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**A5-0455/2001**

19 December 2001

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## **REPORT**

on the proposal for a Council regulation on the conditions in which third-country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months  
(COM(2001) 388 – C5-0350/2001 – 2001/0155(CNS))

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

Rapporteur: Margot Keßler

### ***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)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 24 July 2001 the Council consulted Parliament, pursuant to Article 67(1) of the EC Treaty on the proposal for a Council regulation on the conditions in which third-country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months (COM(2001) 388 – - 2001/0155(CNS)).

At the sitting of 3 September 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0350/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Margot Keßler rapporteur at its meeting of 3 September 2001.

It considered the Commission proposal and the draft report at its meetings of 15 October 2001, 3 December 2001 and 18 December 2001.

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

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Margot Keßler, rapporteur; Niall Andrews, Mary Elizabeth Banotti, Maria Berger (for Gerhard Schmid), Hans Blokland (for Ole Krarup), Christian Ulrik von Boetticher, Mario Borghezio (for Frank Vanhecke), Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Marco Cappato, Charlotte Cederschiöld, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2)), Glyn Ford (for Michael Cashman), Anna Karamanou, Timothy Kirkhope, Eva Klamt, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, Minerva Melpomeni Malliori (for Martin Schulz), Emilia Franziska Müller (for Bernd Posselt pursuant to Rule 153(2)), Hartmut Nassauer, Arie M. Oostlander (for Daniel J. Hannan), Elena Ornella Paciotti, Neil Parish (for Jorge Salvador Hernández Mollar pursuant to Rule 153(2)), Paolo Pastorelli, Hubert Pirker, Martine Roure (for Adeline Hazan), Giacomo Santini (for Enrico Ferri pursuant to Rule 153(2)), Patsy Sørensen, Joke Swiebel, Fodé Sylla, Anna Terrón i Cusí and Gianni Vattimo.

The Committee on Petitions decided on 12 September 2001 not to deliver an opinion.

The report was tabled on 19 December 2001.

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

## LEGISLATIVE PROPOSAL

**Proposal for a Council regulation on the conditions in which third-country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months (COM(2001) 388 – C5-0350 – 2001/0155(CNS))**

The proposal is amended as follows:

Text proposed by the Commission <sup>1</sup>	Amendments by Parliament
Amendment 1 Title	
Proposal for a Council <b>directive</b>	Proposal for a Council <b>regulation</b>

### *Justification*

*The text is sufficiently specific. The legal instrument of a directive would delay the application of the legislation owing to the need to transpose it into national law. This legal act will also replace, inter alia, Regulation 1091/2001 which has already entered into force. The legal instrument chosen must therefore also be a regulation.*

### Amendment 2 Article 5, paragraph 1, introduction

Third-country nationals holding a uniform visa shall travel freely in the territory of all Member States throughout the period of validity of such visa, provided they:

Third-country nationals holding a uniform visa shall travel freely in the territory of all Member States throughout the period of validity of such visa, provided they ***fulfil the conditions laid down by Article 5(1), of the Schengen Implementing Convention in respect of crossing external borders.***

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<sup>1</sup> OJ C ...

### *Justification*

*For the sake of legal clarity, it should be made plain that the conditions laid down in this Article are not new but are taken from Article 5 of the Schengen Implementing Convention.*

### Amendment 3 Article 6, paragraph 1

***Third-country nationals not subject to a visa requirement shall travel freely within the territories of the Member States for a maximum period of three months during the six months following the date of first entry***, provided that they fulfil the conditions laid down by Article 5(1)(a), (c), (d) and (e).

***Within a period of six months following the date of first entry, third country nationals not subject to a visa requirement shall travel freely within the territories of the Member States for a maximum period of three months in total*** provided that they fulfil the conditions laid down by Article 5(1)(a), (c), (d) and (e).

### *Justification*

*The proposal does not make clear from which point in time the six-month period begins. It must also be clarified that the three months freedom to travel within six months may also be an aggregate period.*

### Amendment 4 Article 7, paragraph 1

1. Third-country nationals who hold valid residence permits issued by one of the Member States shall travel freely for up to three months within the territories of the other Member States, provided they carry their residence permit, fulfil the conditions referred to in Article 5(1)(a), (c) and (e) and are not on the national list of alerts of the Member State concerned.

1. Third-country nationals who hold valid residence permits issued by one of the Member States shall travel freely for up to three months ***in total within a period of six months*** within the territories of the other Member States, provided they carry their residence permit, fulfil the conditions referred to in Article 5(1)(a), (c) and (e) and are not on the national list of alerts of the Member State concerned.

### *Justification*

*Third country nationals in possession of a residence permit should not be in a worse position than those who obtain a uniform visa repeatedly. It must therefore also be clarified here that the freedom to travel for three months is within a reference period of six months and that the three months may be an aggregate period.*

### Amendment 5 Article 7, paragraph 3

3. Without prejudice to Article 18 of the Schengen Implementing Convention, paragraph 1 shall also apply to third-country nationals holding a long-stay visa issued by a Member State. ***Such nationals shall travel freely only from the date of submission of the application for residence permit to the Member State which issued the long-stay visa. This application shall be confirmed by a stamp placed in the travel document by the authority to which the request was presented.***

3. Without prejudice to Article 18 of the Schengen Implementing Convention, paragraph 1 shall also apply to third-country nationals holding a long-stay visa issued by a Member State, ***provided that the visa was issued in compliance with the common conditions and criteria adopted pursuant to the relevant provisions of Chapter 3, Section 1 of the Schengen Implementing Convention..***

### *Justification*

*Third country nationals holding a long-stay visa should also be able to travel within the territories of the Member States before submitting an application for a residence permit. Not to allow this until an application was made would be reverting to the present legal situation. Neither are there any grounds for discriminating against this category of third country national as opposed to any other covered by this legal act in respect of the point at which they become free to travel. In other respects, the legal situation created by the French initiative (Regulation 1091/2001) should be maintained.*

### Amendment 6 Article 15 a (new)

***Subject to the criteria and arrangements to be determined in accordance with the procedure laid down in Article 67 of the***

*EC Treaty, the contracting parties shall compensate each other for any financial imbalances resulting from the compulsory expulsion provided for in Article 15 where such expulsion cannot be effected at the third-country national's expense.*

*Justification*

*Article 24 of the Schengen Implementing Convention incorporated here goes hand in hand with Articles 19-23 of the Schengen Implementing Convention which have been incorporated in the proposal and which should be deleted from the Implementing Convention. As, moreover, it refers to Article 23 (Article 15 of the proposal), it should be incorporated in the proposal. The arrangements should be determined in accordance with the procedure laid down in Article 67 of the EC Treaty and decided in the same way as measures to ensure cooperation between the Member States' authorities on visas, asylum and immigration (Article 66 of the EC Treaty).*

Amendment 7  
Article 17, paragraph 2

2. Articles 19 to 23 **and** 25 are deleted **and replaced**.

2. Articles 19 to 25 are deleted **with reference to this Regulation**.

*Justification*

*Article 24 goes hand in hand with Articles 19-23 and also refers to Article 23. As these are incorporated in the proposal, Article 24 should also be included.*

Amendment 8  
Annex I, paragraph 3, subparagraphs 1 and 2

In part I, item 2, the following point is added  
:

In part I, item 2, the following point is added  
:



« 2.5. *Specific travel authorisation: Specific travel authorisation enabling a third-country national to request entry into the territory of the Member States for reasons other than immigration, with a view to an uninterrupted stay or to several stays the total duration of which does not exceed six months during any given period of twelve months from the date of first entry without remaining more than three months in the territory of the same Member State.*

« 2.5. *Specific travel authorisation pursuant to Article 8 ff of Regulation (EC) No .../2001 :*

*Specific travel authorisation pursuant to Article 8 ff of Regulation (EC) No .../2001 enabling a third-country national to request entry into the territory of the Member States for reasons other than immigration, with a view to an uninterrupted stay or to several stays the total duration of which does not exceed six months during any given period of twelve months from the date of first entry without remaining more than three months in the territory of the same Member State.*

#### *Justification*

*Necessary for clarification.*

#### Amendment 9 Annex I, paragraph 4

In part IV, the following point is added :

*The specific travel authorisation shall be issued only if the following conditions laid down by the following articles are met :*

In part IV, the following point is added :

*The specific travel authorisation **pursuant to Article 8 ff of Regulation (EC) No .../2001** shall be issued only if the following conditions laid down by the following articles are met :*

#### *Justification*

*Necessary for clarification.*

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the proposal for a Council regulation on to the conditions in which third-country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months (COM(2001) 388 – C5-0350 – 2001/0155(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2001) 388<sup>1</sup>),
  - having been consulted by the Council pursuant to Article 67(1) of the EC Treaty (C5-0350/2001),
  - 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 (A5-0455/2001),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C ...

## **EXPLANATORY STATEMENT**

### **Introduction:**

The Commission's proposal for a directive covers two main areas for regulation.

Firstly, regulation and harmonisation of the conditions under which third-country nationals have the freedom to travel within the territory of the Member States during a period of no more than three months. This fulfils the provisions of the Amsterdam Treaty which instructed the Council to determine those conditions within five years of the entry into force of that Treaty.

Secondly, the introduction of a completely new legal instrument, the 'specific travel authorisation', which enables the holder to travel freely for up to six months if specific conditions are met.

### **On freedom to travel for third-country nationals for a period of three months**

#### **Rules on freedom to travel**

The proposal providing for freedom to travel for a period of three months for third-country nationals replaces in large part the existing Schengen acquis (Articles 19 to 23, Article 25 of the Schengen Implementing Convention), and Article 18 of the Schengen Implementing Convention as amended by Regulation (EC) No. 1091/2001. The conditions which holders of a uniform visa must fulfil in order to travel freely are not taken verbatim from Article 5(1) of the Schengen Implementing Convention but is a reflection of the substance of that Article which sets out the conditions for crossing the external borders, and to which article 19 of the Schengen Implementing Convention hitherto referred, . Neither has there been any substantive change to the rules on freedom to travel for third-country nationals not subject to a visa requirement and in possession of a long-stay residence permit. There are new rules, however, for holders of a long-stay visa issued by a Member State who are not yet in possession of a residence permit. The Commission proposes that these third-country nationals should not be able to travel freely until they have submitted an application for a residence permit in the Member State which issued the long-stay visa.

#### **Assessment**

The common rules governing the conditions under which third-country nationals enjoy the freedom to travel are to be welcomed. In committee, the piecemeal attempts to lay down rules by way of a French and a Portuguese initiative were subject to repeated criticism; in particular there was a demand for a more comprehensive and integrated approach to facilitate freedom of movement within the Schengen area for third-country nationals. The Portuguese initiative was even rejected by the committee and Parliament on a proposal by the rapporteur to await the submission of a proposal on the subject by the Commission.

In this respect, the proposal lives up to expectations. The common rules governing the freedom to travel of the three categories of third-country nationals (no visa requirement, visa requirement or possession of a residence permit) prevent fragmentation and incoherence, and are logical and necessary for legal certainty and legal clarity. Moreover, there is a need for

new rules to give effect to Community legislation deriving from the Treaty of Amsterdam (Article 62(3) of the EC Treaty).

It is difficult to understand, however, why the legal instrument of a Directive was chosen rather than a Regulation. As a Directive requires transposition into national law, the application of the legislation will be delayed for an indefinite period. This appears even more questionable since part of the area covered by this proposal is already governed by Regulation (EC) No. 1091/2001, which is superseded by this legislation. According to the present wording of the proposal, Regulation (EC) No. 1091/2000 is simply repealed, which would create a legal vacuum in the area governed by the Regulation during the period between the Directive entering into force and its transposition into national law. Although it would be possible to introduce transitional provisions by way of an amendment and apply the Regulation until the Member States had transposed the Directive, this would mean that the instrument would be applied differently in the Member States when it is actually meant to guarantee uniform application in all Member States. A Regulation is consequently the more appropriate instrument (Amendment 1).

Another problem with the proposal - as referred to above - is that the new legal instrument not only takes its place alongside the Schengen Implementing Convention but at the same time replaces parts of that Convention. It is particularly important therefore to make clear the links between the proposal and the Schengen Implementing Convention but also the boundaries between them. The points concerned here are the conditions which holders of a uniform visa must fulfil under Article 5(1) in order to be free to travel, to which reference is subsequently made in regard to third-country nationals not requiring a visa and third-country nationals with a residence permit or waiting for a residence permit. These criteria are already laid down by Article 5 of the Schengen Implementing Convention in relation to crossing the external borders, which remains intact.

Although reproducing the criteria, with the wording adapted to the new circumstances, clarifies the text, it is still not clear that they are the existing criteria in the Schengen Implementing Convention. When other EC legal instruments are issued to transpose the Schengen Implementing Agreement, the risk arises that the fact that both provisions exist in tandem will be forgotten and contradictions then ensue. For the sake of maximum legal clarity, reference should at least be made to the parallels with the Schengen Agreement, and ideally the corresponding wording should be used (Amendment 2).

The proposal in its present form deletes Articles 19 to 23 of Chapter 4, leaving only Article 24 of Chapter 4, 'Conditions for the Movements of Aliens', concerning compensation for financial imbalances resulting from expulsions. The specific link between the two articles means that the entire section must be incorporated in the new legislation (Amendment 6).

The Commission makes clear that all three categories of third country nationals should receive the same treatment, i.e. that they should all be able to travel freely for three months within a period of six months. The fact that Article 7(1) of the proposal lays down a maximum period of 3 months for residence permit-holders without reference to the six-month period must be corrected. Neither is it logical for third country nationals with a residence permit to be in a worse position than those not requiring a visa or those who obtain a uniform visa repeatedly (Amendment 4). It is also the Commission's wish that the three months during which third country nationals are free to travel may be taken as a single period or as several

shorter periods within six months. This is not clear from the current wording, however. (Amendments 3 and 4).

Third country nationals who have a long-stay visa should be able to travel within the territory of the Member States before applying for a residence permit. Only to allow freedom of travel once an application has been submitted would be to revert to the present legal situation since, following the amendment of Article 18 of the Schengen Implementing Convention by the French initiative (Regulation (EC) 10/91/2001), third country nationals in this category are free to travel within the territory of the Member States from the first day on which their visa is valid. There are no obvious grounds why the rules on the point at which the period of freedom to travel begins for these particular third country nationals should be any different from those concerning the other third-country nationals covered by the same legislation. The conditions governing the issue of visas under Chapter 3, Section 1 of the Schengen Implementing Convention cannot, however, be ignored. A security loophole would arise if third country nationals with a national three-month visa were able to travel within the territory of the Member States without fulfilling the same criteria required of third country nationals with a uniform visa (e.g. the obligation to consult under Article 17(2) of the Schengen Implementing Convention). Regulation (EC) 10/91/2001 has already taken this into account (Amendment 5).

### **Specific travel authorisation**

The specific travel authorisation introduces a completely new legal instrument. It enables third country nationals to obtain authorisation in their own country to travel freely for six months within a period of 12 months, though they may stay no longer than 3 months in the same Member State.

Although the EC Treaty makes no express provision for a specific travel authorisation, there is a practical need in the Member States, in particular cases such as tourists, to authorise a longer stay than three months in the territory of the Member States. Your rapporteur is therefore in favour of providing for that possibility.