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REPORT

on the 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
(COM(2010)0662 – C7-0365/2010 – 2010/0325(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Tanja Fajon

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	14
PROCEDURE.....	16

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 (COM(2010)0662 – C7-0365/2010 – 2010/0325(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0662),
 - having regard to Article 294(2) and Article 77(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0365/2010),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0237/2011),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

POSITION OF THE EUROPEAN PARLIAMENT*

AT FIRST READING

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

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 1985¹, Decisions SCH/Com-ex (98)56² and SCH/Com-ex (99)14³ 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.
- (2a) The purpose of the list of travel documents is twofold: on the one hand it allows border control authorities to verify whether a given travel document is recognised***

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

¹ OJ L 239, 22.9.2000, p. 19.

² OJ L 239, 22.9.2000, p. 207.

³ OJ L 239, 22.9.2000, p. 298.

for the purpose of crossing the external borders as set out in Article 5 (1)(a) of Regulation(EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)¹; on the other hand it allows consular staff to verify whether Member States recognise a given travel document for the purpose of affixing a visa sticker.

- (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 Visas² 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 ■ .
- (4a) *Considering the relevance of the security of the travel documents with regard to their possible recognition, where appropriate, the Commission, assisted by experts of the Member States, should provide a technical assessment.***
- (5) Member States are and should remain *competent* 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. ***Since a Member State's failure to notify its position with regard to a travel document may cause problems to holders of this travel document, a mechanism should be established to place an obligation on Member States to express their position on the recognition and non-recognition of these documents. This mechanism does not preclude Member States to notify a change of their position in any given moment.***
- (6a) *An online database containing specimens of all travel documents should be established in the long term to facilitate the examination of a given travel document by border control authorities and consular staff. That database should be kept up to date in line with any changes as referred to in Article 4(3) of this Decision.***
- (7) ***For information purposes, the Commission should draw up a non-exhaustive list of known fantasy and camouflage passports brought to its attention by the Member States. The fantasy and camouflage passports which are on the list are not subject to recognition or non recognition. They do not entitle their holder to cross the external borders and may not be endorsed with a visa.***
- (7a) *In order to ensure uniform conditions for compiling and updating of the list of travel documents, implementing powers should be conferred on the Commission.***

¹ OJ L 105, 13.4.2006, p. 1.

² OJ L 243, 15.9.2009, p. 1.

Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹.

- (7b) *The advisory procedure should be used for drawing-up and updating the list of travel documents, given that those acts merely constitute the compilation of issued travel documents.*
- (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 acquis², 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 Agreement³.
- (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 acquis⁴, 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/EC⁵.
- (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/EC⁶.
- (11) *In accordance with* Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty *on European Union and to the Treaty on the Functioning of the European Union*, Denmark is not *taking part* in the adoption of this *Decision* and, is *not* bound by it *or* subject to its application. Given that *this Decision builds* upon the Schengen acquis Denmark shall, in accordance with *Article 4* of *that* Protocol, decide within a period of six months after the Council has adopted this *Decision* whether it will implement this *Decision* in its national law.

¹ OJ L 55, 28.2.2011, p. 13

² OJ L 176, 10.7.1999, p. 36

³ OJ L 176, 10.7.1999, p. 36

⁴ OJ L 53, 27.2.2008, p. 52

⁵ OJ L 53, 27.2.2008, p. 1

⁶ OJ L 83, 26.3.2008, p. 3

- (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 acquis¹; 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 acquis², 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.
- 2a. *This Decision does not affect Member States' competence for the recognition of travel documents.***

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

¹ OJ L 131, 1.6.2000, p. 43

² OJ L 64, 7.3.2002, p. 20

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.

2. The list of travel documents shall be drawn up in accordance with the *advisory* 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 requirement¹.
3. Part II shall consist of the following travel documents issued by Member States ***including those issued by the Member States of the European Union which are not taking part in the adoption of the present Decision and by the Member States of the European Union which do not yet apply the provisions of the Schengen acquis in full:***
 - (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,
 - (ca) travel documents issued to persons who do not hold the nationality of any country and who reside in a Member State,***
 - (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

¹ OJ L 81, 21.3.2001, p. 1.

indicated by entering "not issued" in the list.

Article 4

Notification of recognition or non recognition of listed travel documents

1. Within *three months* 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.
 - 1a. ***If a Member State fails to notify within the deadline referred to in paragraph 1, the travel document concerned is deemed to be recognised until the Member State's notification on its non-recognition.***
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.
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

1. Member States shall notify to the Commission new travel documents referred to in points (a) to (ca) of Article 3(3).
2. Member States shall inform the Commission of new travel documents issued by third ***countries***, Member States and international organisations referred to in Article 3(2), in Article 3(3)(d) and Article 3(4). ***The Commission shall, in cooperation with the Member States, endeavour to collect specimens of new travel documents in order to share them.***
3. 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 ***advisory*** procedure referred to in Article 7(2).

Article 5a

Information concerning known fantasy and camouflage passports

The Commission shall also draw up and update a non-exhaustive list of known fantasy and camouflage passports on the basis of information received from the Member States.

Article 6

Assessment of the ■ travel documents

1. In order to assist the Member States in their *technical* assessment of the ■ travel documents, the Commission, *assisted by experts of the Member States*, may ■ provide for a technical analysis of such travel documents *taking into account notably the relevant ICAO standards and recommendations*.
- 1a. Where relevant the conditions and procedures for issuing travel documents may be also analysed in this framework.*
2. The results of the ■ assessments *referred to in paragraphs (1) and (2)* shall be communicated to the Member States.

Article 7

Committee procedure

1. The Commission shall be assisted by a committee (the Travel Document Committee). *That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*
2. Where reference is made to this paragraph, *Article 4 of Regulation (EU) No 182/2011 shall apply.*

Article 8

Publication of the list

The Commission shall make the list *referred to in Article 3*, including the notifications pursuant to Article 4, *and the list referred to in Article 5a*, 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 the provisions of this Decision shall apply at the date of its entry into force except for Article 9, which 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

EXPLANATORY STATEMENT

In accordance with the Convention implementing the Schengen Agreement of 14 June 1985, the Decisions SCH/Com-ex (98) 56 and SCH/Com-ex (99) 14 concerning the compilation of a manual of travel documents enabling the crossing of external borders which may be endorsed with a visa. However, these decisions go back to the time of intergovernmental cooperation on Schengen and need to be adapted to the EU's current institutional and legal framework.

The purpose of the list of travel documents is twofold: on the one hand it allows border control authorities to verify whether a given travel document is recognised for the purpose of crossing the external borders as set out in Article 5 (1)(a) of Regulation(EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code); on the other hand it allows consular staff to verify whether Member States recognise a given travel document for the purpose of affixing the visa sticker.

In this context and to ensure information that is as complete as possible on the subject for Member States, a measure guaranteeing an ongoing updating of the list of travel documents would appear to be necessary. Member States would be required to notify their position with respect to the recognition or non-recognition of these documents for the purposes of simplification and efficiency.

Rapporteur is of the opinion that the proposal, based on Article 77(2) TFEU (Border issues), has as such to present added value as a piece of Union legislation, namely by providing security to border guards who are entitled to check the travel documents at the external borders. Otherwise, the objective of the draft proposal would be completely undermined. Therefore, the list of travel documents should be legally binding. Furthermore, rapporteur is of the opinion that the proposed wording would respect the competence of the Member States to recognise the travel documents but would, at the same time, ensure legal certainty after the given period, which could indeed be longer than proposed by the Commission.

The purpose of this Decision is to create the legal certainty with regard to the list of travel documents, therefore rapporteur proposes to clarify consequences of a failure to notify a Member State's position in the given time period. This provision is consistent with the exclusive competence of Member States for the recognition of travel documents since they would always have the right to notify that they don't recognise the travel document concerned.

PROCEDURE

Title	List of travel documents entitling the holder to cross the external borders and which may be endorsed with a visa, and setting up a mechanism for establishing this list
References	COM(2010)0662 – C7-0365/2010 – 2010/0325(COD)
Date submitted to Parliament	12.11.2010
Committee responsible Date announced in plenary	LIBE 23.11.2010
Rapporteur(s) Date appointed	Tanja Fajon 9.12.2010
Discussed in committee	15.6.2011
Date adopted	15.6.2011
Result of final vote	+: 40 -: 0 0: 0
Members present for the final vote	Jan Philipp Albrecht, Rita Borsellino, Simon Busuttil, Carlos Coelho, Rosario Crocetta, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Tanja Fajon, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Salvatore Iacolino, Sophia in 't Veld, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Claude Moraes, Jan Mulder, Georgios Papanikolaou, Judith Sargentini, Birgit Sippel, Csaba Sógor, Rui Tavares, Wim van de Camp, Axel Voss, Renate Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Edit Bauer, Michael Cashman, Anna Maria Corazza Bildt, Ioan Enciu, Heidi Hautala, Mariya Nedelcheva, Zuzana Roithová, Michèle Striffler, Cecilia Wikström
Substitute(s) under Rule 187(2) present for the final vote	Marita Ulvskog
Date tabled	20.6.2011