DISCUSSION PAPER

Visa for temporary relocation of Human Rights Defenders

An EU tool to protect human rights defenders at immediate risk or in need of respite

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I. INTRODUCTION

This paper discusses temporary relocation visas as a tool to protect human rights defenders (HRDs) at risk and/or in need of respite. Being able to get out of a country in a hurry when facing an immediate threat can and has saved the lives of human rights defenders. When HRDs know they have or can get quickly a visa, it can also help them to continue their work in the face of threats knowing they can get out quickly if they have to. The ability to get out for some respite can also help HRDs working in the most hostile environments to sustain their important work for human rights over extended periods of time.

Support for HRDs is already a long established element of the European Union’s human rights external relations policy. This support is reflected in the European Union’s adoption of the EU Guidelines on human rights defenders, which recognize the importance “to ensure the safety and protect the rights of human rights defenders”.

The purpose of the EU Guidelines is to provide practical suggestions for enhancing EU action in relation to the protection of HRDs. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the EU to promote and encourage respect for the right to defend human rights. The Guidelines also provide for interventions by the EU for HRDs at risk and suggest practical means to support and assist HRDs. The Council Working group on Human Rights (COHOM) together with other relevant council working groups are responsible for reviewing the implementation of the Guidelines and promoting the integration of the issue of HRDs into relevant European Union policies.

No explicit provisions for the issuing of visas for HRDs at immediate risk and who need to leave their country are included in these Guidelines. However, the recommendations adopted by the Council in June 2006, further to the first review of the implementation of the EU Guidelines on HRDs, call on the Member States - in the section on practical support for HRDs - to consider “developing protection tools for situations where the life or physical and mental integrity of HRDs may be at immediate risk” and “issuing of emergency visas for HRDs in grave danger, building on the experience and good practice of some member states”. Under the German Presidency of the EU, the Members States have been asked to gather their practices as regards the issuing of emergency visas for human rights defenders.

In April 2007, the European Parliament adopted its Annual Report on Human Rights in the World 2006 and the EU's policy on the matter. The section on human rights defenders (paragraph 74) considers that “the idea of issuing visas for human rights defenders in grave danger, as recommended by the Council, should be an important priority”.

These Council recommendations and the European Parliament Annual Report 2006 illustrate that there are concerns at European level about the issue of temporary relocation visas for HRDs.

The overriding aim of this paper is therefore to promote and inform discussion on how the EU Member States could introduce a procedure/procedures that would facilitate and speed up the delivery of visas for HRDs at risk and in emergency situations. This would strengthen the protection of HRDs by giving them a possibility to rest for a while or flee a hostile environment.

This paper also seeks to draw together some of the practices currently existing amongst EU countries; explain why it is needed to further develop and systematise such practices within the European Union and how these improvements can be obtained, as well as to explain the work of Front Line with regard to obtaining visas for HRDs at risk. In this respect, the procedure for the adoption of the Common Code on Visas seems to be a suitable period to integrate specific provisions for HRDs.
II. WHO IS A HUMAN RIGHTS DEFENDER?

The definition of who is or can be a human rights defender is deliberately broad. The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998) (hereon referred to as the UN Declaration on human rights defenders) refers to “individuals, groups and associations (...) contributing to (...) the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” (4th preambular paragraph).

A HRD is thus anyone who, either individually or in association with others, works through peaceful means for the promotion, protection and realization of human rights and fundamental freedoms. As the UN states, "what is most important in characterizing a person as a human rights defender is not the person’s title or the name of the organization he or she works for, but rather the human rights character of the work undertaken. Human rights defenders are therefore not only the staff or volunteers of human rights organizations, but can also be lawyers, trade union leaders, journalists, teachers, doctors, judges, and police. A student who organizes other students to campaign against torture, an inhabitant of a rural community who coordinates a demonstration by members of the community against degradation of their farmland by factory waste, and a politician who takes a stand against corruption can also be considered as human rights defenders."

Human rights defenders address human rights concerns as varied as extra-judicial executions, torture, arbitrary arrest and detention, female genital mutilation, discrimination, employment issues, forced evictions, access to health care, etc. They actively support human rights as diverse as the rights to life, to food and water, to the highest attainable standard of health, to adequate housing, to a name and a nationality, to education, to freedom of movement and to non-discrimination.

III. WHAT DOES FRONT LINE DO?

Front Line, the International Foundation for the Protection of Human Rights Defenders, was established in 2001 with the specific aim of working to protect, defend, support, and act for HRDs whose lives and/or physical and/or mental health is at risk, either temporarily or permanently, because of their activities. Human rights organisations involved in the protection of HRDs use a combination of measures to strengthen human rights defenders' protection. The various methods used by Front Line include maintaining contacts and monitoring HRDs and human rights organisations work; lobbying on behalf of human rights defenders and publishing country and regional reports. Front Line also conducts missions to assess the human rights situation in particular countries and occasionally undertakes short-term accompaniments. Central to Front Line’s work is providing security grants to human rights defenders and conducting training on personal and IT security, protection and capacity building. Every two years, Front Line organises an international conference in Dublin to bring HRDs together to exchange experiences, network and discuss relevant issues. The Dublin Platform provides also some respite from the risks the HRDs daily face.

In the course of its work since 2001 for the protection of HRDs, Front Line has developed some considerable practical experience concerning visas. Front Line had to obtain Irish visas and transit visas for most of the 400 HRDs who participated in the Dublin Platforms for HRDs organised by Front Line in 2002, 2003, 2005 and 2007. Front Line has also had to obtain visas for 3 HRDs participating in the fellowship scheme, launched in 2006, aimed at offering a possibility for HRDs to take some time out from their normal work to undertake a project which will further develop their capacities and contribute to the protection of HRDs internationally. A further 23 HRDs have received visas to participate in a “training of trainers” on personal and IT security and stress management.

But the most sensitive situations where Front Line has to help HRDs are when they have to leave their countries for a temporary relocation because of an immediate danger. In such very urgent cases, obtaining a visa for HRDs can be problematic, and a refusal or a delay in the issuing of a visa can have disastrous consequence for the HRDs. In order to facilitate the issuing of visas for HRDs, when temporary relocation is required, the Irish Government developed a specific procedure on a pilot basis with Front Line in 2004. The “Facilitated Visa Procedure for HRDs” programme, established with the Irish government\(^2\) allows Front Line to obtain at short notice temporary visas for human rights defenders facing imminent dangers or in need of respite as a consequence of constant persecution.

Front Line views temporary relocation visas as a protection measure to be used in extreme circumstances as part of its global strategy of protection to HRDs. Prior to relocating a human rights defender, other measures of protection, for example general protection measures, advocacy and lobbying, are explored. The overall aim of Front Line is not to facilitate human rights defenders to leave their countries, but rather to support their protection on the ground in order that they can continue to work to promote and protect human rights within their societies. But sometimes, the best way to support someone to continue to work in a very hostile environment is to be able to facilitate her/him getting out for a short time when things get hot. Although the procedure is not intended to provide access to asylum procedures, the temporary relocation programme practiced by Front Line does not compromise or disqualify an asylum application.

**IV. WHY IS A SPECIFIC PROCEDURE FOR HUMAN RIGHTS DEFENDERS NEEDED?**

This section explores the needs expressed by the HRDs themselves in terms of relocation. It also explains why the existing refugee status can hardly give a proper response to the specific situation of HRDs at risk. Finally, the section stresses that relocation inside the country of origin or in the sub-region is not always suitable.

1. Human rights defender's needs

In every region of the world there are human rights defenders who face reprisals because of their human rights work. The type of reprisals human rights defenders are subjected to include: intimidation, surveillance by security forces, defamatory campaigns in state-controlled media and other attacks on their person, arbitrary interference in their work, politically motivated arrests and prosecution, torture and even killings. The severity and scale of reprisals committed against defenders was one of the primary motivations behind the adoption of the UN Declaration on Human Rights Defenders and the establishment of the mandate of the Special Representative of the Secretary-General on Human Rights Defenders. In the aftermath of the terrorist attacks of 11 September 2001, there have been increased attacks, threats and acts of intimidation against HRDs as security concerns have increasingly been exploited to justify repressive measures towards HRDs. Many governments responded to the events by hastily drafting and adopting legislation contributing to a growth in the number and variety of security related laws and procedures.

HRDs in immediate physical risk oft
en need to leave their country of origin for a short period of time and to be relocated temporarily in a host country. Human rights defenders who have faced significant risk for an extended period of time sometimes also need to be able to take a break and get some respite in order to resume their work in a better condition. Very often being out of a country for a specific period of time can be enough to decrease the intensity of - immediate - threats. Sometimes, the possibility of getting a short-stay visa for temporary relocation can be enough to reassure the HRDs and provide the respite needed, without actually using the visa. Front Line has seen cases where after an extended period with significant risk, the stress can lead to a situation where the HRDs can simply not feel the dangers of their work anymore. Sometimes

\(^2\) See section V of this document.
this leads to erratic behaviour which puts themselves more at risk and/or puts their work in jeopardy or the people they work with. The primary objectives of relocating human rights defenders are: saving their lives, preventing them from being tortured or mistreated, preserve their mental health and give them the capacities to work peacefully.

Apart from the primary objective of removing human rights defenders from imminent danger, the relocation period can be used to develop their personal skills and relations in order to prepare their return. This personal development could include IT training, language training and security training. Importantly, this period of time can be used to promote the individual and his/her organisation through public talks, by networking with other human rights organisations and by meeting with government officials. In most countries human rights defenders report that an increased international profile improves their security because it increases the potential political costs of action against them. Those who would persecute HRDs are often slower to do so when they know that others in the international community are watching. The skills and relations developed whilst relocated can contribute to a human rights defender's preparedness in returning to his/her country of origin and continuing working to promote and protect human rights.

2. Refugee status and human rights defenders

The primary legal instrument that deals with protection for people forced to flee their countries and in need of international protection is the 1951 Refugee Convention. To be granted what is known as 'Convention refugee status', a person must prove “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear is unwilling to return to it”.

It can sometimes be difficult for EU member States to understand the distinction between human rights defenders applying for temporary relocation and asylum seekers applying to be recognized as refugees because of similarities in the background of those persons. HRDs often fulfill all the criteria to be asylum seekers according to the international instruments, such as the Refugee Convention, the European Convention on Human Rights (ECHR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). A HRD can thus easily receive refugee status if they can get to a country where they can apply for asylum. But, while the Refugee Convention establishes that the existence of threats implies the impossibility to go back to the country of origin, HRDs do want to go back to their countries even if they are facing risks and thus contradict the Refugee Convention.

Indeed, it is important to note that HRDs who seek temporary relocation do want go back to their country, work, and family. Their goal in life is to help build civil and just societies in their countries. Through the experience of inviting hundreds of HRDs for its Platforms in Dublin, Front Line has found that HRDs do not have immigration/refugee plans in mind but are preoccupied with returning to their work of promoting and protecting human rights in their country of origin. The decision to leave their country, even temporarily, is always a hard one for HRDs who have devoted their lives to the human rights of others. They generally feel strong obligations to the people they would leave behind and can sometimes also feel that leaving is in some way a defeat which undermines the work they have been doing. Front Line all the time witnesses HRDs determination and commitment to return to their activities. Many of them refuse the possibility of any permanent relocation even though they fulfill all the criteria to be recognised as a refugee.

Human rights defenders have thus a different profile than asylum seekers. The Refugee

3 Article 1 A (2) of the Refugee Convention

4 Note that EU Member States may also grant “subsidiary protection” (one-year resident permits) to those persons who fall outside the scope of the Geneva Convention but who nevertheless still need international protection, such as victims of generalised violence or civil war (Council Directive 2004/83/EC of 29 April 2004 ). Like refugees, these people are considered as being unable or unwilling to go
Convention provides a protection for an undefined period, while temporary visa will give protection for a well-defined period. Visas for temporary relocation are thus a complementary protection policy and practice to the refugee status and the subsidiary protection. In the current situation, where no particular visa scheme for HRDs exist, HRDs have only two choices: to stay in their countries and face a risk situation, or flee and seek asylum. **Visas for temporary relocation of HRDs would offer them a third possibility.**

3. National or regional relocation

HRDs can sometimes find a safe/hidden place inside their country or in a country close to their country of origin, as it is often easier and simpler to organise; HRDs are more likely to have relatives or friends available to welcome them inside or in a close country; their own organisation can also sometimes provide such a solution with the help of its network. In addition, many cultural, political and practical factors make it most favorable to relocate as near as possible from the original area of HRDs.

But those opportunities are not always available or not safe enough. When it happens that no safe solution can be found in the country or in the sub-region then they have to consider to join a country further away including Member States of the EU. Moreover, one may not forget the urgency criterion: some HRDs have to flee the country as quickly as possible and getting a visa for temporary relocation within the EU can sometimes be quicker. Once the HRD is safe inside the EU, relocation in the region can always be considered.

V. WHAT ARE THE EXISTING PROCEDURES AND PRACTICES?

In 2007, the Council Human Rights Working Party (COHOM) gathered information on EU Member States’ policies and practices regarding the delivery of “emergency ‘visas for HRDs in grave danger’.” This has shown that EU Member States do not have any special regulations that would apply to such cases, with the exception of Ireland, which has set up a facilitated visa procedure, and Spain, which has established a programme to protect HRDs at risk, which includes provisions aimed at facilitating the delivery of visas for HRDs.

1. **The Irish 'Facilitated Visa Procedure for HRDs'**

To develop temporary relocation in Ireland, Front Line was aided by a specific procedure established by the Irish Ministry of Justice, in co-operation with the Ministry of Foreign Affairs, in 2004. The pilot scheme was launched in 2005. This procedure provides a quick acting mechanism to facilitate HRDs travelling to Ireland and allows them to quickly obtain a short-stay visa of three months for the purpose of respite or because of temporary safety issues. It is intended to provide a fast-track approach to processing applications made under this scheme, having regard in particular to the needs of the individuals concerned. This scheme is used only in exceptional circumstances. It includes two main scenarios that correspond to the human rights defenders needs, expressed in the previous developments of this paper:

- “Human rights defenders who are facing significant immediate risks as a result of their human rights work and who need to relocate to a safe place.” In such cases Front Line will seek to rapidly verify information and if the human rights defender is in grave danger, having explored all possible options, will apply for an Irish temporary facilitated visa.

- “Human rights defenders who have been working in the face of significant risks for an extended period of time and who would benefit from a period of respite.”

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5 EU annual report on human rights 2007, p.66.
The development and implementation of this procedure is indicative of a co-operative relationship between Front Line and the Irish Government on issues pertinent to human rights defenders. The experience with the Dublin Platform helped to allay fears that a temporary visa scheme does not result in an increase or any abuse of the asylum system. Among the 400 HRDs who came to participate in the four Dublin Platforms, the 23 who participated in training and the three who came under the Front Line fellowship programme, despite living in highly insecure situations, only five HRDs to date - coming from Afghanistan, Somalia, Iraq, Togo and Uzbekistan - have applied for asylum in Ireland.

Under the Facilitated Visa Procedure, since 2005, a total of nine human rights defenders - coming from Syria, Iran, Ingushetia, Chechnya, Saudi Arabia, Sri Lanka, and Western Sahara - have received a temporary relocation visa. The Syrian HRD came twice under the scheme, and the two women HRDs from Grozny and Ingushetia came with their daughters aged 10 and 11 respectively for rest and respite. None of them applied for refugee status in Ireland.

On this basis, it is clear to Front Line from the figures that there has been no significant abuse of the procedure as there is a careful checking of who the HRDs are and what their circumstances are. It is easier to do this quickly where international NGOs such as Front Line have been working with the HRDs or where relevant diplomatic representatives have been maintaining contact with HRDs in conformity with the EU Guidelines.

There are terms and conditions attached to the ‘Facilitated Visa procedure’, including placing limitations on the number of visas granted to human rights defenders. Front Line has also received funding from the Irish Government to provide financial support for the nine HRDs who obtained a visa under this procedure.

2. The Common Consular Instructions (CCI)

At the end of 2006, Front Line conducted a research into EU Member States' policies and practices in issuing visas for HRDs in cases of immediate danger or in need of respite. The research reveals that, confronted with the question of visa for temporary relocation, EU Member States refer to the Common Consular Instructions (CCI) as well as to their national law like Alien Acts. The CCI, part of the Schengen Acquis, are the current basic instrument governing the procedures and conditions for the issue of uniform visas (short-stay visas, transit visas and airport transit visas) and visas with limited territorial validity. The Finnish presidency of the EU, through its delegation to the Council Visa Working Party, explained to Front Line that it considered the CCI to be in correlation with the Council recommendations on the first review of the implementation of the EU Guidelines on HRDs, and therefore that there was no need to discuss visa schemes for specific categories.

CCI are based on the provisions of Chapter 3 (sections 1 and 2) of the Convention Implementing the Schengen Agreement of 14 June 1985. Note that visas for visits exceeding three months remain subject to national procedures and only authorise the holder to stay in the one national territory.

No other EU Member State than Ireland and Spain declare having a specific procedure to issue visas for temporary relocation of HRDs. But most EU Member States declare that, if they do not have specific procedure or formal arrangements in this respect, they are aware of the situation of HRDs and in a position to deliver visas on a case-by-case basis, with a territorial validity for those at immediate risk.

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2.1. Visas with limited territorial validity on humanitarian grounds

According to section V.3. of the Common Consular Instructions, it is possible for the diplomatic missions and consular posts of the Member States to grant visas with a limited territorial validity (LTV) in exceptional cases on account of urgency, on humanitarian grounds. In this case, the mission or post does not consult with the central authority of one or more other Contracting Parties to the Schengen Convention. This makes possible to grant visas to HRDs in the situations considered by Front Line.

It is mainly the interpretation of the notion of humanitarian grounds that allows Member States to issue visas for HRDs cases. But the notion of humanitarian grounds does not explicitly refer to HRDs cases and the delivery of such visas is at the discretion of consular and central authorities, and is not always based on clear criteria.

2.2. Visas valid for one year

The CCI give the possibility to issue visas valid for one year, entitling a three-month stay during any half-year and several entries. This might also give the possibility to grant visas to HRDs in the situations considered by Front Line. A visa valid for one year may be issued to persons providing the necessary guarantees and to persons in whom the Contracting Parties have shown a particular interest. In exceptional cases, a visa valid for more than one year, but for no more than five years, may be issued to certain categories of person for several entries. Good relations with international, regional and local NGOs as well as with human rights defenders in the country concerned might facilitate this.

3. Limitations of current practices in case of urgency

In emergency situations the duration of the visa delivery process is critical. Although some countries have efficient and fast procedures in place to grant visas to HRDs in need of respite, these are insufficient in responding to emergency situations. Some countries stress that they can already deliver visas within a very short period of time (up to 48 hours according to one country), however human rights organisations working on behalf of human rights defenders are often obliged to ask the embassies to bypass certain procedures in order to speed up the delivery of a visa. Front Line acknowledges that, although possible, taking speedy decisions is often difficult since embassies are obliged to assess in depth the risks faced by the individual human rights defender who is seeking a temporary relocation visa.

In practice consular offices can decide by themselves to accelerate the normal process of issuing a uniform visa but the existence of visa applications (Schengen) requiring consultation with the national central authority and the authority of one or more other Contracting Parties stands in the way of a quick delivery of visas. A decision usually requires the authorization of the Ministry. Moreover, the list of third countries whose nationals are subject to such consultations (annex 5 of CCI) is officially “restraint EU”, which means information is still confidential.

Moreover, the current informal practices - sometimes quite confidential - are at the discretion of the consular authorities in the country of origin of the HRD, are not obligatory nor based on clear criteria. There are no guarantees or assurances of a quick and positive decision for each application. Each attempt to get a visa assumes an uncertain and variable character. Whereas visa policy is now, for the Contracting Parties to the Schengen Convention, a matter managed at European level with a uniform visa procedure, the decision itself and particularly the time one can expect to receive this decision can vary considerably between different consular offices, which oblige the applicants and human rights organisations to try to choose the “right” consular office to apply to.

Granting a visa for temporary relocation to a HRD might be easier once EU Member States have exchanged on their practices in a transparent way, and learnt from each other's policy towards a
better protection of HRDs at immediate risk or in need of respite.

4. The case of Norway

The Norwegian Government has recently adopted guidelines for systematising and strengthening the efforts of its foreign service missions in supporting human rights defenders. These guidelines mention specifically the issue of visas for HRDs, whereas the EU Guidelines do not.

If the situation requires that the HRD leave the country, the Norwegian mission can support the stay in a neighbouring country or invite HRDs for training courses or conferences abroad. However, the Norwegian guidelines point out there can be problems in obtaining visas for the host country. That's why, in extreme cases, Norway can consider allowing HRDs to stay in Norway for a limited period of time, for study, research or internship at a NGO based in Norway.

VI. COMMUNITY CODE ON VISAS (CCV)

With the aim of developing an effective visa policy, the Commission was invited to review the Common Consular Instructions. It has proposed to establish a Community Code on Visas (CCV) that would incorporate all legal instruments governing the conditions and procedures for issuing visas not exceeding three months in any six-month period, thus enhancing transparency and clarifying existing rules, introducing measures intended to increase the harmonization of procedures, strengthen legal certainty and procedural guarantees, with a view to ensuring a comprehensive common policy with equal treatment of visa applicants.

The draft Regulation⁷ for a Community Code on Visas was adopted by the Commission on 19 July 2006 and passed on Council and Parliament.

The draft CCV suggests to add provisions introducing:
- a maximum issuing time;
- full transparency as to the list of third countries whose nationals are subject to prior consultation;
- shorter deadlines for the response time in the case of prior consultation;
- a harmonised form providing proof of invitation, sponsorship and accommodation;
- an obligation for Member States to notify and motivate negative decisions.

The draft CCV does not include specific facilitated procedure for human rights defenders. But as the next stage in the establishment of rules for processing visa applications for intended stays in the territory of the Member States, its adoption gives the opportunity to incorporate provisions allowing expressively the issue of visas for human rights defenders in order to organise temporary relocation. LTVs will still exist in the CCV. Even if the full transparency concerning the prior consultations can be considered as an improvement, such consultations will not respond to the needs of HRDs at immediate risk if the delivery process is not speeded up in an efficient way.

VII. OUTSTANDING QUESTIONS

The continued practice of informal and occasional granting of visas leads to uncertainty for HRDs and, in the case of human rights organisations, uncertainty over to what extent they can protect human rights defenders at risk. It also results in human rights defenders and human rights organisations desperately searching for the most favorable consular to apply for a visa. This can consume huge amounts of time and energy from the side of HRDs and consular officials. In emergency cases, these considerations can cause delays and therefore have disastrous effects on

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the security of HRDs.

A formalized and structured practice of granting temporary relocation visas would also instill confidence and reassure human rights defenders that there are opportunities for protection.

Having said that, the remaining question is: what can be realistically achieved at Member State and EU level to better protect HRDs at risk through temporary relocation visas? The following sub-questions may be considered:

➢ Is the Irish 'Facilitated Visa' Procedure for HRDs or the Spanish programme to support HRDs at risk transferable to other EU Member States?

➢ Should this issue of temporary relocation visa be a matter for the Member States or should it be discussed at EU level with a view to setting common criteria or even defining a common facilitated procedure for HRDs?

➢ To speed up the consultation process, could HRDs be considered as a specific group with specific needs in the framework of the consultation process for uniform visas, valid for the territory of all the Contracting Parties to the Schengen Convention?

➢ In the context of the upcoming adoption of the Community Code on Visas and the practical guidelines for its implementation, could HRDs be considered as a specific group with specific needs under the procedure for humanitarian visas with a limited territorial validity?

➢ Besides the uniform short-stay visa and humanitarian visa, is granting multiple entry visas to HRDs at risk a solution?

➢ Criteria: how to make them clearer and more transparent? For example, is it foreseen that the list of third countries whose nationals are subject to prior consultation be made public before the formal adoption of the Community Code on Visas (CCV)?