



6 November 1998

A4-0408/98



REPORT

on

- I. the draft joint action of the Council concerning a uniform format for forms for affixing visas issued by the Member States to persons holding travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents (10224/98 - C4-0525/98 - 98/0914(CNS))

and

- II. the draft joint action of the Council on airport transit arrangements (10225/98 - C4-0526/98 - 98/0915(CNS))

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mr Klaus-Heiner Lehne

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PE 228.360/fin.

- * Consultation procedure
simple majority
- **I Cooperation procedure (first reading)
simple majority
- **II Cooperation procedure (second reading)
simple majority 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 to give assent
but simple majority under Articles 8a, 105, 106, 130d and 228 EC

- ***I Codecision procedure (first reading)
simple majority
- ***II 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
- ***III Codecision procedure (third reading)
simple majority to approve the joint text
majority of Parliament's component Members to reject the Council text

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By letter of 14 September 1998 the Presidency of the Council of the European Union consulted Parliament, pursuant to Article K.6(2) of the Treaty on European Union, on the

- I. Draft joint action of the Council concerning a uniform format for forms for affixing visas issued by the Member States to persons holding travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents

and

- II. Draft joint action of the Council on airport transit arrangements

At the sitting of 18 September 1998 the President of Parliament announced that he had referred these proposals to the Committee on Civil Liberties and Internal Affairs as the committee responsible.

By letter of 1 October 1998 the Committee on Civil Liberties and Internal Affairs consulted the Committee on Legal Affairs and Citizens' Rights on the proposed legal basis for the draft joint action of the Council concerning a uniform format for forms for fixing visas issued by the Member States to persons holding travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents (10224/98 - C4-0525/98 - 98/0914(CNS)) pursuant to Rule 53(2).

At its meeting of 24 September 1998 the Committee on Civil Liberties and Internal Affairs appointed Mr Klaus-Heiner Lehne rapporteur.

It considered the draft joint measures at its meetings of 13 October and 26 October 1998.

At the last/latter meeting it adopted draft legislative resolution I by 11 votes to 2 and draft legislative resolution II unanimously.

The following were present for the vote: d'Ancona, chairman; Buffetaut, Colombo Svevo, Elliott, Günther (pursuant to Rule 138(2)), Lindeperg, Nassauer, Oostlander, Pirker, Schaffner, Schmid, Terron I Cusi and Zimmermann.

The report was tabled on 6 November 1998.

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

A.I
LEGISLATIVE PROPOSAL

I. Draft joint action of the Council concerning a uniform format for forms for affixing visas issued by the Member States to persons holding travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents (1022/98 - C4-0525/98 - 98/0914(CNS))

The draft proposal is approved with the following amendments:

Text proposed by the Council⁽¹⁾

Amendments by Parliament

(Amendment 1)
Title

Draft joint action adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning a uniform format for forms for affixing visas issued by the Member States to persons holding travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents.

Draft directive adopted by the Council on the basis of Article 100c of the Treaty establishing the European Community concerning a uniform format for forms for affixing visas issued by the Member States to persons holding travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents. *(Replace joint action with directive throughout the text)*

(Amendment 2)
First citation

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

having regard to the Treaty establishing the European Community, and in particular Article 100c(3) thereof,

⁽¹⁾ OJ C (not yet published)

⁽²⁾ The Commission has entered a scrutiny reservation

(Amendment 3)

Recital 1

whereas Article K.1(3) of the Treaty provides that immigration policy and policy regarding nationals of third countries constitute matters of common interest;

whereas Article 100c(3) of the Treaty provides that the Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, adopt measures relating to a uniform format for visas,

(Amendment 4)

Recital 1a (new)

whereas the uniform format for forms for affixing visas issued by the Member States to holders of travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents constitutes one of the requirements of a uniform format for visas provided for by the Treaty,

(Amendment 5)

Recital 2

whereas it is advisable to harmonise the format of forms for affixing visas issued by the Member States to persons holding travel documents which are not recognised by the Member States drawing up the form or holding no travel documents;

This amendment does not apply to the English version.

(Amendment 6)

Fourth recital

Whereas this Joint Action lays down only such specifications as are not secret; whereas these specifications need to be supplemented by further specifications which are to remain secret in order to prevent counterfeiting and falsification and which may not include personal data or references to such data; whereas it is for the Council to lay down these supplementary specifications;

Whereas this Joint Action lays down only such specifications as are not secret; whereas these specifications need to be supplemented by further specifications which are to remain secret in order to prevent counterfeiting and falsification and which may not include personal data or references to such data; whereas it is for the Commission to lay down these supplementary specifications;

(Amendment 7)

Article 1(3)

3. In addition, in exceptional humanitarian circumstances, the form set out in Annex B is for affixing a visa issued by the authorities of a Member State to a person holding no travel document. In such cases, the form shall be valid only for entry into the territory of the issuing Member State, which shall be obliged to readmit that person if he is in possession of the form and in the territory of another Member State without authorisation.⁽¹⁾

3. In addition, the form set out in Annex B is for affixing a visa issued by the authorities of a Member State to a person holding no travel document.

(Amendment 8)

Article 2(1)

1. The technical specifications for incorporating the information set out in the Annexes to this Joint Action on the two uniform formats for affixing visas as mentioned in Article 1 shall be laid down by the Council without delay.

1. The technical specifications for incorporating the information set out in the Annexes to this Joint Action on the two uniform formats for affixing visas as mentioned in Article 1 shall be laid down by the Commission without delay.

⁽¹⁾ Scrutiny reservation by the United Kingdom delegation.

Further technical specifications which render the formats difficult to counterfeit or falsify shall also be laid down by the Council without delay. These specifications shall be secret and shall not be published. They shall be made available only to the bodies designated by the Member States as responsible for printing and to persons duly authorised by a Member State.

Further technical specifications which render the formats difficult to counterfeit or falsify shall also be laid down by the Commission without delay. These specifications shall be secret and shall not be published. They shall be made available only to the bodies designated by the Member States as responsible for printing and to persons duly authorised by a Member State.

(Amendment 9)
Article 2(2)

2. Each Member State shall designate a single body having responsibility for printing the uniform formats. It shall communicate the name of that body to the Council. The same body may be designated by two or more Member States for this purpose. Each Member State shall be free to change its designated body. It shall inform the Council accordingly.

2. Each Member State shall designate a single body having responsibility for printing the uniform formats. It shall communicate the name of that body to the Commission. The same body may be designated by two or more Member States for this purpose. Each Member State shall be free to change its designated body. It shall inform the Commission accordingly..

(Amendment 10)
Article 2(3)

3. Each Member State shall inform the Council of the competent authority or authorities for issuing the uniform documents.

3. Each Member State shall inform the Commission of the competent authority or authorities for issuing the uniform documents.

(Amendment 11)
Article 4, second paragraph

The Member States shall apply Article 1 no later than 2 years after the adoption of the measures referred to in Article 2(1).

The Member States shall apply Article 1 no later than 1 year after entry into force.

(Amendment 12)
Article 2.3a (new)

Information relating to any known
counterfeited or falsified visa formats shall
immediately be exchanged between the
appropriate national authorities.
Counterfeiting or falsifying such formats shall
be punishable according to national laws.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the draft joint action of the Council concerning a uniform format for forms for affixing visas issued by the Member States to persons holding travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents (10224/98 - C4-0525/98 - 98/0914(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Council proposal (10224/98 - 98/0914(CNS))⁽¹⁾,
 - having been consulted by the Council pursuant to Article K.6(2) of the Treaty on European Union (C4-0525/98),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion of the Committee on Legal Affairs and Citizens' Rights (A4-0408/98),
1. Approves the Council proposal, subject to Parliament's amendments;
 2. Calls on the Commission to submit an amended proposal;
 3. Calls on the Council to notify Parliament and consult it again should it intend to depart from the text approved by Parliament;
 4. Instructs its President to forward this opinion to the Council and Commission.

⁽¹⁾ OJ C

A.II. LEGISLATIVE PROPOSAL

Draft joint action of the Council on airport transit arrangements (10225/98 - C4-0526/98 - 98/0915(CNS))

The proposal is approved with the following amendments:

Text proposed by the Council()

Amendments by Parliament

(Amendment 1) Second recital

Whereas the air route, particularly when it involves applications for entry or de facto entry, in the course of airport transit, represents a significant way in with a view in particular to illegally taking up residence within the territory of the Member States; whereas improvements should be sought in controlling that route;

Whereas the air route, particularly when it involves applications for entry or de facto entry, in the course of airport transit, may represent and facilitate a significant way in for nationals of certain third countries with a view in particular to illegally taking up residence within the territory of the Member States; whereas improvements should or must be sought and carried out in controlling that route;

(Amendment 2) Fourth recital

Whereas the exceptions to the requirements for an airport transit visa currently applied by the Member States should be harmonised.

Whereas the exceptions to the requirements for an airport transit visa currently applied by the Member States should be harmonised, as any measures against illegal immigration affect all other measures on the crossing of the external borders and immigration, which under the Treaty of Amsterdam become matters covered by the first pillar;

(¹) OJ C (not yet published)

(Amendment 3)
Recital 4a (new)

whereas account must be taken of the provisions of the Geneva Convention and the European Convention for the Protection of Human Rights and Fundamental Freedoms,

(Amendment 4)
Recital 6a (new)

whereas this joint action must be replaced by a regulation within six months of the entry into force of the Treaty of Amsterdam,

(Amendment 5)
Article 2(2)

2. The conditions of issue of airport transit visas shall be determined by each Member State subject to adoption by the Council of criteria relating to the preliminaries for and issue of visas.

2. The conditions of issue of airport transit visas shall be determined jointly by the Member States.

(Amendment 6)
Article 3, second paragraph (new)

1. Each Member State shall require an airport transit visa of nationals of third countries included on the joint list in Annex I hereto who do not already hold an entry or transit visa for the Member State in question when passing through the international areas of airports situated within its territory.

1. Each Member State shall require an airport transit visa of nationals of third countries included on the joint list in Annex I hereto who do not already hold an entry or transit visa for the Member State in question when passing through the international areas of airports situated within its territory.

2. Paragraph 1 shall not impede the airport transit of persons entitled to refugee status.

(Amendment 7)

Article 5

Each Member State shall determine the airport transit arrangements applicable to statutory stateless persons and refugees.

The Member States shall determine the airport transit arrangements applicable to statutory stateless persons and refugees.

(Amendment 8)

Article 6

A Member State may provide for exceptions to the requirement for an airport transit visa, in particular for:

- crew members of aircraft and ships,
- holders of diplomatic, official or service passports,
- holders of visas issued by a Member State, or by a State which is a party to the Agreement on the European Economic Area.

Member States may provide for exceptions to the requirement for an airport transit visa, in particular for:

- crew members of aircraft and ships,
- holders of diplomatic, official or service passports,
- holders of visas issued by a Member State, or by a State which is a party to the Agreement on the European Economic Area.

(Amendment 9)

Article 9, first paragraph

Any Member State may suspend, in whole or in part, the application of the measures referred to in Article 7 of this joint action. It shall inform the Council thereof.

Any Member State may suspend, in whole or in part, the application of the measures referred to in Article 7 of this joint action. It shall inform the Commission and the Council thereof. The Presidency of the Council shall then inform the European Parliament.

(Amendment 10)

Article 11 second paragraph a(new)

The President of the Council shall communicate the report and the proposals to the European Parliament and the Commission

DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution embodying Parliament's opinion on the draft joint action of the Council on airport transit arrangements
(10225/98 - C4-0526/98 - 98/0915(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Council proposal (10225/98 - 98/0915(CNS))⁽¹⁾,
 - having been consulted by the Council pursuant to Article K.6(2) of the Treaty on European Union (C4-0526/98),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs (A4-0408/98),
1. Approves the Council proposal, subject to Parliament's amendments;
 2. Calls on the Council to notify Parliament and consult it again should it intend to depart from the text approved by Parliament;
 3. Instructs its President to forward this opinion to the Council and Commission.

⁽¹⁾ OJ C

B

EXPLANATORY STATEMENT

Introduction

In its letter of 14 September 1998 the Presidency of the Council asks the President of Parliament whether it is possible for Parliament to deliver its opinion by 14 December 1998. Although this corresponds exactly to the minimum time limits stipulated in the Treaty of Amsterdam, it fails to allow for transmission, or the fact that Parliament's part-session does not start until the end of the morning of 14 December and Parliament is rarely if ever able to take votes on Monday evening.

This report deals with two aspects of visa policy. The first is a uniform format for visa forms. This seems to be a useful proposal but on closer examination it proves to have very little substance. The draft contains a very basic form and allows the Member States subsequently to determine the technical specifications of their choice. There is a problem with the legal basis which will have to be discussed along with a number of questions of detail.

The second proposal covered by the report concerns airport transit visas. The Commission brought an action against the Council on this matter in which the European Parliament supported the Commission's position. In the judgment the Court ruled against the Commission on the grounds, if we understand it correctly, that although the term 'visa' is used it is not a question of the visa within the meaning of Article 100c of the EC Treaty. The Presidency now wants to make a number of changes to the joint action and these also give rise to various observations.

Legal basis

Both proposals are based on Article K.3(2)(b) of the TEU. In the case of air transit visas there are no observations to be made since the Court has ruled on the matter. However, in the case of the proposal concerning a uniform format for forms for affixing visas, the legal basis cannot be accepted without question. Article 100c of the EC Treaty refers specifically to the uniform format for visas and it has to be asked whether this does not cover a uniform format for forms.

Strictly speaking, forms for affixing visas could be said to be different from the actual visa as such but on the other hand the form would never be issued to anyone unless a visa were affixed to it. Consequently, the form cannot be separated from the visa. (In any case, visas are normally affixed to travel documents).

Moreover Article 100c of the EC Treaty is obviously intended to standardise the appearance of visas as far as possible. The arrangements proposed in the joint action (specification of security marks outside its scope) also have many points in common with the uniform visa regulation 1683/95 of 29 May 1995 (OJ L 164, 14.07.1995, p. 1).

It therefore follows that the legal basis should be changed. The question that then arises is whether or not the proposal should be rejected because it originates from the Presidency of the Council, whereas pursuant to Article 100c (3) of the EC Treaty it should be based on a Commission proposal. In your rapporteur's view, this is the appropriate course of action.

Specific observations concerning the uniform form

Article 1(3) explicitly stipulates that the visa form is to be valid only in one Member State. This appears to be incompatible with the objectives that have been set for the future and which are based on a uniform European visa policy. This provision should therefore be deleted. Similarly, with an eye to future developments, the Commission's position should be strengthened (since it is still the executive under the Treaties). This is not inconsistent with the existing Treaties since the Commission is fully associated with third pillar activities.

Specific observations concerning the air transit visa

The new proposal contains two more or less important changes to the annex and a number of detailed changes to the articles. However, since Parliament was never consulted on the first joint action on air transit visas, this is the first opportunity it has had to give its views.

The rapporteur would like to see it spelled out in the recitals that this matter must be brought within the framework of the EC Treaty as soon as possible. It is therefore inappropriate that the Council should retain the right to determine further details. Here too, the role of the Commission should be strengthened.

Refugees

The proposal might create the impression that it is being made more difficult for refugees to find a safe country. This impression should be corrected.

Conclusions

The proposal on a uniform format for visa forms can be amended (this would have the advantage of informing the Council and Commission of the changes that Parliament would like to see) but, legally speaking, the more correct course of action appears to be to reject the proposal.

The proposal on air transit visas can be amended although it comes at a very inopportune moment just before entry into force of the Amsterdam Treaty.

OPINION

(Rule 147)

for the Committee on Civil Liberties and Internal Affairs

on the legal base of the Commission Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning a uniform format for forms for affixing visas issued by the Member States to holders of travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents (Council Document 10224/98; C4-0525/98 - 98/0914 (CNS))

Committee on Legal Affairs and Citizens' Rights

Letter from the Committee chairman to Mrs Hedy d'Ancona, chair of the Committee on Civil Liberties and Internal Affairs

Brussels, 5 November 1998

Dear Chairman,

The Committee you chair adopted the LEHNE Report⁽¹⁾ on the above subject on 27 October 1998. As this report contained amendments⁽²⁾ aimed at substituting Article 100 c (3) EC-Treaty for Article K.3 (2) b) EU-Treaty as legal base for the Joint Action, the Committee on Legal Affairs and Citizens' Rights was required under Rule 53 of the Rules of Procedure to deliver an opinion on the amendments tabled.

The Committee I have the honour to chair has discussed the legal base of the Joint Action under the guidance of the current permanent rapporteur for questions relating to the legal base, Mr ULLMANN, during its meeting of 27 to 29 October 1998 and voted on 4 November 1998.

Indeed the Committee on Legal Affairs and Citizens' Rights has decided by 11/1/0 votes that Article 100 c (3) EC-Treaty was the appropriate legal base to an act concerning a uniform format for forms for affixing visas issued by Member States to holders of travel documents which are not recognised by the Member State drawing up the form or to persons holding no travel documents.⁽³⁾

The following arguments were taken into account:

⁽¹⁾ PE 228.360 - T06110 - FdR 360296

⁽²⁾ Amendments 1, 2 and 3

⁽³⁾ The following were present for the vote: De Clercq (chairman), Palacio (1st vice chairperson), Lehne, Mosiek-Urbahn, Janssen van Raay, Wieland, Añoveros Trias de Bes, Fabre-Aubrespy, Buffetaut, Berger, Sierra Gonzalez, Voggenhuber (replacing Mr Ullmann), Gebhardt, Tsatsos

- The mere wording of Article 100 c (3) EC-Treaty suggests that it is more apt to cover questions relating to forms for affixing a visa than Article K.3 EU-Treaty read in combination with Article K.1 (3) EU-Treaty as Article 100 c (3) states:

"From 1 January 1996, the Council shall adopt the decisions referred to in paragraph 1 by a qualified majority. The Council shall, before that date, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, adopt measures relating to a uniform format for visas."

- Forms for affixing visas cannot in principle be separated from the visa. Consequently, the same procedure should apply to visas and to forms for affixing them. Even if the form were not indissociable from the visa, it should be argued that the form pursues the same objectives of a visa, that is to say, it is an official document enabling a person to enter and to stay legally in a certain territory. The form therefore serves the same purpose as the visa and thus the same procedure (i.e. Article 100 c (3) EC-Treaty) should be applied.

Willy DE CLERCQ

