EVROPSKÝ PARLAMENT

2004 *2009*

Výbor pro občanské svobody, spravedlnost a vnitřní věci

PROZATÍMNÍ ZNĚNÍ
2005/0159(COD)

9. 1. 2006

***I
NÁVRH ZPRÁVY

o návrhu rozhodnutí Evropského parlamentu a Rady, kterým se zavádí zjednodušený režim kontrol osob na vnějších hranicích vycházející z jednostranného uznávání některých povolení k pobytu vydaných Švýcarskem a Lichtenštejnskem členskými státy za účelem průjezdu přes jejich území
(KOM(2005)0381 – C6-0254/2005 – 2005/0159(COD))

Výbor pro občanské svobody, spravedlnost a vnitřní věci

Zpravodaj: Michael Cashman

Vysvětlivky k označení legislativních postupů

*	Postup konzultace *většina odevzdaných hlasů*
**I	Postup spolupráce (první čtení) *většina odevzdaných hlasů*
**II	Postup spolupráce (druhé čtení) *většina odevzdaných hlasů pro schválení společného postoje* *většina hlasů poslanců Parlamentu pro zamítnutí nebo změnu společného postoje*
***	Postup souhlasu *většina hlasů poslanců Parlamentu s výjimkou případů uvedených v článcích 105, 107, 161 a 300 Smlouvy o ES a článku 7 Smlouvy o EU*
***I	Postup spolurozhodování (první čtení) *většina odevzdaných hlasů*
***II	Postup spolurozhodování (druhé čtení) *většina odevzdaných hlasů pro schválení společného postoje* *většina hlasů poslanců Parlamentu pro zamítnutí nebo změnu společného postoje*
***III	Postup spolurozhodování (třetí čtení) *většina odevzdaných hlasů pro schválení společného návrhu*

(Druh postupu závisí na právním základu navrženém Komisí.)

Pozměňovací návrhy k legislativnímu textu

V pozměňovacích návrzích Parlamentu je pozměněný text zvýrazněn ***tučnou kurzívou***. Zvýraznění *normální kurzívou* označuje části legislativního textu, u nichž je navržena oprava, a má sloužit k usnadnění vypracování konečného znění (např. zjevné chyby nebo vynechání textu v některé jazykové verzi). Tyto navržené opravy podléhají dohodě příslušných oddělení.

OBSAH

Strana

NÁVRH LEGISLATIVNÍHO USNESENÍ EVROPSKÉHO PARLAMENTU 5

VYSVĚTLUJÍCÍ PROHLÁŠENÍ 7

NÁVRH LEGISLATIVNÍHO USNESENÍ EVROPSKÉHO PARLAMENTU

o návrhu rozhodnutí Evropského parlamentu a Rady, kterým se zavádí zjednodušený režim kontrol osob na vnějších hranicích vycházející z jednostranného uznávání některých povolení k pobytu vydaných Švýcarskem a Lichtenštejnskem členskými státy za účelem průjezdu přes jejich území
(KOM(2005)0381 – C6-0254/2005 – 2005/0159(COD))

(Postup spolurozhodování: první čtení)

Evropský parlament,

– s ohledem na návrh Komise předložený Evropskému parlamentu a Radě (KOM(2005)0381)[1],

– s ohledem na čl. 251 odst. 2 a čl. 62 odst. 2 písm. a) Smlouvy o ES, v souladu s nimiž Komise předložila svůj návrh Parlamentu (C6-0254/2005),

– s ohledem na článek 51 jednacího řádu,

– s ohledem na zprávu Výboru pro občanské svobody, spravedlnost a vnitřní věci (A6-0000/2006),

1. schvaluje pozměněný návrh Komise;

2. vyzývá Komisi, aby věc opětovně postoupila Parlamentu, pokud bude mít v úmyslu svůj návrh podstatně změnit nebo jej nahradit jiným textem;

3. pověřuje svého předsedu, aby předal postoj Parlamentu Radě a Komisi.

Znění navržené Komisí	Pozměňovací návrhy Parlamentu
	Pozměňovací návrh 1 Čl. 1 odst. 1a (nový)
	1a. Provádění tohoto rozhodnutí nesmí ovlivnit kontroly, které se provádějí u osob na vnějších hranicích v souladu s články 6 až 13 a 18 a 19 nařízení (ES) č. .../2006 Evropského parlamentu a Rady, kterým se zavádí kodex Společenství o pravidlech upravujících přeshraniční pohyb osob (Schengenský hraniční kodex).

[1] Dosud nezveřejněný v Úředním věstníku.

Pozměňovací návrh 2
Čl. 2 odst. 1

Členské státy plně uplatňující schengenské *acquis* jednostranně uznávají povolení k pobytu vydaná Švýcarskem a Lichtenštejnskem, která jsou uvedena v příloze.	Členské státy plně uplatňující schengenské *acquis* jednostranně uznávají povolení k pobytu vydaná Švýcarskem a Lichtenštejnskem, která jsou uvedena v příloze. ***Pro účely tohoto rozhodnutí se věta „členské státy plně uplatňující schengenské acquis“ vztahuje také na třetí státy spjaté s prováděním, uplatňováním a vývojem schengenského acquis a plně uplatňující schengenské acquis.***

Odůvodnění

Tento pozměňovací návrh bere v úvahu zvláštní postavení Islandu a Norska, které jsou třetími zeměmi spjatými s prováděním, uplatňováním a vývojem schengenského acquis a které ho plně uplatňují. Také tyto země musí uznat povolení k pobytu vydaná Švýcarskem a Lichtenštejnskem.

VYSVĚTLUJÍCÍ PROHLÁŠENÍ

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 is a basic principle underpinning the creation of the area without internal borders. It enables a third country national holder of certain documents issued by a Member State fully participating in the Schengen area to enter and/or circulate freely within the common space without being subject to any additional requirement.

As regards residence permits issued by Switzerland and Liechtenstein, the existing Schengen *acquis* does not allow Member States fully implementing the Schengen *acquis* to recognise these for transit purposes into the Schengen territory.

Additionally, the new Member States have the obligation to apply the EC Regulation 539/2001[2] and to require transit visas to the third country nationals listed in the Annex 1 of the Regulation (e.g. Algeria, Tunisia, Morocco, Turkey, Serbia - Montenegro, etc) even if they are holders of valid Swiss / Lichtenstein residence permits.

Practical example: an Albanian from Kosovo holder of a Swiss residence permit wants to return to his country for the holidays period. He has to pass through Italy and Slovenia, so he needs a Schengen transit visa and also a Slovenian visa.

Switzerland, however, has been unilaterally recognising residence permits from old Schengen Member States for transit and short-term purposes since 2000 and is currently preparing the necessary legislation to extend this to all 25 Member States.

2. Content of the proposal

The present proposal will allow Member States fully implementing the Schengen *acquis*, including the third countries associated to the Schengen *acquis* and fully implementing it (such as Norway and Iceland) and new Member States to simplify the control at the external borders by unilaterally recognising residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory.

The proposed system is limited to transit; it does not affect the possibility of Member States to issue multi-entry visas for short stay.

The duration of the transit period may not exceed five days - this rule takes into account the existing rules on transit visas in the Common Consular Instructions as well as the

[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)

geographical situation of new Member States.

The proposed regime is compulsory for Member States fully implementing the Schengen *acquis*, for Norway and Iceland and optional for new Member States during the transitory period till the date of their full integration into the common area, date from which the recognition regime becomes compulsory. This distinction is necessary in order to avoid imposing upon new Member States additional obligations during this period. Until then, new Member States have the possibility either to implement the new instrument or to continue issuing national visas as required by the Accession Act. Once a new Member State decides to apply the decision, there will not be any possibility to suspend it in order not to complicate the regime.

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.

The proposed system answers an urgent need but is only transitory as Switzerland will soon become part of the Schengen area. Indeed, the Swiss have approved the bilateral agreements concerning Schengen and Dublin by referendum in June 2005 and confirmed it in September 2005. As regards Liechtenstein, it has an open border with Switzerland since a customs agreement of 1923. In order to avoid the establishment of controls at that common border, the Principality is also currently negotiating with the EU on its participation to the Schengen *acquis*.

3. **Consequences in relation to the various protocols annexed to the Treaty**

The proposed EP and Council Decision concerning the unilateral recognition by Member States of certain residence permits issued by Switzerland and Liechtenstein as equivalent to the transit visa falls within Title IV of the Treaty and is therefore affected by the "variable geometry" arising from the Protocols on the positions of the United Kingdom, Ireland and Denmark.

United Kingdom and Ireland are not taking part in the adoption of this Decision and are not bound by it or subject to its application, since they do not take part in the development of the Schengen *acquis.*

Denmark
Since this Decision constitutes a development of the Schengen *acquis*, Denmark shall decide within a period of six months whether it will implement it in its national law".[1]

Norway and Iceland
According to the Agreement[2] of 1999 between the Council, Norway and Iceland which

[1] Article 5 of the Protocol on the position of Denmark annexed to the EC Treaty
[2] Agreement pursuant to the first paragraph of Article 6 of the Protocol integrating the Schengen *acquis*, OJ L 176, 10.7.99, p. 35

associates these two countries with the implementation, application and development of the Schengen *acquis,* Norway and Iceland implement and apply the provisions of all acts or measures amending or building upon the integrated Schengen *acquis.*

Norway and Iceland have also the possibility "to explain the problems they encounter in respect of" the measure and "to express themselves on any questions concerning the development of provisions of concern to them or the implementation thereof" in the "Mixed Committee" provided for in Article 4 of the Agreement.

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 aims at solving very serious difficulties which have arisen from the situation whereby the Member States cannot recognise Swiss / Lichtenstein residence permits issued to third country nationals listed in the Annex 1 of the EC Regulation 539/2001[1].

A large number of third country nationals listed in the Annex 1 of the EC Regulation 539/2001 live in Switzerland and Lichtenstein holding valid residence permits. For example, in Switzerland there are roughly 1.5 million foreigners with legal residence status[2] and according to a survey by Switzerland's Central Register of Foreign Nationals in April 2003, 514.250 persons would be affected by seasonal transit.

The present situation implies a huge administrative burden for the Member States' Consular offices in Switzerland and Lichtenstein. Before the holiday periods, these Consulates have to deal with thousands of applications for visas that they have to treat in a timely manner. For example, in the past, the Italian Consulates have had sometimes to treat 300,000 applications. Other overburdened consulates are the Austrian, French, Hungarian and Slovenian ones. This implies huge costs, modern services and a lot of personnel, which is particularly demanding for geographically small countries of transit.

Furthermore, the current regime implies unjustified administrative procedures and costs for third countries citizens which is translated into efforts to build a whole dossier of application, very long queues at the embassies, high costs because of the price of the visa

[1] 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)
[2] Federal Office for Migration - FOM, December 2005

itself and associated costs (telephone, travel to the city where the consulates is located, etc.) All these formalities can take weeks and even months and can force people to take time of work, abandon their travel plans and even stop people from going abroad to see their family in case of urgency. This regime clearly has a negative effect on family and cultural ties, since it can restrict the access to their homeland to third country nationals residing in Switzerland and Lichtenstein.

This situation is even more difficult to comprehend since the persons concerned do not represent any risk of illegal immigration or any threat to public policy as they have been submitted to controls and screening by the Swiss / Lichtenstein authorities before the issuing of the residence permit. 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 imperative to adopt this Decision allowing the Member States fully implementing the Schengen *acquis* and new Member States to unilaterally recognise residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory.