



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2009/0025(COD)

29.1.2010

OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council regulation amending the Convention
Implementing the Schengen Agreement as regards long stay visa and alerts in
the Schengen Information System
(COM(2009)0090 – C6-0107/2009 – 2009/0025(COD))

Rapporteur: Piotr Borys

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SHORT JUSTIFICATION

Background

It may seem somewhat paradoxical that many holders of long-stay visas enjoy less freedom of movement in the Schengen area than holders of short-stay visas. Two closely related Commission proposals, one under the consultation procedure¹ and the other under the codecision procedure², attempt to provide a solution to this paradox. If adopted, they would enable holders of long-stay visas to move freely throughout the Schengen area in an equivalent way to holders of short-stay visas.

The solution proposed by the Commission side-steps the practical disadvantages and delays observed in many Member States by long-stay visa holders concerning the issuing of residence permits.

The arrangement which is currently applicable³ has been considered unsatisfactory in practice, and expires on 5 April 2010. This has rendered the question rather urgent.

Position of the rapporteur

Your rapporteur agrees with the general approach of the proposal, and its underlying philosophy that people should be able to travel around the Schengen area for short stays for three months in any half year with the document on the basis of which they are legally present in a Member State.

It is unacceptable that third-country nationals able to prove that they are legally resident in a Member State cannot benefit from a level of freedom of movement which would accompany a residence permit. Such long-stay visa holders could for example be students or schoolchildren wanting to go to a field trip in another Member State⁴, scientists⁵, certain family members of third-country nationals⁶ and Union citizens⁷, and certain long-term residents⁸.

¹ 2009/0025/CNS. Legal basis: Article 63(3)(a) EC.

² 2009/0028/COD. Legal basis: Articles 62(2)(a) and (3) EC.

³ The "D + C visa" set up under Article 1 of Regulation 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa, OJ L 150/4, which provides that, for three months from their initial date of validity, long stay visas "shall be valid concurrently as uniform short-stay visas". This Regulation will be repealed by Article 56(2)(e) of the Community Code on Visas (Regulation 810/2009 of the European Parliament and the Council of 13 July 2009 establishing a Community Code on Visas, OJ L 243/1.

⁴ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375/12.

⁵ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289/15.

⁶ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12–18.

⁷ Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158/77.

⁸ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53.

However, in order for such a system to function, and in order to avoid "visa shopping" whereby persons are able to circumvent the refusal of a visa by one Member State by applying to another, checks equivalent to those existing in other areas must be put in place in order to ensure proper communication between Member States and consistency between the issuing of long-stay visas, residence permits and alerts in the SIS.

Furthermore, your rapporteur also considers that the proposal, as it is an urgent solution to a complex problem, may have unintended consequences in the long term, particularly in the event that long-term visas are to be regulated at Union level. A reporting and review clause has therefore been inserted.

Your rapporteur considers that the application of Union law is also at the heart of this proposal, namely the failure of many Member States to issue residence permits within certain time-limits, even when this is set out in mandatory terms in legislation. It must be borne in mind that third countries also witness this state of affairs. The Union should therefore do its utmost to ensure that the procedures applying in different Member States are consistent. For this reason, your rapporteur calls on the Commission to examine individual situations in the Member States, and where possible, start infringement procedures to ensure that legality is respected. The Commission should base itself on long-standing case-law according to which even relatively minor but general and persistent administrative practices many constitute an infringement, despite formally correct transposition by the Member State¹. It should also be made clearer that the present proposals in no way excuse the Member States from their obligations, provided in various Community instruments, to issue residence permits.

It must also be kept in mind that the present proposal is inextricably linked and should therefore be read together with the Commission proposal on the movement of persons with a long-stay visa (COM(2009)091). In your rapporteur's opinion, the right to free movement as laid down in the Article 21(1) of the Convention Implementing the Schengen Agreement, amended in the latter proposal, should also apply to third-country nationals who hold a valid long-stay visa issued by one of the Member States as provided for in Article 18 of the Convention and should be indicated accordingly on the visa sticker by a specification of the territory in which visa holder is entitled to travel.

Finally, your rapporteur recalls the absolute necessity of SIS II and VIS starting operations as soon as possible. He considers that SIS II will bring considerable improvements and new functionalities such as the introduction of biometric data and the interlinking of alerts, which will contribute to better control of external borders and strengthened security. The delayed timetable in the implementation of both systems is also prejudicial to the effectiveness of related legislation.

Given the urgency of the file, your rapporteur reserves the possibility to complete this draft opinion by tabling further amendments as per the usual procedure, as the procedure progresses through the institutions, and in the light of the entry into force of the Treaty of Lisbon².

¹ For instance, see Case C-494/01 *Commission v. Ireland*, 26 April 2005, Grand Chamber.

² See in particular Article 77(2)(a) TFEU which provides for the ordinary legislative procedure.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation – amending act

Article 1 – point 1 a (new)

The Convention Implementing the Schengen Agreement

Article 25 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(1a) In Article 25, the first subparagraph of paragraph 1 is amended as follows:

"1. Where a Contracting Party considers issuing a residence permit, it shall carry out a search in the Schengen Information System. Where a Contracting Party considers issuing a residence permit to an alien for whom an alert has been issued for the purposes of refusing entry, it shall first consult the Contracting Party issuing the alert and shall take account of its interests; the residence permit shall be issued *only* for substantive reasons and where there is a substantial need for the Contracting Party concerned to do so, notably on humanitarian grounds or by reason of international commitments."

Justification

This amendment has to be read in combination with Article 1(2) of the Commission's proposal which inter alia extends the above paragraph to long-stay visas. The amendment requests that the responsible authorities check SIS systematically before issuing residence permits or long-stay visas, thereby clarifying that there will be no extra security risk. In practice, this would help to combat the practice known as "visa shopping".

Amendment 2

Proposal for a regulation – amending act

Article 1 – point 1 b (new)

The Convention Implementing the Schengen Agreement

Article 25 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1b) In Article 25, the following paragraph is inserted:

"1a. Prior to issuing an alert for the purposes of refusing entry, the Contracting Party shall check its national records for issued long-stay visa or residence permits."

Justification

The amendment seeks to ensure that the information recorded in the SIS is coherent with the long-stay visas or permits issued.

Amendment 3

Proposal for a regulation

Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

This Regulation shall not affect the obligation on Member States to issue residence permits to third-country nationals in compliance with time-limits and as provided for by other instruments of Community law, in particular

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

Justification

It should also be made clearer that the present proposals in no way excuse the Member States from their obligations, provided in various Community instruments, to issue residence permits.

Amendment 4

**Proposal for a regulation
Article 1 b (new)**

Text proposed by the Commission

Amendment

Article 1b

Not later than 5 April 2012, the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation and Regulation [200X/0000] on movement of persons with a long-stay visa. If necessary, the report shall be accompanied by proposals to amend this Regulation.

Justification

As an urgent solution to a complex problem, both Regulations may have unintended consequences in the long term, particularly in the event that long-term visas are to be regulated at Union level following the entry into force of the Treaty of Lisbon.

PROCEDURE

Title	Long stay visas and alerts in the Schengen Information System						
References	COM(2009)0090 – C6-0107/2009 – 2009/0025(COD)						
Committee responsible	LIBE						
Opinion by Date announced in plenary	JURI 19.10.2009						
Rapporteur Date appointed	Piotr Borys 5.10.2009						
Discussed in committee	2.12.2009						
Date adopted	28.1.2010						
Result of final vote	<table> <tr> <td>+: </td><td>22</td></tr> <tr> <td>–: </td><td>0</td></tr> <tr> <td>0: </td><td>0</td></tr> </table>	+:	22	–:	0	0:	0
+:	22						
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Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Diana Wallis, Cecilia Wikström						
Substitute(s) present for the final vote	Piotr Borys, Sajjad Karim, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, Toine Manders, Arlene McCarthy						