EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2005/0159(COD)

9.1.2006

***I
DRAFT REPORT

on the proposal for a decision of the European Parliament and of the Council establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory
(COM(2005)0381 – C6-0254/2005 – 2005/0159(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.

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION 5

EXPLANATORY STATEMENT.....7

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a decision of the European Parliament and of the Council establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory (COM(2005)0381 – C6-0254/2005 – 2005/0159(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 Article 62(2)(a) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0254/2005),

– 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 Article 1, paragraph 1a (new)
	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 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).

[1] Not yet published in OJ.

Amendment 2
Article 2, paragraph 1

Member States fully implementing the Schengen acquis shall unilaterally recognise the residence permits issued by Switzerland and Liechtenstein which are listed in the Annex.	Member States fully implementing the Schengen acquis shall unilaterally recognise the residence permits issued by Switzerland and Liechtenstein which are listed in the Annex. ***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.***

Justification

The amendment takes into consideration the particular positions of Iceland and Norway which are third countries associated with the implementation, application and development of the Schengen acquis and which fully implement it. These countries must also recognise the residence permits issued by Switzerland and Liechtenstein.

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 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 geographical situation of new Member States.

---

[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 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 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

[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

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 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

[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

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.