

Visas, asylum, immigration: passage to qualified majority voting and to co-decision (Art. 251) for certain areas covered by Title IV of Part three of the EC Treaty

2004/0816(CNS) - 22/12/2004 - Final act

PURPOSE : to extend the application of the co-decision procedure (Article 251 of the Treaty establishing the European Community) to certain areas covered by Title IV, part three of the same Treaty (Justice and Home Affairs).

LEGISLATIVE ACT : Council Decision 2004/927/EC providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty.

CONTENT : This Decision establishes that certain measures relating to Title IV of the Treaty establishing the European Community should henceforth be subject to qualified majority voting and the

application of the co-decision procedure (Article 251) as opposed to the practice of finding unanimity within the Council.

To recall, under the Treaty of Amsterdam the European Community had acquired the power to adopt measures in the field of visas, asylum, immigration and other policies relating to the free movement of persons, as laid down in Title IV of Part Three of the TEC (the Treaty) by the Council acting unanimously after consulting the European Parliament. Under Article 67, the Council, acting unanimously after consulting the European Parliament, had to take a decision, after a transitional period of five years following the entry into force of the Treaty of Amsterdam, with a view to providing for all or parts of the areas covered by Title IV to be governed by the co-decision procedure. This Decision provides as follows:

- As from 1 April 2005, the Council shall apply Article 251 when adopting measures referred to in Article 62 (1) with a view to ensuring the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders; Article 62 (2) (a) measures on the crossing of the external borders of the Member States which shall establish standards and procedures to

be followed by Member States in carrying out checks on persons at such borders; and Article 62 (3) measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.

- As from April 2005, the Council shall act in accordance with Article 251 when adopting measures referred to in Article 63 (2) (b) on refugees and displaced persons within the following areas: promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons; and 63 (3) (b) measures on immigration policy within the following areas: illegal immigration and illegal residence, including repatriation of illegal residents.

- In addition, the Council has decided that until such time as the adoption of the European Constitution, it will continue to apply unanimity, following consultation with the Parliament, in matters relating to the legal migration of third country nationals to and between Member States referred to in Article 63(3)(a) and (4) of the Treaty. Lastly, all provisions relating to family law will not be affected by this Decision.

In accordance with the Protocol attached to the Treaty on European Union, Denmark will not take part in the adoption of this Decision. Ireland and the United Kingdom on the other hand have expressed their wish to take part in its adoption and application.