

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

(2000/C 376 E/01)

COM(2000) 577 final — 2000/0030(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 21 September 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(b)(i) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Parliament,

Whereas:

(1) Article 62(2)(b) empowers the Council to adopt rules relating to visas for intended stays of no more than three months, and in that context it must determine the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement ⁽²⁾. These lists are among the flanking measures which are directly linked to the free movement of persons in an area of freedom, security and justice for the purposes of Article 61.

(2) Determining the lists of third countries referred to above is an element of visa policy, which requires a range of provisions for its implementation. These provisions, which may be part of national law, public international law, EU law or EC law, including the elements of the Schengen *acquis* incorporated into the EU framework, lie outside the scope of this Regulation. Consequently this Regulation does not affect any such provisions, which relate principally to:

- authorisations, other than visas, that may be required before a person crosses the external borders of the Member States in view of the purpose of their short stay, such as authorisations for access to employment, an occupation or a study course;

- the procedures and conditions governing the issue of visas and the territorial validity of visas;

- the controls to which nationals of third countries are subject when crossing external borders of the Member States;

- recognition of States and territorial entities and of the passports, identity and travel documents issued by their authorities.

Any decisions which the Council might adopt under the common foreign and security policy that have an impact on Member States' decisions in issuing visas are not affected by this Regulation.

(3) The countries that are subject to or exempt from the visa requirement are determined individually on the basis of a variety of criteria relating principally to illegal immigration, public policy and public security and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity. The arrangements for exemption from the visa requirement must also be based on the principle of reciprocity. This principle should in future be applied for any suspension of exemption from the visa requirement for nationals of a third country listed in Annex II by means of agreements to be concluded by the Community with those countries. However, pending those agreements, the Regulation should itself lay down a Community mechanism for this purpose to be applied in the meantime.

(4) Nationals of Iceland, Liechtenstein and Norway, which are not listed in Annex II, are exempt from the visa requirement under the EEA Agreement.

(5) As regards stateless persons, who have no connecting factor with a particular State, and recognised refugees, who are unable to enjoy the protection of the State of which they have the nationality, the decision as to the visa requirement or exemption should be based on a simple criterion reflecting the fact that the State where these persons reside affords them its protection and issues them with travel documents.

⁽¹⁾ COM(2000) 27 final (OJ C 177, E/66, 27.6.2000).

⁽²⁾ Under Article 1 of the Agreement concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* and Annex B to it (which refers to Regulation (EC) No 574/1999), this proposal for a Regulation will have to be considered by the Joint Committee in accordance with Article 4 of the Agreement.

- (6) In specific cases where special visa rules are warranted, Member States may release certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.
- (7) With a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States should communicate to the other Member States and to the Commission the measures which they take pursuant to this Regulation. For the same reasons that information must also be published in the *Official Journal of the European Communities*.
- (8) In accordance with the principal of proportionality stated by Article 5 of the Treaty, enacting a Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement is both a necessary and an appropriate means of ensuring that the common visa rules operate efficiently.
- (9) This Regulation provides for full harmonisation as regards the countries whose nationals require a visa to cross external borders and those whose nationals are exempt from this requirement. Consequently the existing Community legislation on this matter should be replaced.
- (10) As regards the Republic of Iceland and the Kingdom of Norway, this Regulation represents an extension of the Schengen *acquis* under the terms of the Agreement concluded on 17 May 1999 by the Council of the European Union and those two States. On completion of the procedures laid down in the Agreement, the rights and obligations flowing from this Regulation will also apply to those two States,
- the Member State concerned may notify the Commission and the Council in writing of the measure by which the third country imposed the visa requirement;
 - no later than two months after notification the Commission shall publish in the 'L' series of the *Official Journal of the European Communities* a notice on the measure taken by the third country. Exemption from the visa requirement for nationals of that third country shall be suspended five days after publication of the notice.
- (b) if the third country revokes the measure imposing the visa requirement for nationals of a Member State:
- the Member State concerned shall immediately notify the Commission and the Council in writing of the revoking measure; on receiving notification the Commission shall publish in the 'L' series of the *Official Journal of the European Communities* a notice on the measure;
 - exemption from the visa requirement for nationals of the third country shall be restored five days after publication of the notice.
- The publications provided for by points (a) and (b) shall specify, *inter alia*, the date on which measures suspending or restoring visa requirements take effect.
3. Nationals of new third countries on these lists shall be subject to the requirements of paragraphs 1 and 2 unless and until the Council decides otherwise under the procedure laid down in the relevant provision of the Treaty.

HAS ADOPTED THIS REGULATION:

Article 1

1. Nationals of third countries on the common list in Annex 1 shall be required to be in possession of visas when crossing the external borders of the Member States.
2. Nationals of third countries on the common list in Annex 2 shall be exempt from this requirement for stays of no more than three months.

Pending the conclusion of agreements on exemption from the visa requirement between the Community and the third countries listed in Annex II:

- (a) if one of those third countries imposes a visa requirement on nationals of a Member State:

Article 2

For the purposes of this Regulation, 'visa' shall mean an authorisation issued or a decision taken by a Member State which is required with a view to:

- entry for an intended stay in that Member State or in several Member States of no more than three months in all;
- entry for transit through the territory of that Member State or several Member States, except for airport transit.

Article 3

Stateless persons within the meaning of the New York Convention of 28 September 1954 and recognised refugees within the meaning of the Geneva Convention of 28 July 1951 shall be subject to the visa requirement or exempted from it on the same terms as nationals of the non-member State in which they reside and which issued their travel document.

Article 4

Without prejudice to agreements on exemption from the visa requirement to be concluded by the Community with the third countries listed in Annex II, a Member State may maintain or provide for exceptions from the visa requirement provided for by Article 1(1) or for exemption from the visa requirement provided for by Article 1(2) as regards:

- (a) holders of diplomatic passports, official-duty passports and other official passports;
- (b) civilian air and sea crew;
- (c) flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident;
- (d) civilian crew of ships navigating on international inland waterways;
- (e) holders of *laissez-passer* issued by certain international inter-governmental organisations to their officials,
- (f) persons entering its territory to pursue a gainful activity during their stay.

A Member State may exempt from the visa requirement a school pupil having the nationality of a third country listed in Annex 1 who resides in a third country listed in Annex 2 and is travelling in the framework of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question.

Article 5

Within 10 working days of the entry into force of this Regulation, Member States shall communicate to the other Member States and the Commission the exception measures they have taken pursuant to Article 4. Any further changes to this list and these measures shall be similarly communicated within five working days.

The Commission shall publish the measures communicated pursuant to paragraph 1 in the *Official Journal of the European Communities* for information.

Article 6

Regulation (EC) No 574/1999 ⁽¹⁾ is replaced by this Regulation.

Annex 1 to the Common Consular Instructions and Annex 5 to the Common Manual, excluding part IV thereof, as laid down by the decision of the Executive Committee of 28 April 1999 (SCH/Com-ex(99)13) concerning the final versions of the Common Manual and the Common Consular Instructions, are replaced by Annexes 1 and 2 to this Regulation.

Article 7

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

⁽¹⁾ OJ L 72, 18.3.1999, p. 2.

ANNEX I

LIST REFERRED TO IN ARTICLE 1(1)

1. STATES

Afghanistan	Ghana	Papua New Guinea
Albania	Grenada	Peru
Algeria	Guinea	Philippines
Angola	Guinea-Bissau	Qatar
Antigua and Barbuda	Guyana	Russia
Armenia	Haiti	Rwanda
Azerbaijan	India	Saint Kitts and Nevis
Bahamas	Indonesia	Saint Lucia
Bahrain	Iran	Saint Vincent and the Grenadines
Bangladesh	Iraq	São Tomé and Príncipe
Barbados	Jamaica	Saudi Arabia
Belarus	Jordan	Senegal
Belize	Kazakhstan	Seychelles
Benin	Kenya	Sierra Leone
Bhutan	Kiribati	Solomon Islands
Bosnia and Herzegovina	Kuwait	Somalia
Botswana	Kyrgyzstan	South Africa
Burkina Faso	Laos	Sri Lanka
Burma/Myanmar	Lebanon	Sudan
Burundi	Lesotho	Surinam
Cambodia	Liberia	Swaziland
Cameroon	Libya	Syria
Cape Verde	Madagascar	Tajikistan
Central African Republic	Malawi	Tanzania
Chad	Maldives	Thailand
China	Mali	The Comoros
Colombia	Marshall Islands	Togo
Congo	Mauritania	Tonga
Côte d'Ivoire	Mauritius	Trinidad and Tobago
Cuba	Micronesia	Tunisia
Democratic Republic of the Congo	Moldova	Turkey
Djibouti	Mongolia	Turkmenistan
Dominica	Morocco	Tuvalu
Dominican Republic	Mozambique	Uganda
Egypt	Namibia	Ukraine
Equatorial Guinea	Nauru	United Arab Emirates
Eritrea	Nepal	Uzbekistan
Ethiopia	Niger	Vanuatu
Federal Republic of Yugoslavia (Serbia-Montenegro)	Nigeria	Vietnam
Fiji	North Korea	Western Samoa
Former Yugoslav Republic of Macedonia	Northern Marianas	Yemen
Gabon	Oman	Zambia
Gambia	Pakistan	Zimbabwe
Georgia	Palau	

2. ENTITIES AND TERRITORIAL AUTHORITIES NOT RECOGNISED AS STATES BY ALL THE MEMBER STATES

East Timor
 Palestinian Authority
 Taiwan

ANNEX II

LIST REFERRED TO IN ARTICLE 1(2)

1. STATES

Andorra	Guatemala	Paraguay
Argentina	Holy See	Poland
Australia	Honduras	Romania
Bolivia	Hungary	Salvador
Brazil	Israel	San Marino
Brunei	Japan	Singapore
Bulgaria	Latvia	Slovakia
Canada	Lithuania	Slovenia
Chile	Malaysia	South Korea
Costa Rica	Malta	Switzerland
Croatia	Mexico	United States
Cyprus	Monaco	Uruguay
Czech Republic	New Zealand	Venezuela
Ecuador	Nicaragua	
Estonia	Panama	

2. SPECIAL ADMINISTRATIVE REGIONS OF CHINA

Hong Kong SAR (*)
Macao SAR (*)

(*) Exemption from the visa requirement applies only to the holders of passports issued by these special administrative regions.
