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Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Croatia and Cyprus of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period
and
repealing Decision No 895/2006/EC and Decision No 582/2008/EC of the European Parliament and the Council

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 1 July 2013 Croatia will accede to the European Union. For Croatia, as for the previous 2004 and 2007 enlargements, the so-called "Schengen two-phase implementation process" has been followed in matters related to the Schengen *acquis* (Article 4 of the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaties on which the European Union is founded (hereinafter: the 2012 Act of Accession)). This implies that Croatia, as previous accession countries, has to apply, from the date of accession the provisions of Regulation (EC) 539/2001¹ and thus, to subject third-country nationals listed in its Annex I to a visa requirement.

Croatia, as the countries who acceded to the European Union in 2004 and 2007, has this obligation even if the persons concerned hold a uniform visa, a long-stay visa or a residence permit issued by a Schengen Member State, as indeed, other Schengen provisions will not apply to Croatia from the date of its accession, such as:

-the Schengen mutual recognition rules laid down in Articles 18 and 21 of the Schengen Implementing Convention² and in Article 5(4)(a) of Regulation (EC) No 562/2006 (Schengen Borders Code)³, according to which aliens who hold valid residence permits or valid long-stay visas issued by one of the Schengen Member States may move freely for short stays within the territories of the other Member States,

- the provisions on uniform visas issued laid down in Article 2(3) of Regulation (EC) No 810/2009 (Visa Code)⁴, according to which uniform visas are valid for the entire territory of the Schengen Member States.

In addition, the national visas issued by other EU Member States, who are not Schengen Member States yet (Cyprus), are also not valid for the territory of Croatia.

To avoid imposing unnecessary administrative burdens on the countries who acceded to the European Union in 2004 and 2007, by way of derogation from Regulation 539/2001, Decisions No 895/2006/EC⁵ and No 582/2008/EC⁶ authorised the optional unilateral recognition by the new Member States not yet fully implementing the Schengen *acquis* of uniform visas, long-stay visas and residence permits issued by Schengen Member States as well as of national short-stay visas, long-stay visas and residence permits issued by other Member States not yet fully implementing the Schengen *acquis* for the purpose of transit not exceeding five days. In addition, Decision No 896/2006/EC⁷ authorised new Member States to recognise residence permits issued by Switzerland and Liechtenstein who were not yet part of the Schengen area without internal borders for the purpose of transit not exceeding five days.

Persons holding such documents have already passed a strict screening process by the issuing Schengen State and are not considered a threat to public policy or a risk in terms of illegal immigration by that State. Such a regime of unilateral recognition does not affect the acceding countries' obligation to refuse entry of a person for whom an alert has been issued in its

¹ OJ L 81, 21.3.2001, p.1.

² OJ L 239, 22.9.2000, p. 19.

³ OJ L 105, 13.4.2006, p. 1.

⁴ OJ L 243, 15.9.2009, p.1.

⁵ OJ L 167, 20.6.2006, p. 1.

⁶ OJ L 161, 20.6.2008, p.30.

⁷ OJ L 167, 20.6.2006, p.8.

national data base for the purposes of refusing entry in accordance with Article 5(1) of the Schengen Borders Code.

Similarly, by way of derogation from Regulation 539/2001, this proposal aims at introducing an optional regime based on common rules authorising Croatia on a transitional basis until its full application of the Schengen *acquis* to unilaterally recognise as equivalent to their national visas, uniform visas, long-stay visas and residence permits issued by Schengen Member States, as well as similar documents issued by Member States not yet fully implementing the Schengen *acquis* (Cyprus). However this authorisation is not limited to the purpose of transit not exceeding five days as in Decisions 895/2006 and 582/2008, but is valid for both transit through or intended stays on its territory not exceeding 90 days in any 180-day period. In fact, at the time of the adoption of the aforementioned Decisions the then applicable Common consular instructions on visas for the diplomatic missions and consular posts still foresaw the distinction between "transit visas" and "short-stay" visas. This distinction was abolished by Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), so that the aforementioned limitation is not appropriate anymore.

The above-mentioned previous transit decisions adopted at the occasion of the last two EU enlargements dealt only with uniform Schengen visas, i.e. visa allowing to circulate within the Schengen area. The visas with limited territorial validity (LTVs) were excluded from the scope of these previous decisions. However, currently the issue of Kosovo* (as defined by the UN Security Council Resolution 1244 of 10.06.1999.) not recognised by all the Schengen States must be addressed.

There is an essential difference between visas with limited territorial validity which in principle are only valid for the territory of the issuing Member State, and such visas issued for the citizens of Kosovo (in accordance with Article 25 (3) first sentence of the Visa Code) which allow to circulate in all Schengen Member States except those few Member States that do not recognise Kosovo. This specific characteristic justifies bringing these LTVs within the application of the regime of unilateral recognition, also because in this case there is no real threat of irregular migration or security risks for the Schengen area.

The extension of the unilateral recognition regime by a Union instrument would not impose any new obligations on Croatia in addition to those listed in the 2012 Act of Accession. It would thus not constitute a derogation from this Accession Treaty. The proposed regime would be implemented on an optional basis: Croatia would have the possibility either to implement the proposed regime or to continue issuing national visas as required by the Accession Treaty. Should Croatia opt for the implementation of the common regime, Croatia would have to accept the documents issued by any Schengen Member State, thus avoiding any distinction as regards the issuing Member State.

In this context, it should be recalled that until the date of accession, on the basis of its national legislation, Croatia accepts valid Schengen visas, long stay visas and residence permits issued by Schengen States for entry and stay or transit through its territory.

The current proposal repeals No 895/2006/EC and No 582/2008/EC. With regard to those Member States to whom these decisions were addressed who have meanwhile become Schengen Member States these Decisions have become obsolete (all but Cyprus)⁸. With regard to Cyprus, which fully implements the common regime established by Decision No 895/2006/EC since 10 July 2006 and that established by Decision No 582/2008/EC since 18

⁸ When presenting this proposal, the Commission starts from the understanding that by 1 July 2013, Bulgaria and Romania will fully apply the Schengen *acquis*.

July 2008, the current proposal foresees that this regime shall be replaced by a regime that authorises Cyprus, like Croatia, to unilaterally recognise the short-stay visas, long-stay visas and residence permits issued by Schengen Member States as well as of national short-term visas, long-term visas and resident permits issued by Member States not yet fully implementing the Schengen *acquis* (Croatia) for transit through or intended stays on their territories not exceeding 90 days in any 180-day period⁹. The current proposal foresees that Cyprus, like Croatia, is authorised to recognise visas and residence permits by the countries associated with the implementation, application and development of the Schengen *acquis*.

This regime will be applicable until the end of the transitional period and the full participation of the Member States concerned in the area without internal borders, date from which the mutual recognition of such documents becomes compulsory under Articles 18 and 21 of the Schengen Implementing Convention, Article 5(2) of the Schengen Borders Code and the Visa Code.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary

The main elements of this proposal can be summarised as follows:

- common rules authorising Croatia and Cyprus on a transitional basis to unilaterally recognise uniform visas, long-stay visas, visas with limited territorial validity issued to citizens of Kosovo in accordance with Article 25 (3) first sentence of the Visa Code and residence permits issued by Schengen Member States as well as similar documents issued by each other as equivalent to its national visas for transit through or intended stays on its territory not exceeding 90 days in any 180-day period;
- The unilateral recognition regime introduced by the current proposal must be limited to documents whose validity would cover the whole duration of the short stay in Croatia and Cyprus. In this context and having in mind the problems faced in the past (Decisions 895/2006 and 582/2008) by third country nationals, holders of one entry uniform visa when travelling back from their stay into the Schengen area with a visa which was not valid anymore, the current proposal should limit the unilateral recognition regime to uniform visas authorising two or multiple entries into the Schengen area.
- Member States addressed by this Decision have to communicate their decision on the use of the authorisation to the Commission. The Commission will publish this information in the *Official Journal of the European Union* and ensure in this way that the whole system is transparent;
- repeal of Decision No 895/2006/EC and Decision No 582/2008/EC.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence"

Legal basis

The proposed Decision is based on Article 77(2)(a) and (b) of the Treaty on the Functioning of the European Union, as it constitutes a measure concerning the common policy on visas and other short-stay residence permits as well as the checks to which persons crossing external borders are subject. This instrument will be adopted under the ordinary legislative procedure.

⁹ According to its Article 5, Decision No 896/2006/EC has become inapplicable as of the Schengen accession of Switzerland and Liechtenstein.

Insofar as the proposed decision should be addressed to Croatia, this proposal is subject to the entry into force of the Treaty between the Member States of the European Union and the Republic of Croatia concerning the Accession of the Republic of Croatia to the European Union¹⁰.

Subsidiarity principle

Article 5(3) of the Treaty on European Union states that, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objective of the proposed action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. As the objective pursued by this proposal requires derogation from existing Union law it can only be attained through action at Union level.

Proportionality principle

Article 5(4) of the Treaty on European Union states that the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. The form chosen for this action must enable the proposal to achieve its objective and be implemented as effectively as possible. As to the content, this initiative temporarily authorises the Member States concerned to derogate from their obligations under Council Regulation (EC) No 539/2001 by unilaterally recognising visas and residence permits issued by states fully implementing the Schengen *acquis*, during their period of validity, for transit through or intended stays on its territory not exceeding 90 days in any 180-day period. The entry and stay on the territories of the Member States concerned of persons holding visas or residence permits issued by states fully implementing the Schengen *acquis* or Croatia or Cyprus do not represent any risk as they have been subject to the applicable controls by the state that issued the visa or residence permit. The proposed unilateral derogation from Regulation (EC) No 539/2001 is therefore justified in order to avoid imposing unnecessary administrative burdens on the Member States concerned. Also, it applies only during a transitional period until the date of the Member States' concerned full integration into the common area without internal borders, date from which the mutual recognition regime becomes compulsory. Furthermore, the derogation is optional, thus not imposing on the Member States concerned any obligations additional to those laid down by the applicable Acts of Accession. The proposal therefore complies with the proportionality principle. It takes the form of a Decision, likewise the similar instruments adopted for the Member States acceding to the EU in 2004 and 2007.

5. CONSEQUENCES OF THE VARIOUS PROTOCOLS ANNEXED TO THE TREATIES AND OF THE ASSOCIATION AGREEMENTS CONCLUDED WITH THIRD COUNTRIES

The legal basis for this proposal is to be found in Title V of Part Three of the Treaty on the Functioning of the European Union, with the result that the system of 'variable geometry', provided for in the Protocol on the position of Denmark, the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, and the Protocol on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, applies. It follows that Denmark, the United Kingdom and Ireland are not taking part in its adoption, bound by it or subject to its application. The latter also follows from the fact that the proposed decision is addressed exclusively to Member States that are bound by the Schengen *acquis* without yet applying it.

¹⁰ OJ L 112, 24.4.2012, p. 10.

Because the proposed decision is addressed exclusively to Member States that are bound by the Schengen *acquis* without yet applying it, this proposal does not constitute a development of the provisions of the Schengen *acquis* within the meaning of the respective association agreements with Norway, Iceland, Switzerland and Liechtenstein. It therefore does not bind the aforementioned countries. However, for the coherence and proper functioning of the Schengen system, this Decision also covers visas and residence permits issued by the countries associated with the implementation, application and development of the Schengen *acquis*.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77 (2) (a) and (b) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national Parliaments,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) Pursuant to Article 4(1) of the 2012 Act of Accession, Croatia, which acceded to the Union on 1 July 2013, is required from that date to subject nationals of third countries, which are listed in Annex I to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement¹¹, to a visa obligation.
- (2) According to Article 4(2) of the 2012 Act of Accession, the provisions of the Schengen *acquis* on the conditions and criteria for issuing uniform visas, as well as the provisions on mutual recognition of visas and on the equivalence between residence permits/long stay visas and short stay visas, apply in Croatia only pursuant to a Council decision to that effect. However, they are binding on that Member State from the date of accession.
- (3) Croatia is therefore required to issue national visas for entry into or transit through their territory to third country nationals holding a uniform visa or long-stay visa or residence permit issued by a Member State fully implementing the Schengen *acquis* as well as similar documents issued by Cyprus.
- (4) The holders of documents issued by those Member States as well as documents issued by Cyprus do not represent any risk for Croatia as they have been subjected to all necessary controls by those States. In order to avoid imposing unjustified additional administrative burdens on Croatia, common rules should be adopted authorising Croatia to recognise unilaterally certain documents issued by those Member States as

¹¹ OJ L 81, 21.3.2001, p. 1.

equivalent to its national visas and to establish a simplified regime for the control of persons at the external borders based on that unilateral equivalence.

- (5) The common rules introduced by Decision No 895/2006/EC and by Decision No 582/2008/EC should be repealed . With regard to Cyprus, which implements the common regime established by Decision No 895/2006/EC since 10 July 2006 and that established by Decision No 582/2008/EC since 18 July 2008, common rules should be adopted authorising Cyprus, like Croatia, to recognise unilaterally certain documents issued by Member States fully implementing the Schengen *acquis* as well as similar documents issued by Croatia, as equivalent to its national visas and to establish a simplified regime for the control of persons at the external borders based on that unilateral equivalence.
- (6) The simplified regime laid down in this Decision should apply for a transitional period, until the date to be determined in a Council decision as referred to in the first subparagraph of Article 3(2) of the 2003 Act of Accession in respect of Cyprus and the first subparagraph of Article 4(2) of the 2012 Act of Accession in respect of Croatia.
- (7) Participation in the simplified regime should be optional, without imposing on the Member States obligations additional to those laid down by the 2003 Act of Accession and the 2012 Act of Accession.
- (8) The common rules should apply to short-term uniform visas, long-stay visas and residence permits issued by Member States fully implementing the Schengen *acquis*, visas with limited territorial validity issued in accordance with Article 25 (3) first sentence of the Visa Code and by the countries associated with the implementation, application and development of the Schengen *acquis* as well as to short-term visas, long-term visas and residence permits issued by Croatia and Cyprus. The recognition of a document should be limited to the period of validity of the document.
- (9) The entry conditions laid down in Article 5(1) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)¹² have to be fulfilled, with the exception of the condition laid down in Article 5(1)(b) thereof, insofar as this Decision sets up a regime of unilateral recognition by Croatia and Cyprus of certain documents issued by Member States fully implementing the Schengen *acquis* as well as similar documents issued by Croatia and Cyprus for transit through or intended stays on their territories not exceeding 90 days in any 180-day period.
- (10) Since the objective of this Decision, namely the introduction of a regime of unilateral recognition by Croatia and Cyprus of certain documents issued by other States, cannot be sufficiently achieved by Member States and can, therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as also set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.
- (11) As regards Iceland and Norway, this Decision does not constitute a development of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and by the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and

¹² OJ L 105, 13.4.2006, p. 1.

development of the Schengen *acquis*,¹³ as it is addressed only to Croatia and Cyprus, which are not yet fully implementing the Schengen *acquis*.

- (12) As regards Switzerland, this Decision does not constitute a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*,¹⁴ as it is addressed only to Croatia and Cyprus, which are not yet fully implementing the Schengen *acquis*.
- (13) As regards Liechtenstein, this Decision does not constitute a development of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*,¹⁵ as it is addressed only to Croatia and Cyprus, which are not yet fully implementing the Schengen *acquis*.
- (14) However, for the coherence and proper functioning of the Schengen system, this Decision also covers visas and residence permits issued by third countries associated with the implementation, application and development of the Schengen *acquis* and fully implementing the Schengen *acquis*, such as Iceland, Liechtenstein, Norway and Switzerland.
- (15) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision.
- (16) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*;¹⁶ the United Kingdom is therefore not taking part in its adoption.
- (17) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*¹⁷; Ireland is therefore not taking part in its adoption,

HAVE ADOPTED THIS DECISION:

Article 1

This Decision introduces a simplified regime for the control of persons at the external borders whereby Croatia and Cyprus may recognise unilaterally as equivalent to their national visas for transit through or intended stays on their territory not exceeding 90 days in any 180-day period the documents referred to in Article 2(1) and those referred to in Article 3 issued by Member States and countries associated with the implementation, application and development of the Schengen *acquis* and fully implementing the Schengen *acquis* and by

¹³ OJ L 176, 10.7.1999, p. 36.

¹⁴ OJ L 53, 27.2.2008, p. 1.

¹⁵ OJ L 83, 26.3.2008, p. 5.

¹⁶ OJ L 131, 1.6.2000, p. 43.

¹⁷ OJ L 64, 7.3.2002, p. 20.

Cyprus and Croatia to third country nationals subject to a visa obligation pursuant to Regulation (EC) No 539/2001.

The implementation of this Decision shall not affect the checks to be carried out on persons at the external borders in accordance with Articles 5 to 13 and Articles 18 to 19 of Regulation (EC) No 562/2006.

Article 2

1. Croatia and Cyprus may consider as equivalent to their national visas, for transit through or intended stays on their territory not exceeding 90 days in any 180-day period, the following documents issued by the Member States and associated countries fully implementing the Schengen *acquis*, irrespective of the nationality of the holders:

(i) a ‘uniform visa’ as defined in Article 2 (3) of Regulation (EC) No 810/2009, valid for 2 or multiple entries;

(ii) a ‘long-stay visa’ as referred to in Article 18 of the Convention implementing the Schengen Agreement;

(iii) a ‘residence permit’ as defined in Article 2(15) of Regulation (EC) 562/2006.

2. Croatia and Cyprus may also consider as equivalent to their national visas, for transit through or intended stays on their territory not exceeding 90 days in any 180-day period visas with limited territorial validity issued in accordance with Article 25 (3) first sentence of the Visa Code.

3. If Croatia or Cyprus decides to apply this Decision, it shall recognise all the documents referred to in paragraphs 1 and 2, regardless of which State issued the document.

Article 3

1. If Croatia or Cyprus decides to apply Article 2, they may, in addition, recognise as equivalent to their national visas for transit through or intended stays on their territory not exceeding 90 days in any 180-day period:

(i) national short-stay visas and national long-stay visas issued by Cyprus or Croatia in the uniform format laid down by Council Regulation (EC) No 1683/95¹⁸;

(ii) residence permits issued by Cyprus or Croatia according to the uniform format laid down by Council Regulation (EC) No 1030/2002¹⁹.

2. Documents issued by Croatia which may be recognised are listed in Annex I.

Documents issued by Cyprus which may be recognised are listed in Annex II.

Article 4

The period of validity of the documents referred to in Articles 2 and 3 shall cover the duration of the transit or stay.

Article 5

Croatia and Cyprus shall notify the Commission within 10 working days of the entry into force of this Decision, if they decide to apply this Decision. The Commission shall publish the

¹⁸ OJ L 164, 14.7.1995, p. 1.

¹⁹ OJ L 157 15.6.2002, p. 1.

information communicated by those Member States in the *Official Journal of the European Union*.

Article 6

Decision No 895/2006/EC of the European Parliament and of the Council and Decision No 582/2008/EC of the European Parliament and of the Council are repealed.

Article 7

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply until the date determined by a Council decision adopted pursuant to the first subparagraph of Article 3(2) of the 2003 Act of Accession in respect of Cyprus, and to the first subparagraph of Article 4(2) of the 2012 Act of Accession in respect of Croatia, on which all the provisions of the Schengen *acquis* in the field of the common visa policy and the movement of third country nationals legally residing within the territory of the Member States shall apply to the Member State concerned.

Article 8

This Decision is addressed to Croatia and Cyprus.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I
List of documents issued by CROATIA

V i s a s

- Kratkotrajna viza (C) - Short-stay visa (C)

R e s i d e n c e p e r m i t s

- Odobrenje boravka – Approval of Stay
- Osobna iskaznica za stranca – Identity Card for Foreign Nationals

ANNEX II
List of documents issued by CYPRUS

Θ ε ω ρ ή σ ε ι ς (V i s a s)

- Θεώρηση διέλευσης — Κατηγορία Β (transit visa — type Β)
- Θεώρηση για παραμονή βραχείας διάρκειας — Κατηγορία Γ (short-stay visa — type C)
- Ομαδική θεώρηση — Κατηγορίες Β και Γ (group visa — type Β and C)

Α δ ε ι ε ς π α ρ α μ ο ν ή ς (R e s i d e n c e p e r m i t s)

- Προσωρινή άδεια παραμονής (απασχόληση, επισκέπτης, φοιτητής) Temporary residence permit (employment, visitor, student)
- Άδεια εισόδου (απασχόληση, φοιτητής) Entry permit (employment, student)
- Άδεια μετανάστευσης (μόνιμη άδεια) Immigration permit (permanent permit)