

**Proposal for a Council Directive relating 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**

(2001/C 270 E/29)

(Text with EEA relevance)

COM(2001) 388 final — 2001/0155(CNS)

(Submitted by the Commission on 10 July 2001)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(3) and Article 63(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) With a view to the progressive establishment of an area of freedom, security and justice, Article 61 of the Treaty provides for the adoption of measures to ensure the free movement of persons in accordance with Article 14 of the Treaty, in conjunction with flanking measures relating to this freedom and concerning in particular external border controls, asylum and immigration.
- (2) Article 61(a) refers in particular to measures to determine the conditions in which third-country nationals shall travel freely for a period of no more than three months in the territory of the Member States.
- (3) Certain conditions of movement of third-country nationals form already part of the Schengen acquis integrated within the European Union framework.
- (4) The measures provided for by Article 62(3) of the Treaty replace the relevant components of the Schengen acquis incorporated in the European Union framework. This Directive provides for the general harmonisation of the conditions for movement of third-country nationals. The existing provisions of the Schengen acquis on the matter should accordingly be replaced.
- (5) This Directive should accordingly lay down the conditions in which third-country nationals, whether or not they are subject to a visa requirement or hold a residence permit, shall travel freely for periods of no more than three months.
- (6) The Schengen Implementing Convention also provides for the possibility of extending the stay in the territory of a single Member State beyond three months in exceptional circumstances or pursuant to a bilateral agreement concluded prior to the entry into force of that Convention.
- (7) Following the entry into force of the Amsterdam Treaty, the bilateral visa exemption agreements provided for in Article 20(2) of the Schengen Implementing Convention cannot justify stays for periods of more than three months in the frontier-free area under the short-stay visa exemption scheme.
- (8) However, the conditions in which third-country nationals shall enter the frontier-free area for a period of between three and six months, without spending more than three months in the territory of any one of the Member States visited, must be determined.
- (9) Provision should therefore be made for a specific travel authorisation for third-country nationals, whether or not subject to the visa requirement, planning to move in the territory of two or more Member States for a period of no more than six months within 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.
- (10) With regard to Denmark, this Directive constitutes a development of the Schengen acquis within the meaning of the Protocol on the position of Denmark, annexed to the Amsterdam Treaty. With regard to the Republic of Iceland and the Kingdom of Norway, this Directive constitutes a development of the Schengen acquis within the meaning of the agreement concluded on 17 May 1999 by the Council of the European Union and these two States<sup>(1)</sup>. At the end of the procedures provided for by that agreement, the rights and obligations arising from this Directive will also apply in these two states.
- (11) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

<sup>(1)</sup> Pursuant to Article 1 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, the proposal must be discussed in the Mixed Committee set up by Article 4 of the Agreement.

(12) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the establishment of the conditions in which third-country nationals shall travel freely in the territory of the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

(b) conferred on third-country nationals and their family members, whatever their nationality, who under agreements between the Community and its Member States and these countries enjoy rights identical to those of Union citizens as regards entry and stay in a Member State.

2. This Directive does not affect the provisions of Community or national law applicable to third-country nationals relating to:

HAS ADOPTED THIS DIRECTIVE:

#### CHAPTER I

##### GENERAL PROVISIONS

###### Article 1

###### Purpose

The purpose of this Directive is to establish the conditions in which:

- (a) third-country nationals, legally present in the territory of a Member State, shall travel freely for a period of no more than three months in the territory of the Member States;
- (b) third-country nationals planning to move in the territory of two or more Member States for a period of no more than six months shall obtain a specific travel authorisation enabling them to enter the territory of the Member States in order to move there.

###### Article 2

###### Definitions

For the purposes of this Directive, the following definitions shall apply:

'Third-country nationals' means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty;

'Uniform visa' means the visa provided for by Articles 10 and 11(1)(a) of the Schengen Implementing Convention;

'Residence permit' means any document or authorisation issued by the authorities of a Member State allowing a person to remain in its territory and covered by the list in Annex 4 to the Common Consular Instructions<sup>(1)</sup> and Annex 11 to the Common Manual;

###### Article 3

###### Scope

- 1. This Directive does not affect rights:
  - (a) relating to free movement enjoyed by European Union citizens on third-country nationals who are members of the family of a Union citizen;

(a) long-term stays;

(b) access to and exercise of economic activity.

###### Article 4

###### Non-discrimination

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

#### CHAPTER II

##### CONDITIONS TO BE MET IN ORDER TO TRAVEL FOR A PERIOD OF NO MORE THAN THREE MONTHS

###### Article 5

###### Third-country nationals subject to the visa requirement

1. 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:

(a) possess a valid travel document or documents authorising them to cross external borders;

(b) are in possession of a visa valid for the duration of envisaged stay;

(c) produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) are not persons for whom an alert has been issued for the purposes of refusing entry; and

<sup>(1)</sup> OJ L 239, 22.9.2000, p. 317 amended most recently by Council Decision No 2001/329/EC of 24 April 2001 (OJ L 116, 26.4.2001).

(e) are not considered to be a threat to public policy, national security or the international relations of any of the Member States.

2. Paragraph 1 shall not apply to third-country nationals having a visa subject to limited territorial validity in accordance with Chapter 3 of the Schengen Implementing Convention.

#### Article 6

### Third-country nationals exempted from the visa requirement

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).

2. Paragraph 1 shall not affect each Member State's right to extend beyond three months a third-country national's stay in its territory in exceptional circumstances.

#### Article 7

### Third-country nationals holding a residence permit

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.

2. Paragraph 1 shall also apply to third-country nationals holding a provisional residence authorisation issued by a Member State and a travel document issued by that Member State.

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.

4. Where a Member State considers issuing a residence permit to a third-country national for whom an alert has been issued for the purposes of refusing entry, it shall first consult the Member State issuing the alert and shall take account of its interests; the residence permit shall be issued for substantive reasons only, notably on humanitarian grounds or by reason of international commitments or commitments arising from Community law.

If a residence permit is issued, the Member State issuing the alert shall withdraw the alert but may put the third-country national concerned on its national list of alerts.

5. Where it emerges that an alert for the purposes of refusing entry has been issued for a third-country national who holds a valid residence permit issued by one of the Member States, the Member State issuing the alert shall consult the Member State which issued the residence permit in order to determine whether there are sufficient reasons for withdrawing the residence permit.

If the residence permit is not withdrawn, the Member State issuing the alert shall withdraw the alert but may nevertheless put the third-country national in question on its national list of alerts.

#### CHAPTER III

### SPECIFIC TRAVEL AUTHORISATION

#### Article 8

### Conditions

1. Third country nationals shall enter in the territory of the Member States, with a view to move therein, for a period of no more than six months during any given twelve-month period from the date of first entry, without staying more than three months in the territory of the same Member State, provided they:

- carry a valid specific travel authorisation, issued by a Member State; and
- meet the conditions laid down by Article 5(1)(a), (c), (d) and (e).

2. Paragraph 1 shall not affect each Member State's right to extend beyond three months a third-country national's stay in its territory in exceptional circumstances.

#### Article 9

### Issuing technique

1. The specific travel authorisation shall be issued on application from the third-country national by the diplomatic and consular authorities of the Member States prior to entry into the territory of the Member States, provided he meets the conditions laid down by Article 5(1)(a), (c), (d) and (e).

2. The specific travel authorisation may be issued for one or more entries into the territory of the Member States.

3. The specific travel authorisation may not be issued at the border.

4. The Member State empowered to issue the specific travel authorisation shall be the Member State of principal destination. If this cannot be determined, the specific travel authorisation shall be issued by the diplomatic or consular authorities of the Member State of first entry.

5. The application for a specific travel authorisation shall be subject to the procedure for prior consultation of the Member States referred to in Article 17(2) of the Schengen Implementing Convention if a visa application from the same person is subject to this prior consultation procedure.

#### Article 10

##### Issuing procedure

1. No specific travel authorisation may be affixed in a travel document that has expired.

2. The period of validity of the travel document must be longer than that of the specific travel authorisation, given the period for which it may be used. The period of validity of the travel document must allow the third-country national to return to his country of origin or to enter a third country.

3. No specific travel authorisation may be affixed in a travel document if it is valid for none of the Member States or valid only for one Member State. If the travel document is valid only for two or more Member States, the specific travel authorisation to be affixed shall be limited to such Member States.

#### Article 11

##### Model

1. The specific travel authorisation issued by the Member States shall be issued in the form of a uniform format (adhesive sticker) conforming *mutatis mutandis* to the rules and to the specifications of Regulation (EC) No 1683/95 of 29 May 1995 <sup>(1)</sup>.

2. The standard model issued for this purpose shall contain the distinctive letter 'E' followed by the word 'travel' under heading 11 ('type of visa').

#### Article 12

##### Implementation of the Common Consular Instructions

1. Without prejudice to Articles 11(2) and 18 of this Directive, the Common Consular Instructions and Annexes 1, 5, 7, 9, 10, 11, 12, 13, 14 and 15 thereto shall apply *mutatis mutandis* to the issue of the specific travel authorisation.

2. The charge for the issue of a specific travel authorisation shall be the same as the charge for a 'multiple-entry visa valid for one year', as set out in Annex 12 to the Common Consular Instructions.

#### CHAPTER IV

##### COMMON PROVISIONS

#### Article 13

##### Relationship between the 'conditions to be met in order to travel for a period of no more than three months' and the 'specific travel authorisation'

The specific travel authorisation may not be combined with the exercise of freedom to travel in accordance with Chapter II, to avoid that total presence in the territory might exceed a maximum period of six months in the course of a given period of twelve months.

#### Article 14

##### Reporting presence

1. Member States may require persons benefiting from this Directive to report their presence within seven working days to an authority within their territory.

2. Member States shall notify the Commission of the conditions and procedures for the report provided for in paragraph 1 and of any later change. The Commission shall publish this information in the *Official Journal of the European Communities*.

#### Article 15

##### Expulsion

1. A third-country national who does not fulfil or no longer fulfils the conditions for a short stay or for a specific travel authorisation in the territory of the Member States, as the case may be, shall be required to leave the territory of the Member States immediately.

If the third-country national who holds a valid residence permit, provisional residence permit or long-stay visa issued by another Member State, he shall be required to go to the territory of that Member State immediately.

2. Where such third-party nationals have not left voluntarily, or where it may be assumed that they will not do so, or where their immediate departure is required for reasons of national security or public policy, they must be expelled from the territory of the Member State in which they were apprehended, in accordance with the national law of that Member State. If under that law expulsion is not authorised, the Member State concerned may allow the persons concerned to remain within its territory.

3. Such third-country nationals may be expelled to their countries of origin or any other State to which they may be admitted, in particular under the relevant provisions of the readmission agreements concluded by the Member States with the third country concerned.

<sup>(1)</sup> OJ L 164, 14.7.1995, p. 1.

4. Paragraph 3 shall not preclude the application of the second subparagraph of paragraph 1, provisions on the right of asylum, the obligations of the Member States as regards non-refoulement, the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, paragraph 2 of this Article or the obligations of the Member States as regards the readmission or taking-back, in accordance with the relevant provisions, of an asylum-seeker whose request is being examined and who is in another Member State without having received permission to enter it.

#### CHAPTER V

#### FINAL PROVISIONS

##### Article 16

##### Penalties

Member States shall lay down the penalties for infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are enforced. Such penalties shall be effective, proportionate and dissuasive. The Member States shall notify these provisions, together with any amendments thereof, to the Commission not later than the date mentioned in Article 21.

##### Article 17

##### Amendment of the Schengen Implementing Convention

The Schengen Implementing Convention is amended as follows:

1. Article 18 is replaced by the following:

##### 'Article 18

1. Visas for stays exceeding three months shall be national visas issued by one of the Member States in accordance with its national law. Such visas shall enable their holders to transit through the territories of the other Member States in order to reach the territory of the Contracting Party which issued the visa, unless they fail to fulfil the entry conditions referred to in Article 5(1)(a), (d) and (e) or they are on the national list of alerts of the Member State through the territory of which they seek to transit.'

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

##### Article 18

##### Amendment of the Common Consular Instructions

The Common Consular Instructions shall be amended in accordance with Annex I to this Directive.

##### Article 19

##### Amendment of the Common Manual

The Common Manual shall be amended in accordance with Annex II to this Directive.

##### Article 20

##### Repeal

Regulation (EC) No 1091/2001 is hereby repealed.

##### Article 21

##### Transposal

Member States shall adopt and publish, before . . ., the provisions necessary in order to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply these provisions from . . .

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

##### Article 22

##### Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

##### Article 23

##### Addressees

This Directive is addressed to the Member States, in accordance with the Treaty establishing the European Community.

## ANNEX I

The Common Consular Instructions are amended as follows:

1. In part I, item 1, the following paragraph is added:

'However, the holder of a long-stay visa shall travel freely for a maximum period of three months in the territory of the Member States after applying for a residence permit to the state which issued the long-stay visa.'

2. In Part I, point 2.2 shall be replaced by the following:

'Visas for stays exceeding three months shall be national visas issued by one of the Member States in accordance with its national law.

Such visas shall have the status of uniform transit visa and shall enable their holders to reach the territory of the Member State that issued it, provided that the duration of such transit shall not exceed five days from the date of entry, unless they fail to fulfil the entry conditions or are on the national list of alerts of the Member State through the territory of which they seek to transit.

However, the holder of a long-stay visa shall travel freely for a maximum period of three months in the territory of the Member States after applying for a residence permit to the 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. 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.

The provisions of the Common Consular Instruction and Annexes 1, 5, 7, 9, 10, 11, 12, 13, 14 and 15 thereto shall apply *mutatis mutandis* to the issue of the specific travel authorisation.

This authorisation may be issued for one or more entries'.

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:

*Article 9*

1. The specific travel authorisation shall be issued on application from the third-country national by the diplomatic and consular authorities of the Member States prior to entry into the territory of the Member States, provided he meets the conditions laid down by Article 5(1)(a), (c), (d) and (e).

*Article 5*

1. 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:

- (a) possess a valid travel document or documents authorising them to cross external borders;
  - (b) are in possession of a visa valid for the duration of envisaged stay;
  - (c) produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;
  - (d) are not persons for whom an alert has been issued for the purposes of refusing entry; and
  - (e) are not considered to be a threat to public policy, national security or the international relations of any of the Member States.'
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## ANNEX II

The Common Manual is amended as follows:

1. In part I, item 1.1, the following paragraph is added:

'A person bearing a specific travel authorisation who has lawfully entered the territory of a Member State by the external border shall move in the territory of all the Member States for a period of no more than six months in any given twelve-month period without remaining more than three months in the territory of the same Member State.'

2. At item 3 of part I, the following indent is added to the last paragraph:

'— specific travel authorisation'

3. At item 3.3.1 of part I, the following paragraph is added:

'However, the holder of a long-stay visa shall travel freely for a maximum period of three months in the territory of the Member States after applying for a residence permit to the 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.'

4. In part I, the following point is added:

'3.4. Specific travel authorisation:

This specific travel authorisation enables its holder to move in the territory of the Member States for a period of no more than six months without staying more than three months in the territory of the same Member State, provided he meets the conditions laid down by Article 8 of the Directive relating to the conditions under 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.

*Article 8*

1. Third country nationals shall enter in the territory of the Member States to move therein for a period of no more than six months during any given twelve-month period from the date of first entry, without staying more than three months in the territory of the same Member State, provided they:

- carry a valid specific travel authorisation, issued by a Member State; and
- meet the conditions laid down by Article 5(1)(a), (c), (d) and (e).

2. Paragraph 1 shall not affect each Member State's right to extend beyond three months a third-country national's stay in its territory in exceptional circumstances.

*Article 5*

1. 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:

- (a) possess a valid travel document or documents authorising them to cross external borders;
- (b) are in possession of a visa valid for the duration of envisaged stay;
- (c) produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;
- (d) are not persons for whom an alert has been issued for the purposes of refusing entry; and
- (e) are not considered to be a threat to public policy, national security or the international relations of any of the Member States.'

5. In part II item 5, the following item 5.7 is added:

'5.7. A specific travel authorisation may not be issued at the border.'