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REPORT

on the initiative of the Republic of Austria with a view to adopting a Council Regulation establishing the criteria for determining the States which qualify as safe third States for the purpose of taking the responsibility for examining an application for asylum lodged in a Member State by a third-country national and drawing up a list of European safe third States
(14712/2002 – C5-0010/2003 – 2003/0802(CNS))

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

Rapporteur: Olle Schmidt

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.

CONTENTS

	Page
PROCEDURAL PAGE	4
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	6

PROCEDURAL PAGE

By letter of 20 January 2003 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative of the Republic of Austria with a view to adopting a Council Regulation establishing the criteria for determining the States which qualify as safe third States for the purpose of taking the responsibility for examining an application for asylum lodged in a Member State by a third-country national and drawing up a list of European safe third States (14712/2002 – 2003/0802(CNS)).

At the sitting of 29 January 2003, the President of Parliament announced that he had referred the initiative of the Republic of Austria to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0010/2003).

The committee appointed Olle Schmidt rapporteur at its meeting of 18 February 2003.

It considered the initiative of the Republic of Austria and draft report at its meetings of 25 March, 2 June, and 11 June 2003.

At the last meeting it adopted the draft legislative resolution by 27 votes to 2 with 0 abstentions.

The following were present for the vote, Johanna L.A. Boogerd-Quaak (vice-chairman), Giacomo Santini (vice-chairman), Olle Schmidt (rapporteur) Alexandros Alavanos (for Ole Krarup pursuant to Rule 153(2)), Alima Boumediene-Thiery, Mogens N.J. Camre (for Roberta Angelilli), Marco Cappato (for Mario Borghezio), Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Lissy Gröner (for Gerhard Schmid pursuant to Rule 153(2)), Ewa Hedkvist Petersen (for Michael Cashman), Margot Keßler, Eva Klamt, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Lucio Manisco (for Ilka Schröder), Marjo Matikainen-Kallström (for Charlotte Cederschiöld), Bill Newton Dunn, Marcelino Oreja Arburúa, Hubert Pirker, Martine Roure, Heide Rühle, Patsy Sørensen, Anna Terrón i Cusí, Maurizio Turco and Christian Ulrik von Boetticher.

The report was tabled on 13 June 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative of the Republic of Austria with a view to adopting a Council Regulation establishing the criteria for determining the States which qualify as safe third States for the purpose of taking the responsibility for examining an application for asylum lodged in a Member State by a third-country national and drawing up a list of European safe third States

(14712/2002 – C5-0010/2003 – 2003/0802(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Republic of Austria (14712/2002)¹,
 - having regard to Article 63 of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, according to which it was consulted by the Council (C5-0010/2003),
 - having regard to Rules 67 and 61(4) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0210/2003),
1. Rejects the initiative of the Republic of Austria;
 2. Calls on the Council and Commission to submit to it as swiftly as possible the modified proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status², and to arrive at a solution to the issue of safe third States within that framework;
 3. Calls on the Republic of Austria to withdraw its initiative;
 4. Instructs its President to forward Parliament's position to the Council and Commission, as well as the Government of the Republic of Austria.

¹ OJ C 17 E, 24.1.2003, p. 6.

² OJ C 291 E, 26.11.2002, p. 143.

EXPLANATORY STATEMENT

The European Parliament has been consulted on the initiative of the Republic of Austria with a view to adopting a Council Regulation establishing the criteria for determining the States which qualify as safe third countries for the purpose of taking the responsibility for examining an application for asylum lodged in a Member State by a third country national and drawing up a list of European safe third States (14712/02).

As rapporteur on this dossier, I propose to reject the initiative of the Republic of Austria for the reasons explained below.

One of the main priorities in the field of Justice and Home Affairs is the establishing of a Common European Asylum System, which should be based on the full and inclusive application of the 1951 Geneva Convention and the principle of non-refoulement.

With a view to the Austrian initiative, any contribution to further the establishment of a Common European Asylum System is therefore in principle to be welcomed.

However, for a number of reasons I do not believe that Parliament should support the initiative:

Scope

The initiative defines a safe third State as a state that has ratified the 1951 Geneva Convention and the European Convention for the protection of Human Rights and Fundamental Freedoms as well as the 1966 International Covenant on Civil and Political Rights and where effective protection exists in relation to these principles.

The list of European safe third states includes the current EU-15 Member States by default, the 12 accession countries as well as Norway, Iceland and Switzerland.

However, out of the 15 countries that are mentioned on the list, only Switzerland would actually remain on the list:

- Following the signing of the Accession Treaties on 16 April 2003 in Athens by the **10 accession countries** (excluding Romania & Bulgaria), it should be remembered that the Dublin II Regulation and Schengen Acquis will apply for these countries.
- **Romania and Bulgaria** would not be covered by the Regulation until the Council has made a decision “at a later date” (Article 6, 2).
- With regard to **Norway and Iceland**, via the Dublin II Regulation and Schengen Acquis the Regulation will also be applicable once they have notified that they accept its content and agree to implement it in their national legal order.¹

¹ This follows the Agreement between the EC and Norway and Iceland relating to the Dublin system, as approved by the Council Decision (2001/258/EC). This Agreement provides that the Dublin Convention, or any other legislative measures relating to such matters, shall be implemented by Norway and Iceland from the same time as by the Member States, unless they explicitly state otherwise (see Article 4 of the Agreement). OJ 03.04. 2001, L 93/38.

For these reasons only Switzerland would remain on the list. The scope of having such a list is therefore very limited, given that statistics provided for 2002 shows that only 0,3 % of all illegal border crossings into Austria were from Switzerland.¹

Moreover, the initiative calls upon the Commission to monitor the third states included on the list with regard to their compliance with the aforementioned principles, but the initiative fails to put forward a specific procedure for removing or adding countries to the list. (Article 4)

Respecting the subsidiarity principle, any criteria for drawing up a list of safe third states must be seen as minimum standards, which allow the Member States to enforce higher standards. In addition, only four Member States, UK, Germany, Finland and Denmark, currently have lists of safe third states either by law or administrative practice.

It is therefore questionable whether a Regulation is the most appropriate instrument, as this would force a large majority of the Member States to change their current practice or legislation to embrace a list of safe third countries without a prior and principal political debate.

Political context

It should be stressed from the outset that as a fundamental principle, the Geneva Convention allows any applicant for asylum to have his or her case individually examined. Even if a list of safe third states were to be established, an application for asylum cannot be automatically rejected, as this would override the Geneva Convention. Moreover, the Austrian initiative does not seek to resolve how the establishment of a list by Community law relates to the principle of individual examination, but leaves it up to the Member States to resolve this question (Article 5)².

Having regard to the conclusions from the Tampere, the Laeken and the Seville European Councils, much is still to be done with regard to establishing a Common European Asylum System.

The Austrian initiative is a contribution to this development, albeit a very limited one in scope. It should be noted that the question of safe third states is addressed in the Directive on asylum procedures³, Articles 27 & 28, and Annex I. Although that Directive does not set up a common list of safe third countries, it would be appropriate – if indeed a common list is desirable – if the question were to be addressed within the frame of that Directive, which is expected to be adopted at the latest by the end of 2003 according to the Conclusions at the Seville summit.

It will be even more difficult for the Greek and Italian Presidency to meet this deadline set by the European Council if the Austrian initiative has to be examined, and furthermore it does seem rather futile as upon the adoption of the Directive on asylum procedures, the Austrian initiative would be repealed (Recital 11).

¹ Note provided by the Austrian Representation to the EU, 25 March 2003.

² Is it a rebuttable presumption (as in e.g. UK, Finland and Denmark) or basically non-rebuttable (e.g. Germany)

³ Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ C0291/2002, 26.11.2002.

This, however, leads to the question as to why Parliament has not been re-consulted on the Directive, as the Commission put forward a modified proposal on 18 June 2002.¹ In accordance with the Rules of Procedure, Rule 65 and 71, your rapporteur formally asks the Council to be re-consulted on the modified proposal for a Directive, so as to ensure that Parliament's prerogatives are fully respected and to pursue the debate on safe third states within the framework of that Directive.

Once again, in the field of JHA it has been proven as a general rule that Member State initiatives are more designed to address national problems and media agendas without consideration of the European general interest. The Austrian initiative even admits that this is one of the main motivations for putting forward the initiative, "recent months have shown a dramatic increase in asylum applicants in the Republic of Austria contrary to the European trend"².

It is much to be preferred if the Community method is adhered to, thus stressing that it is up to the Commission to ensure the cohesion of Community policies and long term planning.

CONCLUSION

For a number of reasons, your rapporteur therefore recommends that the Austrian initiative be rejected:

- it is very limited in scope – it only applies to Switzerland in practice!
- it does not contain a proper review procedure for adding or removing countries from the list
- it does not resolve how the establishment of a list by Community law relates to the Geneva Convention's principle of individual examination
- its concept of safe European third states should not be the object of a separate Regulation - if a common list is in fact deemed desirable - but be addressed within the general framework of the Directive on Asylum procedures
- it would be repealed upon the adoption of the Directive on Asylum Procedures
- it would divert attention away from and possibly delay the adoption of the modified proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Finally, your rapporteur formally calls on the Council to re-consult Parliament on the modified proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.

¹ OJ C0291/2002, 26.11.2002.

² Note from the Austrian delegation, 12454/02, 4 October 2002.