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REPORT

on the initiative by the Republic of Portugal for adoption of a Council Regulation on the period during which third-country nationals exempt from visa requirements are free to travel within the territory of the Member States (8210/2000 – C5-0286/2000 – 2000/0806(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Pernille Frahm

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, 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 except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 9 June 2000 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative by the Republic of Portugal for adoption of a Council Regulation on the period during which third-country nationals exempt from visa requirements are free to travel within the territory of the Member States (8210/2000 – 2000/0806(CNS)).

At the sitting of 16 June 2000 the President of Parliament announced that she had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy for its opinion for (C5-0286/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Pernille Frahm rapporteur at its meeting of 14 September 2000.

It considered the initiative by the Republic of Portugal and the draft report at its meetings of 10-12 October 2000, 5-6 February 2001 and 26-27 February 2001.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Graham R. Watson chairman; Bernd Posselt and Robert J.E. Evans, vice-chairmen; Pernille Frahm, rapporteur; Charlotte Cederschiöld, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giorgos Dimitrakopoulos, Francesco Fiori (for Enrico Ferri pursuant to Rule 153(2)), Vitaliano Gemelli (for Rocco Buttiglione pursuant to Rule 153(2)), Jorge Salvador Hernández Mollar, Margot Keßler, Timothy Kirkhope, Jean Lambert, Baroness Sarah Ludford, Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Heide Rühle (for Patsy Sørensen pursuant to Rule 153(2)), Ingo Schmitt, Charles Tannock (for Daniel J. Hannan pursuant to Rule 153(2)), Anna Terrón i Cusí, Maurizio Turco, Christian Ulrik von Boetticher, Jan-Kees Wiebenga.

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy decided on 3 July 2000 not to deliver an opinion.

The report was tabled on 28 February 2001.

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

LEGISLATIVE PROPOSAL

Initiative by the Republic of Portugal for adoption of a Council Regulation on the period during which third-country nationals exempt from visa requirements are free to travel within the territory of the Member States (8210/2000 – C5-0286/2000 – 2000/0806(CNS))

The initiative is rejected.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative by the Republic of Portugal for adoption of a Council Regulation on the period during which third-country nationals exempt from visa requirements are free to travel within the territory of the Member States (8210/2000 – C5-0286/2000 – 2000/0806(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative by the Republic of Portugal (8210/2000¹),
 - having regard to Article 62(3) of the EC Treaty,
 - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0286/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0075/2001),
1. Rejects the initiative by the Republic of Portugal;
 2. Calls on the Republic of Portugal to withdraw its initiative;
 3. Instructs its President to forward its position to the Council and Commission, and the government of the Republic of Portugal.

¹ Not yet published in OJ.

EXPLANATORY STATEMENT

On 2 February 2000 the Portuguese Presidency submitted an initiative concerning the period during which nationals of third countries who are exempt from the visa requirement can travel freely within the territory of the Member States (that is to say, the Schengen Member States, as is made clear by Article 3 of the initiative). Although no explanatory statement was provided with this initiative, it was explained to the Committee that the intention of this initiative is to regulate the problem of bilateral agreements, which may extend the period of travel to six or nine months or even more.

The Commission has raised a number of concerns about the initiative, with which the rapporteur agrees. The rapporteur is therefore concerned that the adoption of this Portuguese initiative could:

- i) create a lack of coherence in the rules enabling third-country nationals to travel within the Schengen Member States, and
- ii) introduce a substantial derogation from the relevant Treaty provision, Article 62(3).

The Commission Scoreboard¹ indicates that the Commission intends to propose measures on the freedom to travel within the territory of the Member States (p.33) in April 2001 and the Commission services have indicated that the proposal may be available before that date.

1. Lack of coherence in the rules enabling third-country nationals to travel within the Schengen Member States

The current Schengen rules cover three categories of third country nationals which have a right to travel within the Member States: those required to have a visa, those exempt from a visa and those who have a residence permit. Furthermore, almost all the conditions governing internal circulation are applied in an identical manner to all three categories by Chapter 4 Title II of the Schengen Convention.

The Portuguese initiative covers only one category: third country nationals exempt from the visa requirement, thereby fragmenting the right to travel of third country nationals without indicating to what extent these rules replace, substitute or modify the Schengen acquis and how the system would remain coherent.

Article 1 of the Portuguese initiative rephrases Article 20(1) of the Convention without any modification to the substance. Therefore, there does not seem to be any "effet utile" of this measure. On the other hand, it creates some confusion given that Article 20(1) of the Schengen Convention establishes the conditions for free circulation by referring to the conditions of access to the territory set out in Article 5(1) of the Schengen Convention, with the result that the initiative would no longer respects the coherence of the Schengen system as regards the conditions for access to the territory and circulation within the Schengen area.

Furthermore, the Portuguese initiative does not make any reference to the fact that

¹ Biannual update of the Scoreboard to review progress on the creation of an area of "Freedom, Security and Justice" in the European Union, COM(2000) 782.

individuals, who are themselves third country nationals, and are family members of an EU national cannot be subject to all the conditions in Article 1 of the initiative.

2. Substantial derogation from Article 62(3) of the Treaty

Article 2 of the Portuguese initiative seeks to regulate the "difficult issue" of bilateral agreements with third countries which were previously authorised by Article 20(2) of the Schengen Convention. Again the initiative does not indicate whether it replaces or amends Article 20(2) of the Schengen Convention.

The new Article establishes the principle of exclusive Community competence for bilateral agreements which can be welcomed. The text itself appears to be a mandate for negotiations without however specifying the conditions on which the period during which third country nationals may travel freely may be extended.

Most importantly, the solution proposed would introduce a derogation from the Treaty provision, Article 62(3), by permitting an extension of the period of three months. Article 62(3) itself does not foresee the possibility of such a derogation. Therefore, although this initiative was intended to regulate an inconsistency between the Schengen acquis and the Treaty, this does not appear to be the result.

Since Article 62(3) of the Treaty does not foresee the possibility of extending beyond three months the period during which a third country national exempt from the visa requirement can move freely within the Member State, it could be argued that this initiative should be based on a different legal base for the initiative (the recitals refer to the immigration policy which is related to different articles). However, this proposal does not fit easily into the other Treaty provisions.

Conclusion

If the Portuguese initiative clearly provided some added value it would worth considering the possibility of amending the legal base but given the fragmentation and incoherence that would result from treating one category (those exempt from the visa requirement) separately from the other two categories (those subject to the visa requirement and those with residence permits), the rapporteur is proposing that the Parliament rejects this initiative, rather than trying to correct all the problems raised by it, and that the Committee waits for the proposal on this subject to be presented by the Commission.