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LIMITE

ASIM 167

REPORT

from : Visa Working Party

to : Steering Group I

No. prev. doc.: 6661/95 ASIM 134

5587/2/95 ASIM 79 REV 2

~~No. Cion prop.: 11287/93 ASIM 32 [COM(93) 684 final]~~

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

At its meeting on 17 May 1995 the Visa Working Party reexamined the two issues outstanding in relation to Article 2 of the Regulation, as instructed by the K.4 Committee (6971/95 ASIM 150). It also continued its proceedings on the list of third countries to be attached to the Regulation.

I. Text of the Regulation

The Visa Working Party moved towards the following solutions:

- (a) To deal with the issue of **territorial entities or authorities not recognized by all Member States**, the Spanish delegation insisted on the adoption of a separate list of territorial entities or authorities whose nationals must be in possession of a visa via a decision taken outside the framework of the Regulation and Article 100c and requiring unanimity for any amendments to that second list even after 1.1.1996, an arrangement which would not be possible on the basis of Article 100c in view of the content of paragraph 3.

In addition, that decision would have to take account of common foreign and security policy conducted by the Council under Title V of the TEU. It would also need to list the travel documents recognized for visa purposes and the type of visa which could be affixed to those documents.

The Greek and Portuguese delegations supported the Spanish position.

The other delegations and the Commission representative agreed, or urged that the matter be resolved under Article 100c but, while remaining within the first pillar, were anxious to find a solution which would deal with the fears expressed by the Spanish and Greek delegations regarding revision of the list by a qualified majority.

The following compromise was suggested by the Presidency:

- territorial entities or authorities to remain in the Regulation (Article 2(3)) and in a separate section of the list annexed to it, as advocated by Steering Group I at its meeting in April
- a **public statement** to be adopted which would bind the Member States politically, when making any amendments to that section of the list, to take account of decisions under the CFSP, which are adopted unanimously;

The statement would read as follows:

"The Council agrees that any amendments to Part II of the Annex to this Regulation must take due account of decisions and guidelines adopted under the Common Foreign and Security Policy."

The delegations were, in principle, prepared to agree to this solution subject to more detailed scrutiny of the text of the statement; the Spanish delegation, however, maintained a reservation.

- (b) As regards the recognition of certain **travel documents** issued by a territorial entity declared legally null and void by the United Nations Security Council, the Greek delegation agreed in principle that the matter be resolved by the following **statement** to be entered in the Council minutes and published:

"The Council declares that for the purposes of Article 2(3) it will take due account of United Nations Security Council Resolutions, particularly where it has condemned the entities or authorities in question, has called on all States not to recognize them and has declared their actions legally null and void. It also agrees to determine which passports and travel documents are to be recognized as valid, in accordance with those Resolutions, under the provisions of Title VI of the Treaty on European Union, with regard to the harmonization of the conditions governing the issue of visas".

- (c) The draft Regulation and the statements appear in the Annex hereto.

II. List of countries to be annexed to the Regulation.

5587/3/95 ASIM 79 REV 3 contains a progress report on this list.

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100c thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

1. Whereas Article 100c of the Treaty requires the Council to determine the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States;
2. Whereas the drawing up of the list annexed to this Regulation represents an important step towards the harmonization of visa policy; whereas Article 7a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of persons is ensured in accordance with the Treaty; whereas other aspects of the harmonization of visa policy, including the conditions for the issue of visas, are matters to be determined by the Member States under Title VI of the Treaty on European Union;
3. Whereas risks relating to security and illegal immigration should be given priority consideration when the list annexed hereto is drawn up; whereas, in addition, Member States' international relations with third countries also play a role;

4. Whereas the principles that a Member State may not require a visa from a person wishing to cross its external borders if that person holds a visa issued by another Member State which meets the harmonized conditions governing the issue of visas and is valid throughout the Community or if that person holds an appropriate permit issued by a Member State are matters to be determined by the Member States under Title VI of the EU Treaty;
5. Whereas this Regulation shall not prevent a Member State from deciding under what conditions nationals of third countries lawfully resident within its territory may re-enter it after having left the territory of the Union during the period of validity of their permits;
6. Whereas, in special cases, justifying an exemption where visa requirements would in principle exist, Member States may exempt certain categories of person in keeping with international law or custom;
7. Whereas since national rules differ on stateless persons, recognized refugees and persons who produce passports or travel documents issued by a territorial entity or authority which is not recognized as a state by all Member States, Member States may decide on visa requirements for that group of persons, where that territorial entity or authority is not on the list annexed to this Regulation;
- 7a. Whereas the inclusion of a third country on the list annexed to this Regulation is entirely without prejudice to its international status;

8. Whereas the determination of third countries whose nationals must be in possession of visas when crossing the external borders of the Member States should be achieved gradually; whereas Member States shall constantly endeavour to harmonize their visa policies with regard to third countries not on the common list in the Annex to this Regulation; whereas that must be without prejudice to the achievement of free movement for persons as provided for in Article 7a of the Treaty establishing the European Community; whereas the Commission should draw up a progress report on harmonization after five years;
9. Whereas, with a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States must communicate to the other Member States and to the Commission the measures they take pursuant to this Regulation;
10. Whereas for the same reasons that information must also be published in the Official Journal of the European Communities;
11. Whereas the information provided for in Articles 2(4) and 4(2) must be published before the other provisions come into force; whereas Articles 2(4) and 4(2) must therefore become applicable one month before the other provisions of the Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Nationals of third countries on the common list in the Annex to this Regulation shall be required to be in possession of visas when crossing the external borders of the Member States.
2. Nationals of countries formerly part of countries on the common list in the Annex to this Regulation shall be subject to the requirements of paragraph 1 unless and until the Council decides otherwise under the procedure laid down in Article 100c of the Treaty.

Article 2

1. The Member States shall determine the visa requirements for nationals of third countries not on the list in the Annex to this Regulation.
2. The Member States shall determine the visa requirements for stateless persons and recognized refugees.
3. The Member States shall determine the visa requirements for persons who produce passports or travel documents issued by a territorial entity or authority which is not recognized as a state by all Member States if that entity or territorial authority is not on the list in the Annex to this Regulation.
4. Within ten working days of the entry into force of this paragraph, Member States shall communicate to the other Member States and the Commission the measures they have taken pursuant to paragraphs 1, 2 and 3. Any further measures taken pursuant to paragraph 1 shall be similarly communicated within five working days.

The Commission shall publish the measures communicated pursuant to this paragraph and updates thereof in the Official Journal of the European Communities for information.

Article 3

Five years after the entry into force of this Regulation the Commission shall draw up a progress report on the harmonization of Member States' visa policies with regard to third countries not on the common list in the Annex to this Regulation and, if necessary, submit to the Council proposals for further measures required to achieve the objective of harmonization laid down in Article 100c.

Article 4

1. A Member State may exempt nationals of third countries subject to visa requirements under Article 1(1) and (2) from those requirements. This shall apply in particular to civilian air and sea crew, flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident and holders of diplomatic passports, official duty passports and other official passports.
2. Article 2(4) shall apply *mutatis mutandis*.

Article 5

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

- an intended stay in that Member State or in several Member States of no more than three months in all;
- transit through the territory of that Member State or several Member States, except for transit through the international zones of airports and transfers between airports in a Member State.

Article 6

This Regulation shall be without prejudice to any further harmonization between individual Member States, going beyond the common list, determining the third countries whose nationals must be in possession of visas when crossing their external borders.

Article 7

This Regulation shall enter into force six months after its publication in the Official Journal of the European Communities. Articles 2(4) and 4(2) shall, however, enter into force on the day following publication.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX to the Regulation

(List of countries in preparation)

(See 5587/3/95 REV 3 ASIM 79)

DRAFT STATEMENTS

to be entered in the minutes of the Council
adopting the Regulation
and to be published

Re Article 2(3)

"The Council agrees that any amendments to Part II of the Annex to this Regulation must take due account of decisions and guidelines adopted under the Common Foreign and Security Policy."

"The Council declares that for the purposes of Article 2(3) it will take due account of United Nations Security Council Resolutions, particularly where it has condemned the entities or authorities in question, has called on all States not to recognize them and has declared their actions legally null and void. It also agrees to determine which passports and travel documents are to be recognized as valid, in accordance with those Resolutions, under the provisions of Title VI of the Treaty on European Union, with regard to the harmonization of the conditions governing the issue of visas".