COMMISSION OF THE EUROPEAN COMMUNITIES

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Communication from the Commission to the Council and the European Parliament

(I) Proposal for a decision, based on Article K3 of the Treaty on European Union establishing the Convention on the crossing of the external frontiers of the Member States.

(II) Proposal for a regulation, based on Article 100C of the Treaty establishing the European Community, determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States.

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1. The Commission herewith transmits to the Council and the Parliament two proposals which are closely linked and need to be examined together.

2. The need for a revised draft of the Convention on the crossing of the external frontiers of the Member States results from a number of relevant developments which have taken place since negotiations on the earlier draft, conducted by Ministers responsible for immigration policy, were broken off in June 1991 when it proved impossible to find a solution to the sole outstanding question (the territorial application article) which was preventing the signature of the Convention. The text proposed by the Commission does not attempt to solve this question which will therefore require sustained further bilateral negotiations between the two Member States principally concerned.

3. The most significant such development was the entry into force on 1 November 1993 of the Treaty on European Union itself, particularly its Article 100C. This article provides that certain aspects of visa policy, hitherto covered by articles in the draft Convention, should pass to Community competence and be adopted on the basis of Community instruments.

4. Together these draft proposals cover all the substantive elements previously brought together in the single instrument represented by the draft Convention. The explanation of why each of the changes to the Convention is necessary is set out in the explanatory memorandum.

5. These proposals, once adopted, will provide the legislative base for establishing the agreed rules for crossing the external borders in which all Member States can have confidence. As the European Council has often stated, most recently at its meeting in Edinburgh in December 1992, this is an essential element in the creation of an area without internal frontiers, as provided for in Article 7A of the Treaty on European Union.

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PROPOSAL FOR A COUNCIL DECISION

ESTABLISHING A CONVENTION

ON CONTROLS ON PERSONS

CROSSING EXTERNAL FRONTIERS

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(presented by the Commission to the Council
in accordance with Article K.3(2)
of the Treaty on European Union)

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EXPLANATORY MEMORANDUM

1. The efforts of the Ministers responsible for immigration, working through intergovernmental cooperation, to conclude a Convention on crossings at the external frontiers of the Member States of the European Community - something which they regard as vital for the establishment of an area without internal frontiers as required by Article 7a of the Treaty establishing the European Community - have been overtaken by events in the shape of the European Union. For the Treaty on European Union introduces a specific procedure for the conclusion of conventions in the fields of justice and home affairs.

On the **formal** side, the work done in the past cannot have any formal status since the Convention, not having been signed, does not exist legally. As regards the **substance**, however, there is still the political outcome of the negotiations conducted between 1989 and 1991, in the course of which a consensus had emerged between the Member States on the basic rules that should govern crossings at external frontiers, even though that agreement never took concrete shape because of the difference between the United Kingdom and Spain over Gibraltar.

2. The **aim of this proposal is to preserve that political consensus** by **adapting the text in line with the legal requirements** of the Union Treaty - in particular Title VI - and of the future European Economic Area.

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I. ORIGIN OF THE DRAFT CONVENTION

Earlier work

3. Following the programme approved by the Madrid European Council for the establishment of an area without internal frontiers as required by Article 7a ("Palma document"), the Member States started work at intergovernmental level on drawing up a Convention on crossings at the external frontiers of the Member States. Supported by successive European Councils, this work, conducted under the authority of the Ministers responsible for immigration, resulted in the Member States reaching agreement in June 1991 on a set of principles that were to be given formal shape in a Convention, which the Ministers were due to sign at the end of the Luxembourg Presidency.

4. In the final stages of the negotiations, however, a difference arose between the United Kingdom and Spain over the territorial extent of the Convention with regard to Gibraltar. Despite two years of attempts by successive presidencies to find a compromise, the Convention was never signed. Nevertheless, in the absence of a formal conclusion by the Ministers, it was decided that all the other provisions of the Convention would be deemed to have been accepted *de facto* by the Member States.

5. There matters stood until the entry into force of the Union Treaty on 1 November 1993. Title VI of the Treaty provides for cooperation between the Member States in the fields of justice and home affairs.

As regards the **substance**, Article K.1 states that *inter alia* "rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon" (point (2)) shall be regarded as matters of common interest "[f]or the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community". As far as the **means** are concerned, Article K.3(2) spells out three courses open to the Council, including the option of "draw[ing] up conventions, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements" (point (c)). The special procedure applicable is laid down in Title VI.

Need for adoption of the Convention

6. The Ministers responsible for immigration, recognizing the need to abide by this new legal framework, are concerned to preserve the political consensus arrived at in the earlier negotiations. Thus at their meeting in Copenhagen on 1 and 2 June 1993:

> "Ministers took note of the possible impact of the Treaty on European Union and the Agreement on the European Economic Area on the draft Convention on the crossing of external frontiers. Ministers agreed that:
>
> - any changes made to the draft Convention to bring it into line with the Treaty on European Union should be technical in character and confined to what is strictly necessary; there is no question of reopening negotiations on any other articles than those which need to be revised for that purpose;
> - this is a purely technical matter and must not be allowed to cause an impasse on legal grounds;
> - there must be no legal vacuum."

7. The main developments since 1991 requiring amendments to the text are as follows:

(a) Changes in the Community framework

- Firstly, in July 1991 the full range of Community legislation to remove controls on **goods** at internal frontiers had not yet been adopted. This is now fully in place and controls have effectively been removed since 1 January 1993.

- Secondly, on 2 May 1992 the Community concluded the Agreement establishing the European Economic Area, which - once it enters into force - will give nationals of the EFTA countries covered by that Agreement the same rights of entry and residence as nationals of the Member States.

(b) Procedure introduced by Title VI of the Union Treaty

Article K.3 of the Treaty lays down a special procedure for the adoption of legal instruments in the context of cooperation in the fields specified in Title VI, including in particular the right of initiative for the Commission as well as the Member States, consultation of Parliament (by the Presidency), and the option of granting jurisdiction to the Court of Justice. Now that the Treaty has entered into force, the Member States can therefore no longer conclude conventions between one another in the areas listed in Article K.1 in the traditional manner prescribed by public international law.

(c) Community competence regarding visas

Under the new Article 100c of the EC Treaty, the tasks of determining "the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States" and preparing "measures relating to a uniform format for visas" are matters of Community competence. They must, then, be dealt with through decisions taken under the procedures laid down in the EC Treaty rather than in Title VI of the Union Treaty.

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II. AMENDMENTS REQUIRED

Grounds for the Commission initiative

8. Under the intergovernmental approach followed in preparing the 1991 draft, the Commission enjoyed no right of initiative. Now that the Union Treaty has entered into force, it **does have a legal right of initiative**, a right also enjoyed by the Member States (first indent of Article K.3(2)). As guardian of the Treaty, it must act to prevent any danger of further delay in ensuring the free movement of persons in accordance with Article 7a of the EC Treaty that might result from failure to adopt the Convention. The Edinburgh European Council clearly stated that one of the essential instruments was implementation of the Convention. The issue should therefore be referred to the Council as soon as possible.

Form of the proposal

9. Article K.3 defines the Council's role in the following terms: "The Council may ... draw up conventions which it shall recommend ... for adoption". Article 220 of the EEC Treaty simply provided that: "The Member States shall ... enter into negotiations with each other with a view to securing ...". Consequently the Convention should no longer take the form of a traditional instrument of public international law concluded by the plenipotentiaries of the Heads of State.

The Council, then, is now entitled to **draw up** conventions. It has a specific power to recommend their adoption by the Member States in accordance with their respective constitutional requirements. These two functions will be reflected in a specific act of the Council, signed solely by its President and distinct from the Convention itself.

10. Since the Treaty gives no indication as to the legal nature of the act by which the Council is to exercise this specific power and Article 189 of the EC Treaty does not apply to Title VI, the act must necessarily be a decision *sui generis*. Thus the present proposal comprises two separate parts: a "Council Decision" and, annexed to it, the text of the Convention.

Proposed Council Decision[1]

11. The preamble comprises the normal citations (legal basis, reference to the Commission's proposal, Parliament's involvement as prescribed by Article K.6) plus a series of recitals giving the grounds not only for the Decision itself but also for the Convention annexed to it. The recitals originally preceding the body of the Convention are now included with the Decision. Their wording has been altered in line with the Treaty to include references to closer cooperation on visa policies (fourth recital) and to the European Convention on Human Rights (eighth recital).

A further recital has been added, referring to Article K.1 and in particular to the fact that the Convention is without prejudice to the powers of the Community. This replaces the former Article 27(2), which is not now needed as the Convention comes under the institutional arrangements of the Union.

12. The substantive provisions embody the Council's exercise of its powers. Besides formally establishing the text of the Convention annexed to the Decision, Article 1(1) spells out the recommendation to the Member States to adopt it in accordance with their respective constitutional requirements. For this provision to be effective, a time limit needs to be specified. Since the Convention serves an objective for which the deadline was 1 January 1993, the time limit must needs be short and is therefore set at 31 December 1994. The Convention will, then, enter into force by 1 January 1995, which was the date specified in Article 6 laying down a derogation applicable to airports; this reference is thus superfluous and can be deleted in paragraphs 1 and 4 of that Article. This does not affect the timing.

13. Since the Decision is the operative instrument, it should include the provisions governing the Convention's entry into force that were contained in the former Article 32 of the Convention. These comprise the obligation on Member States to give notice of their adoption of the Convention within the time limit laid down (Article 1(2)) and the rules governing the Convention's entry into force (Article 2).

Furthermore, as the Convention is being concluded under the European Union, the instruments of ratification now have to be deposited with the Secretary-General of the Council, as for conventions concluded under Article 220 of the EC Treaty.

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[1] Comparisons and references (former Article ...) are to the July 1991 proposal.

Amendments to the text of the Convention itself

14. The main element behind the amendments made to the July 1991 text is the entry into force of the Union Treaty. There is also the need to ensure that the Convention will be compatible with the Agreement on the European Economic Area once that comes into force. To make the structure clearer, the Convention has been divided into titles and articles, each of them carrying a heading.

(a) Amendments required by the Treaty on European Union

(i) Purely formal

15. Being concluded in the framework of the Union, the Convention is necessarily between the Member States. It is, then, unnecessary to mention this explicitly every time: this change has been made in the title and throughout the body of the Convention. The former Articles 33 and 34 on the accession of future Member States and the revision of the Convention should also be deleted, these matters now being governed by Articles O and K.3 of the Union Treaty.

With the recitals incorporated in the Decision, there is no need to repeat them in the Convention. Furthermore, since the Convention is annexed to the Decision, no provision needs to be made for its signature by the plenipotentiaries of the Heads of State. These deletions do not affect the substance in any way.

16. The Convention falls under the Union Treaty, which must be applied without prejudice to the powers of the Community, and so it cannot include a definition of internal frontiers, since that is a matter which falls under the EC Treaty. Consequently reference should be made to the relevant Community instruments. The new Article 1(h), replacing the former Article 1(f) and (g), no longer gives a substantive definition but merely refers to the Community instruments defining intra-Community flights and sea crossings.[2] This change does not affect the substance.

The same is true of Article 13(2): work to prepare the computerized system is proceeding under the Convention establishing a European Information System. This is simply a clarification.

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[2] At present these are paragraphs 3 and 5 of Article 2 of Council Regulation (EEC) N° 3925/91 of 19 December 1991.

(ii) Formal amendments with practical consequences

17. The Treaty now contains rules on the procedures for the application of conventions, and so the relevant provisions of the Convention must be amended accordingly. The Committee set up in the former Article 26 as a decision-making body need no longer be defined at all. This power now rests with the Council, but that need not be spelled out because the second subparagraph of Article K.3(2)(c) does so. It is sufficient to refer to the measures adopted in implementation of the Convention. This change is reflected in the many articles which referred to the Committee.

These rules must conform to the principle laid down in Title VI of the Treaty: a two-thirds majority is the rule, while unanimity is the exception. The scope of such exceptions must be expressly stated in the Convention. Consequently except where provision is made for some other procedure, reference to "measures in implementation" implies recourse to the procedure laid down in the second subparagraph of Article K.3(2)(c) (which applies unless a convention provides otherwise). This involves adoption within the Council by a majority of two thirds. For practicality's sake, the same rule should apply for all implementing measures provided for under the Convention. Realistically, to safeguard the interests of the Member States it is reasonable to make provision for recourse to unanimity for measures not expressly provided for in the Convention. Article 26 is now worded accordingly.

18. As regards the territorial extent of the Convention, the Gibraltar issue that blocked progress in 1991 remains unresolved, so the Commission feels unable to take a position. A solution can only come from the bilateral negotiations that have been under way since 1991. The Commission therefore proposes that the relevant article be left blank for the time being so that negotiations can proceed undisturbed. This will enable the Council to go ahead with considering the text straight away and to incorporate whatever emerges from the parties' efforts when the time comes.

19. The Convention is now established by the Union and should not therefore include a Final Act. The Member States could, however, submit declarations to be recorded in the Council minutes.

(iii) Substantive amendments reflecting transfers of powers and secondary legislation

20. Under Article 100c of the EC Treaty the Community is now responsible for certain aspects of visa policy: determining which countries' nationals are subject to visa requirements and deciding on a uniform format for visas. This transfer of powers means that the Council will have to adopt Community legislation. To ensure consistency with the Treaty and any future Community decisions, the provisions in the old text of the Convention that now fall within the scope of Article 100c have to be deleted. The relevant passages in Articles 17, 18, 19(3) and 21 have therefore been removed and the rest of the text amended accordingly. Likewise there needs to be a definition of "uniform visa"; this is added by the new Article 1(f).

21. Article K.1 clearly states that Title VI applies "without prejudice to the powers of the European Community",, and therefore allowance has to be made for the fact that Community law already deals to some extent with the crossing of frontiers, although no distinction is made between internal and external frontiers. The Convention cannot undermine this division of responsibilities and therefore applies primarily to persons not entitled under Community law. This is spelled out in the new paragraph 2 of Article 1, making it possible thereafter to refer simply to "persons". Nevertheless common rules applicable to all travellers are still necessary. It is essential to be able to distinguish between persons entitled under Community law and other travellers. These are the only controls that apply to all travellers regardless of their situation. The Convention can make this distinction because these provisions are not contrary to Community law. The principle is stated in the second recital. The arrangements governing such controls are laid down in Article 2.

22. The July 1991 version of the Convention was drawn up before the adoption of the legislation on **goods** transport and so does not reflect those provisions. Firstly, the title of the Convention itself needs to be amended to make clear that it relates only to controls on **persons**. Secondly, since Articles 5(5) and 6(2) deal *inter alia* with controls on baggage, they now also state that such controls are to be effected without prejudice to Community provisions.[3]

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[3] In particular this means Council Regulation N° 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing and Commission Regulation N° 1823/92 of 3 July 1992 implementing the Council Regulation.

(iv) Substantive amendments reflecting the new legal framework laid down by Title VI

23. Article K.3 of the Treaty states that "[s]uch conventions may stipulate that the Court of Justice shall have jurisdiction to interpret their provisions and to rule on any disputes regarding their application, in accordance with such arrangements as they may lay down." The Commission considers that recourse to this provision is warranted both to ensure the uniform interpretation of the Convention, given the link between the subject of the Convention and matters falling under the EC Treaty, and to resolve any differences that may arise over its implementation. Such a provision also serves to meet the concerns of the European Parliament and non-governmental organizations.

Provision for uniform interpretation is made through the preliminary ruling procedure in accordance with Article 177 of the EC Treaty. The Court of Justice will also be able to rule on any dispute regarding the implementation of the Convention on application by a Member State or the Commission. That is the purpose of the new Article 29.

(b) Amendments required by the future European Economic Area

24. Once it enters into force the Agreement of 2 May 1992 establishing the European Economic Area will allow nationals of the EFTA member countries covered by the Agreement to be treated in the same way as nationals of Community countries for the purposes of entry controls and residence. The Commission considers that this development can best be catered for by replacing the term "national of a Member State" by "person entitled under Community law", newly defined at (a) of Article 1 to include not only Union citizens but also third-country nationals who, by agreement between the European Community and such countries, have identical rights of entry and residence.

This approach also makes it possible to stipulate that the family members, as defined in Article 10 of Council Regulation N° 1612/68 of 15 October 1968, of a national of a Member State who have third-country nationality may not be subjected, under the terms of Directives 68/360, 73/148, 90/364, 90/365 and 93/... on entry and residence, to controls beyond those applied to nationals of Member States, with the sole exception of an entry visa requirement (this exception is contained in the second sentence of Article 5(2)).

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25. These, then, are the amendments to the draft Convention required by legal developments since July 1991. The resulting text reflects the endeavour to conform to the conclusions adopted by the Ministers responsible for immigration on 1 June 1993 and, above all, not to reopen negotiations on a text already agreed in substance, the swift adoption of which is a top political priority in order to secure the free movement of persons.

PROPOSAL FOR A COUNCIL DECISION

ESTABLISHING A CONVENTION ON

CONTROLS ON PERSONS CROSSING

EXTERNAL FRONTIERS

PROPOSAL FOR COUNCIL DECISION N° .....
of .....

establishing a Convention
on Controls on Persons Crossing
External Frontiers

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2) thereof,

Having regard to the proposal from the Commission,[1]

Having regard to the opinion of the European Parliament,

Whereas the rules governing crossings by persons at the external frontiers of the Member States and the exercise of controls on such crossings are, by virtue of Article K.1 of the Treaty on European Union and without prejudice to the powers of the European Community, matters of common interest which may be the subject of cooperation under Title VI;

Whereas the rules governing crossings at the external frontiers of the Member States by citizens of the Union and other persons entitled under Community law fall within the scope of the Treaty establishing the European Community; whereas this Convention primarily defines the rules applicable to persons not entitled under Community law; whereas controls on crossings at external frontiers must cover all persons arriving at a frontier to the extent necessary to distinguish those entitled under Community law from other persons;

Whereas Article 7a of the Treaty establishing the European Community sets the common objective of an area without internal frontiers in which the free movement of persons is ensured;

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1 OJ .....

Whereas attainment of this objective requires effective controls, in line with common criteria, on persons at the external frontiers of those States and closer cooperation on implementing a common visa policy;

Whereas the controls on persons conducted by each Member State at its external frontiers must be carried out according to rules which should be adopted in common, with due regard for the interests of all Member States;

Whereas the aim of such controls is to enable threats to public policy and public security to be eliminated in the Member States of the European Union and to combat illegal immigration, while preserving the openness of those States to the rest of the world and their intensive exchanges with other countries, particularly in the cultural, scientific and economic spheres;

Whereas the introduction of a system of controls at external frontiers requires that particular attention be paid to the questions of infrastructure and frontier surveillance on the part of countries which, because of their geographical position and configuration, are exposed to increased migratory pressure;

Whereas the Member States intend to conduct these controls in compliance with their common international commitments, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees as well as with more favourable constitutional provisions on asylum,

HAS DECIDED AS FOLLOWS:

Article 1

1. It is recommended that the Member States adopt the Convention on Controls on Persons Crossing External Frontiers established by this Decision, the text of which is annexed hereto, in accordance with their respective constitutional requirements by 31 December 1994.

2. The Member States shall notify the General Secretariat of the Council of the instruments attesting completion of the procedures for the adoption of the Convention in accordance with their respective constitutional requirements, and deposit them with it.

Article 2

1. The Convention shall enter into force on the first day of the second month following the deposit of the instrument of adoption with the General Secretariat of the Council by the last Member State to take that step.

   The provisions concerning the adoption of measures in implementation of the Convention shall apply from the date of its entry into force. The other provisions shall apply from the first day of the third month following that date.

2. The Secretary-General of the Council shall inform the Member States of the date of entry into force of this Convention.

Article 3

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

Done at Brussels, ...

For the Council

The President

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CONVENTION
ON CONTROLS ON PERSONS
CROSSING EXTERNAL FRONTIERS

TITLE I

GENERAL

ARTICLE 1

Definitions

1. For the purposes of this Convention:

(a) 'persons entitled under Community law' means:

(i) citizens of the Union within the meaning of Article 8(1) of the Treaty establishing the European Community;

(ii) members of the family of such citizens who are nationals of a third State and have the right of entry and residence in a Member State by virtue of an instrument enacted under the Treaty establishing the European Community;

(iii) nationals of third States who, by agreement between the European Community and its Member States and such countries, have rights of entry and residence in a Member State which are identical with those enjoyed by citizens of the Union, and members of the family of such persons who are nationals of a third State and have the right of entry and residence in a Member State under any such agreement.

(b) 'residence permit' means any authorization issued by the authorities of a Member State authorizing a person not entitled under Community law to stay in its territory, with the exception of visas and the provisional residence permit referred to in Articles 8 and 15;

(c) 'entry visa' means authorization or decision by a Member State, given in accordance with decisions adopted under Article 100c of the Treaty establishing the European Community, to enable a person to enter its territory who is required to hold a visa to do so, subject to other entry conditions being fulfilled;

(d) 'transit visa' means authorization or decision by a Member State, given in accordance with decisions adopted under Article 100c of the Treaty establishing the European Community, to enable a person to transit through its territory or through the transit zone of a port or airport who is required to hold a visa to do so, subject to other transit conditions being fulfilled; the time taken to transit shall not exceed five days;

(e) 're-entry visa' means authorization by a State enabling a person who is not a national of that State and who is present in the territory of that State to re-enter within a specified period without re-obtaining an entry visa to that State;

(f) 'uniform visa' means entry, transit or re-entry visa of the uniform format provided for in Article 100c(3) of the Treaty establishing the European Community, issued under the rules specified in Articles 19 to 22 of this Convention;

(g) 'short stay' means an uninterrupted stay or successive stays in the territories of the Member States the length of which does not exceed three months, calculated over six months from the date of first entry;

(h) 'external frontiers' means:

(i) a Member State's land frontier which is not contiguous with a frontier of another Member State, and maritime frontiers;

(ii) airports and seaports, except where they are considered to be internal frontiers for purposes of instruments enacted under the Treaty establishing the European Community;

(i) 'local frontier traffic' means the movement, within a limited geographical area defined in a convention concluded by a Member State with a contiguous State which is not a member of the European Communities, of persons who come within the scope of that convention and are thereby entitled to cross the external land frontier of the Member State concerned under special conditions.

2. This Convention applies, except where there is an express statement to the contrary, to all persons other than those entitled under Community law.

TITLE II

GENERAL PRINCIPLES

ARTICLE 2

Crossing external frontiers

1. All persons crossing the external frontiers shall do so at authorized crossing points permanently controlled by the Member States.

2. Persons crossing external frontiers at any point other than authorized crossing points shall be liable to penalties as determined by each Member State.

3. Each Member State shall determine the location and opening conditions of authorized crossing points on its external frontiers and shall communicate this information and any changes thereto to the General Secretariat of the Council, which shall inform the other Member States accordingly. Crossing at crossing points outside their opening hours shall not be permitted.

4. By way of exception, as provided in Article 1(2), this Article also applies to persons entitled under Community law who cross the external frontiers, unless otherwise stipulated in the law of the Member State concerned.

5. The exceptions and specific rules applying to particular categories of maritime traffic for the crossing of external frontiers, and the arrangements for local frontier traffic, shall be determined by measures to give effect to this Convention.

ARTICLE 3

Surveillance of external frontiers

External frontier stretches other than authorized crossing points shall be kept under effective surveillance by mobile units or by other appropriate means. Member States undertake to provide surveillance yielding similarly effective results along all their external frontiers; their surveillance agencies shall consult and cooperate to that end.

ARTICLE 4

Controls at external frontiers

The crossing of external frontiers shall be subject to control by the competent authorities of the Member State concerned. Controls shall be carried out in accordance with national law, with due regard for the provisions of this Convention.

ARTICLE 5

Nature of controls at external frontiers

1. When crossing an external frontier upon entering or leaving the territories of the Member States, all persons shall be subject to a visual control under conditions which permit their identity to be established by examination of their travel documents.

2. Upon entry, persons shall also be subject to a control to ensure that they fulfil the conditions set out in Article 7. By way of exception, as provided in Article 1(2), persons entitled under Community law who are third-country nationals shall be subject to the condition in Article 7(1)(b) if they are required to hold a visa by virtue of instruments enacted under Article 100c of the Treaty establishing the European Community.

3. Detailed rules for applying the controls shall be determined by measures to give effect to this Convention.

4. Certain controls may, exceptionally, be relaxed, due regard being had for any conditions that may be laid down by measures to give effect to this Convention. Controls upon entry shall take precedence over controls upon departure.

5. Without prejudice to Community provisions regulating controls on baggage carried by travellers and on their vehicles, controls on persons and their vehicles and baggage may be performed where necessary for the purposes of:

   - detecting and preventing threats to national security and public policy; or

   - combating illegal immigration.

6. When effecting these controls, Member States shall take account of the interests of the other Member States.

ARTICLE 6

Specific arrangements for airports

1. Member States shall ensure that passengers on flights from third States who transfer onto internal flights will be subject to an entry control at the airport at which the external flight arrives. Passengers on internal flights who transfer onto flights bound for third States will be subject to a departure control at the airport from which the external flight departs.

2. Paragraph 1 is without prejudice to Community baggage inspection measures.

3. Member States shall also take any measures necessary to ensure that:

- passengers who embark in a Member State on a flight coming from a third State which is bound for a destination in a Member State are subject at the airport of destination to the controls specified for passengers coming from third countries;

- passengers who embark in a Member State on a flight bound for a destination in a third State and who disembark in another Member State are subject at the airport of embarkation to the controls specified for passengers going to third countries;

- passengers who embark in a Member State to go to another Member State on a flight coming from and bound for one or more third States are subject at the airports of the Member States to the controls specified for passengers coming from or bound for third countries, depending on whether they are departing from or arriving in a Member State.

TITLE III

CONTROL ARRANGEMENTS AT EXTERNAL FRONTIERS

ARTICLE 7

Controls on persons not entitled under Community law

1. Any person may be authorized to enter the territories of the Member States for a short stay provided that he meets the following requirements:

   (a) that he present a valid travel document which authorizes the crossing of frontiers; a list and description of such documents shall be drawn up by measures to give effect to this Convention;

   (b) where applicable, that he be in possession of a visa valid for the length of stay envisaged;

   (c) that he does not represent a threat to the public policy, national security or international relations of Member States and, in particular, that his name does not appear on the joint list provided for in Article 10;

   (d) that he produce, if necessary, documents justifying the purpose and conditions of the intended stay or transit, in particular the required work permits if there is reason to believe that he intends to work;

   (e) that he have sufficient means of subsistence, both for the period of the intended stay or transit and for him to return to his country of origin or travel to a third State into which he is certain to be admitted, or be in a position to acquire such means lawfully.

2. Any person may also be refused entry:

   (a) if his name appears on the national list of persons who are not to be admitted to the Member State to which he seeks entry;

   (b) in all the circumstances in which a national of a Member State may be refused entry to another Member State.

ARTICLE 8

Crossing of external frontiers by third-country nationals residing in a Member State

1. A Member State shall not require a visa of a person who wishes to enter its territory for a short stay or to transit through it, provided that that person:

   (a) fulfils the conditions in Article 7, except that in paragraph 1(b); and

   (b) holds a residence permit issued by another Member State permitting him to reside in that State, the period of validity of which, at the time of entry, still has more than four months to run.

2. In exceptional cases, paragraph 1 may also apply to persons who hold a provisional residence permit issued by a Member State and a travel document issued by that Member State.

3. Member States shall, under conditions determined by measures to give effect to this Convention, take back any person to whom they have issued a residence permit or provisional residence permit within the meaning of paragraphs 1 and 2 and who is illegally resident in the territory of another Member State.

4. In exceptional cases, a Member State may depart from the provisions of paragraphs 1 and 2 for urgent reasons of national security, but must take into consideration the interests of the other Member States.

   The Member State concerned shall inform the other Member States in an appropriate manner, determined by measures to give effect to this Convention.

   Such measures shall be used only to the extent that and for as long as is strictly necessary to achieve the purposes referred to in the first subparagraph.

5. For the purposes of implementing this Article,

   - a list of the residence permits and provisional residence permits referred to in paragraphs 1 and 2 which shall be accepted as equivalent to visas; and

   - an indicative list of the exceptional circumstances in which Member States' authorities shall accept the provisional residence permits and the travel documents referred to in paragraph 2 as equivalent to visas

   shall be drawn up by measures to give effect to this Convention.

ARTICLE 9

Stays other than for a short time

Persons who propose to stay in a Member State other than for a short time shall enter that State under the conditions laid down in its national law. In that case access shall be restricted to the territory of that State.

TITLE IV

NOTIFICATIONS FOR REFUSING ENTRY

ARTICLE 10

List of persons to be refused entry

1. A joint list of persons to whom the Member States shall refuse entry to their territories shall be drawn up on the basis of national notifications by measures to give effect to this Convention.

2. The list, which shall be continually updated, shall contain the names submitted for this purpose by each Member State.

3. The decision to put a person on the joint list shall be based on the threat which that person may represent to the public policy or national security of a Member State. It shall be based on a decision taken with due regard for the rules of procedure laid down by national law by the administrative or competent judicial authorities of the Member States on account of:

   - a custodial sentence of one year or more in the Member State concerned; or

   - information to the effect that the person concerned has committed a serious crime; or

   - serious grounds for believing that he is planning to commit a serious crime or that he represents a threat to the public policy or national security of a Member State; or

   - a serious offence or repeated offences against the law relating to the entry and residence of foreigners.

4. Detailed rules for applying the criteria set out in paragraph 3 shall be determined by measures to give effect to this Convention.

ARTICLE 11

Issue of residence permit

1. Where a person whose name is on the joint list provided for in Article 10 applies for a residence permit, the Member State to which application is made shall first consult the Member State which entered the name on the list and shall take into account the interests of that State; the residence permit shall be issued for substantive reasons only, notably on humanitarian grounds or by reason of international commitments.

   If the residence permit is issued, the Member State which entered the name on the joint list shall delete the entry.

2. If it becomes apparent that the name of a person who is in possession of a valid residence permit issued by one of the Member States is on the joint list, the Member State which entered the name and the Member State which issued the residence permit shall consult each other in order to determine whether there are sufficient grounds for withdrawing the residence permit.

   If the residence permit is not withdrawn, the Member State which made the entry shall delete it.

3. Detailed rules for the application of this Article shall be determined by measures to give effect to this Convention.

ARTICLE 12

Refusal of entry to a Member State

1. Entry into the territories of the Member States shall be refused to persons who fail to fulfil one or more of the conditions set out in Article 7(1) and Article 9.

2. A Member State may, however, on humanitarian grounds or in the national interest or by reason of international commitments, allow persons who fail to fulfil those conditions to enter its territory. In such a case, permission to enter shall be restricted to the territory of the Member State concerned, which, if the person concerned is on the joint list, shall inform the other Member States in an appropriate manner, determined by measures to give effect to this Convention.

ARTICLE 13

Exchange of information

1. The exchange of information on data contained in the joint list shall be computerized.

2. The creation, organization and operation of this computerized system will be the subject of the Convention on the European Information System. The Convention will include guarantees for the protection of individuals with regard to the processing of personal data.

3. The joint list may be consulted by the competent authorities of the Member States which, in accordance with their national laws, are concerned with:

   - processing visa applications;

   - frontier controls;

   - police checks;

   - the admission and regulation of the stay of persons who are not nationals of a Member State.

4. Each Member State shall inform the Commission and the other Member States of the agencies authorized, in pursuance of this Article, to consult the joint list.

TITLE V

ACCOMPANYING MEASURES

ARTICLE 14

Responsibilities of carriers

1. Without prejudice to Article 27 and instruments enacted under the Treaty establishing the European Community, the Member States undertake to incorporate in their national legislation measures relating to airlines and shipping companies and to public-service international carriers transporting groups overland by coach, with the exception of local frontier traffic.

2. The purpose of such measures will be:

   - to oblige the carrier to take all necessary measures to ensure that persons coming from third countries are in possession of valid travel documents and of the necessary visas, and to impose appropriate penalties on carriers failing to fulfil this obligation;

   - to oblige the carrier, where required by the control authorities, to assume responsibility without delay (this may include covering the costs of accommodation until departure), and to return to the State from which he was transported or to the State which issued his passport or to any State to which he is certain to be admitted, a person coming from a third country who is refused admission at the first control on entry into Community territory.

ARTICLE 15

Illegal crossing of an external frontier

1. A person who illegally crosses an external frontier without a residence permit or who does not fulfil, or no longer fulfils, the conditions of residence in a Member State shall normally be required to leave the territory of the Member State without delay, unless his stay is regularized.

   If such a person holds a valid residence permit or provisional residence permit issued by another Member State, he shall go to the territory of that Member State without delay, unless he is authorized to go to another country to which he is certain to be admitted.

2. Where such a person has not left voluntarily or where it may be assumed that he will not so leave or if his immediate departure is required for reasons of national security or public policy, he shall be expelled as laid down in the legislation of the Member State in which he was found. He shall be expelled from the territory of that Member State to his country of origin. He may equally be expelled to any other country to which he may be admitted, notably under the relevant provisions of readmission agreements between Member States.

3. A list of the residence permits or provisional residence permits issued by the Member State shall be drawn up by measures to give effect to this Convention.

4. Should one of them so request, Member States shall conclude bilateral agreements between themselves on the readmission of persons who are not entitled under Community law.

ARTICLE 16

Compensation for financial imbalances

Subject to determination of the appropriate criteria and practical arrangements by measures to give effect to this Convention, Member States shall compensate each other for any financial imbalances which may result from the obligation to expel provided in Article 15 where such expulsion cannot be effected at the expense of the person concerned or of a third party.

TITLE VI

VISAS

ARTICLE 17

Common visa policy

Member States undertake to harmonize their visa policies progressively, without prejudice to decisions adopted under Article 100c of the Treaty establishing the European Community.

ARTICLE 18

Uniform visa

A Member State shall not require a visa issued by its own authorities of a person applying to stay for a short time within its territory who holds a uniform visa.

ARTICLE 19

Conditions for issue of uniform visa

1. A uniform visa may be issued only where a person fulfils the conditions for entry laid down in Article 7(1), except that in subparagraph (b).

2. Uniform visas shall be issued on the basis of the following common conditions and criteria:

- travel documents presented upon application for a visa must be checked to ensure that they are in order and authentic;

- the expiry date of the travel document must be at least three months later than the final date for stays stated on the visa, account being taken of the time within which the visa must be used;

- the travel document must be recognized by all Member States;

- the travel document must be valid in all Member States;

- the travel document must allow for the return of the traveller to his country of origin or his entry into a third country;

- the existence and validity of an authorization or a re-entry visa for the traveller to return to the country of departure must be checked if such formalities are required by the authorities of that country. The same shall apply to any authorization required for entry to a third country.

ARTICLE 20

Prior consultation of central authorities

1. Where in certain cases a Member State makes the issue of visas subject to prior consultation of its central authorities and where it wishes to be consulted on the issue, in such cases, of a uniform visa by another Member State, this visa shall not be issued unless the central authorities of the Member State concerned have been consulted in advance and have expressed no objection.

   The absence of a reply from these authorities within a period to be determined by measures to give effect to this Convention shall be regarded as indicating that there is no objection to the issue of a visa. The period shall be fourteen days at most.

   If there is an objection, or if the consultation procedure referred to in the first subparagraph has not been implemented for reasons of urgency, only a national visa with restricted territorial validity shall be issued.

2. Rules for implementing this Article shall be determined by measures to give effect to this Convention, having particular regard for Member States' security; they may specify cases in which the issue of a uniform visa must be made subject to prior consultation of the central authorities of the Member State or States requiring such consultation, but this shall be without prejudice to Member States' option to hold prior consultations with their own central authorities in other cases.

ARTICLE 21

Multiple-entry uniform visa

1. The uniform visa may be a visa valid for one or more entries. Neither the length of any continuous stay nor the total length of successive stays may exceed three months in a six-month period starting on the date of entry.

2. The conditions and criteria for issuing multiple-entry uniform visas shall be determined by measures to give effect to this Convention.

ARTICLE 22

Issue of uniform visa

1. The uniform visa shall be issued by the diplomatic and consular authorities of the Member States or, in exceptional cases, by other authorities determined in accordance with national legislation.

2. The Member State which is the main destination shall normally be responsible for issuing the visa. If it is not possible to determine that destination, the Member State of first entry shall be responsible.

3. The principles stated in this Article shall be implemented by measures to give effect to this Convention.

ARTICLE 23

Extension of stay

A Member State may, if necessary, issue a visa the validity of which is restricted to its own territory to the holder of a uniform visa in the course of any one six-month period.

A Member State may also authorize a person holding a uniform visa to remain in its territory for more than three months.

ARTICLE 24

National visas

1. Member States may issue visas valid only in their respective territories in the cases provided for in Articles 20, 23 and 25.

2. In addition, a Member State may, on humanitarian grounds or in the national interest or by reason of international commitments, issue a person who does not meet any or some of the conditions laid down in Article 7(1)(a), (c), (d) and (e) with a visa valid only in its own territory.

3. A Member State which has issued a person with a visa pursuant to paragraph 2 shall so inform the other Member States if that person is on the joint list or if the State consulted pursuant to Article 20 has objected. This information shall be supplied in accordance with the procedures established under Article 12(2) in accordance with the measures to give effect to this Convention.

4. Visas issued in accordance with paragraphs 1 and 2 shall indicate their distinct nature and be different in appearance from the uniform visa.

ARTICLE 25

Long-stay visas

Visas for stays of more than three months shall be national visas issued by each Member State in accordance with its national law.

The issue of such visas shall be subject to consultation of the joint list.

TITLE VII

IMPLEMENTATION

ARTICLE 26

Implementing measures

Decisions needed to give effect to this Convention, other than those expressly provided therein, shall be adopted by the Council, acting unanimously on a proposal from the Commission or on the initiative of a Member State.

ARTICLE 27

Primacy of instruments

1. This Convention shall be subject to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and to the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees and without prejudice to more favourable constitutional provisions of Member States on asylum.

2. This Convention shall not affect bilateral conventions on local frontier traffic.

ARTICLE 28

Relations with third States

1. A Member State which envisages conducting negotiations on frontier controls with a third State shall inform the other Member States and the Commission accordingly in good time.

2. No Member State shall conclude with one or more third States agreements simplifying or removing frontier controls without the prior agreement of the Council.

This paragraph does not apply to agreements on local frontier traffic where such agreements conform to the arrangements laid down pursuant to Article 2 and is without prejudice to Article 27(2).

ARTICLE 29

Jurisdiction of the Court of Justice

The Court of Justice of the European Communities shall have jurisdiction:

- to give preliminary rulings concerning the interpretation of this Convention; references shall be made as provided in the second and third paragraphs of Article 177 of the Treaty establishing the European Community;

- in disputes concerning the implementation of this Convention, on application by a Member State or the Commission.

TITLE VIII

FINAL PROVISIONS

ARTICLE 30

Extent

[text to be inserted later]

EXPLANATORY MEMORANDUM

1. General

The new Article 100C of the Treaty of Rome requires the Council to determine the third countries whose nationals must be in possession of a visa when crossing the external frontiers of the Community. 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).

In October 1986 the Twelve set up inter-governmental cooperation in the field of justice and internal affairs. One of the first results of the gradual coordination of their policies with respect to visas was the adoption by the Ministers responsible for immigration at Copenhagen in December 1987 of a list of 50 third countries whose nationals were subject to a visa requirement in all the Member States. This means that a national of one of those countries wishing to visit the twelve Memeber States must hold 10 different visas (for the Benelux countries, a visa issued by one of those 3 countries is enough). Starting with their meeting in Munich in June 1988, the Ministers followed developments relating to the harmonisation of visas and took note at each of their successive meetings of the number of third countries whose nationals were required by all Member States to hold a visa to enter their territory. Thus at their meeting held in Copenhagen in June 1993 the Ministers responsible for immigration took note of the fact that 73 countries fell into this category. Furthermore, the information supplied by the Member States shows that there are 19 countries whose nationals are not subject to a visa requirement by any Member State and 92 third countries whose nationals are required to hold a visa by between one and 11 Member States.

The accompanying measures regarded as essential and desirable for the achievement of the free movement of persons are set out in the Palma Document adopted at the European Council held in Madrid in June 1989. One of the measures considered to be essential is a convention between the Member States on the crossing of external frontiers. The harmonisation of Member States' policies concerning visas constitutes an important part of the envisaged convention. Apart from creating the legal framework for the

determination of the third countries whose nationals are or are not to be subject to visa requirements, the unsigned draft External Frontiers Convention of 1991 provides for a uniform visa (including the conditions for the issue of such a visa) and contains provisions on visas having limited territorial validity and the right of movement of certain categories of third country nationals.

The Convention of 1990 applying the Schengen Agreement, which is now expected to come into force shortly, also contains provisions on visas. Article 9 of the former text declares that the Contracting Parties undertake to adopt a common visa régime and to harmonise their policies in this regard. The nine Schengen States have drawn up three lists of third countries pursuant to this article: a relatively long list of third countries whose nationals will require visas to enter all the Schengen States; a relatively short non-binding "inventory" of third countries whose nationals are to be exempted from this requirement in all the Schengen States; and a further non-binding "inventory" of countries whose nationals are subject to visa requirements in some Schengen States only.

The Commission has naturally had regard to all these texts when drafting this proposal, and has drawn on them where appropriate.

Moreover, this proposal is not to be read in isolation, but as part of the Commission's overall approach to achieving the free movement of persons, comprising: the revised External Frontiers Convention, proposed jointly with the present Regulation; a proposal on the uniform format for visas based on Article 100C(3) to be made as soon as various technical problems, relating notably to confidentiality, have been overcome; and any other Community instruments which may appear necessary.

The language of Article 100C(1) makes it plain that the Community is under an obligation to take the action referred to in paragraph 1, and that any such action on the part of Member States is precluded as from the entry into force of the Treaty on European Union. At the same time, the opening words of paragraph 3 necessarily suggest that such action is to be taken before 1996. Hence the need to propose this measure as soon as possible after the Treaty of Maastricht has entered into force, particularly as that event has itself been delayed by almost a year.

This proposed Regulation is not expressed to be limited to the period prior to 1 January 1996, when the Council will act by qualified majority pursuant to Article 100C(3). There is no need to adopt a new Regulation merely because the voting procedure in the Council changes. Thus the Regulation will continue in force after that date subject to any amendments which may be made under the new procedure.

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2. Subsidiarity and proportionality

Article 100C confers an exclusive power on the Community in this matter.

In theory, this provision could be implemented by a regulation or by a directive. The Commission has opted for a regulation rather than a directive, for two reasons: by definition, the drawing up of a list of countries whose nationals are to be subject to a visa requirement gives Member States no discretion, and indeed "implementing" such a list would be a pointless exercise; and in certain cases urgent action may be necessary, so that the delays involved in implementing directives would give rise to severe practical difficulties.

3. Commentary on the articles

Article 1

The very purpose of Article 100C is to establish a uniform list of third countries whose nationals are to be subject to visa requirements, which inevitably means that disparities between the practices of Member States in this regard must be removed. By providing that the Council is to "*determine* the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States" Article 100C necessarily implies that the Council must also determine which third countries are to be exempt from a visa requirement. The contrary view cannot be reconciled either with the letter or with the spirit of this provision.

Article 1(1) refers to the Annex, which sets out the countries whose nationals are subject to a visa requirement. For ease of reference the Annex will be called the "negative list".

Ideally the Commission would have wished at this stage to place every third country either on the negative list or on a "positive list" of countries whose nationals are to be exempted from visa requirements. Manifestly, this is what is contemplated by Article 100C. However, this proved impossible in view of the very large number of third countries for which the practices of Member States diverge and the sensitive nature of the decision to be taken with respect to many of those countries. Accordingly, the Commission accepts that Member States may decide whether or not to impose visa requirements on nationals

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of third countries not listed in the Annex, subject to the two conditions set out in the preamble, namely: that it does not give rise to any controls contrary to Article 7A EC (formerly Article 8A EEC); and that it is only applicable for a strictly limited period of time, whereupon each third country must be governed either by the positive or the negative list. This situation can only be compatible with the Treaty if these two conditions are met. These principles are enshrined in Article 1(2).

Article 1(3) is designed to ensure the observance of the principle of open government: any measures taken by Member States pursuant to paragraph 2 are to be published in Part C of the *Official Journal*.

Article 2

This Article, which lays down the principle of mutual recognition by Member States of visas granted by each other, is in a sense the corner-stone of this proposal. As stated at the outset, Article 100C is an internal market provision. Its purpose is thus *inter alia* to contribute towards the realisation of the internal market provided for in Article 7A of the Treaty. It necessarily follows from this that the mere drawing up of common lists of third countries without more would fall well short of the objective set by Article 100C. Rather, the purpose is to hasten the end of controls on persons at the Community's internal borders. This can only be achieved by the principle of mutual recognition.

However, this Article applies only to visas which are valid throughout the Community. This matter is governed by the External Frontiers Convention. This condition was judged necessary because Member States could not be expected to recognise visas granted by each other without a minimum of harmonisation. Otherwise the Member States would lay themselves open to the abusive practice of "visa shopping".

Moreover, the External Frontiers Convention provides that persons holding a residence permit granted by a Member State are to be exempt from visa requirements.

Article 3

The term "visa" is used in Article 100C, so that the Council must be taken to have power to define this term pursuant to that provision. Some definition is indispensable if the other provisions of the Regulation are to be fully effective, as work in the Schengen Group and the Ad hoc Immigration Group has clearly shown. At the same time, the Commission does

not seek to innovate in this regard. Consequently, the definition in Article 3 broadly corresponds to that in Article 1 of the draft External Frontiers Convention.

In the overwhelming majority of Member States a short stay is considered to be one lasting no more than three months. This explains why this criterion was used in Article 21 of the External Frontiers Convention as drafted in 1991. Thus the first indent is closely modelled on the latter provision.

Article 4

The first paragraph is a standard provision.

The object of the second paragraph is merely to ensure that all the information referred to in Article 1(3) is published in the *Official Journal* before the other operative provisions of the Regulation are applied.

Proposal for a
Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external frontiers of the Member States

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, in particular Article 100C thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas Article 100C of the Treaty requires the Community to determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States; whereas its place in the Treaty shows that this article forms an integral part of the provisions relating to the internal market;

Whereas, according to the third paragraph of Article 3B of the Treaty, action taken by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty; whereas the mutual recognition by Member States of visas issued by each other, which is necessary to give full effect to Article 100C, is an essential accompanying measure for the achievement of the objective set out in Article 7A as regards the free movement of persons;

Whereas third countries should be classified according to their political and economic situation and according to their relations with the Community and the Member States, taking into account the degree of harmonisation achieved at Member State level;

Whereas the purpose of Article 100C is to harmonise the regulations and practices of the Member States in this regard; whereas divergences between the regulations and practices of Member States should be authorised for a limited period as a transitional measure, on the understanding that they may not give rise to controls contrary to Article 7A; whereas it should be stipulated that this transitional regime shall expire on 30 June 1996 and that prior to that date the Council shall decide with respect to each third country whether its nationals are to be subject to a visa requirement or are to be exempted from that requirement;

Whereas, with a view to ensuring that the system is administered openly and that the persons concerned are informed, measures taken by Member States pursuant to this

transitional and exceptional regime must be notified to the other Member States and to the Commission; whereas for the same reasons this information must also be published in the *Official Journal of the European Communities*;

Whereas the information provided for in Article 1(3) of this Regulation must be published before Article 1(1) and 2 and Article 2 become applicable; whereas it is therefore necessary to defer the application of those provisions until one month after the Regulation has come into force;

HAS ADOPTED THIS REGULATION:

Article 1

1. Nationals of third countries listed in the Annex to this Regulation shall be required to be in possession of a visa when crossing the external frontiers of the Member States.

2. Until 30 June 1996 Member States shall decide whether to require visas of nationals of third countries not listed in the Annex. Prior to that date the Council shall decide according to the procedure laid down in Article 100C either to add each of those countries to that list or or to exempt its nationals from visa requirements.

3. Within 10 working days of the entry into force of this Regulation, Member States shall notify the other Member States and the Commission of their measures taken pursuant to paragraph 2. Any fresh measures taken pursuant to paragraph 2 shall be similarly notified within 5 working days. The Commission shall publish the information notified pursuant to this paragraph in the *Official Journal of the European Communities*.

Article 2

A Member State shall not be entitled to require a visa of a person who seeks to cross its external frontiers and who holds a visa issued by another Member State, where that visa is valid throughout the Community.

Article 3

For the purposes of this Regulation, the following definition shall apply:

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visa: any authorisation granted by a Member State which either

-- entitles 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 stays not exceeding a total of three months in any six month period commencing on the date of the first entry; or

-- entitles 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

-- entitles a person who is present on its territory to re-enter within a specified period;

Article 4

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

However, Article 1(1) and (2) and Article 2 shall become applicable one month thereafter.

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

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Annex *

Afghanistan
Albania
Algeria
Angola
Antigua and Barbuda
Armenia
Azerbaidjan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belize
Benin
Bhutan
Botswana
Bulgaria
Burkina Faso
Burundi
Cambodia
Cameroon
CapeVerde
Central African Republic
Chad
China
Comores
Congo
Cuba
Djibouti
Dominica
Domenican Republic
Egypt
Eritrea
Ethiopia
Fiji
Gabon
Gambia
Georgia
Ghana
Grenada
Guinea
Guinea Bissau
Guinea (Equitorial)
Guyana
Haïti
India
Indonesia
Iran
Iraq
Ivory Coast
Jordan
Kazakhstan
Kirghizstan
Kiribati
Korea (North)
Kuwait
Laos
Lesotho
Lebanon
Liberia
Libya
Madagascar
Maldives
Mali
Morocco
Marshall Islands
Mauritius
Mauritania
Micronesia
Moldavia
Mongolia
Mozambique
Myanmar
Namibia
Nauru
Nepal
Niger
Nigeria
Northern Mariana Islands
Oman
Pakistan
Papua New-Guinea
Philippines
Qatar
Roumania
Russia
Rwanda
Saint Christopher and Nevis
Saint Vincent and Grenadines
Santa Lucia
Samoa (Western)
Sao Tomé and Principe
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Solomon Islands
Somalia
South Africa
Sudan
Sri Lanka
Surinam
Swaziland
Syria
Taiwan
Tadjikistan
Tanzania
Thailand
Togo
Tonga
Trinidad and Tobago
Trust Territory of the Pacific Islands (Palau)
Tunisia
Turkmenistan
Turkey
Tuvalu
Uganda
Ukraine
United Arab Emirates
Uzbekistan
Vanuatu
Vietnam
Yemen
Zaïre
Zambia
Zimbabwe

* The present list does not prejudge the position of the European Community or its Member States with respect to the international status of the countries mentioned above, nor with respect to the relations which they maintain with them.

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