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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa

(COM(2009)0091 – C6-0076/2009 – 2009/0028(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa (COM(2009)0091 – C6-0076/2009 – 2009/0028(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0091),
 - having regard to Article 251(2) and Article 62(2)(a) and (3) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0076/2009),
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A7-0000/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a regulation – amending act

Article 1 – point -1 (new)

Convention Implementing the Schengen Agreement

Article 21 – paragraph 1

Text proposed by the Commission

Amendment

(-1) In Article 21 of the Convention Implementing the Schengen Agreement, paragraph 1 is amended as follows:

"1. Aliens who hold valid residence permits issued by one of the Contracting Parties may, on the basis of that permit and a valid travel document, move freely for up to three months in any six-month period within the territories of the other Contracting Parties, provided that they

fulfil the entry conditions referred to in Article 5(1)(a), (c) and (e) of Regulation (EC) No 562/2006 and are not on the national list of alerts of the Contracting Party concerned."

Or. en

Justification

The amendment clarifies that holders of residence permits and, in case the present Commission proposal is adopted, holders of long-stay visa, may move freely within the Schengen area for three months per six-month period. Depending on the period of validity of the visa the freedom of movement may apply not only to a single three-month period, but to two or more three-month periods.

Amendment 2

Proposal for a regulation – amending act

Article 1 - point 1 a (new)

Convention Implementing the Schengen Agreement

Article 23 – paragraph 2

Text proposed by the Commission

Amendment

(1a) In Article 23 of the Convention Implementing the Schengen Agreement, paragraph 2 is amended as follows:

"2. Aliens who do not fulfil or who no longer fulfil the short-stay conditions applicable within the territory of a Contracting Party, but who hold valid residence permits or provisional residence permits or long-stay visas issued by another Contracting Party shall be required to go to the territory of that Contracting Party immediately."

Or. en

Justification

The amendment intends to prevent misuse of the freedom of movement granted to long-stay visa holders by the present legislative proposal.

Amendment 3

Proposal for a regulation – amending act

Article 1 - point 2 a (new)

Regulation (EC) No 562/2006

Article 5 – paragraph 4 - point a

Text proposed by the Commission

Amendment

(2a) In Regulation (EC) No 562/2006, Article 5(4)(a) is amended as follows:

"(a) third-country nationals who do not fulfil all the conditions laid down in paragraph 1 but hold a residence permit, a long-stay visa or a re-entry visa issued by one of the Member States or, where required, a residence permit or a long-stay visa and a re-entry visa, shall be authorised to enter the territories of the other Member States for transit purposes so that they may reach the territory of the Member State which issued the residence permit, long-stay visa or re-entry visa, unless their names are on the national list of alerts of the Member State whose external borders they are seeking to cross and the alert is accompanied by instructions to refuse entry or transit;"

Or. en

Justification

It is necessary to adapt Article 5(4) (a) of the Schengen Borders Code to take into account the freedom to travel granted to long-stay visa holders by the present legislative proposal.

Amendment 4

Proposal for a regulation

Article 2

Text proposed by the Commission

Amendment

This Regulation shall not affect the obligation for Member States to issue

This Regulation shall not affect the obligation for Member States to issue

residence permits to third-country nationals as provided by other instruments of Community law.

residence permits to third-country nationals as provided by other instruments of Community law, *notably*

- *Council Directive 2005/71/EC*
- *Council Directive 2004/114/EC*
- *Council Directive 2003/86/EC*
- *Directive 2004/38/EC and*
- *Council Directive 2003/109/EC.*

Or. en

Justification

The overall aim of the present Commission proposal is to address the negative impact on free movement of third-country nationals caused by the reluctance of Member States to issue residence permits in a timely manner. Therefore the specific obligations for Member States under Community law to issue residence permits within a certain time limit to certain categories of third-country nationals should be underlined.

EXPLANATORY STATEMENT

Introduction

The Schengen Convention stipulates that holders of a long-stay visa ('D visa') may only:

- stay in the territory of the Member State which issued the visa;
- transit through the territories of other Member States in order to reach that State, and may not travel to the other Member States or transit through the other Member States when returning to their country of origin.

Most Member States have introduced the procedure for converting this type of visa into a residence permit following entry into the country, which allows a third-country national holding such residence permit and a valid travel document to travel freely for up to three months in any half year within the territories of the other Member States.

However, in practice, there have been considerable delays in the conversion of such visas and, in some cases, they have not been converted at all. Under the Schengen Convention, this makes it impossible for such persons to travel to other Member States or to transit through them when returning to their countries of origin.

In response to this situation, a regulation was adopted in 2001 (Regulation No 1091/2001), introducing D+C visas, which allow holders of a long-stay D visa to move freely in the Schengen area during the first three months of the visa's period of validity, provided it has been issued in accordance with the rules governing short-stay visas (including checking against the SIS non-admissibility list).

Nevertheless, in practice most Member States still do not issue D+C visas or only issue very small numbers, the reasons being that:

- there is a lack of knowledge on the subject among consular officials;
- applicants are not informed of this possibility;
- national visa registration and processing programmes do not allow for the possibility of considering applications or issuing such visas.

Where a visa is issued and is not replaced by a residence permit by the end of the three-month period, the holder is no longer authorised to travel to another Member States. To do so, such persons are required to apply for a separate Schengen short-stay visa. However, some Member States refuse to issue such visas as such applicants have already stayed in the Schengen area for three months, on the basis of a D+C visa.

Schengen Borders Code and Community Code on Visas

A number of issues need to be considered in connection with these instruments:

- The proposal for a Regulation establishing the Community Code on Visas provides for

- the abolition of the D+C visa in order to simplify matters and requires Member States to speed up the issuance of residence permits to third-country nationals.
- The Visa Code will need to be adopted at the same time as these Regulations. The date of application of these Regulations should be aligned with the application of the Visa Code, scheduled for 5 April 2010.
 - Article 5(1)(b) of Regulation (EC) No 562/2006 (Schengen Borders Code) also provides for the possibility for third-country nationals in possession of a valid residence permit to cross the external borders of another Member State without a visa for stays not exceeding three months.

Scope of the proposals

The proposals seek to make it easier for third-country nationals legally residing in a Member State to move in the Schengen area on the basis of a D long-stay visa issued by that Member State.

They are intended to provide a response to situations where Member States are unable, for various reasons, to issue residence permits in time to third-country nationals residing in their territory, by extending the existing principle of equivalence between a residence permit and short-stay C visas to long-stay D visas. A long-stay visa will thus have the same effects as a residence permit as regards circulation in the Schengen area. This will make it possible for anyone in possession of a document showing that he is legally resident in a Member State to move freely in the Schengen area for short periods of no more than three months in any half year.

Member States will still be required to issue residence permits, in keeping with the obligations laid down by a number of directives relating to the admission of certain categories of third-country nationals.

Rapporteur's position

It should be borne in mind that Schengen is about freedom of movement. Anyone in possession of a document showing that they are legally resident in a Member State should be able to travel freely in that area, which is free of internal borders.

The ideal solution would be for Member States to meet their obligation to grant a residence permit to third-country nationals holding this visa. However, in practice this is not what happens in most Member States.

The fact that a student who is granted a visa to attend a course in Belgium (not falling within the scope of Directive No 2004/114/EC) cannot travel to a specialised library in the Netherlands to obtain information for the purposes of writing his thesis or to Barcelona for a weekend visit is simply unacceptable. This is an example of how absurd situations can arise.

Given that the Community Code on Visas is due to enter into force in April 2010, a solution needs to be found to this problem as a matter of urgency.

The Commission's proposals seem reasonable, although some amendments will be necessary to remedy the problem relating to long-stay visas without calling into question or reducing security levels in the Schengen area, but with a view to putting an end to this violation of fundamental rights, as reflected by the thousands of complaints that have been received.

The requirement to consult the SIS when processing long-stay (D) visa applications will ensure the same control over long-stay visa applicants as the existing one applicable to third-country nationals holding a residence permit. This addresses the concern that insecurity is on the increase.

Moreover, a number of Member States have, under the present arrangements, issued D long-stay visas, and subsequently residence permits, to third-country nationals without prior consultation of the SIS (in particular the provisions of Article 96 on refusing entry). This tendency not only poses a threat to security in the Schengen area, but also creates considerable difficulties at the external borders, when the names of persons with valid D visas appear on SIS lists. This gives rise to complications and unnecessary problems for the persons themselves and for border officials, who need to carry out lengthy checks in order to ascertain whether visas have been falsified, the SIS data are inaccurate and should be removed, or the visas in question simply should never have been issued.

Impact of the forthcoming entry into force of the Treaty of Lisbon

The rapporteur would like to highlight the fact that this draft report forms part of a package of two reports. The underlying Commission proposals will be affected by the entry into force of the Treaty of Lisbon, planned for 1 December 2009.

The legal bases of both Commission proposals are in the so-called first pillar. This means these proposals will probably be listed in an "*omnibus*" *Communication*, which is being prepared by the Commission at this moment. This communication will cover all proposals for which the legislative procedure has not been completed upon the entry into force of the Treaty of Lisbon. The intention is not to withdraw these proposals, but merely, via the "omnibus", to determine the new legal bases of the pending proposals under the Treaty of Lisbon. The omnibus Communication is not available yet.

These changes will probably imply that for both proposals the co-decision ("ordinary legislative procedure") shall apply. However, the legal bases of the two proposals will probably remain distinct, as one proposal affects provisions on short-stay visas and the other one provisions on long-stay visas. Therefore the rapporteur, on the basis of the current two Commission proposals, is presenting two draft reports with the respective amendments.

The rapporteur invites the Commission to present its proposals for the transition of these files to the new legal framework as soon as possible.

He would favour a conclusion of the legislative procedure before April 2010 in principle. This would avoid restrictions of the freedom of movement for long-stay visa holders, when the current regime of D+C visa is repealed by the Visa Code, which applies from 5 April 2010. However, he would like to underline that another question is currently under examination by the EU institutions: the question whether the *national Parliaments* have yet to be consulted

and granted an *8 weeks period* to react on the files which are pending at the moment when the Treaty of Lisbon comes into force.