

Thursday 22 May 2008

**Promotion of democracy**

38. Underlines that the current food crisis demonstrates the need to promote political stability, regional integration, democracy and human rights, not only within the EU, but also worldwide; calls, therefore, on all relevant stakeholders to promote human and democratic values and the rule of law when addressing the current food crisis and tackling long-term food security problems;

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39. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the World Bank, the G8, the United Nations Secretary-General and the United Nations General Assembly, the Co-Presidents of the ACP-EU Joint Parliamentary Assembly and the Pan-African Parliament (PAP).

**Visa exemptions**

P6\_TA(2008)0230

**European Parliament resolution of 22 May 2008 on negotiations between the European Union and the United States with regard to visa exemptions (visa waiver)**

(2009/C 279 E/15)

*The European Parliament,*

- having regard to Articles 2, 6, 24 and 29 of the Treaty on European Union and Articles 62, 63, 286 and 300 of the EC Treaty, which are the legal foundation for a European area of freedom, security and justice and for international negotiations with third countries and organisations,
- having regard to the Council and the Commission statements of 6 March 2008 and 21 April 2008 to its Committee on Civil Liberties, Justice and Home Affairs,
- having regard to Rules 83 and 103(2) of its Rules of Procedure,
- A. whereas, since the entry into force of the Amsterdam Treaty in 1999, the Council has been responsible for establishing the rules on visas, including the list of third countries whose nationals must be in possession of a visa or are exempt from a visa requirement (Article 62(2)(b)(i) of the EC Treaty),
- B. whereas Community competence in visa matters includes the conditions under which visa-free status is given to nationals of third countries, and whereas such conditions must ensure equal treatment for all EU citizens, not only as regards the granting or denial of visa-free status *per se*, but also as regards the terms and conditions under which such status is given to, or withheld from, different Member States by third countries,
- C. whereas since 2001 the Council has exempted US citizens from the visa requirement <sup>(1)</sup>; whereas unfortunately a comparable exemption does not apply to all EU citizens, as the US still maintains the visa requirement for nationals of some Member States (currently Bulgaria, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania and Slovakia), due to the fact that, among other things, the rate of visa refusal, which is based on non-transparent criteria, is, for most of these countries, greater than 3 % of applications (10 % under certain conditions),
- D. whereas since 2005 a reciprocity mechanism may be activated at Community level <sup>(2)</sup> following a notification from a Member State, contacts by the Commission with the third country concerned and a Commission report to the Council, which may then decide on 'a temporary restoration of the visa requirement for nationals of the third country in question',

<sup>(1)</sup> See Annex II to Council Regulation (EC) No 539/2001.

<sup>(2)</sup> See Article 1(4) of the consolidated version of Council Regulation (EC) No 539/2001.

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- E. whereas even if reciprocity has been reached with several third countries, this is still not the case with the US, so that in 2006 the Commission proposed 'temporarily restoring the visa requirement for US nationals holding diplomatic and duty/official passports, in order to expedite progress towards reciprocity' <sup>(1)</sup>; whereas, however, this symbolic proposal was not followed by the Council,
- F. whereas several Member States continued their direct bilateral contacts with the US administration notwithstanding the Community's clear competence in the matter,
- G. whereas the situation became legally complicated when the US, on 3 August 2007, with the enactment of Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 <sup>(2)</sup>, namely the Secure Travel and Counterterrorism Partnership Act of 2007, reformed its visa waiver regime by adding seven security enhancements <sup>(3)</sup> so as to require all Member States wishing to be part of the visa waiver programme (VWP) to agree to sign a bilateral Memorandum of Understanding (MoU) and its binding implementing rules,
- H. whereas, even though the content of these so-called 'implementing rules' is still unknown to the EU institutions, it is clear from the MoUs that some of the new 'security enhancements' fall within the Community's competence (such as that concerning visa delivery or the 'Electronic System Travel Authorization' (ESTA) complementary future obligations), some within the EU's competence (such as on stolen passports <sup>(4)</sup>, PNR data or Schengen crime-related data), and the remaining enhancements fall within the exclusive competence of each Member State (such as those linked to the criminal records of its own nationals or those providing for the presence of air marshals on transatlantic flights),
- I. whereas in order to resolve this issue and for all the Member States to participate in the reformed US visa waiver regime in 2009, the Council decided on a two-tier approach on 18 April 2008 by:
- (a) giving the Commission a formal mandate to negotiate with the US on all Community-related issues and
- (b) adopting the 'red lines' that the Member States must respect in their dialogue with the US before the conclusion of the EC/US negotiations; these 'red lines' outline what falls within EC/EU competence and what, since it falls within national competence, may be negotiated bilaterally and make it clear that, as far as bilateral negotiations are concerned, the Member States must respect the principle of loyal cooperation with the other Member States and the EU institutions as laid down in Article 10 of the EC Treaty and in a judgment by the Court of Justice (C-105/03) with regard to the fulfilment of obligations under the EU Treaty,
- J. whereas even for matters that fall within the exclusive competence of the Member States, the principle of loyal cooperation could be threatened by bilateral agreements containing different conditions for the granting of visa-free status to some Member State nationals, which would result in differing treatment of citizens between the Member States in the visa field; whereas the Commission should ensure the principle of loyal cooperation,

<sup>(1)</sup> Second 'reciprocity' report, COM(2006)0568 of 3 October 2006.

<sup>(2)</sup> Accessible at: [http://www.ise.gov/docs/nsis/Implementing911\\_Act.pdf](http://www.ise.gov/docs/nsis/Implementing911_Act.pdf)

<sup>(3)</sup> Four of them are mandatory such as: (1) an Electronic System Travel Authorization (ESTA) system; (2) more robust security data sharing efforts; (3) requirements for timely reporting of blank as well as issued lost and stolen passports; and (4) guarantees that VWP countries accept the repatriation of their nationals ordered removed from the United States. There are also three discretionary enhanced security factors to be taken into consideration when determining whether the 3 % visa denial rate requirement can be waived: (1) airport security standards; (2) air marshals programs; and (3) standards for national travel documents.

<sup>(4)</sup> See Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol. (OJ L 27, 29.1.2005, p. 61).

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- K. whereas, in order better to protect US and EU citizens from the terrorist threat, transatlantic cooperation should improve: (a) the identification of the threat through joint analysis and broad information exchange, including exchange of best practice, within the framework of strict data protection measures, (b) coordination at EU and transatlantic level between law enforcement and intelligence agencies, while always respecting the rule of law, fundamental rights and privacy, and (c) operational capacity by means of closer cooperation between EU and US law enforcement and intelligence agencies, based on a deeper level of mutual trust between the different agencies and bodies involved,
- L. whereas the US Department of Homeland Security intends to implement air and sea biometric exit procedures by January 2009, the exit programme is considered to be a key provision in order to manage the VWP effectively and the US authorities intend not to extend the VWP to more of the United States' allies if the proposed exit procedures are not implemented by 30 June 2009,
1. Considers that any form of direct or indirect discrimination between European citizens, including on the grounds of their nationality should be prohibited not only inside the European Union, as laid down in Article 12 of the EC Treaty, but also outside the European Union, notably when such discrimination is the consequence of a lack of coordination in international negotiations between the EU institutions and the Member States;
2. Notes the fact that, for the first time, the US recognised the Community's competence to negotiate international visa policy agreements during the JHA Ministerial Troika on 13 March 2008 by agreeing in a joint statement to follow a 'twin track' approach; notes that the statement includes the words: 'those matters that fall within national responsibilities will be discussed with national authorities while those that fall within EU responsibility will be discussed with EU authorities'; considers that, in accordance with that statement, the US should from now on negotiate:
- with the Commission on visa matters, as is already the case for air transport <sup>(1)</sup>,
  - with the Council on EU policies on security-related matters (PNR Agreement or EU-US agreements on extradition and mutual legal assistance), and
  - with the Member States on the presence of air marshals on transatlantic flights and on security-related issues in so far as they relate to their own nationals, under the same conditions;
3. Reiterates that any agreement entered into by the EC/EU should comply with fundamental rights and individual freedoms as provided for in Article 6(2) of the EU Treaty, including the rights to privacy and data protection as provided for in:
- Articles 7 and 8 of the Charter of Fundamental Rights of the European Union,
  - Directive 95/46/EC and specific rules of Community law (and measures related to Schengen) when transfer to a third country is at stake,
  - Council of Europe Convention no 108 on the Protection of Individuals with regard to Automatic Processing of Personal Data and its Additional Protocol 181 regarding supervisory authorities and transborder data flows;
4. Urges the Commission to include in the negotiations the exclusion of Europeans with HIV from the VWP, and ensure equal treatment of all Union citizens; agrees with the Commission that there are no objective reasons for a travel ban on HIV infected people (as stated in its reply of 19 February 2008 to parliamentary question E-6038/07);

(<sup>1</sup>) The Open Skies Agreement (OJ L 134, 25.5.2007, p. 4).

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5. Endorses the mandate given by the Council to the Commission to negotiate an agreement securing visa waivers for all EU citizens entering the territory of the US, such as already apply to US citizens entering the territory of the EU; calls on the Commission to inform the competent parliamentary committee after each negotiation meeting (if necessary on a confidential basis);
6. Considers that negotiations should be concluded before June 2009 and that, by then, no discrimination should be allowed between EU citizens;
7. Shares the view that the Council's 'red lines' should be followed by the Member States <sup>(1)</sup> according to the principle of loyal cooperation provided for in Article 10 of the EC Treaty and also applicable, according to the case law of the Court of Justice (C-105/03 or the AETR case (22/70)), with regard to the fulfilment of the obligations embodied in the EU Treaty; stresses notably the fact that:
  - participation in the VWP should create as soon as possible the same rights for all citizens of the Member States, under the same conditions, in terms of the status of their passports;
  - any access for the US to EU/EC databases or information systems should be prohibited unless expressly permitted by EC law and, if so, should be commonly agreed to by the EU and based on full respect for the principle of reciprocity; the granting of access should therefore only be allowed as far as it is in line with the specific purpose of these EU information systems, as stated in their respective legal bases; in addition, an adequate level of protection must be ensured, in compliance with the criteria set forth in the relevant EU data protection instruments, whether general (Directive 95/46/EC) or specific (such as the Europol Convention, Eurodac Regulation and Schengen Convention);
  - any extension to Interpol of the reporting of data on lost and stolen passports should be commonly agreed by the EU;
  - airport security in accordance with International Civil Aviation Organization (ICAO) standards is sufficiently guaranteed by the existing EC rules (US inspections might be agreed where there are direct flights between airports on EU territory and the US);
  - any formal agreement on repatriation of EU citizens should be acceptable only on the basis of reciprocity, to be negotiated and concluded between the EC and the US;
  - obligations relating to the possible introduction of an electronic system for travel authorisations for US citizens travelling to the EU should be negotiated by the EC;
8. Instructs its President to forward this resolution to the Council, the Commission, the parliaments and governments of the Member States, the United States Congress and the United States Secretary of Homeland Security.

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<sup>(1)</sup> <http://register.consilium.europa.eu/pdf/en/08/st07/st07337.en08.pdf>

## Burma

P6\_TA(2008)0231

### European Parliament resolution of 22 May 2008 on the tragic situation in Burma

(2009/C 279 E/16)

*The European Parliament,*

- having regard to its previous resolutions on Burma,
- having regard to the conclusions of the extraordinary meeting of the General Affairs and External Relations Council of 13 May 2008 on the humanitarian situation in Burma/Myanmar,
- having regard to UN General Assembly Resolution 60/1 of 24 October 2005 on the World Summit Outcome, paragraph 139 of which endorsed the possibility of collective cohesive action against individual states where 'national authorities are manifestly failing to protect their populations from genocide, war crime, ethnic cleansing and crimes against humanity',
- having regard to Rule 103(4) of its Rules of Procedure,