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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the proposal for a Council decision 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 (15130/2004 – C6-0208/2004 – 2004/0816(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jean-Louis Bourlanges

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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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision 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
(15130/2004 – C6-0208/2004 – 2004/0816(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (15130/2004)[1],

– having regard to Article 67(2), second indent, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0208/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2004),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly;

3. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend its proposal substantially.

Text proposed by the Commission	Amendments by Parliament
Amendment 1 Title	
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***	Draft Decision of the Council ***implementing Article 67(2), second indent,*** of the Treaty establishing the European Community

[1] OJ C … / Not yet published in OJ.

Justification

The change of title will be necessary if Parliament extends the scope of the decision to include the jurisdiction of the Court of Justice.

Amendment 2
Recital 7

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.	7. ***The Member States have already agreed, on 29 October 2004, at the time of the signature of the Treaty establishing a Constitution for Europe, that the measures provided for*** in Article 63(3)(a) and (4) of the ***EC*** Treaty ***relating to legal immigration must not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed***.

Justification

Parliament considers that codecision and qualified-majority voting on legal immigration are essential in order to manage the European Union's migration policy. This having been said, since the signature of the Constitutional Treaty it has no longer been possible for legislation in this field to prejudice the rights of the Member States with regard to 'quotas'.

Amendment 3
Recital 10 a (new)

	10a. It is vital and urgent to abolish the limits which Article 68 of the EC Treaty imposes on the jurisdiction of the Court in the fields covered by Title IV of the EC Treaty; the European Council accordingly asked the Commission on 5 November 2004 to submit, after consulting the Court, a proposal for a Council decision establishing, pursuant to Article 225a of the EC Treaty, a specialised panel for actions relating to matters provided for in the said Title IV.

Justification

Article 67(2) of the Treaty permits the Council to abolish the limits to the jurisdiction of the Court of Justice provided for by Article 68. It would therefore be appropriate to delete this article and at the same time institute the procedure for the setting-up of a specialised panel at the Court as permitted by Article 225a of the ECT.

Amendment 4
Article 1, paragraph 2 a (new)

2a. With effect from 1 [January][1] 2005, the Council shall act in accordance with the procedure laid down in Article 251 of the EC Treaty for the purpose of adopting measures referred to in Article 63(3)(a) and (4) of that Treaty. As agreed on 29 October 2004, at the time of the signature of the Treaty establishing a Constitution for Europe, these measures must not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Justification

See the justification for the amendment to Recital 7.

Amendment 5
Article 3 a (new)

Article 3a

Article 68 of the EC Treaty is deleted.

Justification

The deletion of Article 68 (which provides for special arrangements) extends the judicial protection normally provided for in the rest of the Treaty to the policies covered in Title IV.

EXPLANATORY STATEMENT

1. The proposal for a decision which the Council has just forwarded to Parliament is the first instrument implementing Article 67(2) of the ECT, which permits the adoption of qualified-majority voting and the codecision procedure with Parliament for the formulation of most of the policies provided for in Title IV of the ECT (immigration, asylum, crossing of borders, etc.). Once adopted, this decision will increase both democratic legitimacy and the effectiveness of decision-making in fields which until about ten years ago fell outside the remit of the Community and the Union. It also implements a provision in the Amsterdam Treaty, which the Member States confirmed when they signed the Nice Treaty[1], and is a response to a recommendation made by the European Parliament to the European Council on 14 October 2004. But for the determination of the Dutch Presidency, which responded rapidly and effectively to the requests of the Committee on Civil Liberties, Justice and Home Affairs, this bridging clause ('passerelle') could have remained unexploited (like that provided in Article 42 of the Treaty on European Union, incidentally).

The situation which will arise from the adoption of the decision is summarised in the table in the annex, which also shows the other legal bases in Title IV for which codecision has already been adopted, either because of the entry into force of the Nice Treaty or because of the adoption of minimum standards (e.g. asylum policies) or for which it is not possible for codecision to be adopted because specific rules or protocols exist (cf. Article 62(2)(b) and Protocol 35 on administrative cooperation pursuant to Article 66 of the ECT).

2. Having said this, the proposal for a decision ought to be improved in at least two respects:

(a) Firstly by making QMV and codecision applicable to legal immigration as well (cf. Article 63(3)(a) for long stays and Article 63(4) for the rights and conditions applicable to allow people legally resident in one Member State to reside in another Member State). The text submitted to Parliament does not provide for this because of the reservations of such Member States as Germany and Austria, which fear that a policy of 'quotas' may be adopted at European level, which they are opposed to and which was ruled out by the Constitutional Treaty[2].

However, these fears seem excessive, as this Treaty has now been signed and any legislation which violated the Treaty, even during its ratification procedure, by-passing the national

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[1] ***5. Declaration on Article 67 of the Treaty establishing the European Community***
The High Contracting Parties agree that the Council, in the decision it is required to take pursuant to the second indent of Article 67(2):
- will decide, from 1 May 2004, to act in accordance with the procedure referred to in Article 251 in order to adopt the measures referred to in Article 62(3) ***(freedom of movement for third-country nationals for a period of less than three months - ed.) and Article 63(3)****(b)* ***(illegal immigration - ed.)****;*
- will decide to act in accordance with the procedure referred to in Article 251 in order to adopt the measures referred to in Article 62(2)(a) from the date on which agreement is reached on the scope of the ***measures concerning the crossing by persons of the external borders of the Member States****.*
The Council will, moreover, endeavour to make the procedure referred to in Article 251 applicable from 1 May 2004 or as soon as possible thereafter to the other areas covered by Title IV or to parts of them.

[2] *Art. III-267(5). '5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.'*

reservations for which it provides in this field, would be contrary to the Vienna Convention on the Law of Treaties. One way of reassuring these two countries more effectively might be to amend Article 1 of the Decision so as, while adding the legal bases for legal immigration (Articles 63(3)a and 63(4)), to incorporate verbatim the reservation provided for in the Constitutional Treaty.

(b) Secondly, by abolishing the limits to the jurisdiction of the Court imposed in Title IV of the ECT (Article 68). It is well known that these limits were adopted in Amsterdam out of a fear of imposing an excessive workload on the Court which would further increase the time taken to transact the Court's business, which was already quite long, particularly where requests for preliminary judicial rulings on the interpretation of the law were concerned. However, these fears should no longer exist since the Nice Treaty inserted in the ECT Article 225a[1], which makes it possible, when necessary, to create specialised panels (one of which, indeed, has just been set up to hear cases brought by officials at the institutions).

Thus it is desirable:
- firstly to take account of the need to enhance the judicial protection of European citizens and third-country nationals by deleting Article 68 so as to make Title IV subject to the same rules as apply to the other parts of the ECT, and
- secondly, on a proposal by the Commission and in consultation with the Court, to initiate the procedure provided for in Article 225a, as already envisaged by the European Council itself in the Hague Plan[2].

Apart from these two questions, it should be acknowledged that the Dutch Presidency has acted effectively and diplomatically to secure progress. Parliament can only appreciate its commitment and hope that the Council will be able to adopt the decision before the end of the year so that it can enter into force at the very beginning of 2005.

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[1] *Article 225a: 'The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission, may create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas.*
The decision establishing a judicial panel shall lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it. (...)'

[2] *'3.1 European Court of Justice*
The European Council underlines the importance of the European Court of Justice in the relatively new area of freedom, security and justice and is satisfied that the Constitutional Treaty greatly increases the powers of the European Court of Justice in that area. To ensure, both for European citizens and for the functioning of the area of freedom, security and justice, that questions on points of law brought before the Court are answered quickly, it is necessary to enable the Court to respond quickly as required by Article III-369 of the Constitutional Treaty. In this context and with the Constitutional Treaty in prospect, thought should be given to creating a solution for the speedy and appropriate handling of requests for preliminary rulings concerning the area of freedom, security and justice, where appropriate, by amending the Statutes of the Court. The Commission is invited to bring forward - after consultation of the Court of Justice - a proposal to that effect.'

ANNEX

ECT, Title IV – Visas, asylum, immigration and other policies relating to the free movement of persons – Articles 61-69
Policies which (according to informal sources) could be affected by the decision provided for in Article 67(2) of the ECT

Art.	Provision	Current procedure for adoption	Dec. 67(2) ECT	Notes
CROSSING OF BORDERS - VISAS				
62 (1)	No checks on persons at internal borders	Council decides unanimously on a proposal from the COM	*	CODECISION
62 (2) a	Rules and procedures for checks on persons crossing the external border	Council decides unanimously on a proposal from the COM	*	CODECISION
62 (2) b	Rules on visas for visits for a maximum of three months: i) lists + and - third countries iii) model visa	...by way of derogation from Art. 67 (1) and (2) the Council decides by QMV on a proposal from the COM after consulting the EP		
62 (2) b	ii) procedure and conditions for issuing of visas by MS iv) rules for uniform visa	ii) and iv): codecision applicable since 1 May 2004		
62 (3)	Conditions for free movement of persons from third countries for a maximum of three months	Council decides unanimously on a proposal from the COM	*	CODECISION
ASYLUM & REFUGEES				
63 (1) a Asy-lum	Criteria and procedure for determining the MS responsible for considering an asylum application	Codecision once the common rules and essential principles governing these matters have been adopted	Codecision already applies to the next proposals due to the adoption of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.	
63 (1) b	Minimum standards for reception of asylum-seekers	Codecision once the common rules and essential principles governing these matters have been adopted	Codecision already applies to the next proposals due to the adoption of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States. Consequently, the codecision procedure applies in this field.	
63 (1) c	Minimum conditions to be met in order to claim refugee status	Codecision once the common rules and essential principles governing these matters have been adopted	Codecision already applies to the next proposals due to the adoption of the Council directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted	
63 (1) d	Procedure for granting or withdrawing refugee status	Codecision once the common rules and essential principles governing these matters have been adopted	Codecision will apply to the next proposals, as the adoption of the Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status was agreed in April 2004. Its formal adoption will follow the renewed consultation of the EP	

			(particularly regarding the problem of 'safe countries') scheduled for the end of 2004 and the directive should be adopted before the Art. 67 decision. **The recitals in the directive would indicate that any future amendment of the principles laid down in Art. 63, (1)a,b,c d and 63,(2)a WOULD BE SUBJECT TO CODECISION.**
63 (2) a Temporary protection	Granting of temporary protection to displaced persons or persons requiring international protection	Codecision once the common rules and essential principles governing these matters have been adopted	Codecision already applies to the next proposals following the adoption of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.
63 (2) b	Balance of efforts made by the MS	Council decides unanimously on a proposal from the COM	* CODECISION
63 (3) a immigration	Conditions for entry and residence; procedure for issuing visas and long-term residence permits, incl. for purposes of family reunification	Council decides unanimously on a proposal from the COM	Opposition from Germany and Austria to the adoption of codecision and QMV
63 (3) b	Clandestine immigration, illegal residence and repatriation	Council decides unanimously on a proposal from the COM	* CODECISION
63 (4)	Rights and conditions applicable to allow people legally resident in one MS to reside in another MS	Council decides unanimously on a proposal from the COM	Opposition from Germany and Austria to the adoption of codecision and QMV
CIVIL JUDICIAL COOPERATION			
65 a Civil jud. coop. with cross-border effects	Simplifying and improving exchanges between MS of judicial and extrajudicial documents – cooperation to obtain evidence – recognition and enforcement of decisions on civil and commercial matters, incl. those which are extrajudicial	Codecision already applies (except for family law)	
65 b	Promoting compatibility of rules on conflicts of laws and jurisdiction		
65 c	Eliminating civil procedural obstacles, particularly by means of compatibility of rules of civil procedure		
66	Cooperation between appropriate departments and between them and the Commission	Council decides by QMV on a proposal from the COM	According to the Legal Services, Article 67 could not affect Protocol 35 to the Nice Treaty, which provides for QMV from 1 May 2004 (but not codecision).