



1 February 1999

A4-0043/99



REPORT

on the proposal for a Council Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States (COM(93)0684 - C4-0665/97 - 97/0922(CNS))

and

the Council guideline on the draft Council Regulation determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (11323/97)

Committee on Civil Liberties and Internal Affairs

Rapporteur: Klaus-Heiner Lehne

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PE 226.830/fin.

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| • Consultation procedure
simple majority | ••• Codecision procedure (first reading)
simple majority |
| ••• Cooperation procedure (first reading)
simple majority | •••• Codecision procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to adopt a declaration of intended
rejection of the common position, and amend the common position or confirm its rejection |
| •••• Cooperation procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to reject or amend the common position | ••••• Codecision procedure (third reading)
simple majority to approve the joint text
majority of Parliament's component Members to reject the Council text |
| ••••• Assent procedure
majority of Parliament's component Members to give assent
but simple majority under Articles 8a, 10b, 10c, 133a and 226 EC | |

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By letter of 14 October 1997 the Council consulted Parliament, pursuant to Article 100c of the EC Treaty, on a document containing a proposal for a Council Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States.

At the sitting of 18 December 1997 the President of Parliament announced that he had referred this proposal and the guideline of the Council on the same subject to the Committee on Civil Liberties and Internal Affairs as the committee responsible and the Committee on Legal Affairs and Citizens' Rights and the Committee on Committee on Foreign Affairs, Security and Defence Policy for their opinions.

At its meeting of 27 January 1998 the Committee on Civil Liberties and Internal Affairs appointed Klaus-Heiner Lehne rapporteur.

It considered the Commission proposal, the guideline of the Council and the draft report at its meetings of 5 February, 22 April, 25 May, 29 June, 13 October, 23 November and 30 November 1998 and 20 January 1999.

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

The following took part in the vote: d'Ancona, chairman; Reding and Wiebenga, vice-chairmen; Lehne, rapporteur; Bontempi, Cederschiöld, Colombo Svevo, Deprez, Elliott, Lambraki (for Crawley), Lindeperg, Méndez Bota, Nassauer, Oostlander (for Posselt), Schulz, Terrón i Cusí and Zimmermann.

The opinions of the Committee on Legal Affairs and Citizens' Rights and the Committee on Foreign Affairs, Security and Defence Policy are attached to this report.

The report was tabled on 1 February 1999.

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

A
LEGISLATIVE PROPOSAL

Proposal for a Council Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States (COM(93)0684 - C4-0665/97 - 97/0922(CNS))

and

Council guideline on the draft Council Regulation determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (11323/97)

The proposal is approved with the following amendments:

Text proposed by the Commission⁽¹⁾

Amendments by Parliament

(Amendment 1)

Title

Proposal for a Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States

Proposal for a provisional Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States

(Amendment 2)

Second citation

Having regard to the fact that the Treaty of Amsterdam, which is to enter into force soon, contains significant amendments to the Treaty establishing the European Community,

(Amendment 3)

Recital -1 (new)

⁽¹⁾ OJ C 11, 15 January 1994, p. 15

Whereas the Treaty of Amsterdam removes visa, asylum, immigration and other policy areas which have to do with the free movement of persons from Title VI and places them in a new title under the Community's jurisdiction;

(Amendment 4)
Recital 1

Whereas Article 100c of the Treaty requires the Council to determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States; whereas its place in the Treaty shows that this article forms an integral part of the provisions relating to the internal market;

Whereas Article 100c of the Treaty stipulates that it is necessary to determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States;

Whereas Member States may not impose visa requirements on countries which have for fair and objective reasons been excluded from the list;

Whereas no third country whose nationals do not at present require a visa for entry to a Member State should be on the negative list of those countries who are obliged to obtain visas under this Regulation;

Whereas Article 3(d) of the EC Treaty provides that the activities of the Community include measures concerning the entry and movement of persons in the internal market as provided for in Article 100c.

(Amendment 5)
Recital 1a (new)

= whereas, in drawing up the common list appearing in the annex to this regulation, account should be taken of the risks relating to security and illegal immigration;

(Amendment 6)
Recital 2

Whereas, according to the third paragraph of Article 3b of the Treaty, action taken by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty; whereas the mutual recognition by Member States of visas issued by each other, which is necessary to give full effect to Article 100c, is an essential accompanying measure for the achievement of the objective set out in Article 7a as regards the free movement of persons;

Whereas mutual recognition of visas issued on the basis of Article 100c is not explicitly provided for in Article 100c; whereas, however, arrangements which do not provide for such mutual recognition would negate almost entirely the effective substance of Article 100c;

(Amendment 7)
Recital 3a (new)

Whereas the arrangements hereby adopted are provisional given that the European Parliament and the Commission wish to see more far-reaching harmonisation of visa policy; whereas the Commission has already undertaken to submit a fresh proposal within a few months following the entry into force of the amendments agreed in the Treaty of Amsterdam; whereas, moreover, the progress achieved by the Schengen Group must also be consolidated as part of the *acquis communautaire*;

(Amendment 8)
Recital 4

Whereas the purpose of Article 100c is to harmonise the regulations and practices of the Member States in this regard; whereas divergences between the regulations and practices of Member States should be authorised for a limited period as a transitional measure, on the understanding that they may not give rise to controls contrary to Article 7a; whereas it should be stipulated that this transitional regime shall expire on 30 June 1996 and that prior to that date the Council shall decide with respect to each third country whether its nationals are to be subject to a visa requirement or are to be exempted from that requirement;

Whereas the purpose of Article 100c is to harmonise the regulations and practices of the Member States in this regard; whereas divergences between the regulations and practices of Member States should be authorised for a limited period as a transitional measure, on the understanding that they may not give rise to controls contrary to Article 7a; whereas it should be stipulated that this transitional regime shall expire on 30 June 1999 and that prior to that date the Council shall decide with respect to each third country whether its nationals are to be subject to a visa requirement or are to be exempted from that requirement;

(Amendment 9)

Recital 6

Whereas the information provided for in Article 1(3) of this Regulation must be published before Article 1(1) and (2) and Article 2 become applicable; whereas it is therefore necessary to defer the application of those provisions until one month after the Regulation has come into force;

Whereas all Member States must harmonise visa policy at the same time, for otherwise the free movement of persons, fair asylum policy, the harmonisation of immigration rules, action to combat illegal immigration and effective checks at the external borders will be jeopardised;

(Amendment 10)

Recital 7 (new)

Whereas it must be specified in this Regulation what 'visa' means within the meaning of Article 100c;

(Amendment 11)

Recital 7a (new)

Whereas arrangements have not yet been adopted for certain categories of visa; whereas, however, the more far-reaching provisions of the Treaty of Amsterdam along with an effective policy mean there will be an urgent need for such arrangements in the near future;

(Amendment 12)
Recital 8 (new)

Whereas a new procedure should be proposed for the establishment of implementing measures;

(Amendment 13)
Article -1 (new)

Article -1

For the purposes of this Regulation, 'visa' shall mean an authorisation granted, or a decision taken, by a Member State, being a requirement for a person entering its territory with a view to:

- staying in a Member State or various Member States for a total period not exceeding three months;
- transiting the territory of a Member State or various Member States, with the exception of transit through the international transit zone of an airport and of transfers between airports of the same Member State. (Article 3 of the Commission proposal deleted)

(Amendment 14)
Article 1(2)

2. Until 30 June 1996 Member States shall decide whether to require visas of nationals of third countries not listed in the Annex. Prior to that date the Council shall decide according to the procedure laid down in Article 100c either to add each of those countries to that list or to exempt its nationals from visa requirements.

2. Until 30 June 1999 Member States shall decide whether to require visas of nationals of third countries not listed in the Annex. Prior to that date the Council shall decide according to the procedure laid down in Article 100c either to add each of those countries to that list or to exempt its nationals from visa requirements.

(Amendment 15)
Article 1(4) (new)

4. The list of third countries in the Annex shall be updated regularly on a proposal from a Member State or the Commission and after consultation of the European Parliament.

(Amendment 16)
Article 2 (1)

1. A Member State shall not be entitled to require a visa of a person who seeks to cross its external frontiers and who holds a visa issued by another Member State, where that visa is valid throughout the Community

1. A Member State shall not be entitled to 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 or who holds a residence permit or authorization issued by another Member State permitting him to reside in that State and which is valid for at least a further four months at the time of entry.

(Amendment 17)
Article 2 (2)

2. Stateless persons and recognized refugees resident in the States referred to in Article 1 are required to possess a valid visa before crossing the external frontiers.

(Amendment 18)
Article 2a (1)(new)

1. 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.

(Amendment 19)
Article 2a(2) (new)

2. In addition to the above criteria, Member States shall assess whether a visa must be refused owing to a risk of illegal immigration or in order to maintain law and order and safeguard internal security;

(Amendment 20)
Article 2b (new)

There shall be a right of appeal to the competent authorities of the Member State concerned against a refusal to grant a uniform visa.

(Amendment 21)
Article 2c (new)

The uniform visa shall be issued by the diplomatic and consular authorities of the Member States.

(Amendment 22)
Article 3

For the purposes of this Regulation, the following definitions shall apply:

visa: any authorisation granted by a Member State which either

- entitles a person to enter its territory, subject to other entry conditions being fulfilled, and is valid for a stay of no more than three months, or a number of stays not exceeding a total of three months in any six-month period commencing on the date of the first entry, or
- entitles a person to transit through its territory or through the transit zone of a port or airport, subject to other transit conditions being fulfilled, or
- entitles a person who is present on its territory to re-enter within a specified period.

In the first half of 1999, the Commission shall draw up a report on the progress made in harmonising Member States' visa policies with regard to third countries not included in the Community list, accompanied by conclusions as to the measures still needed in order to achieve the harmonisation envisaged in Article 100c.

(Amendment 23)
Article 3 a (new)

1. Without prejudice to the provisions of Article 1 the Commission shall propose the necessary implementing provisions.
2. After the Commission has submitted its proposal, this proposal shall be forwarded to the Council and the European Parliament. If no objection is raised by the Council or Parliament within three months, the proposal shall be deemed to be accepted.
3. If an objection is raised by one of the institutions and if, within three months, no solution is found in consultations between the three institutions which is acceptable to the institution which raised the objection, the Commission shall submit within three months a proposal to amend or supplement this regulation.

(Amendment 24)
Article 3b (new)

This Regulation shall be replaced within one year following the entry into force of the Treaty of Amsterdam. For this purpose the Commission shall submit a proposal within one month following the entry into force of that Treaty.

(Amendment 25)
Article 4, second paragraph

However, Article 1(1) and (2) and Article 2 shall become applicable one month thereafter.

However, Article 1(1) and (2), Article 2, Article 2a, Article 2b and Article 2c shall not become applicable until one month thereafter.

(Amendment 26)

ANNEX

(The list must be amended so that it conforms to the principles laid down in recital 1, third paragraph)

(Amendment 27)

ANNEX

Delete Bulgaria and Romania

DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution embodying Parliament's opinion on the proposal for a Council Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States (COM(93)0684 - C4-0665/97) - 97/0922(CNS)) and on the Council guideline on the draft Council Regulation determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (11323/97)
(Consultation procedure)**

The European Parliament,

- having regard to the Commission proposal to the Council, COM(93)0684 - C3-0012/94⁽¹⁾,
 - having regard to the judgment of the European Court of Justice of 10 June 1997 in Case C-392/95,
 - having regard to the confirmation of the Commission proposal of 20 November 1997 (C4-0665/97)
 - having regard to the guideline from the Council of 13 October 1997 (11323/97),
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Legal Affairs and Citizens' Rights and the Committee on Foreign Affairs, Security and Defence Policy (A4-0043/99),
 - whereas the Commission proposal was confirmed in circumstances unacceptable to Parliament and whereas it is necessary for agreements to be concluded between the institutions concerning the implementation of judgments of the Court in cases such as these,
1. Calls on the Council and the Commission to open negotiations with Parliament as soon as possible on binding agreements concerning the procedures to be followed after the Court of Justice has annulled Regulations and Directives;
 2. Approves the Commission proposal, subject to Parliament's amendments;
 3. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 4. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 5. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 6. Instructs its President to forward this opinion to the Council and Commission.

⁽¹⁾ OJ C 11, 15 January 1994, p.15

B

EXPLANATORY STATEMENT

I. INTRODUCTION

In 1993, the Commission submitted a proposal for short-term visas (COM(93)0684 - C3-0012/94). The proposal was accompanied by a proposal for a convention on checks at external frontiers. The Council consulted Parliament on the Commission's proposal by letter of 11 January 1994. It was made clear to Parliament that the Council wished to adopt the regulation by the end of the first half of 1994. On 21 April 1994, Parliament accordingly adopted a legislative resolution which was accompanied by 14 amendments (OJ C 128/1994, p. 350).

However, the Council did not take a decision until 25 September 1995 - almost 17 months later. The text adopted by the Council departed considerably from Parliament's amendments and also from the Commission proposal (case C-392/95). Because Parliament had not been consulted again by the Council, it instituted legal action against the Council in Court. Regrettably, the Commission failed to lend its support.

On 10 June 1997, the Court annulled the Regulation, but ruled that the effects of the annulled Regulation be maintained until the Council adopted a new regulation. Parliament was then consulted again, but in such a bizarre way that it is questionable whether the Council was serious. This explanatory statement discusses the first reading and the text adopted by the Council, which is almost identical to the text which the Council forwarded to Parliament after it had been annulled by the Court. It then looks at the Court's judgment, the current consultation procedure, the position of Bulgaria and Romania and the changes in the amendments to be tabled by Parliament.

II. PARLIAMENT'S FIRST READING

The Commission's proposal did not go far enough for Parliament. Article 3(d) of the Treaty, covering the activities of the Community, provides for 'measures concerning the entry and movement of persons in the internal market as provided for in Article 100c'. Article 100c says that the Council 'shall determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States' (first paragraph), makes provision for emergency situations (second paragraph), establishes a uniform format for visas (third paragraph) and contains a number of procedural arrangements (fourth to seventh paragraphs). Article 100c and Article 3(d) do not distinguish in any way between short-term and long-term visas. The Regulation must therefore be seen as relating to only one area of visa policy, and the Council has failed to establish provisions (by means of Community legislation) for other areas.

From the outset, Parliament has sought to establish a link between the list of countries and the uniform formats for visas, in the hope that the Council would take a decision in good time on uniform visas.

One of the most important points was mutual recognition of visas. Although the text of the explanatory memorandum in the Commission proposal did refer to it and the Commission official explicitly defended it at the meeting of the Committee on Civil Liberties and Internal Affairs as being the cornerstone of the proposal, Parliament, after endorsing this principle, wanted the point made clearer for the citizens of Europe and third country nationals.

Parliament wanted progress speeded up and brought forward some time limits and wanted it made clear that Parliament was also to be consulted in the event of the list being amended.

III. THE COUNCIL REGULATION

The Council changed the whole structure of the Regulation, and its contents, too. The main points in the Regulation were: recognition of visas of other Member States was made the subject of a Title VI decision (Recital 4), no harmonization of the list of countries (Recital 9), exceptions for stateless persons, refugees and territories not recognized as States (Article 2(2) and (3) and a provision allowing exceptions to be granted in respect of the countries on the list (Article 4). The Regulation was thus stripped of any provisions representing progress towards harmonization, because exceptions had been permitted on both sides: Member States could still require a visa from States whose nationals were exempt on the basis of the list and Member States could exempt from the visa requirements States from whom, on the basis of the list, they had to require a visa. The Regulation adopted by the Council is diametrically opposed to the opinion delivered by Parliament.

IV. COURT JUDGMENT

The Court judgment contains amongst other things the following (parts of) paragraphs, recitals and decisions:

- It is settled law that the requirement to consult the European Parliament in the legislative procedure, in the cases provided for by the Treaty, means that it must be freshly consulted whenever the text finally adopted, taken as a whole, differs in essence from the text on which the Parliament has already been consulted, except in cases in which the amendments substantially correspond to the wishes of the Parliament itself (see, in particular, the judgments in Case C-388/92, *Parliament v Council* [1994] ECR I-2067, paragraph 10 and in Case C-280/93, *Germany v Council* [1994] ECR I-4973, paragraph 38).⁽¹⁾
- It must therefore be concluded that the fact that the Parliament was not consulted a second time in the legislative procedure provided for by Article 100c of the EC Treaty constitutes an infringement of essential procedural requirements which must entail annulment of the Regulation.⁽²⁾
- On those grounds, the Court, hereby:
 1. Annuls Council Regulation No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States;
 2. Declares that the effects of the annulled Regulation are to be maintained until the Council of the European Union has adopted new legislation in the matter;
 3. Orders the Council to pay the costs;
 4. Orders the French Republic to bear its own costs.

V. THE CURRENT CONSULTATION

⁽¹⁾ Judgment of the Court of Justice of 10 June 1997, paragraph 15, pp. 9-10.

⁽²⁾ Judgment of the Court of Justice of 10 June 1997, paragraph 24, p. 11.

A number of procedural aspects will first be discussed before addressing the texts to be considered. The working document of 9 February 1998 (PE 225.446) already raises a number of problems concerning the Council's consultation of Parliament. It is our opinion that the position is particularly unclear. When Parliament consulted the Council, on 14 October 1997, there was no Commission proposal, because the Commission proposal was not resubmitted until 20 November 1997. Basically, the question has to be asked as to whether, under such circumstances, a response should in fact be made to what is in principle an invalid consultation. We take the view that it should, albeit only because if the answer were 'no', we would end up in an impasse, which would make a bad impression on Europe's citizens, the Member States, third countries and their nationals, which would be difficult for Parliament to counter. Fundamentally, however, we do not believe that consultation can take place in this manner, and that the same Commission which even stated in proceedings before the Court that, after annulment by the Court, a proposal lapses, cannot now support the Council by arguing that the Council should simply reconsult Parliament (letter of 9 September 1997 from the President of the Commission, Mr Santer, to Mrs d'Ancona, chairman of the Committee on Civil Liberties and Internal Affairs). We do hope, however, that this cooperative attitude will also help change the Council's stance and that the amendments will now receive a more favourable reception.

The content of the text forwarded by the Council to Parliament on 14 October 1997 is, except for a few details, identical to the Regulation that has been annulled. The changes are: date by which the Commission is to submit an evaluation (now the first half year of 2001 as opposed to five years after the entry into force, i.e. by 3 April 2001, stated in the Regulation), the provision on entry into force (which indicates the Council's intention not to force the Member States in any way into making concessions or harmonization), the spelling/names of some States and a footnote concerning Hong Kong.

The question could be asked as to whether the texts now before us are not outdated, given that, in our view, Parliament wished to have the Council Regulation annulled for other reasons, too (see also the conclusions of the Advocate-General, which support Parliament's position) and the fact that the Treaty of Amsterdam requires a different approach, as Article 100c is to be repealed and the Article 73j referred to in the Treaty provides for much clearer regime. In our view, third countries should be divided between two lists: an exempt list and a visa-required list, and the requirements, rights and obligations associated with those visas should fall within Community jurisdiction. Yet we should make our assessment now, because it may be some time before the Treaty of Amsterdam enters into force, and that Treaty does confer on the Council the right of deferral (five years). There is a risk that the Council might be all too happy to make use of that right in some areas.

VI. PARLIAMENT'S OPINION AS REGARDS BULGARIA AND ROMANIA

It seems that the Member States are unlikely to support the removal of Bulgaria and Romania from the EU's common visa list. Nevertheless, Parliament must express its opinion on the need for Romanians and Bulgarians to apply for a visa. Bulgaria and Romania have to reduce risks related to security and illegal immigration, by concluding re-admission agreements with Member States and improving the safety of travel documents. Moreover, cooperation has also been stepped up in the field of customs cooperation, the fight against drug trafficking and international organized crime and the alignment of their visa regimes with that of the EU. The following elements must be taken into account:

- With regard to re-admission agreements, the countries have concluded, or are negotiating such agreements with many, but not all, EU Member States. There is no reason to assume an unwillingness on the part of the two Governments to complete this process.
- With regard to drug trafficking, missions have recently taken place in the context of the UNDCP-EC Drug Law Enforcement Programme for South-Eastern Europe. Mission reports setting out recommendations for further actions and assistance will be used for targeted actions supported by Phare.
- Both countries focus on border management (combating illegal immigration), action to combat organized crime, and judicial cooperation with Member States.
- Technical bilateral cooperation exists with Greece, Germany, France, the UK, Italy and with some other Member States with regard to police cooperation and judicial cooperation.
- The main concern of EU Member States regarding Bulgaria and Romania, apart from illegal immigration and drug trafficking, is cross-border organized crime. Anti-corruption measures, reform and reinforcement of police forces and reform of customs services and the judiciary are considered necessary in the medium term.
- It is considered politically difficult to introduce, in the near future, visa obligations for citizens originating from the former Soviet Republics. Bulgaria would have difficulties introducing a stricter visa regime with Turkey, in part because many Bulgarians (Turkish-speaking minority) also have a Turkish passport. Romania has close relations and a liberal border policy with Moldova. Direct flights from risk countries to Sofia (especially with regard to drug trafficking) still exist. This is not the case with Romania, which recently stopped those risk flights.

Although there remains a lot of work to be done, the rapporteur considers that the risks are relatively limited and that the Parliament has already taken some engagements. The removal of Bulgaria and Romania from the "common list" would mark the EU's recognition of efforts they are making in addressing Member States' concerns.

VII. CONCLUSIONS AND NEW AMENDMENTS

Two new amendments by Parliament are intended to make it clear that the current Union Treaty is set to expire and that the Council and the Commission must take account of the fact that Parliament wants to see the Commission in particular, but also the Council, assume their new roles as soon as possible.

It is also proposed that visa requirements for nationals of Romania and Bulgaria be lifted, given that these two countries are eventually to become members of the EU.

The text forwarded by the Council to Parliament could be rejected by Parliament, given that it provides for too little in the way of harmonization as regards visas, thus undermining the substance of Article 100c, and it is not based on a Community proposal. The Commission proposal now amended is acceptable, subject to the amendments adopted.

25 June 1998

OPINION

(Rule 147)

for the Committee on Civil Liberties and Internal Affairs

on the proposal for a Council Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States (COM(93)0684 - C4-0665/97 - 97/0922(CNS)) and the Council guideline on the proposal for a Council Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States (11323/97) (report by Mr Lehne)

Committee on Foreign Affairs, Security and Defence Policy

Draftsman: Magda Aelvoet

PROCEDURE

At its meeting of 3 June 1998 the Committee on Foreign Affairs, Security and Defence Policy appointed Mrs Aelvoet draftsman.

At its meeting of 24 June 1998 the committee considered the draft opinion and approved the following conclusions unanimously.

The following were present for the vote: Cushnahan, acting chairman; Mendiluce Pereiro, vice-chairman; Aelvoet, draftsman; Barón Crespo, Bernard-Reymond, Bianco, Burenstam Linder, Dillen, Habsburg, Lenz, Lindqvist (for Cars), Lomas (for Titley), Mutin, Oostlander, Piha, Schroedter (for Cohn-Bendit) and Truscott.

BACKGROUND AND GENERAL REMARKS

The proposal for a Council Regulation on third country nationals needing a visa when crossing the external borders of the Member States of the European Union has wide-ranging implications which should not be overlooked in the context of the enlargement process. Indeed, it should be stressed that the list annexed to the proposal includes two countries, Bulgaria and Romania, which form part of the pre-accession strategy and whose relations with the Union are to be strengthened and stepped up in the coming years.

In accordance with recent Council decisions, Bulgaria and Romania form part of the second group of applicant countries with which the Union plans to open accession negotiations once the criteria laid down at the Copenhagen and Essen European Councils have been adequately met. Nevertheless, the accession process for these countries officially began with the launch of the enlargement process on 30 March 1998 in Brussels with all ten applicant countries from Central and Eastern Europe. Subsequently, Commissioner Van den Broek launched the so-called 'screening' procedure for analysis of the *acquis communautaire* at a joint meeting in early April.

Like the other applicant countries, Bulgaria and Romania will also benefit from the 'accession partnerships', which will enable them to define short- and medium-term objectives in the context of a gradual process of accession to the European Union.

The inclusion of these two countries on the 'blacklist' is a sign of mistrust on the part of the Council and is bound to be seen in an unfavourable light by the governments of Bulgaria and Romania. If the Council proposal is adopted, there would be an inevitable political backlash which could slow down or even undermine these countries' progress towards accession. It should be stressed that in recent months these two countries have made provision to bring their border controls into line with Community standards by means of radical measures which have brought about an appreciable improvement. It would therefore be more appropriate for the relevant Community bodies to strengthen cooperation on border controls with Bulgaria and Romania, under the same conditions as for the other countries applying for accession.

Imposing a visa requirement for entering the countries of the European Union would also have repercussions for other applicant countries, which would be required to apply the same provisions under their agreements with the Union. This would affect relations between countries which traditionally enjoy close links and would reduce the scope for mutual integration.

A further argument in favour of the Bulgarian and Romanian position is that the governments in Sofia and Bucharest signed the pre-accession pact on organized crime on 30 March 1998, along with all other European Ministers for Justice and Home Affairs.

All these concerns were quite properly raised in Parliament's resolutions of December 1997 on Agenda 2000 and March 1998 on the accession partnerships in the report by Mr Oostlander, which also included your draftsman's opinion on Bulgaria.

Furthermore the Foreign Affairs Committee is concerned about the lack of visa free access for holders of Hong Kong (SAR) passports. The Commission proposal would permit all Member States to grant such visa free access. The Foreign Affairs Committee would like to see this happen particularly as EU citizens have visa free access to Hong Kong. This issue is symbolically important for Hong Kong and if the EU wants Hong Kong to remain an "autonomous special administrative region" the free flow of citizens from Hong Kong to the rest of the world should be facilitated.

CONCLUSION

The Committee on Foreign Affairs, Security and Defence Policy, bearing in mind the objections raised in its previous reports and endorsing the requests made in this draft opinion, calls for Bulgaria and Romania to be removed from the list of countries for which a visa requirement applies.

23 June 1998

OPINION

(Rule 147)

for the Committee on Civil Liberties and Internal Affairs

on the proposal for a Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States - (COM(93) 0648 - C4-0665/97 - 97/0922(CNS)) and the Council guideline on the draft Council Regulation determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (11323/97)
(report by Mr Lehne)

Committee on Legal Affairs and Citizens' Rights

Draftsman: Mrs MaLou Lindholm

PROCEDURE

At its meeting of 22 January 1998 the Committee on Legal Affairs and Citizens' Rights appointed Mrs Lindholm draftsman.

It considered the draft opinion at its meetings of 19 May and 23 June 1998.

At the last meeting it adopted the following conclusions unopposed, with 5 abstentions.

The following were present for the vote: De Clercq, chairman; Palacio Vallelersundi and Rothley, vice-chairmen; Lindholm, draftsman; Anastassopoulos, Añoveros Trias de Bes, Berger, Cassidy, Crowley, Falconer, Gebhardt, Mosiek-Urbahn, Thors, Tsatsos, Ullmann and Wieland.

I. Background

In 1993 the Commission, on the basis of Article 100c of the EC Treaty, submitted document COM(93)684⁽¹⁾ containing a proposal for a regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States.

Parliament delivered an opinion on the proposal on 21 April 1994⁽²⁾. Even though its text departed considerably from the Commission's proposal, the Council adopted Regulation (EC) No 2317/95⁽³⁾ *without consulting Parliament again*.

On 10 June 1997 the Court of Justice annulled the Regulation *on the grounds of failure to respect Parliament's right to be consulted again* and declared that 'the effects of the annulled Regulation are

⁽¹⁾ OJ C 11, 15.1.1994, p. 15.

⁽²⁾ OJ C 128, 9.5.1994, pp. 346 et seq.

⁽³⁾ OJ L 234, 3.10.1995, p. 1.

to be maintained until the Council of the European Union has adopted new legislation in the matter⁽¹⁾.

II. Procedural aspects

Any infringement of procedural requirements could again lead to the annulment of the regulation which is now to be adopted.

Furthermore, the conduct of the bodies concerned could set a precedent unfavourable to Parliament. This should be avoided.

Attention should therefore be drawn to a number of problems.

The question arises as to *the exact stage* at which the fresh legislative procedure should commence and *on which document* Parliament should deliver its opinion. The absence of a Swedish and Finnish version of the proposal also gives rise to problems.

1) Consultation of Parliament

On 18 December 1997 the President of Parliament announced that he had received a draft regulation from the Council. The minutes of the sitting read as follows:

'The Commission had formally confirmed in a letter of 20 November 1997 its proposal of 10 December 1993 (COM(93)0684 - C4-0665/97).

The new legislative procedure (CNS)97/0922 would therefore take place on the basis of the Commission's proposal as well as the Council's guideline (11323/97) forwarded on 14 October 1997.'⁽²⁾

2. The effects of the judgment

Article 174 of the EC Treaty enables the Court of Justice to declare that the effects of an annulled regulation be maintained. The Court of Justice made use of this power and explicitly maintained 'the effects of the Regulation' until the Council adopts new legislation in this area. It must therefore be concluded **that *the entire regulation remains in force***.

3. The effects of the Commission proposal COM(93)684

Where a legislative act *which is in force* has completed the legislative procedure, the original Commission proposal provides no possibility for any of the bodies participating in the legislative procedure to alter the legislative act in force either alone or together with others. The proposal has therefore been 'lapsed' and has 'disappeared'.

⁽¹⁾ Case C-392/95, Parliament v Council, ECR I - 3213.

⁽²⁾ Minutes of the sitting of 18 December 1997, p. 31, PE 264.958.

This is, moreover, the view taken by the Commission itself in Case T-175/96⁽¹⁾.

Were a proposal to continue to have an independent existence after the legislative act had been adopted, this would undermine the *Commission's initiating monopoly*.

4) Preconditions for a fresh legislative procedure

In the light of the above, a fresh legislative procedure must commence with a fresh Commission proposal. Technically, the College of Commissioners could - inappropriately - content itself with a decision referring to document COM(93)684.

However, given that the Commission confirmed its proposal COM(93)684 only *after* the Council had forwarded its guideline, the question arises as to how account can be taken in a particular legislative procedure of a 'guideline' submitted by the Council *in advance of* the Commission proposal.

It should be noted in this connection that Article 100c(1) and (3) lays down that the Council shall act by a qualified majority *on a proposal from the Commission and after consulting the European Parliament*.

The procedure can therefore be opened only by the Commission proposal.

During that procedure, which is opened only through a Commission decision, only a Commission proposal is available, and amendments must be tabled to that proposal.

5. Obligation to submit documents in all the official languages

Document COM(93)684 was not available in Swedish and Finnish before 15 May 1998. The draftsman is Swedish.

Article 4 of Regulation (EEC) No 1 of 1958 determining the languages to be used by the European Economic Community⁽²⁾ stipulates that regulations and other *documents of general application* shall be drafted in the official languages.

Rule 102 of Parliament's Rules of Procedure lays down that all *documents* of Parliament shall be drawn up in the official languages. Rule 124(6) establishes the same requirement for *amendments*. It is clear that Finnish and Swedish Members are potentially at a disadvantage.

Given that Regulation 1/1958 refers to *documents*, the final paragraph of Article 16 of the Commission's Rules of Procedure⁽³⁾, which refers merely to '*instruments of general application*', is too narrowly worded, in contravention of Regulation 1/1958. Consequently, the Commission cannot cite its Rules of Procedure in order to evade its obligations under Article 4 of Regulation 1/1958.

⁽¹⁾ Order of 15 May 1997, *Berthu v Commission*, paragraph 10.

⁽²⁾ OJ 17, 6.10.1958, p. 385; as last amended by the Acts of Accession of Austria, Finland and Sweden.

⁽³⁾ OJ L 230 (1993), p. 15, as last amended by OJ L 97 (1995), p. 82.

The solution is to be found in the meaning and purpose of Article 4 of Regulation 1/1958. The following considerations are relevant:

- All Union citizens are potentially affected by legislation.
- If the Commission were not obliged to submit proposals in all the languages, *in how many* languages should it be required to submit them? Would seven languages be sufficient, or perhaps six or five? If so, *which*? Would it (absurdly) have the right to submit a proposal *in only one* language (e.g. Danish)?
- Were a mandatory preparatory text in a legislative procedure to be drawn up only in certain official languages, this would impinge on the *right to equal treatment* of those affected by legislation in the remaining languages.
- If a legislative procedure is to meet the requirements of *transparency*, it must be understood by all Union citizens.
- It would be problematic if Parliament or another body were to translate Commission instruments, since translations often involve *a degree of discretion*.

An obligation to submit the legislative proposal in all the official languages must therefore remain. The burden of translation must fall on the Commission.

6. Legal basis and decision-making majority

Article 100c is the correct legal basis.

In accordance with Article 100c(3), from 1 January 1996 the Council must adopt its decision *by a qualified majority*; prior to that date, unanimity was required.

III. Comments on the substance

1. The substance of Council document No 11323/97 is identical to that of Regulation No 2317/95. There are some few formal changes, but no substantial alterations. The Council has evaded a fresh debate on the matter.

There should nevertheless be objective public **criteria for inclusion** in the list which should be the same for all countries. Conversely, the objective criteria for inclusion must lead to removal from the list as soon as inclusion in the list is no longer justified. Third countries must know how they can ensure that they are removed from the list. The list should be regularly assessed and updated.

The situation with regard to **Bulgaria** and **Romania** gives particular cause for concern. The justification for visa requirements for applicant countries is highly dubious. Moreover, three expert missions have visited these countries. It is incomprehensible that the expert reports have remained secret.

2. Under Article 1(1) of the Council text, the list is a minimum list. It does not permit a more liberal visa policy. In accordance with Article 2, the only possibility open to the Member States is to

make their visa policy more stringent. Article 100c does not exclude a more liberal visa policy on the part of individual states, nor does it oppose a more stringent visa policy in individual states. It should be possible for Member States to apply a more open visa policy if they so wish. This should in any case be possible for those Member States which are not hindered by other commitments, such as those arising from the Schengen Agreement. The standardization of the visa list without exception provided for in Article 1 of the Commission proposal is not a desirable objective.

3. The **EC Treaty**⁽¹⁾ is as a matter of principle applicable only to Union citizens with regard to the free movement of workers, freedom of establishment and the freedom to provide services. The general rule of equal treatment (Article 6) likewise applies only to Union citizens. It cannot be inferred from Article 100c that a third country national who has been granted a visa for Member State A will automatically be authorized to enter Member State B. Article 2 of the Commission proposal should be adjusted.
4. Articles 9 to 17 of the **Schengen Agreement** provide (with regard to Schengen countries) for a uniform⁽²⁾ and mutually *recognized* visa for a stay of up to three months. Third country nationals who (a) are not subject to visa requirements or are in possession of a visa issued by a Schengen country valid for (b) up to three months or (c) a longer period have the right, in accordance with Articles 19 et seq, to move freely on the territory of the remaining Schengen countries during a *period of three months*. Under Article 17, visa applications may be considered in accordance with common rules. Article 9(2) of the Schengen Convention provides that a *common visa regulation* with regard to third countries, already existing or subsequently introduced, may be changed only with the agreement of all the contracting parties. However, this provision would be replaced by a relevant EC regulation pursuant to Article 100c(7) of the EC Treaty.

A visa issued by a non-Schengen country does not entitle the holder to enter the Schengen area or to enter another non-Schengen country.

The draftsman takes the view that it should be possible for EC Member States which are not Schengen contracting parties to implement a more liberal visa policy towards nationals of certain third countries under the new visa regulation, which should be adapted accordingly; this would not affect the right of the remaining EC countries and the Schengen states to require visas from nationals of those same third countries. However, a corresponding amendment by the draftsman did not obtain a majority.

5. In amendments 5b, 7 and 12a, the rapporteur for the committee responsible proposes a new kind of committee procedure⁽³⁾. This would contravene the current decision on committee procedure 87/373/EEC, based on Article 145.

Conclusions

(¹) Articles 48, 52 and 58.

(²) cf. Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas and the joint action of 16 December 1996 concerning a uniform format for residence permits, OJ L 7, 10.1.1997, p. 1.

(³) PE 226.830/A.

The Committee on Legal Affairs and Citizen Rights

1. Notes that a fresh Commission proposal is required in order to make good the annulment of Regulation No 2317/95; concedes that, from a legal point of view, that proposal might refer to the substance of document COM(93)684;
2. Would consider a fresh proposal necessary, the substance of which would have been adapted and updated;
3. Notes that the proposal was not available in Swedish and Finnish before 15 May 1998;
4. Calls on the Committee on Civil Liberties and Internal Affairs to urge the Commission to submit the substance of its proposal COM(93)0684 in Finnish and Swedish and to suspend its procedure until this has been done;
5. Takes the view that amendments should refer to the substance of Document COM(93)0684 and not to the Council 'guideline' 11323/97;
6. Urges that Parliament's amendments should take account of the following:
 - the criteria for inclusion in the list should be objective, identical for all countries and public. Conversely, the criteria for inclusion in the list must make it possible to deduce the conditions required for removal from the list. The list should be regularly assessed and updated;
 - visa requirements with regard to Bulgaria and Romania should be lifted;
7. Asks that the reports drawn up by the expert commissions which visited Bulgaria and Romania, describing the situation in those countries with a view to visa requirements, be submitted to Parliament.