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035

EUROPEAN UNION
THE COUNCIL

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LIMITE

VISA 61
COMIX 224

NOTE

from : the Finnish delegation

to : Visa Working Party

Subject: Initiative of the Republic of Finland with the view to the adoption of a Council Regulation on airport transit arrangements

Delegations will find attached the text of the above initiative.

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Initiative of the Republic of Finland
with the view to the adoption of a
Council Regulation
on airport transit arrangements

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63, 3), b) thereof,

Having regard to the initiative of the Republic of Finland [1],

Having regard to the Opinion of the European Parliament [2],

Whereas

[(1) the present Regulation constitutes a development of the Schengen acquis in the sense of the Protocol integrating the Schengen acquis into the framework of the European Union;]

(2) it is important to take measures to combat unauthorised immigration by third country nationals;

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

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1 OJ C

2 Opinion delivered on ..... (not yet published in the Official Journal).

(4) Annex 9 to the Chicago Convention on International Civil Aviation establishes the principle of free transit passage through the international areas of airports; States may nevertheless make exceptions to this general principle by notifying the International Civil Aviation Organisation (ICAO) and requiring an airport transit visa; this possibility should be limited as far as possible to avoid any unnecessary constraint on the development of air transport;

(5) the exceptions to the requirement for an airport transit visa currently applied by [the] Member States should be harmonised; the harmonisation of Member States' policies in this field, in particular the harmonisation of the exceptions, is in accordance with the objectives of security and control of illegal immigration of the Treaty, while contributing to harmonising the conditions of competition between airlines and airports in [the] Member States;

(6) this matter does not concern visas required when crossing the external borders of [the] Member States and is therefore not covered by Article 62, 2), b) of the Treaty establishing the European Community;

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, "airport transit visa (ATV)" shall mean the authorisation to which nationals of certain third countries are subject, as an exception to the principle of free transit laid down in Annex 9 to the Chicago Convention on International Civil Aviation, for transit through the international areas of the airports of Member States.

Article 2

1. The airport transit visa shall be issued by the consular services of the Member States.

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.

   In all cases, the consular services must ascertain that there is no security risk or risk of illegal immigration. They must above all be satisfied that the application for an airport transit visa is justified on the basis of the documents submitted by the applicant, and that as far as possible these documents guarantee entry into the country of final destination, in particular by presentation of a visa where so required.

Article 3

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.

Article 4

Each Member State shall decide whether it will require an airport transit visa in respect of nationals of countries not included on the joint list in Annex I.

Article 5

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

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.

Article 7

A Member State shall not require an airport transit visa for:

(a) holders of a residence permit issued by a Member State, or by a State which is a party to the Agreement on the European Economic Area;

(b) holders of a residence permit issued by Andorra, Canada, the Principality of Monaco, the Republic of San Marino, the Swiss Confederation, Japan or the United States of America which guarantees an unqualified right of return and a high level of forgery proofing.

Article 8

1. The list of residence permits guaranteeing an unqualified right of return referred to in Article 7(b) is set out in Annex II to this Regulation. It shall be updated by the Council acting unanimously whenever the States referred to in Article 7(b) make changes affecting those permits. Member States shall, however, remain free to require a transit visa for certain residence permits if this is specifically provided for in Annex II.

Article 9

1. Any Member State may suspend, in whole or in part, the application of the exemptions referred to in Article 7 [point b] of this Regulation. It shall inform the Council thereof.

2. As regards nationals of the third countries included in the joint list in Annex I, the suspension referred to in paragraph 1 may be taken only for important reasons of national policy for a period not exceeding six months.

3. When the period referred to in paragraph 2 has expired, the Council, acting unanimously may, upon request from the Member State(s) concerned, extend the period of suspension referred to in paragraph 2, or repeal it.

Article 10

Within ten working days of the entry into force of this Regulation, Member States shall notify the Council and the Commission of the measures taken pursuant to Articles 4, 5 and 6. Those measures shall be published by the Commission, for information, in the Official Journal of the European Communities.

The Commission will also publish, for information, the list of residence permits issued by those Member referred to in Article 7point a) which are not Member States of the European Union.

Article 11

Each year the Commission shall draw up a report on progress in the harmonisation of airport transit arrangements within the Community.

Article 12

1. This Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities.

2. However, as regards Articles 7, 8 and 9, it shall enter into force on the first day of the third month following its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community in any cases in which an act is not applicable to, and in, all Member States.

Done at Brussels,

For the Council
The President

ANNEX I

Afghanistan	Iran
Iraq	Democratic Republic of the Congo
Nigeria	Ethiopia
Eritrea	Somalia
Ghana	Sri Lanka

ANNEX II

List of residence permits referred to in Article 7(b)

ANDORRA:

- *Tarjeta provisional de estancia y de trabajo* (Provisional residence and work permit) (white). These are issued to seasonal workers; the period of validity depends on the duration of employment, but never exceeds 6 months. This permit is not renewable.*

- *Tarjeta de estancia y de trabajo* (Residence and work permit) (white). This permit is issued for 6 months and may be renewed for another year. *

- *Tarjeta de estancia (*Residence permit) (white). This permit is issued for 6 months and may be renewed for another year. *

- *Tarjeta temporal de residencia* (Temporary residence permit) (pink). This permit is issued for 1 year and may be renewed twice, each time for another year. *

- *Tarjeta ordinaria de residencia* (Ordinary residence permit) (yellow). This permit is issued for 3 years and may be renewed for another 3 years. *

- *Tarjeta privilegiada de residencia* (Special residence permit) (green). This permit is issued for 5 years and is renewable, each time for another 5 years.

- *Autorización de residencia* (Residence authorization) (green). This permit is issued for one year and is renewable, each time for another 3 years. *

- *Autorización temporal de residencia y de trabajo* (Temporary residence and work authorization) (pink). This permit is issued for 2 years and may be renewed for another 2 years. *

- *Autorización ordinaria de residencia y de trabajo* (Ordinary residence and work authorization) (yellow). This permit is issued for 5 years.

- *Autorización privilegiada de residencia y de trabajo* (Special residence and work authorization) (green). This permit is issued for 10 years and is renewable, each time for another 10 years.

JAPAN:

- Re-entry permit to Japan *

CANADA:

- Returning Resident Permit (separate sheet inserted in passport)

MONACO:

- Temporary resident's permit *(Carte de séjour de résident temporaire de Monaco)* *
- Ordinary resident's permit *(Carte de séjour de résident ordinaire de Monaco)*
- Special resident's permit *(Carte de séjour de résident privilégié)*
- Residence permit for the spouse of a person of Monegasque nationality *(Carte de séjour de conjoint de ressortissant monégasque)*.

SAN MARINO:

- Permesso di soggiorno ordinario (validità illimitata) [Ordinary residence permit (no expiry date)]
- Permesso di soggiorno continuativo speciale (validità illimitata) [Special permanent residence permit (no expiry date)]
- Carta d'identità de San Marino (validità illimitata) [San Marino identity card (no expiry date)]

SWITZERLAND:

- Livret pour étranger B (Residence permit, sufficient within the framework of a one-year period of validity) *
- Livret pour étranger C (Establishment authorisation, sufficient within the framework of a period of validity of 5 or 10 years)

UNITED STATES OF AMERICA:

- Form I-551 permanent resident card (valid for 2 * or 10 years)
- Form I-551 Alien registration receipt card (valid for 2 * or 10 years)
- Form I-551 Alien registration receipt card (unlimited validity)
- Form I-327 Reentry document (valid for 2 years – issued to a holder of an I-551) *
- Resident alien card (for residents with a period of validity of 2 * or 10 years or unlimited. This document is only sufficient if residence outside the United States lasted no longer than one year)
- Permit to reenter (period of validity of 2 years. This document is only sufficient if residence outside the USA lasted no longer than two years) *
- Valid temporary residence stamp in a valid passport (valid for one year from the date of issue) *.

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* This residence permit does not exempt the holder from the airport transit visa requirement in Germany.