 18 of the Convention implementing the Schengen Agreement.

Moreover, after the expiry of a five-year period following the entry into force of the Treaty of Amsterdam, the matters referred to in Article 62(2)(b) will be subject either to decision-making by a qualified majority or the codecision procedure (see Article 67(3) and (4)), whereas the procedure applicable to Article 63(3) will remain decision-making by a unanimous vote.

A procedure which provides for adoption by a qualified majority or by means of the codecision procedure is *incompatible* with a procedure which provides for unanimity (see judgment on linguistic diversity in the information society, *mutatis mutandis*¹).

Is the reference to Article 62(3) justified?

Does the substance of Article 18 as proposed in the initiative justify an *additional* legal basis?

The (current) Article 18 of the Convention implementing the Schengen Agreement is worded as follows:

'Visas for stays exceeding three months shall be national visas issued by one of the Member States in accordance with its national law. Such visas shall enable their holders to transit through the territories of the other Member States in order to reach the territory of the Member State which issued the visa, unless the holders do not fulfil the entry conditions referred to in Article 5(1)(a), (d) and (e) or are on the national list of alerts of the Member State through whose territory they seek to transit.'

In contrast, the key provision of the initiative is worded as follows:

'*Article 18 of the Convention implementing the Schengen Agreement* shall be **replaced** by the following:

“Visas for stays exceeding three months shall be national visas issued by one of the Member States in accordance with its national law. For three months as from their initial date of validity such visas shall be *valid concurrently as uniform short-stay visas*, provided that their holders fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e). Otherwise, such visas shall merely enable their holders to transit through the territories of the other Member States in order to reach the territory

¹ Judgment of 23 February 1999, Case C-42/97, European Parliament v Council, ECR p. I-869, paragraphs 38-43 (dealing with former Articles 130 (industry, unanimity) and 128 (culture, codecision) as legal bases).

of the Member State which issued the visa, unless the holders do not fulfil the entry conditions referred to in Article 5(1)(a), (d) and (e) or are on the national list of alerts of the Member State through whose territory they seek to transit”.’

The initiative thus makes a substantive addition to Article 18.

It is clear that the provisions which remain unchanged require Article 63(3)(a) as their legal basis, as has been demonstrated.

However, the new provision incorporates ‘measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States *during a period of no more than three months*’. This justifies the reference to Article 62(3) of the EC Treaty.

Is it possible to amend an act founded on legal basis X by means of an act founded on legal basis Y?

The answer is *yes*, if the amending act is founded on a legal basis which provides for *the same adoption procedure* as the amended act. The amending act is thus the *actus contrarius* of the amended act.

In the case in point, the (incorrect) legal basis for the current Article 18 is a combination of Articles 62(2) and 63(3). Both stipulate adoption by the Council acting unanimously.

The legal basis we are proposing here for the amendment of Article 18 consists of Articles 63(3)(a) and 62(3), both of which stipulate adoption by the Council acting unanimously.

Conclusion

The Committee on Legal Affairs and the Internal Market has decided unanimously¹ that the appropriate legal basis for the initiative by the French Republic is a combination of Articles 63(3)(a) and 62(3) of the EC Treaty.

Yours sincerely,

(sgd) Ana Palacio Vallelersundi

¹ The following were present for the vote: Willi Rothley (acting chairman); Ward Beysen (vice-chairman); Diana Wallis (draftsman), Francesco Fiori, Janelly Fourtoul, Lord Inglewood, Ioannis Koukiadis, Klaus-Heiner Lehne, Hartmut Nassauer, Francesco Speroni and Joachim Wuermeling.

28 November 2000

OPINION OF THE COMMITTEE ON PETITIONS

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

on the initiative of the French Republic with a view to adopting a Council Regulation on freedom of movement with a long-stay visa (9667/2000 – C5-0374/2000 – 2000/0810(CNS))

Draftsman: Jean Lambert

PROCEDURE

At its meeting of 9/10 October 2000 the Committee on Petitions appointed Jean Lambert draftsman.

It considered the draft opinion at its meetings of 6/7 November and 27/28 November 2000.

At the last meeting it adopted the following conclusions by 9 votes, with 1 abstention.

The following took part in the vote: Roy Perry, acting chairman and first vice-chairman; Proinsias De Rossa, second vice-chairman; Luciana Sbarbati, third vice-chairman; Jean Lambert, draftsman; Herbert Bösch, Felipe Camisón Asensio, Laura González Álvarez, Ioannis Marinos, Véronique Mathieu and María Sornosa Martínez.

JUSTIFICATION

I. Introduction

In his Press Conference on the proposal, as reported by “Agence France Presse”, the French Minister of Internal Affairs declared:

“La France va proposer à ses partenaires européens la création d’un « titre de séjour de longue durée harmonisé » à tous les États membres, dans le cadre de sa présidence de l’Union européenne.... Une telle harmonisation pourrait constituer «un préalable à l’intégration complète de ces bénéficiaires ».

Following this declaration, the European public would have expected a fundamental, global proposal but instead, the Parliament received an initiative of the French Republic for a Council Regulation consisting of only three articles.

II. The proposal or a better method of legislation

The scope of the proposal is very limited. It regards only Article 62(2)(b)(ii) and Article 63(3)(a) and applies to Member States covered by the Schengen agreements. The rapporteur for the Committee on Citizens' Freedoms, Mr M.J. Deprez, made a very thorough legal analysis which the Committee on Petitions approves: it supports his view that a different legal base should be used. What has to be underlined, is that the citizens and their elected representatives expect a global and understandable legislation, which is as clear as possible. We are concerned that confusion could arise in interpretation by border authorities if long-term visas are accorded a similar status to short-term ones. This could result in more petitions to the Parliament. We are also concerned that the proposal does not address the question of the lack of time permitted for transit at the end of stay, which has also occasioned problems.

The multitude of petitions received (see Annex) show that, in very many cases, visas and residence permits are needed for the purpose of family reunions as citizens of the European Union get married to a person from a third country. With globalisation going ahead, this will happen more and more often.

Treating long-term visa holders as already resident would enable such people to exercise similar rights of circulation to their parents.

A clear and global Community legislation needs, as the Treaty provides for, a proposal based on Article 67 of the EC Treaty from the European Commission rather than the Council. This proposal should be submitted before 1 May 2005 – that is five years after the entry into force of the Treaty of Amsterdam on 1 May 1999 - to Council and Parliament. Consequently, the proposal should cover all aspects of Articles 62 and 63 of the Treaty establishing the European Community.

The Council should not continue with this kind of “patchwork” legislation in the intergovernmental style, but rather stick to the Community method of legislation and accept that it is up to the European Commission to propose a code of measures on the crossing of internal and external borders, on asylum, on refugees, on displaced persons and on immigration policy, based on Articles 62 and 63 of the EC Treaty. “Patchwork” legislation is a dream for lawyers but a nightmare for citizens.

The Council and the Commission should take advantage of the very fact that the “Schengen acquis” has now been integrated into the framework of the European Union and legislate appropriately for those Member States that have chosen such involvement in order to provide greater transparency and clarity.

CONCLUSIONS

The Committee on Petitions is of the opinion, that

1. the Council should no longer submit to Parliament fragmented proposals on the matters covered by Articles 62 and 63 of the EC Treaty;

2. the Commission should propose legislation for the Member States involved in the Schengen process which takes into account all aspects of Articles 62 and 63 of the EC Treaty;
3. the issue of transit time at the end of a stay should also be examined;
4. the services of Parliament should regularly ask for the opinion of the Committee on Petitions whenever the areas of legislation concern items on which petitions have been introduced.

1. No 248/87 by the Association of Women Married to Foreigners (German) on the exemption from visa requirements for the families of EC citizens within the EC
2. No 434/87 by Mr Lambert on behalf of the SAAR German-Philippine Association on visas for foreign spouses
3. No 29/89 by Mr Wolfgang Reiter (German) on the French authorities' refusal to grant a visa to the Indian wife of a German national
4. No 44/90 by the National Executive of the Federation of Self-Employed Persons e.V. (German) on compulsory visas for spouses from third countries
5. No 543/90 by Mr Walter Riester (German) on the abolition of visa requirements for Turkish nationals
6. No 84/91 by Mr Herbert Linke (German) on the easing of visa requirements for wives from third countries
7. No 281/91 by Mrs Waltraud Valynseele, of German and French nationality on the issuing of a visa
8. No 288/91 by Mr Gernot Weidler (German) on visa requirements for children from third countries
9. No 268/92 by the Fritz-Steinhoff Comprehensive School (German) on the high costs of visas for pupils from third countries entering France
10. No 477/93 by Mrs Sofie Dittmann (German) on visa requirements for her husband
11. No 519/93 by Mr Louis Wolfs (Belgian) on a visa problem
12. No 526/93 by Mr Oscar Acedo (Spanish) on the granting of a visa to visit Spain
13. No 574/93 by Mr Gunter Feneis (German) on visa requirements for citizens from third countries
14. No 169/94 by Mr Jonathan Utting (British) on the refusal of the British authorities to grant his wife a visa
15. No 311/94 by Mr Francis Letellier (French) on a visa problem
16. No 531/94 by Mrs Sylvia Möhle (German) on a visa problem
17. No 1008/94 by Mr Gernot Bach (German) on refusal to issue his son with a visa

18. No 1108/94 by Mr Gaitzsch-Lhafi (German) on behalf of the Moroccan-German Association, on the visa requirement for Moroccan spouses of German citizens
19. No 1150/94 by Mr Jonathan Gill (British) on the refusal of the British authorities to grant his wife a visa
20. No 427/95 by Mr and Mrs George (British) on the refusal of the British Embassy in Moscow to grant a UK visitor's visa
21. No 458/97 by the Parents' Advisory Committee of the Reutlingen Muslim community (German) concerning the introduction of visa and residence permit requirements for Turkish children
22. No 551/97 by Mrs Liselotte Turan (German) concerning freedom of movement within the European Union for third country citizens
23. No 783/97 by Mr Jannis Goudoulakis (Greek) on behalf of the Leverkusen Foreign Residents Committee concerning visa and residence permit requirements for the under-age children of foreign residents from third countries
24. No 1062/97 by Mrs Nuala Mole (British) on the refusal by the UK authorities to grant Mrs Chandrika Shingadia (Indian) a visa to travel to the UK
25. No 84/98 by Mr Addelkader Kechairi (Algerian) concerning refusal of a visa by the Spanish Consulate in Oran
26. No 527/99 by Mr David Boyle (British) on UK immigration laws