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Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the list of travel documents entitling the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list

EXPLANATORY MEMORANDUM

1. Context of the proposal

Article 17 (3) (a) of the Convention Implementing the Schengen Agreement (CSA) established that "the Executive Committee shall also take the necessary decisions on ... the travel documents to which a visa may be affixed. In accordance with that Article, two Executive Committee decisions were drawn up in 1998 and in 1999 "concerning the compilation of a manual of documents to which a visa may be affixed" (SCH/Com-ex (98)56 and SCH/Com-ex (99) 14) and consequently the existing "Table of travel documents of third country nationals for the purpose of visa issuance and the crossing of borders" was drawn up. Annex 11 to the Common Consular Instructions (CCI) listed certain "criteria for determining whether a travel document may bear a visa." However, on 5 April 2010 Regulation 810/2009 of the European Parliament and the Council establishing a Community Code on Visas ("the Visa Code") repealed both Article 17 (3) of the CSA, which was the legal basis for SCH/Com-ex (98)56, SCH/Com-ex (99)14 and the CCI.

Article 2(1) of Council Regulation (EC) No 789/2001 established that "Each Member State shall communicate to the Secretary-General of the Council such amendments as it wishes to make to the manual of documents to which a visa may be affixed...". Article 3 of the same Regulation established that "The General Secretariat of the Council shall be responsible for the preparation of revised versions of the manual of documents to which a visa may be affixed...". Also Regulation 789/2001 in turn was also repealed by the Visa Code.

The existing "Table of travel documents of third country nationals for the purpose of visa issuance and the crossing of borders" (hereinafter referred to "the Table") consists of five parts:

- I: Travel documents to which a visa may be affixed listing documents issued by all third countries whose nationals are subject to visa requirements, the third countries whose nationals are not subject to such requirements and Member States not yet applying the Schengen acquis in full.
- II: Aliens' passports issued by the Schengen States to which a visa may be affixed listing the aliens travel document (or alien's passport or non-nationals passport), refugees travel document (Geneva Convention of 28 July 1951), and the stateless persons travel document (New York Convention of 28 September 1954).
- III: A list of travel documents issued by international organisations listing 12 documents issued by international organisations.
- IV: Gradual compilation of a documentary register containing copies of originals (this part was never drawn up).
- V: Information on known fictitious passports.

The Table is periodically updated on the basis of Member States' notifications to the Council General Secretariat. Consolidated versions are published generally once a year.

The purpose of the Table is twofold: on the one hand it allows border control authorities to verify whether a given document is recognised for the purpose of crossing the external borders and on the other it allows consular staff to verify whether all Member States applying

the common visa policy recognise a given document for the purpose of affixing the visa sticker. The territorial validity of the visa issued and affixed must correspond to the territory of the Member States recognising the travel document, i.e. if a Member State does not recognise a given travel document, the holder of the travel document will not have access to the territory of that Member State. The rules for issuing visas in such cases are set out in Article 25 (3) of the Visa Code.

Under Article 5 (1) (a) of the Schengen Borders Code (SBC), "third country nationals must possess a valid travel document or documents authorising them to cross the border".

Grounds for and objectives of the proposal

The existing "Table of Travel documents" which dates back to the intergovernmental period of the Schengen cooperation needs to be adapted to the institutional and legal framework of the European Union. The legal basis for the Schengen provisions on visa policy and on "the standards and procedures to be followed ... in carrying out checks on persons at [external] borders" is Article 77 (2) (a) and (b) of the Treaty on the Functioning of the European Union (TFEU).

Certain provisions of the Visa Code refer to Member States' recognition or non-recognition of travel documents issued by third countries. There is only one implicit reference in the Schengen Borders Code to Member States' recognition or non-recognition of travel documents held by third country nationals wishing to cross the external borders. The existing Table also lists documents entitling their holder to cross the external borders.

To date there is no systematic monitoring of the lists of travel documents issued by third countries. Consequently Member States do not have to indicate their position in relation to recognition or non-recognition of all the documents listed. This creates legal uncertainty for the holders of certain travel documents who risk refusal of entry or who are issued with a visa with limited territorial validity allowing them to travel only to the Member States who recognise their travel document. Moreover, the "non-recognition" indicated in the Table is often the result not of deliberate decision by the Member State concerned not to recognise the travel document but of a failure to take a position on the travel document in question.

Given Member States exclusive powers over recognition of travel documents it is not possible to set out rules on harmonisation of the recognition of travel documents. This proposal is therefore limited to setting up a mechanism to ensure that the list of travel documents issued by third countries is constantly updated, to establish a centralised mechanism for the technical assessment of such travel documents and, finally, to ensure that Member States express their position in relation to recognition or non-recognition of all the listed travel documents. However, the proposal also allows for exchanges of information within an advisory committee with the aim of reaching a common position amongst Member States on recognition or non-recognition of any given travel document.

2. Legal elements of the proposal

The purpose of the proposal is to set up a mechanism to ensure that the list of travel documents issued by third countries is constantly updated, to establish a centralised mechanism for the technical assessment of such travel documents and, finally, to ensure that Member States express their position in relation to the recognition or non-recognition of these documents. The structure of the list of travel documents has been modernised and linked to Regulation 539/2001, listing the third countries whose nationals must be in possession of a

visa when crossing the external borders and those whose nationals are exempt from that requirement.

The Table will also contain information on: travel documents issued by Member States not applying the Schengen acquis on travel documents issued by Member States to third country nationals, to refugees under the Geneva Convention of 28 July 1951 and to stateless persons under the New York Convention of 28 September 1954 and on travel documents issued by international organisations, e.g. the United Nations, the European Union, the North Atlantic Treaty Organisation and the International Committee of the Red Cross.

A link has also been created to the provisions in the Visa Code on local Schengen cooperation (Article 48). Article 48 (1) (c) stipulates that "an exhaustive list of travel documents issued by the host country" should be established. This will contribute to keeping the data updated.

The proposal does not include Part V of the existing Table - "Information on known fictitious passports". The list of "non-recognisable" fictitious travel documents cannot be considered as exhaustive and therefore offers little added value.

The legal basis of the proposal is Article 77 (2) of the TFEU as this is the EU legal basis given to Schengen Executive Committee Decisions SCH/Com-ex (98) 56 and SCH/Com-ex (99) 14 in Council Decision No 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis (Annex C, Article 4)¹.

The proposal provides for simplification of administrative procedures for public authorities (EU or national). Creation of a centralised mechanism, in the form of an advisory committee which can carry out a technical assessment of travel documents issued by third countries and their level of security will share the burden, as the results of such assessments will be shared between all Member States thus preventing duplication of effort.

Adoption of the proposal will lead to the repeal of existing legislation.

3. Consultation of interested parties

On 3rd October 2008 an experts' meeting on the revision of the Table of travel documents was organised by Commission staff. Experts from 23 Member States participated.

Member States called for a legal instrument:

- o establishing a mechanism to ensure that the entries concerning the documents issued by third countries are constantly up to date;
- o establishing a centralised mechanism for Member States to carry out a technical assessment of travel documents issued by third countries in order to support Member States' decision-making process on recognition of travel documents;
- o establishing a mechanism placing an obligation on Member States to express their position on all travel documents listed;

¹ OJ L 176, 10.7.1999, p. 17.

- o possibly, providing for a harmonised position on "traditional" types of travel documents (ordinary, diplomatic and service/official/special passports);
- o basing the Table on Lists I and II of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
- o maintaining the current structure of the Table but deleting of Part V;
- o ensuring that the Table is "online" and maintained by the Commission. The electronic database should contain specimens of all travel documents listed.

This proposal by the Commission has taken into account all the suggestions made by the experts, except for the wish for greater harmonisation of recognition given the above-mentioned legal constraints and for establishment of an online database containing specimen of all travel documents. While fully supporting the latter, the Commission is of the opinion that the main concerns in relation to the current Table of Travel Documents are the unstructured updating of entries concerning the documents issued by third countries and the negative effects at operational level (in particular in terms of issuing uniform visas) of Member States' failure to take a position on to the recognition or non-recognition. Therefore the first priority should be to establish channels and procedures for solving those problems. Establishment of such a database would take time and consume resources and would simply delay the adoption of the legal instrument to remedy the more pressing problems. On the long-term basis, synergies with the FADO (online system for exchanging information on false and authentic documents set up under the Joint Action 98/700/JHA and operated by the Council General Secretariat) could be obtained by basing an online Table of travel documents on certain elements of the FADO (e.g. images of specimens of travel documents) and thus avoiding onerous overlapping of efforts. The list of travel documents as suggested by the Commission, and subsequent updates, will be available in electronic form in the Circa database.

A meeting document drawn up by the Commission staff for the purpose of the expert meeting, held in October 2008 set out a number of options that were considered by Member States' experts.

The option of establishing a legal instrument providing for a mechanism to provide a list of Travel documents constantly updated in terms of both the information on the travel documents issued by third countries and of the indication of Member States' recognition or non-recognition of these documents was chosen in order to enhance harmonisation while preserving Member States' exclusive powers over recognition of travel documents.

4. Impact assessment

Given that the objectives of the proposal are to adapt the already existing "Table of Travel documents" to the institutional and legal framework of the European Union, to make the existing system more efficient, and to establish a framework for exchange of information on decisions taken by Member States at national level an impact assessment is not relevant.

5. Proportionality and subsidiarity principles

The Table of Travel Documents is an indispensable part of the Schengen acquis on borders and visas. The objectives of the proposal are to adapt the already existing "Table of Travel documents" to the institutional and legal framework of the European Union, to make the existing system more efficient and to establish a framework for exchanges of information on decisions taken by Member States at national level.

6. Choice of instrument

Recognition of travel documents is relevant for to the implementation of existing Union legislation (i.e. the Schengen Borders Code and the Visa Code): it is intrinsically linked to application of the provisions of the Schengen acquis relating to checks on persons at the external borders and the issuing of short stay visas. However, given Member States' exclusive powers over the recognition of travel documents, the instrument will take the form of a Decision of the European Parliament and the Council as it is limited to a revision and modernisation of the Table of travel documents.

7. Budgetary implications

The proposed Decision has no implication on the European Union budget.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) On the basis of Article 17(3) (a) of the Convention implementing the Schengen Agreement of 14 June 1985², Decisions SCH/Com-ex (98)56³ and SCH/Com-ex (99)14⁴ established the Manual of travel documents entitling the holder to cross the external borders and which may be endorsed with at visa. These Decisions should be adapted to the institutional and legal framework of the European Union.
- (2) The lists of travel documents issued by third states should be monitored systematically to ensure Member States' authorities dealing with the processing of visa applications and border control have accurate information at their disposal about the travel documents presented by third country nationals. Exchanges of information between Member States on the travel documents issued and on Member States' recognition of these travel documents and making available of the entire compilation to the public should be modernised and made more efficient.
- (3) Under Article 48 (1) (c) of Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas⁵ an exhaustive list of travel documents issued by the host country should be drawn up within local Schengen cooperation.
- (4) A mechanism should be established to ensure that the list of travel documents is constantly updated and to allow for a common technical assessment, where appropriate, of the listed travel

² OJ L 239, 22.9.2000, p. 19.

³ OJ L 239, 22.9.2000, p. 207.

⁴ OJ L 239, 22.9.2000, p. 298.

⁵ OJ L 243, 15.9.2009, p.1.

documents and place an obligation on Member States to express their position on the recognition and non-recognition of these documents.

- (5) Member States are and should remain responsible for the recognition of travel documents for the purpose of allowing the holder to cross the external borders and affixing a visa.
- (6) Member States should notify their position in relation to all travel documents and endeavour to harmonise their positions on the different types of travel documents.
- (7) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁶.
- (8) As regards Iceland and Norway, this Decision constitutes 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 latter's association with the implementation, application and development of the Schengen acquis⁷, which falls within the area referred to in Article 1, points (A), (B) and (C) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement⁸.
- (9) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis⁹, which fall within the area referred to in Article 1, points (A), (B) and (C), of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁰.
- (10) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, points (A), (B) and (C) of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC¹¹.
- (11) As provided for in Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the Functioning of the European Union, Denmark is not participating in the adoption of this instrument and, accordingly, is neither bound by it nor subject to its application. Given that the present instrument is intended to build upon the Schengen acquis under the provisions of Title V of the Treaty on the Functioning of the European Union, Denmark shall, in

⁶ OJ L 184, 17.7.1999, p. 23.

⁷ OJ L 176, 10.7.1999, p. 36.

⁸ OJ L 176, 10.7.1999, p. 31.

⁹ OJ L 53, 27.2.2008, p. 52.

¹⁰ OJ L 53, 27.2.2008, p. 1.

¹¹ OJ L 83, 26.3.2008, p. 3.

accordance with Article 5 of the Protocol, decide within a period of six months after the Council has adopted this instrument whether it will implement this decision in its national law.

- (12) This Decision constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis¹²; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (13) This Decision constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis¹³; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (14) As regards Cyprus, this Decision constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.
- (15) This Decision constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession,

HAVE ADOPTED THIS DECISION:

Article 1

Subject matter and Scope

1. This Decision establishes the list of Travel Documents entitling the holder to cross the external borders and which may be endorsed with a visa (hereinafter referred to as "the list of travel documents") and a mechanism for compiling this list.
2. This Decision applies to travel documents such as national passport (ordinary, diplomatic or service/official or special passport), an emergency travel document, a refugee or stateless persons travel document, a travel document issued by international organisations or a *laissez-passer*.

Article 2

Compilation of the list of travel documents

1. The Commission shall draw up the list of travel documents with the assistance of Member States and on the basis of information gathered within local Schengen cooperation, as referred to in Article 48(1)(c) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.

¹² OJ L 131, 1.6.2000, p. 43.

¹³ OJ L 64, 7.3.2002, p. 20.

2. The list of travel documents shall be drawn up in accordance with the procedure referred to in Article 7(2).

Article 3

Structure of the list

1. The list shall be divided into three parts.
2. Part I shall consist of travel documents issued by the third countries and territorial entities as listed in Annexes I and II to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement¹⁴.
3. Part II shall consist of the following travel documents issued by Member States of the European Union:
 - (a) travel documents issued to third country nationals,
 - (b) travel documents issued to refugees under the United Nations Convention Relating to the Status of Refugees of 28 July 1951 ,
 - (c) travel documents issued to stateless persons under the United Nations Convention relating to the Status of Stateless Persons of 28 September 1954 (d) travel documents issued by the United Kingdom to British citizens who are not nationals of the United Kingdom of Great Britain and Northern Ireland for the purposes of Union law.
4. Part III shall consist of travel documents issued by international organisations.
5. As a general rule, the listing of a given travel document applies to all series of that travel document that are still valid.
6. If a third country does not issue a particular type of travel document, this shall be indicated by entering "not issued" in the list.

Article 4

Notification of recognition or non recognition of listed travel documents

1. Within one month after the communication of the list referred to in Article 2(1), Member States shall notify to the Commission their position on recognition or non-recognition of the travel documents.
2. In the framework of the Committee referred to in Article 7(1), Member States shall exchange information on the grounds for the recognition or non-recognition of specific travel documents with a view to reaching a harmonised position.

¹⁴ OJ L 81, 21.3.2001, p. 1.

3. Member States shall notify to the Commission of all changes to previously indicated recognition or non recognition of a given travel document.

Article 5

New travel documents issued

4. Member States shall notify the Commission of new travel documents referred to in points (a) to (c) of Article 3(3).
5. Member States shall inform the Commission of new travel documents issued by third states, Member States and international organisations referred to in Article 3(2), in Article 3(3)(d) and Article 3(4).
6. The Commission shall update the list in accordance with the notifications and information received and shall request Member States to notify their position on recognition or non recognition in accordance with Article 4.
4. The updated list shall be drawn up in accordance with the procedure referred to in Article 7(2).

Article 6

Assessment of the technical standards of travel documents

1. In order to assist the Member States in their assessment of the technical standards of the travel documents, the Commission may in accordance with the procedure set out in Article 7(2), provide for a technical analysis of such travel documents.
2. The results of the technical assessment of a travel document shall be communicated to the Member States.

Article 7

Committee procedure

1. The Commission shall be assisted by a committee (the Travel Document Committee)
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 8

Publication of the list

The Commission shall make the list, including the notifications pursuant to Article 4, available to the Member States and the public via a constantly updated electronic publication.

Article 9

Repeals

Decisions SCH/Com-ex (98) 56 and SCH/Com-ex (99) 14 shall be repealed.

Article 10

Entry into force

1. This Decision shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.
2. All provisions of this Decision shall apply at the date of its entry into force except for Article 9 that will apply at the date of the first publication by the Commission of the list referred to in Article 8.

Article 11

This Decision is addressed to the Member States in accordance with the Treaties.

Done at [...],

For the European Parliament
The President

For the Council
The President