NOTE

from: General Secretariat

Nos prev. docs: 11287/93 ASIM 32, 7712/94 ASIM 119, 5917/3/95 ASIM 95 REV 3

Subject: Text of the draft Council act drawing up the Convention on the crossing by persons of the external frontiers of the Member States of the European Union

Delegations will find attached a revised version of the text reflecting the outcome of the meeting of the K.4 Committee on 27 and 28 February 1996 and of the meeting of the External Frontiers Working Party on 7 March 1996.

Outstanding problems are referred to in the footnotes. The most significant problems are set out in the report from the K.4 Committee to Coreper/Council (5438/96 ASIM 36).
COUNCIL ACT No ....

of
drawing up the Convention on the crossing by persons
of the external frontiers of the Member States of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles K.1(2) and K.3(2), point (c), thereof,

Having regard to the Commission initiative (1),

Having regard to the Resolution of the European Parliament of 21 April 1994 (2),

Whereas, for the purposes of achieving the objectives of the Union, Member States regard the rules governing the crossing by persons of the external frontiers of the Member States of the European Union and the exercise of controls on such crossings as matters of common interest coming under the cooperation provided for in Title VI of the Treaty;

Has decided on the drawing up of the Convention the text of which is ANNEXED, which has been signed today by the Representatives of the Governments of the Member States of the Union;

(2) OJ No C 128, 9.5.1994, p. 351.
Recommends that it be adopted by the Member States in accordance with their respective constitutional rules.

Done at Brussels,

For the Council
The President
ANNEX

CONVENTION
ON THE CROSSING BY PERSONS OF THE EXTERNAL FRONTIERS
OF THE MEMBER STATES OF THE EUROPEAN UNION
THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Council Act of ......,

1. WHEREAS the rules governing the crossing by persons of 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 coming under the cooperation provided for in Title VI of that Treaty;

2. WHEREAS the rules governing the crossing of 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 nevertheless cover all persons arriving at a frontier to the extent necessary to distinguish those entitled under Community law from other persons;

3. 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;

4. 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;

5. 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;
6. **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;

7. **WHEREAS** the introduction of a system of controls at external frontiers pursuant to Article 7a of the Treaty and for the purposes of implementing this Convention 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;

8. **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,

**HAVE AGREED ON THE FOLLOWING PROVISIONS:**
TITLE I

GENERAL

ARTICLE 1

Definitions

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 States listed in the Annex (1) to this Convention as well as members of their families who come within the scope of Community legal provisions on entry and residence;

(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 permits referred to in Articles 8 and 15;

(c) "entry visa" means an authorization issued or a decision taken by a Member State which is required for entry into its territory with a view to an intended stay in that Member State or in several Member States of no more than three months in all;

(1) The text of the Annex reads as follows:
"The Member States declare that nationals of Iceland, Liechtenstein and Norway are persons entitled under Community law within the meaning of Article 1, point (a)(iii), of the Convention".
(d) "uniform visa" means a visa of the uniform format adopted by the European Community and issued in accordance with the rules laid down in Articles 19 to 22 of this Convention;

(e) "transit visa" means an authorization issued or a decision taken by a Member State which is required for entry into its territory with a view to transit through the territory of that Member State or of several Member States;

(f) "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;

(g) "re-entry visa" means an 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-applying for an entry visa for that State;

(h) "external frontiers" (i) means:

(i) the land frontier of a Member State without any common border with another Member State, and maritime frontiers;

(ii) airports, save as regards internal flights;

(iii) seaports, save as regards internal connections within a Member State and regular ferry links between Member States;

(1) The Commission, as it wanted to ensure that the definition of "external frontiers" was consistent with the definition given in Community law (see Regulation No 3925/91 – OJ No L 374, 31.12.1991), entered a substantive reservation on the return to the former definition of "external frontiers" and "internal flight". It preferred the definition in its 1993 proposal (11287/93 ASIM 32).

As a compromise, the Commission proposed the following definition of external frontiers:

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

The present (i), containing a definition of "internal flight", could then be deleted.

The Commission representative explained that that wording would also cover measures in Community law which might be adopted in the future, which was not the case with the present texts.
(i) "internal flight" means any flight coming from and going to destinations exclusively in the territory of the Member States, without any stopover in the territory of a third State. (1)

(j) "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 Community, 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.

**ARTICLE 1a**

**Scope of the Convention**

This Convention shall apply to all persons other than those entitled under Community law and, where there is an express statement to that effect, additionally to those so entitled.
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. In accordance with Article 1a, this Article also shall apply to persons entitled under Community law who cross the external frontier of a Member State, unless otherwise stipulated in the legislation 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 the implementing measures for 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 control agencies shall consult and cooperate to that end.

ARTICLE 4

Checks at external frontiers

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

ARTICLE 5

Nature of checks at external frontiers

1. When crossing an external frontier upon entering or leaving the territories of the Member States, all persons, including those entitled under Community law, shall be subject to a visual check 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 check to ensure that they fulfil the conditions set out in Article 7. Furthermore, Member States may check that persons entitled under Community law who are third-country nationals meet the conditions stipulated in Article 7(1), points (b) and (c). (5)

3. Arrangements for applying the checks shall be determined by the implementing measures for this Convention.

4. Certain checks may, exceptionally, be relaxed, due regard being had for any conditions that may be laid down by the implementing measures for this Convention. Checks upon entry shall take precedence over checks upon departure.

5. Without prejudice to Community provisions regulating checks on luggage carried by travellers and their vehicles, checks on persons and their vehicles and luggage shall take into account the need for:
   – detecting and preventing threats to national security and public policy or
   – combating illegal immigration.

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

(5) The text underlined is a Commission proposal which was favourably received, subject to a distinction being made between the conditions stipulated in point (b) which are compulsory and those in point (c) which are optional. The Commission will propose a new text.
ARTICLE 6

Specific arrangements for airports

1. Member States shall ensure that passengers on flights from third States who transfer on to internal flights are subject to a check on entry at the airport at which the external flight arrives. Passengers on internal flights who transfer on to flights bound for third States shall be subject to a prior check on departure 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 checks 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 checks specified for passengers going to that third country;

   - 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 checks 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

Checks 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 presents a valid travel document which authorizes the crossing of frontiers; a list and description of such documents shall be drawn up under the implementing measures for this Convention;

   (b) where applicable, that he is 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 produces, 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 has 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 is 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 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, point (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 a person who holds 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 the implementing measures for 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 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, in accordance with arrangements determined by the implementing measures for 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, the following shall be drawn up under the implementing measures for this Convention:

- 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.

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 legislation. In that case the stay shall be restricted to the territory of that State. (6)

(6) Substantive reservation by the United Kingdom delegation on replacing "access" by the word "stay" for reasons of consistency with Article 25, to which a second paragraph on transit has been added, also the subject of a reservation by that delegation.
TITLE IV

NOTIFICATIONS FOR REFUSING ENTRY

ARTICLE 10

List of persons to be refused entry

1. A joint list of persons to whom Member States shall refuse entry to their territories shall be drawn up on the basis of national notifications under the implementing measures for 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 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 legislation 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,
   
   - information to the effect that the person concerned has committed a serious crime,
   
   - serious grounds for believing that he is planning to commit a serious crime or that he represents a threat to the public policy or security of a Member State, or (7)

(7) Scrutiny reservation by the German delegation, which wanted to add the following criterion at the end of this indent: "that other important interests are affected or jeopardized, or".
– a serious offence or repeated offences against the legislation relating to the entry and residence of foreigners.

4. **Arrangements** for applying the criteria set out in paragraph 3 shall be determined by the implementing measures for this Convention.

5. In principle, persons entitled under Community law may not be placed on the joint list of persons to be refused entry. However, a person referred to in Article 1, point (a)(ii) or (iii), may be placed on the said list provided that this is compatible with the rules of Community law.

If a person who has been placed on the joint list of persons to be refused entry is found to be entitled under Community law, he may be kept on the list only if this is compatible with Community law. Should this not be the case, the Member State which placed the person on the list shall take whatever measures are required to remove him therefrom.

**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. **Arrangements for the application of this Article shall be determined by the implementing measures for 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 a person who fails 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, in accordance with the arrangements determined by the implementing measures for 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 legislation, are concerned with:

   – processing visa applications;

   – frontier controls;

   – police checks;

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

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 or rail companies and shipping companies and to 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 check 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 must 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 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 likewise 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 States shall be drawn up under the implementing measures for 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 under the implementing measures for 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

VISA PROVISIONS

ARTICLE 17

Common visa policy

Member States undertake to harmonize their visa policies progressively.

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 governing the issue of uniform visas

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 point (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 into a third country;

   – the visa shall be attached to the travel document in accordance with arrangements determined by the implementing measures for this Convention. (8)

(8) The Legal Service advised that this indent be deleted since its content was exclusively the responsibility of the European Community in accordance with Article 100c(3) of the Treaty establishing the European Community: see Legal Service opinion of 8 November 1993 (9903/93 JUR 139, paragraph 12) and the Legal Service contribution to the proceedings of the Visa Working Party on 6 March 1996 (5595/96 JUR 61 ASIM 40, paragraph 4).
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 objections.

The absence of a reply from these authorities within a period to be determined by the implementing measures for 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. Arrangements for implementing this Article shall be determined by the implementing measures for this Convention, having particular regard to Member States' security; they may, in particular, 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

Uniform visas

1. The uniform visa shall be issued using a uniform format for visas adopted in Regulation No 1683/95 of 29 May 1995; it shall state the information indicated in the Annex to that Regulation. (*)

2. 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.

3. The criteria and procedures for issuing multiple-entry uniform visas shall be determined by the implementing measures for this Convention.

4. The uniform visa may be a transit visa. The transit period may not exceed five days.

ARTICLE 22

Issue of uniform visas

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 under conditions determined by the implementing measures for this Convention.

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, and in particular the criteria to determine the main destination, shall be implemented under the implementing measures for this Convention.

**ARTICLE 23**

**Extension of stay**

Article 21 shall not prevent a Member State from issuing, if necessary, 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.

Nor shall these provisions prevent Member States from authorizing a person who is not a national of a Member State and holds a uniform visa to remain in their territories for more than three months.

**ARTICLE 24**

**Visas with restricted territorial validity** (10)

1. Member States may, on humanitarian grounds or in the national interest or by reason of international commitments, issue a person who does not meet all or some of the conditions laid down in Article 7(1), points (a), (c), (d) and (e); they may issue a visa valid in the territory of more than one Member State where this has been agreed, in agreements separate from this Convention, by the Member States concerned. They may also issue visas with restricted territorial validity in the cases described in Articles 20(1) and 23(1).

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(10) Scrutiny reservation by the Portuguese delegation.
2. A Member State which has issued a person with a visa pursuant to paragraph 1 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 arrangements determined by the implementing measures for this Convention on the basis of Article 12(2).

3. Visas issued in accordance with paragraphs 1 and 2 shall indicate their distinct nature.

ARTICLE 25

**Long-stay visas** *(1)*

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

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

2. A foreign national holding a long-stay visa issued by a Member State may travel through the territory of the other Member States in transit to the Member State which issued the visa, if he satisfies the entry conditions listed in Article 7, with the exception of the condition stipulated in paragraph 1, point (b). *(2)*

*(1)* Scrutiny reservation by the Portuguese delegation.

*(2)* Substantive reservation by the United Kingdom delegation on the inclusion of this second paragraph.
TITLE VII

FINAL PROVISIONS

ARTICLE 26 (¹³)

Implementing measures

1. The implementing measures provided for in this Convention shall be adopted by a majority of two thirds of the High Contracting Parties, with the exception of the implementing measures referred to in paragraphs 2 and 3 of this Article.

2. The implementing measures referred to in:
   - Article 5(3) and (4)
   - Article 7(1), point (a)
   - Article 8(3) and (5)
   - Article 10(4)
   - Article 15(3)

shall be adopted by common accord of the High Contracting Parties.

However, as from............(¹⁴) these implementing measures shall be adopted in accordance with paragraph 1 of this Article.

3. The implementing measures referred to in:
   - Article 10(1) and
   - Article 16
   - and those not expressly provided for in this Convention shall be adopted by common accord of the High Contracting Parties.

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(¹³) This compromise proposal from the Commission was favourably received by delegations subject to examination.
   See description of the problem in the report (5438/96 ASIM 36 + ADD 1).

(¹⁴) This date would be specified when the date of adoption of the Act drawing up the Convention was known. However, with regard to the Commission proposal, all the Member States were already agreed that this date should not be later than three years after that of adoption of the Council Act.
However, the implementing measures relating to the application of Title VI of this Convention shall be adopted by a majority of two thirds of the High Contracting Parties, if the Council, acting unanimously, so decides beforehand.

ARTICLE 27

Primacy of instruments


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 via the General Secretariat of the Council.

2. No Member State shall conclude agreements with one or more third States 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 comply with the arrangements laid down pursuant to Article 2 and shall not affect 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; reference to the Court shall be made as provided for 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.] (15)

TITLE VIII

Territorial application

ARTICLE 30

1. In the case of the Kingdom of Denmark, this Convention shall not apply to the Faroe Islands or Greenland unless the Kingdom of Denmark makes a declaration to the contrary. Such a declaration may be made at any time and shall be communicated to the General Secretariat of the Council, which shall inform Member States accordingly.

This Convention shall not affect the arrangements for persons moving between the Faroe Islands, Greenland and Denmark.

2. The provisions of this Convention shall apply, as regards France, to the European territories of the French Republic.

(15) Some delegations wanted wider jurisdiction for the Court of Justice. Another delegation was against the Court having any jurisdiction. Most delegations favoured seeking a middle path. See report (5438/96 ASIM 36 + ADD 1).
3. This Convention shall not affect the arrangements for persons moving between Italy and San Marino, Campione d'Italia or the Vatican.

4. As regards the Kingdom of the Netherlands, the provisions of this Convention shall apply only to its European territory.

5. United Kingdom proposal

As regards the United Kingdom, the provisions of this Convention shall apply to the United Kingdom of Great Britain and Northern Ireland and to the European territories for whose external relations the United Kingdom is responsible, with the exception of those territories where the right of free movement of persons does not apply. The Convention shall not apply to the Channel Islands nor the Isle of Man unless a declaration to the contrary is made by the United Kingdom. Such a declaration may be made at any time by a communication to the General Secretariat of the Council, which shall inform the other Member States and the Commission accordingly. (16)

Spanish proposal

As regards the United Kingdom, the provisions of this Convention shall apply to the United Kingdom of Great Britain and Northern Ireland and to the European territories for whose external relations the United Kingdom is responsible, with the exception of those territories where the right of free movement of persons does not apply. The Convention shall not apply to the Channel Islands nor the Isle of Man unless a declaration to the contrary is made by the United Kingdom. Such a declaration may be made at any time by a communication to the General Secretariat of the Council, which shall inform the other Member States and the Commission accordingly.

As regards the application of this Convention to Gibraltar, the Kingdom of Spain and the United Kingdom shall apply appropriate checks in accordance with this Convention.

(16) Substantive reservation by the Spanish delegation on this United Kingdom drafting proposal.
The application of this Convention to Gibraltar shall remain in abeyance until an agreement has been concluded between the Kingdom of Spain and the United Kingdom on the arrangements for applying the Convention to this territory.\(^{(17)}\)

6. This Convention shall not affect the arrangements for persons moving between Jersey, Guernsey, the Isle of Man and, respectively, the United Kingdom and Ireland.

7. As regards the Hellenic Republic, this Convention shall not affect the special status of Mount Athos, which is based exclusively on spiritual and religious considerations, as guaranteed by Article 105 of the Constitution of the Hellenic Republic and the Mount Athos Charter.

**ARTICLE 31**

**Reservations**

This Convention may not be the subject of any reservations.

**ARTICLE 32**

**Adoption and entry into force**

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. The Member States shall notify the depositary of the completion of their constitutional requirements for adopting this Convention.

\(^{(17)}\) Substantive reservation by the United Kingdom delegation on this Spanish drafting proposal. The Spanish delegation proposed a joint Spanish/United Kingdom statement at the time of signing to make it clear that this provision was without prejudice to sovereignty.
3. This Convention shall enter into force on the first day of the month following the expiry of a period of two months after the notification referred to in paragraph 2 by the last State, belonging to the European Union on the date of the adoption by the Council of the Act drawing up this Convention, to fulfil that formality.

4. The provisions concerning the adoption of measures for the implementation of this Convention shall be applicable upon entry into force of this Convention. The other provisions of this Convention shall be applicable as from the first day of the month following the expiry of a period of two months after the entry into force of this Convention.

ARTICLE 33

Accession by new Member States

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of the Convention in the language of the acceding Member State, as drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any acceding Member State on the first day of the month following the expiry of a period of two months after the date of deposit of its instrument of accession or on the date of entry into force of the Convention, in accordance with Article 32(3) and (4), if it has not already entered into force at the time of the expiry of the aforementioned period.

ARTICLE 34

Amendments

1. Amendments to this Convention and to the implementing measures for this Convention may be proposed by any Member State that is a High Contracting Party and by the Commission. Any proposed amendment shall be sent to the depositary, who shall communicate it to the Council and the Commission.
2. Amendments to this Convention shall be adopted by the Council, which shall recommend them to the Member States for adoption in accordance with their respective constitutional requirements.

3. Amendments adopted in accordance with paragraph 2 shall enter into force in accordance with Article 32(3).

4. Amendments to the implementing measures for this Convention shall be adopted by the Council in accordance with the procedures laid down for the adoption of the implementing measures in question. Save as otherwise provided in the Council act concerning their adoption, such amendments shall enter into force on the first day of the month following the expiry of a period of two months after their adoption by the Council.

**ARTICLE 35**

**Depositary**

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, entry into force and any other notification concerning this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

Done at .............................., .................................................. in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.]
1. The Member States hereby declare that this Convention, which deals with the crossing of their external frontiers,

   – is being signed with a view to achieving the objectives of Article 7a of the Treaty establishing the European Community and constitutes a stage towards achieving an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the aforementioned Treaty;

   – does not contain any express or implicit obligation upon Member States concerning controls at intra-Community frontiers;

   – does not affect agreements between Member States on the movement of persons which provide for greater freedom of movement or more extensive cooperation than that resulting from the provisions of this Convention.

2. Re Article 13

The Member States declare that this Convention will enter into force simultaneously with the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. That Convention will take into account Recommendation R(87)15 of 17 September 1987 of the Council of Europe's Committee of Ministers regulating the use of personal data in the police sector, insofar as police data are recorded.
3. **Re Article 19**

   The Member States declare that the provisions of this Convention do not prevent any Member State from issuing to persons who are not nationals of a Member State and whose travel documents are not recognized by all the Member States visas valid only in its territory.

4. **The Member States** declare that the effective entry into force of this Convention implies certain prior arrangements, in particular with respect to the conditions for the issue of visas.

   As a result, the Member States undertake to endeavour, as from the signing of this Convention, to ensure that the measures necessary for its application can be formally adopted as rapidly as possible.

5. **The Member States** take note that:

   – the application of this Convention to Gibraltar is without prejudice to the respective positions of the Kingdom of Spain and the United Kingdom on the dispute over the sovereignty of the isthmus on which the airport is built;

   – the Kingdom of Spain and the United Kingdom, which reaffirm their commitment to their early implementation of the joint declaration made at London on 2 December 1987, will consult together to overcome any practical difficulties that might arise in the application of this Convention to Gibraltar, having regard to the implementation of that declaration.

   The Member States declare that this Convention contains no provision which would prevent the Kingdom of Spain and the United Kingdom from carrying out systematic checks on persons moving between Gibraltar and Spain.

6. (a) **The Kingdom of Denmark** declares that checks at Denmark's external Community frontiers will be carried out with due regard for the obligations incumbent upon Denmark within the framework of the Nordic Passport Union.
During a transitional period, checks will be conducted as a combination of the effective checks that the other Nordic countries carry out at their external Nordic frontiers and the checks that can be made within the framework of the Nordic Passport Union at the internal Nordic frontiers between Denmark and the other Nordic countries.

These combined checks will be carried out with regard both to the interests of the Nordic countries and to those of the Community Member States and they will be as effective as the checks that will be established at the external frontiers of the other Community Member States.

Moreover, the Kingdom of Denmark does not undertake to carry out checks on nationals of Iceland and Norway entering Denmark via an external Community frontier according to standards for such checks that are stricter than the regulations that apply to nationals of Member States entering Denmark via an external Community frontier. (18)

(b) In the light of the explanatory note drawn up by the Kingdom of Denmark (WGI 798) the other Member States have agreed to this declaration.

7. The Kingdom of Denmark declares that checks at the frontiers of the Faroe Islands and of Greenland are carried out effectively so that they take full account of the requirements of public policy and public security and of the need to combat illegal immigration.

8. The Kingdom of Spain declares that the application of this Convention by Spain to the entire national territory of Spain will not prevent the continuing existence, in accordance with Article 12 and taking into account Articles 9 and 23, of specific entry and stay arrangements territorially confined to the cities of Ceuta and Melilla, in the application of which account will be taken of the interests of the other Member States (Articles 5 and 7), in particular through prior consultation of the joint list (Articles 7 and 10 and other related Articles).

(18) The Danish, Finnish and Swedish delegations are considering the possibility of a joint declaration.
Pursuant to its national legislation, in order to ensure that passengers continue to meet the conditions laid down in Article 7 which provided the basis for allowing them admission to the territory upon arrival at passport control at the external frontier, Spain will maintain checks (checks on identity and documentation) on sea and air journeys from Ceuta and Melilla having as their sole destination any other place on Spanish territory.

For the same purpose, Spain will maintain checks on domestic flights and regular ferry connections leaving the cities of Ceuta and Melilla for a destination in another State party to the Convention.