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NOTE

from : incoming German Presidency

Subject: Travel facilities for third-country nationals resident in a Member State

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Note from the German delegation

Travel facilities for third-country nationals resident in another Member State

1. Under Article 8 of the draft External Frontiers Convention, a third-country national resident in a Member State may enter another Member State, without requiring a visa, for a short stay or for transit. This shows that Member States have long agreed on the granting of travel facilities to third-country nationals living within their territories on a longer-term basis.

   However, it is impossible at present to say when the External Frontiers Convention will come into force. In spite of the efforts made up to now, it has not been possible to settle the problem of the Convention's territorial scope. Moreover, the draft needs to be adjusted in the light of the Treaty on European Union and the EEA Agreement. Even if the External Frontiers Convention were to be signed straight away, experience shows that ratification of the Convention by national parliaments will take quite some while.

2. The German Presidency therefore proposes that the travel facilities agreed on in the draft External Frontiers Convention should already be put into practice before the signing and entry into force of that Convention, initially in the following cases only:

   - third-country nationals holding a residence permit for an unlimited period;

   - third-country nationals travelling as a group.

   Member States' policies are geared to fuller integration of third-country nationals lawfully living within the European Union. Those policies retain their credibility only if they can be experienced by third-country nationals and by Union citizens in their daily lives. Waiving visa requirements for short stays or for transit would be a particularly good way of achieving this. Travel facilities for third-country nationals in the case of group travel (e.g. tours by school parties and sports clubs), especially, would project a positive image of the European Union among nationals of the Member States and of third countries.

3. The German delegation does not consider it necessary to conclude a Convention in order to grant travel facilities. An agreement in the form of, say, an intergovernmental

Agreement or "joint action" under Article K.3 of the Treaty on European Union would provide an adequate basis for the purpose. The outline of such an agreement is attached, and is closely based on the provisions in Articles 7 and 8 of the draft External Frontiers Convention. It only covers the normal cases in Article 8(1). In the German Presidency's view, the exceptional waiving of visa requirements under Article 8(2) could wait until the External Frontiers Convention comes into force.

As with arrangements under Article 8 of the draft External Frontiers Convention, implementing provisions spelling out the details will be required in order to put the agreement into practice. These would have to be annexed to an agreement between Member States. The implementing provisions in question would comprise:

- a list and description of travel documents valid for the crossing of frontiers (see Article 7(1)(a) of the draft External Frontiers Convention); WGI 1379 REV 3 deals with this;

- conditions for readmission of third-country nationals (see Article 8(3)). Reference should be made here to the conclusions on the taking back by Member States of persons who are illegally resident in the territory of a Member State but who hold a residence permit for another Member State (4357/94 ASIM 10);

- a list of residence permits accepted as equivalent to visas (Article 8(5)). Use may be made here of 9893/93 FRONTEX 4, which is currently under discussion.

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Outline agreement
on mutual recognition of residence permits for the
purposes of admission for a short stay or transit

1. In the case of a person who is not a national of any of the Member States and who wishes to enter its territory for a short stay or to transit through it, a Member State shall

not require a visa if that person:

(a) holds a residence permit for an unlimited period issued by another Member State, or is travelling as a member of a group and holds a permit to reside in that State the period of validity of which, at the time of entry, still has more than four months to run. The group in question must already have been an established group prior to the decision to travel and must travel together as a closed group at all times while entering, staying in and leaving the territory of the Member State;

(b) presents a travel document valid for the crossing of frontiers (see Annex 1);

(c) does not represent a threat to the public policy, national security or international relations of the Member State;

(d) produces, if necessary, documents substantiating the purpose and conditions of the intended stay or transit;

(e) has sufficient means of subsistence both for the period of the intended stay or transit and for him to return to his country of origin or travel to a third country to which he is certain to be admitted.

2. Notwithstanding the above, any person who is not a national of a Member State may be refused entry:

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

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

3. Member States shall, under the conditions jointly established (see Annex 2), take back any person who is not a national of a Member State to whom they have issued an unlimited or a limited residence permit within the meaning of paragraph 1(a) and who is illegally resident in the territory of another Member State.

4. In exceptional cases, a Member State may depart from the provisions of paragraph 1 for urgent reasons of national security, but must take into consideration the interests of the other Member States. The Member States concerned shall inform the other Member States in an appropriate manner. Such measures must be used only to the extent that and for as long as is strictly necessary to achieve their purpose.

5. The residence permits referred to in paragraph 1 which shall be accepted as equivalent to visas are listed in Annex 3.