COUNCIL OF THE EUROPEAN UNION

Brussels, 23 November 2004

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COVER NOTE

from:	Presidency
to:	Coreper (2nd part)
Prev.doc.	14497/04 JAI 441 ASIM 41
Subject:	Draft Decision of the Council providing for certain areas covered by title IV of Part three of the Treaty establishing the European Community to be governed by the procedure referred to in Article 251 of that Treaty

Please find attached copy of the draft Council Decision regarding the passage to qualified majority voting and co-decision as foreseen in chapter III paragraph 1.1.2 of the Hague programme adopted by the European Council on 5 November 2004, taking into account the result of the discussions in the meeting of Coreper of 18 November 2004.

DRAFT

Decision of the Council

providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty [1]

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular the second indent of Article 67(2) thereof;

Having regard to the opinion of the European Parliament;

Whereas:

1. Under the Treaty of Amsterdam the European Community acquired the power to adopt measures in the field of visas, asylum, immigration and other policies relating to the free movement of persons, as laid down in Title IV of Part Three of the Treaty establishing the European Community.

2. Under Article 67 of the Treaty, as introduced by the Treaty of Amsterdam, most of those measures were to be adopted by the Council acting unanimously after consulting the European Parliament.

[1] Parliamentary reserve by IRL and UK

3. Under the second indent of paragraph 2, of the same Article 67, the Council, acting unanimously after consulting the European Parliament, must take a decision, after a transitional period of five years following the entry into force of the Treaty of Amsterdam, with a view to providing for all or parts of the areas covered by Title IV to be governed by the procedure referred to in Article 251 of the Treaty.

4. Pursuant to the amendment to the Treaty made by the Treaty of Nice the Council shall, in accordance with the procedure laid down in Article 251, adopt the asylum-related measures provided for in Article 63(1)(2)(a) provided that the Council has, unanimously and after consultation of the European Parliament, adopted Community legislation defining the common rules and basic principles governing those issues, as well as the measures on judicial cooperation in civil matters provided for in Article 65 with the exception of aspects relating to family law; those provisions are not affected by this Decision.

5. Moreover, pursuant to the Protocol on Article 67 of the EC Treaty, annexed by the Nice Treaty to the Treaty establishing the European Community, as from 1 May 2004 the Council shall act by a qualified majority, on a proposal from the Commission and after consulting the European Parliament, when adopting the measures referred to in Article 66 of the Treaty; that Protocol is not affected by this Decision.

6. In addition to that which follows from the Nice Treaty, when approving "the Hague Programme": "Strengthening Freedom, Security and Justice in the European Union" at its meeting on 4 and 5 November 2004 the European Council asked the Council to adopt a decision based on Article 67(2) of the EC Treaty no later than 1 April 2005 to the effect that the Council is required to act in accordance with the procedure laid down in Article 251 when adopting, in conformity with the case law of the Court of Justice relating to the choice of legal basis for community acts, the measures referred to in Article 62(1)(2)(a) and (3) and Article 63(2)(b) and 3(b) of the Treaty.

7. However, the European Council took the view that, pending the entry into force of the Treaty establishing a Constitution for Europe, the Council should continue to act unanimously after consulting the European Parliament when adopting measures in the field of the legal migration of third-country nationals to and between Member States referred to in Article 63(3)(a) and (4) of the Treaty.

8. The transition to co-decision procedures for the adoption of measures referred to in Article 62(1) of the Treaty is without prejudice to the requirement for the Council to act unanimously when taking the decisions referred to in Article 3(2) of the Act of Accession, Article 15(1) of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the application, implementation and further development of the Schengen acquis, Article 4 of the Protocol on the integration of the Schengen acquis into the framework of the European Union and any future accession treaty.

9. The transition to co-decision procedures for the adoption of measures referred to in Article 62(2)(a) of the Treaty is without prejudice to the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

10. Incentive measures to support the action of Member States regarding the integration of third country nationals residing legally in their territories might be adopted by the Council acting in accordance with the appropriate legal basis provided for in the Treaty.

11. As a consequence of the transition to co-decision procedures for the adoption of measures referred to in Articles 62(2) and (3) of the Treaty, the Regulations reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications and for carrying out border checks and surveillance should be amended so as to require the Council to act by qualified majority in those cases.

12. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application.

13. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, those Member States have expressed their wish to take part in the adoption and application of this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

1. As from the 1 [April] [1] 2005 the Council shall act in accordance with the procedure laid down in Article 251 of the Treaty establishing the European Community when adopting measures referred to in Article 62(1)(2)(a) and (3) of that Treaty.

2. As from 1 [April] **[1]** 2005 the Council shall act in accordance with the procedure laid down to in Article 251 of the Treaty establishing the European Community when adopting measures referred to in Article 63(2)(b) and (3)(b) of that Treaty.

[1] Or the first day of the month following the adoption of this Decision, whichever is earlier.

Article 2

Article 251 of the Treaty shall apply to opinions of the European Parliament obtained by the Council before 1 [April] [1] 2005 concerning proposals for measures with respect to which the Council shall act, pursuant to this Decision, in accordance with the procedure laid down in Article 251 of the Treaty.

Article 3

1. In Article 1(1) and (2) of Council Regulation (EC) N° 789/2001 of 24 [April] 2001[1] the words "acting unanimously" shall be replaced by "acting by qualified majority" with effect from 1 [April] [1] 2005.

2 In Article 1(1) of Council Regulation (EC) No 790/2001 of 24 April 2001 [2] the words "acting unanimously" shall be replaced by "acting by qualified majority" with effect from 1 [April] [1] 2005.

Done at

For the Council
the President

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1 OJ L 116 of 26 April 2001, p. 2.
2 OJ L 116 of 26 April 2001, p. 5.