EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2005/0158(COD)

9.1.2006

***I
DRAFT REPORT

on the 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 Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories
(COM(2005)0381 – C6-0253/2005 – 2005/0158(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Michael Cashman

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***. 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). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a decision of the European Parliament and of the Council on introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories (COM(2005)0381 – C6-0253/2005 – 2005/0158(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0381)[1],

– having regard to Article 251(2) and Articles 62(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0253/2005),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006),

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 Commission.

Text proposed by the Commission	Amendments by Parliament
Amendment 1 Recital 8	
(8) The entry conditions laid down in Article 5(1) ***of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux economic union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders[2] (hereinafter referred to as the "Schengen Convention")***, have to	(8) The entry conditions laid down in Article 5(1) ***of Regulation (EC) No .../2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)*** have to be fulfilled, with the exception of the condition laid down in Article 5(1)(b), insofar as this Decision sets up ***a regime of***

[1] OJ C ..., 4.1.2006, p. .....
[2] ***OJ L 239 22/09/00, p.19.***

be fulfilled, with the exemption of 5(1)(b), insofar as this Decision sets up ***a unilateral recognition regime between national transit visas issued by a new Member State and certain documents issued by Member States fully implementing the Schengen acquis as well as similar documents issued by other new Member States.***	***unilateral recognition by new Member States of certain documents issued by Member States fully implementing the Schengen acquis and similar documents issued by other new Member States for the purpose of transit.***

Amendment 2
Recital 9 a (new)

	(9a) This Decision does not constitute a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, as it is only addressed to Member States that do not yet fully implement the Schengen acquis. However, for the coherence and proper functioning of the Schengen system, this Decision also covers visas and residence permits issued by the third States associated with the implementation, application and development of the Schengen acquis and fully implementing the Schengen acquis such as the Republic of Iceland and the Kingdom of Norway.

Amendment 3
Article 1

This Decision introduces a simplified regime for the control of persons at the external borders based on allowing the Czech Republic, Estonia, Cyprus, Latvia,	***1.*** This Decision introduces a simplified regime for the control of persons at the external borders based on allowing the Czech Republic, Estonia, Cyprus, Latvia,

Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia, (hereinafter new Member States) to recognise unilaterally as equivalent to their national visas for the purpose of transit, certain documents issued by the Member States fully implementing the Schengen acquis and documents issued by other new Member States to third country nationals subject to a visa obligation pursuant to Regulation (EC) 539/2001	Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia, (hereinafter new Member States) to recognise unilaterally as equivalent to their national visas for the purpose of transit, certain documents issued by the Member States fully implementing the Schengen acquis and documents issued by other new Member States to third country nationals subject to a visa obligation pursuant to Regulation (EC) 539/2001.
	For the purposes of this Decision, "Member States fully implementing the Schengen acquis" also includes the third States associated with the implementation, application and development of the Schengen acquis and fully implementing the Schengen acquis
	1a. The implementation of this Decision shall not affect the checks to be carried out on persons at the external borders in compliance with Articles 6 to 13 and 18 to 19 of Regulation (EC) No …/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

Justification

The amendment takes into consideration the particular positions of Iceland and Norway concerning their full implementation of the Schengen acquis. As such, documents from these countries must also be considered as equivalent to the national visas for the purpose of transit by those new Member States which implement this Decision.

Amendment 4
Article 2, paragraph 2

2. If a new Member State decides to apply this Decision, it shall recognise all documents referred to in ***paragraph 2*** issued by the Member States fully implementing the Schengen acquis independently of the State issuing the document.	2. If a new Member State decides to apply this Decision, it shall recognise all documents referred to in ***paragraph 1*** issued by the Member States fully implementing the Schengen acquis independently of the State issuing the document.

Amendment 5
Article 4

Member States may only recognise documents as equivalent to their national visas for the purpose of transit if the duration of the transit by the third country national through the territory of the new Member State(s) shall not exceed five days.	***New*** Member States may only recognise documents as equivalent to their national visas for the purpose of transit if the duration of the transit by the third country national through the territory of the new Member State(s) shall not exceed five days.
The period of validity of the documents referred to in Articles 2 and 3 shall cover the duration of the transit.	The period of validity of the documents referred to in Articles 2 and 3 shall cover the duration of the transit.
A uniform visa allowing ***one*** entry which has been used for entry into a Member State fully implementing the Schengen acquis shall be valid on the holder's return trip for transit back through the territory of ***a*** same ***one*** new Member State.	A uniform visa allowing ***a single*** entry which has been used for entry ***from a new Member State*** into a Member State fully implementing the Schengen acquis shall be valid on the holder's return trip for transit back through the territory of ***the*** same new Member State.

Amendment 6
Article 5, paragraph 2

The Commission shall publish the ***publication*** communicated by new Member States in the Official Journal of the European Union.	The Commission shall publish the ***information*** communicated by ***the*** new Member States in the Official Journal of the European Union.

Amendment 7
Annex, point 1

CZECH REPUBLIC	CZECH REPUBLIC
Visas	Visas
- Vízum k pobytu do 90 dnů – (*Short-stay visa*)	- Vízum k pobytu do 90 dnů – (*Short-stay visa*)

- Vízum za účelem převzetí povolení k pobytu VR – (visa with the aim of collecting a residence permit)	
- Vízum k pobytu nad 90 dnů – (*Long-stay visa*)	- Vízum k pobytu nad 90 dnů – (*Long-stay visa*)
- Diplomatické vízum – **(***diplomatic visa***)**	- Diplomatické vízum – **(***diplomatic visa***)**
- Zvláštní vízum – (*special visa*)	- Zvláštní vízum – (*special visa*)
- Vízum za účelem strpění VS – (*Visa to allow exceptional leave to remain*)	- Vízum za účelem strpění VS – (*Visa to allow exceptional leave to remain*)
- Vstupní vízum VV – (*entry visa)*	- Vstupní vízum VV – (*entry visa)*
- Vízum za účelem dočasné ochrany VG – (Visa for the purpose of temporary protection)	
Resident Permits	Resident Permits
- Prukaz o povoleki k pobytu pro statniko prislusnika (residence permit for foreigners)[1]	***– Průkaz o povolení k přechodnému pobytu (temporary residence permit card)***
- Long-term residence permit (valid – till the expiration day – maximum 1 year, extension is possible)	***– Průkaz o povolení k trvalému pobytu (permanent residence permit card)***
- Permanent residence permit (Issued to foreigners staying on the territory of the Czech Republic for more than 10 years. The time condition is not applicable if the foreigner is a close family member of the Czech citizen (family unification), or if the foreigner stayed on the territory of the Czech Republic for more than 8 years and additional conditions stipulated by law are fulfilled (par. 66 of the Czech Alien act- no. 326/1999 Col.)	

Justification

This amendment aims at taking into account the last version of the list of documents of the Czech Republic to be recognised and follows a communication from the Permanent Representation of the Czech Republic to the European Union.

[1] ***Same type of document for all variants with the validity indicated on the sticker.***

EXPLANATORY STATEMENT

1. Context of the proposal

The current Schengen "*acquis*"[1] establishes the principle of mutual recognition of uniform visas, of long term visas and of residence permits issued by Member States fully implementing the Schengen *acquis* for transit and short stay purposes. This enables a third country national holder of certain documents issued by a Schengen State to enter and/or circulate freely within the common space without being subject to any additional requirement.

As regards the new Member States, according to the Act of Accession, they implement the Schengen *acquis* in two separate phases: they apply the category I provisions as from accession, while the category II provisions will only be applied from a date to be determined by the Council. As a result, the new Member States currently have to apply the EC Regulation 539/2001[2] (category I provision) and must issue a national visa for the third country nationals listed in the Annex 1 of the Regulation who intend to transit or stay in their territory, while they do not apply yet the part of the Schengen *acquis* establishing a regime of mutual recognition of visas, residence permits (category II provisions). These countries cannot recognise as equivalent to their national visas the documents issued by a Schengen States or by other new Member States. They are obliged to require their own national visas even if the persons concerned already hold a Schengen residence permit or visa.

However, some of the new Member States do recognise in practice the documents issued by the Schengen States for transit and short-stay purposes, through bilateral agreements or unilateral national decisions. Such recognition is incompatible with EU law and thus the situation must be regulated as soon as possible.

Practical examples:

- A citizen of a country listed in the Annex 1 of the Regulation 539/2001 (e.g. Bosnia and Herzegovina, Serbia-Montenegro, Russia, Turkey, Ukraine, Moldova, etc) holds a French residence permit. He intends to travel by land to his country of origin, which entails transit through several countries. He does not need any visa for the Schengen Countries since these countries recognise his French residence permit but he needs a national visa for each one of the new Member States he goes through.

- A citizen of a country listed in the Annex 1 of the Regulation 539/2001 would like to visit Germany by car, which entails transit through several countries. As he obtained a German visa, he does not need another visa for the Schengen countries, but he needs a national visa for each one of the new Member States he transits.

2. Content of the proposal

[1] Art. 10, 18 and 21 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux economic union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (the Schengen Convention) confirmed by Article 2 of Regulation (EC) No 539/2001

[2] Council Regulation 539/2001 of 15 March 2001 listing the countries whose nationals must be in possession of visas when crossing the external borders and whose nationals are exempt from that requirement, OJ L 81, 21.3.2001, page 1, Regulation as last amended by Regulation (EC) No 851/2005 (OJ L 141, 04.06.2005, page 3)

The present proposal will allow new Member States to simplify the control at the external borders by unilaterally recognising certain documents issued by:

- Schengen Member States fully implementing the Schengen *acquis*, including Norway, Iceland and Danemark, that are associated to the Schengen *acquis* and fully implementing this *acquis*,

- other new Member States

as equivalent to their national visa.

This simplified regime should apply to the following documents:

- the uniform visas issued by a Schengen State in compliance with the common rules laid down in the Common Consular instructions (transit, short-stay or travel, group visa);

- the national long stay visas issued by a Schengen State according to its national legislation;

- the residence permits issued by a Schengen State and which are included in Annex IV of the Common Consular Instructions;

- the national short term and long term visas as well as the residence permits issued by another new Member State.

In order to avoid a fragmentary approach, it is deemed impossible to recognise some documents whilst not recognising others. Thus, all the abovementioned documents will be recognised as equivalent to the national visas of those new Member States which choose to implement this Decision.

The recognition of a document should be limited to the purpose of transit, without affecting the possibility of new Member States to issue national visas for short term stay. Such a limitation is necessary in order to avoid any risk of confusion of the current Schengen rules on the state responsible for a visa application.

The duration of the transit period may not exceed five days - this takes into account the existing rules on transit visas in the Common Consular Instructions as well as the geographical situation of new Member States.

This regime should only apply for a transitional period**,** until such a time as the new Member States will fully implement the Schengen *acquis*, at a future date to be determined by a Council Decision. Once a country decides to apply the decision, there will not be any possibility to suspend it, in order not to complicate the regime.

The proposed decision is addressed to the new Member States but their participation in this regime is optional, in order not to impose upon them additional obligations to those as defined by the 2003 Act of Accession. New Member States have the possibility either to implement the new instrument or to continue issuing national visas. Should they opt for the simplified regime, new Member States will have to accept documents issued by all the Member States fully implementing the Schengen *acquis*, without any distinction between them. Once these documents are recognised, the new Member States also have the possibility to recognise the documents issued by the other new Member States.

The new Member States shall notify the Commission within 10 working days of the entry into force of this Decision if they decide to opt in. There will not be any possibility to opt in at a later stage.

3. Consequences in relation to the various protocols annexed to the Treaty and to the associated states

The proposed Decision is addressed exclusively to new Member States and therefore does not affect the position of the **United Kingdom, Ireland and Denmark.**

As regards **Norway and Iceland,** this decision does not constitute a development of the provisions of the Schengen *acquis* within the meaning of the agreement these countries signed with the Council concerning their association with the implementation, application and development of the Schengen *acquis,* since it is only addressed to the new Member States. However, for the coherence of the Schengen system, it is necessary to include visas and residence permits delivered by the associated States and future associated States in the present decision. The new Member States will then have the possibility to unilaterally recognise these documents.

4. Opinion of the Rapporteur

The EU *acquis* relating to the internal and external borders is currently being extensively developed. The present proposal is the latest contribution in an on-going development of the *acquis*. Other developments include: the Directive of 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, the Schengen Borders Control Code approved by the Parliament and the Council in June 2005, the External Border Agency formally inaugurated in June 2005, the very recent Regulation concerning the local border traffic at the external land borders of the Member States.

The Rapporteur welcomes the present proposal which brings a response to the very acute issues which have arisen from the situation whereby the new Member States cannot recognise visas and residence permits issued by the other Member States and have to issue national visas to some third countries citizens for transit purposes.

On one hand, this situation implies a huge administrative burden for the new Member States' Consular offices in the Schengen States and in the new Member States. Before the holiday periods, these Consulates have to deal with thousands of applications for visas that they have to treat in a timely manner. This implies huge costs, modern services and a lot of personnel, which is particularly demanding for geographically small countries of transit.

On the other hand, the current regime is questionable because of the unjustified bureaucratic procedures and costs they imply for third countries citizens. When they intend to travel by land, for each one of the new Member States they pass through, these citizens need a transit visa. This means a lengthy, dissuasive and sometimes humiliating process: several dossiers of application, with forms to fill in, photographs, supporting documents such as medical and car insurance, hotel reservation, proofs of subsistence, bank

statements, etc. They have to pay for the visas, travel to the city where the consulates are located and they have to queue in front of them.

This regime has also a negative effect on family and cultural ties, since in the case of third country nationals residing in Schengen states it can restrict the access to their homeland.

All this situation is even more difficult to tolerate since the persons concerned do not represent any risk of illegal immigration or any threat to public policy as they have been submitted to several controls and screening either by a Schengen State or by another new Member State before the issuing of the Schengen visa, residence permit or the national visa. Moreover, the checks at the external borders are still to be carried out in compliance with Articles 6 to 13 and 18 to 19 of the European Parliament and Council Regulation (…) establishing a Community Code on the rules governing the movement of persons and according to the art 5 (1) of same regulation the following entry conditions still have to be fulfilled:

- possession of valid travel documents allowing to cross the border,

- documents justifying the purpose and conditions of the intended stay and the sufficiency of the means of subsistence,

- absence of an alert in the SIS for the purposes of refusing entry,

- lack of being considered to be a threat to public policy, internal security, public health or the international relations of any of the Schengen Member States.

For all these reasons, it is now crucial and urgent to adopt this Decision allowing the new Member States to opt in for the unilateral recognition of the visas and residence permits issued by the Member States fully implementing the Schengen *acquis* including Norway, Iceland and Denmark and by other new Member States. This Decision will not only be useful for the ten new Member States, but it will also operate when Romania and Bulgaria join EU.