

COMMISSION OF THE EUROPEAN COMMUNITIES

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94/0163 (CNS)

Proposal for a
COUNCIL REGULATION

laying down a uniform format for visas

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. General

The new Article 100c(3) of the Treaty of Rome requires the Council to adopt measures relating to a uniform format for visas issued by Member States. According to the same provision, the Council must take such action before 1 January 1996.

As the Commission stressed when presenting its proposal based on Article 100c(1) determining the list of countries whose nationals are to require visas (OJ No C 11, 15.1.1994, p. 15), this provision has been placed squarely amongst the internal market provisions of the Treaty. The necessary inference from this is that it is designed to contribute towards achieving the free movement of persons within the internal market, as specified in Article 7a EC (formerly Article 8a EEC).

The uniform format must present the following characteristics: it must contain the necessary information and meet very high technical standards, notably as regards safeguards against counterfeiting and falsification, and is well adapted for use by all the Member States; and bear universally recognisable security features which are clearly visible to the naked eye.

Article 10 of the Convention of 1990 applying the Schengen Agreement provides for the creation of a uniform visa for use by the countries which are party thereto. Although the provisions of that Convention are not yet fully operative, work on such a visa was already completed by the nine Schengen States on 14 December 1993. Indeed, Germany and Portugal are already producing and using such visas.

The format developed by the Schengen group fulfils the requirements set out in above, and it is therefore appropriate to have regard to it.

This proposal can be applied before the other accompanying measures connected with the free movement of persons under Article 7a EC. Point 6 of the Annex provides for a box beginning with the words "valid for", in which the issuing State is to indicate the territory for which entry is authorized. This means that the visa can be made valid for the territory of the issuing Member State only, until such time as the Convention on the Crossing of the External Frontiers of the Member States is in force. Thereupon most visas issued by Member States are intended to be valid throughout the Community (Article 18 of the draft Convention), although in exceptional cases visas valid only for the territory of the issuing State will continue to be granted (Article 24). In the latter case the indication of the territory of the issuing Member State will satisfy the requirements of Article 24(4) of the draft Convention.

2. Subsidiarity and proportionality

Article 100c(3) confers an exclusive power on the Community. The Community is required to exercise this power before the end of 1995.

In theory, this provision could be implemented by a regulation or by a directive. The Commission has chosen to propose a regulation rather than a directive because the purpose of this provision is the creation of a uniform model which is as detailed as possible and is precisely not intended to "leave to the national authorities the choice of form and methods" (Article 189 EC).

3. Commentary on the Articles

Article 1

This provision describes the general characteristics of the uniform format and refers to the Annex, where those specifications that are not secret and are visible to the naked eye are set out.

In exceptional cases the sticker will not be glued into the holder's passport (e.g. where his country is not recognised by the issuing Member State). However, the words "save in exceptional circumstances" clearly indicate that as a rule the sticker is indeed to be glued into the passport.

Articles 2 and 3

Plainly, it is of the utmost importance that certain specifications should not be published, since such information would be used by persons wishing to counterfeit or falsify visas. Consequently it is essential that these specifications be enshrined in a decision, since according to Article 191 EC decisions need not be published.

By the same token, it is essential to ensure that only persons duly authorized by the Member States and the Community institutions gain access to this information.

The purpose of the requirement in the first sentence of Article 3(2) is to ensure that the number of printers involved is no more than twelve so as to limit access to sensitive information in so far as possible.

With respect to this provision one should have regard to Article 2(1)(b) of Directive 93/36 coordinating procedures for the award of public supply contracts (OJ No L 199, 9.8.1993, p. 1). That provision reads as follows:

"This Directive shall not apply to ...

- (b) supply contracts which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member States concerned or when the protection of the basic interests of the State so requires."

This provision clearly covers the printing of visas. However, it should also be recalled that Article 2(2) of the same Directive provides:

"When a contracting authority within the meaning of Article 1(b) grants to a body other than a contracting authority -- regardless of its legal status -- special or exclusive rights to engage in a public service activity, the instrument granting this right shall stipulate that the body in question must observe the principle of non-discrimination by nationality when awarding public supply contracts to third parties."

Moreover, the same rules apply where the contract is governed instead by Council Directive 92/50/EEC coordinating procedures for the award of public service contracts (OJ No L 209, 24.7.1992, p. 1). Thus, Article 4(2) of that Directive corresponds to Article 2(1)(b) of Directive 93/36/EEC.

Article 4

It need hardly be said that the Community is bound to respect fundamental rights (see Article F(2) of the Treaty on European Union). Involving as it does the protection of privacy, data protection must be regarded as an integral part of the body of fundamental rights which the Community is required to observe.

Article 4 is worded so as to cover *all* the applicable provisions on data protection, and not merely national legislation. Thus the uniform visa will also have to comply with the proposed Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (COM(92) 422 final), once it is adopted.

The third paragraph entitles the person to whom visa has been issued to obtain the information concerned from the authorities of any Member State. This is important because he may experience difficulties when seeking to cross the external frontiers of Member State A with a visa issued by Member State B. In that case, it will be incumbent on the authorities of either Member State to supply the information concerned. However, only the issuing State will be able to correct the data.

Article 5

This Article provides in effect that all types of short-term visa (i.e. all visas which will be caught by the draft External Frontiers Convention) are covered by this Regulation. This provision thus reproduces in substance the terms of Article 1(1)(c), (d) and (e) of the draft Convention read with Articles 1(g) and 9 thereof. Moreover, as specified in point 11 of this Annex, the proposed uniform visa will contain a box beginning with the words "type of visa" in which the issuing State must indicate whether the visa concerned is an entry visa, a transit visa or a re-entry visa.

Although this Regulation is closely linked to the proposed Regulation based on Article 100c(1) laying down the list of countries whose nationals require visas to cross the external borders of the Member States, there is no inherent reason why the scope of the two Regulations should be the same.

Article 6

By virtue of this article the implementing decision is to be adopted according to procedure III(a) provided for in Decision 87/373. The Commission believes that this is the most appropriate procedure in the circumstances, having regard in particular to the security considerations involved.

Article 7

The first sentence simply reproduces the general rule enshrined in Article 191 EC.

The second sentence will ensure that Article 1 of the Regulation does not become applicable until the implementing decision has been adopted according to the procedure set out in Article 6 and until the Member States have had time to produce the new visa. This means that the obligation on Member States to issue visas corresponding to the new format will not arise until that time.

Annex

The Annex, to which Article 1 refers, contains a description of those features of the visa which are visible to the naked eye and which are therefore not of a secret nature. This description is divided into two parts, which relate to security features and to sections to be completed respectively.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, in particular Article 100c(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas Article 100c(3) of the Treaty requires the Council to adopt measures relating to a uniform format for visas before 1 January 1996; whereas this is an exclusive Community power;

Whereas the creation of a uniform format for visas forms an integral part of the provisions relating to the internal market and constitutes an accompanying measure for the achievement of the objective set out in Article 7a as regards the free movement of persons; whereas this provision is also to be regarded as forming a coherent whole with measures to be adopted under Title VI of the Treaty on European Union;

Whereas it is essential that the uniform format should contain all the necessary information and meet very high technical standards, notably as regards safeguards against counterfeiting and falsification, and is well adapted for use by all the Member States; whereas the format must also bear universally recognisable security features which are clearly visible to the naked eye;

Whereas this Regulation only lays down such specifications of the format that are not secret; whereas these specifications need to be supplemented by further specifications which must remain secret in order to prevent counterfeiting and falsification; whereas power to decide on further specifications should be conferred on the Commission; whereas, having regard to the object of this Regulation, it is appropriate that these decisions should be adopted according to procedure III(a) provided for in Council Decision 87/373/EEC⁽¹⁾;

Whereas, to ensure that the information referred to is not made available to more persons than necessary, it is also essential that each Member State should designate not more than one body having sole responsibility for printing its visas; whereas for security reasons each Member State must communicate the name of the body concerned to the Commission and the other Member States;

⁽¹⁾ OJ No L 197, 18.7.1987, p. 33.

Whereas to be effective this Regulation should apply to all types of visa, since otherwise the uniform format would be supplemented by national visas not covered by Community norms; whereas the uniform visa must be designed for use for different types of visa;

Whereas according to Article F(2) of the Treaty on European Union the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law; whereas personal data protection forms an integral part of the protection of such rights and freedoms; whereas it is therefore essential that persons to whom visas have been issued have the right to be informed of the contents of machine-readable personal data contained therein, and, where necessary, to have such information rectified by the issuing authorities;

HAS ADOPTED THIS REGULATION:

Article 1

Visas issued by the Member States shall be produced in the form of a uniform sticker, which shall, save in exceptional circumstances, be glued into the holder's travel document. They shall conform to the specifications set out in the Annex.

Article 2

Further specifications which shall render the visa difficult to counterfeit or falsify and which are of a secret nature, shall be added by the Commission according to the procedure set out in Article 6.

Article 3

1. The specifications referred to in Article 2 shall not be published and shall be secret. They shall be made available only to printers designated by the Member States and to persons duly authorized by a Member State or the Commission.
2. Each Member State shall designate one body having sole responsibility for printing its visas. It shall communicate the name of that body to the Commission and the other Member States. One body may be designated by two or more Member States for this purpose.

Article 4

1. In its presentation, production and use the uniform format shall conform to the relevant provisions relating to personal data protection.
2. No information in machine-readable form shall be contained in the visa unless it also appears in the boxes described at points 6 to 12 of the Annex.

3. At his request a person to whom a visa has been issued shall have communicated to him in an intelligible form any data contained therein which can be read only with the aid of a machine, or the meaning of any abbreviations which may be used. The issuing Member State shall grant to the person concerned the right to have rectified or erased, as the case may be, any information which is inaccurate, irrelevant or excessive.

When the visa is issued, the holder shall be informed of this right of access and rectification.

Article 5

For the purposes of this Regulation *visa* shall mean any authorisation granted by a Member State which either

- enables a person to enter its territory, subject to other entry conditions being fulfilled, and is valid for a stay of no more than three months, or a number of stays not exceeding a total of three months in any six month period commencing on the date of first entry; or
- enables a person to transit through its territory or through the transit zone of a port or airport, subject to other transit conditions being fulfilled; or
- enables a person who is present on its territory to re-enter within a specified period.

Article 6

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of two months, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 7

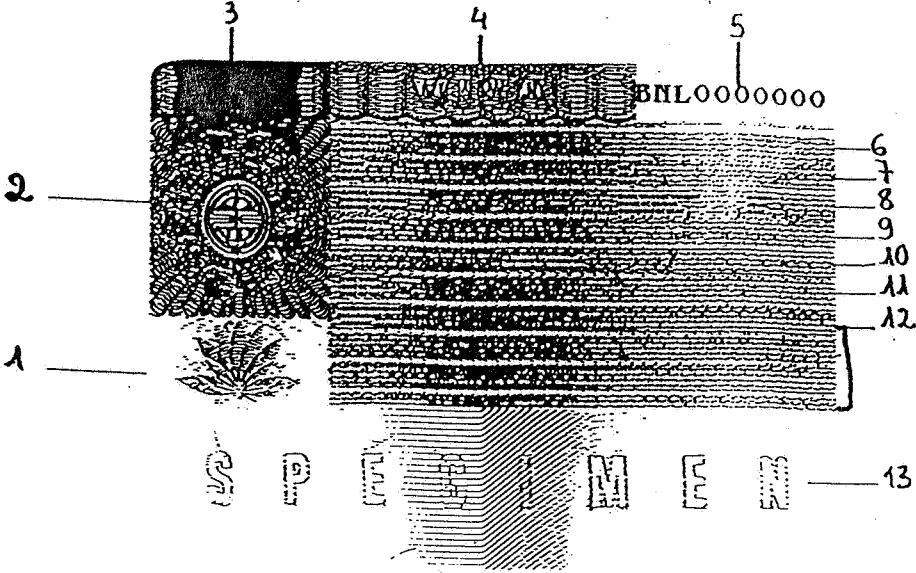
This Regulation shall come into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 1 shall become applicable six months after such publication.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President



Security Features

1. A sign consisting of nine ellipses in a fan-shape shall appear in this space.
2. An optically variable mark ("kinegram") shall appear in this space. Depending on the angle of vision 12 stars, "E" signs and a globe become visible in various sizes and colours.
3. The logo consisting of a letter or letters indicating the issuing Member State (or "BNL" in the case of the Benelux countries, namely Belgium, Luxembourg and the Netherlands) with a latent image effect shall appear in this space. This logo shall appear light when held flat and dark when turned by 90°. The following logos shall be used: BNL for Benelux, D for Germany, DK for Denmark, E for Spain, F for France, GR for Greece, I for Italy, IRL for Ireland, P for Portugal, UK for the United Kingdom.
4. The word "visa" in capital letters shall appear in the middle of this space in optically variable colouring. Depending on the angle of view, it shall appear green or red.
5. This box shall contain the number of the visa, which shall be pre-printed and shall begin with the letter or letters indicating the issuing country as described in point 3 above. The following special type shall be used:⁽¹⁾

Sections to be completed

6. This box shall begin with the words "valid for". The issuing authority shall indicate the territory for which entry is authorized. The abbreviations set out at point 3 shall apply. In addition, Belgium shall be designated by the letter B, Luxembourg by L and the Netherlands by NL. Where the visa is to be valid throughout the territory to which the Treaty establishing the European Community applies by virtue of Article 227 thereof, it shall bear the words "European Union".
7. This box shall begin with the word "from" and the word "until" shall appear further along the line. The issuing authority shall indicate here the period of validity of the visa.
8. This box shall begin with the words "number of entries" and further along the line the words "duration of stay" and again "days" shall appear.
9. This box shall begin with the words "issued in" and shall be used to indicate the place of issue.

⁽¹⁾ [The correct type shall be used in the final version as published in the Official Journal.]

10. This box shall begin with the word "on" (after which the date of issue shall be filled in by the issuing authority) and further along the line the words "number of passport" shall appear (after which the holder's passport number shall appear).
11. This box shall begin with the words "type of visa". The letter A shall be used by the issuing authority to indicate that the visa is an airport transit visa, the letter B shall be used for a normal transit visa, the letter C for a visa for a stay corresponding to the terms of the first indent of Article 5, and the letter D for a visa which enables a person to re-enter its territory within a specified period.
12. This box shall begin with the word "remarks". It shall be used by the issuing authority to indicate any further information which is considered necessary, provided that it complies with Article 4 of this Regulation. The following two and a half lines shall be left empty for such remarks.
13. This box shall contain the relevant machine-readable information to facilitate external border controls.

The paper shall be pastel green with red and blue markings.

The words designating the boxes shall appear in English and French. The issuing State may add a third official Community language. However, the word "visa" in the top line may appear in any one official language of the Community.