



**COUNCIL OF  
THE EUROPEAN UNION**

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**"I" ITEM NOTE**

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from:            General Secretariat

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to:                Permanent Representatives Committee

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No. Cion prop.: 7094/09 VISA 76 SIRIS 33 COMIX 189  
7097/09 VISA 77 CODEC 277 COMIX 190

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No. prev. doc: 5779/10 VISA 31 CODEC 63 COMIX 88

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Subject:        Draft Regulation of the European Parliament and of the Council amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa  
- Analysis of the final compromise text with a view to an agreement at first reading

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1. On 2 March 2009, the Commission submitted two proposals<sup>1</sup> aiming at facilitating movement within the Schengen area to third-country nationals legally residing in one of the Member States on the basis of a long-stay visa ("D" visa) issued by that Member State.
2. The Visa Working Party examined the proposals at its meetings on 9 March, 15 April, 16 June, 10 September, 15 October, 8 December 2009 and 20 January 2010.

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<sup>1</sup> 7094/09VISA 76 SIRIS 33 COMIX 189 and 7097/09 VISA 77 CODEC 277 COMIX 190.

3. The two proposals were based on different legal basis. The draft Regulation regarding movement of persons with a long-stay visa was based on Article 62 (2)(a) and (3) of the TEC (qualified majority in the Council and co-decision procedure) while the draft Regulation on long stay visas and alerts in the Schengen Information System was based on Article 63 (3)(a) of the TEC (unanimity in the Council after consulting the European Parliament). As a consequence of the entry into force of the Treaty on the Functioning of the European Union (Lisbon) on 1 December 2009, both proposals came under the ordinary legislative procedure (co-decision with the European Parliament)<sup>1</sup>.
4. At its meeting on 20 January 2010, the Visa Working Party approved a merged text of the Commission proposals (5221/10 VISA 11 CODEC 9 COMIX 31) which was also supported both by the Commission and the LIBE Committee of the European Parliament, as a basis for further proceedings.
5. A number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading. In this context, the Presidency submitted a compromise text (5779/10 VISA 31 CODEC 63 COMIX 88) to the Group of JHA Counsellors at its meeting on 29 January 2010. The JHA Counsellors agreed on the text, subject to two changes, and subject to reservations by DE/EL/HU/NL/PL.
6. On 4 February 2010, the LIBE Committee of the European Parliament adopted its report including the text of the draft Regulation as agreed by JHA Counsellors. The text adopted by the LIBE Committee is set out in Annex I to the present note.
7. DE has since lifted its reservation. EL/HU/NL/PL maintain their reservations.

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<sup>1</sup> 17193/09 ADD 4

*The Permanent Representatives Committee is on this basis invited to:*

- *agree by qualified majority on the text of the draft Regulation as adopted by the LIBE Committee of the European Parliament as set out in Annex I;*
  - *agree that the joint statement by the European Parliament and the Council on data protection and the statement by the Council on biometrics set out in Annex II shall be entered in the minutes of the Council at the final adoption of the Regulation;*
  - *take note that the Presidency will inform the Chairman of the LIBE Committee of the European Parliament accordingly by a letter in order to reach agreement at first reading.*
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Draft

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of [...]**

**amending the Convention Implementing the Schengen Agreement and Regulation (EC) No  
562/2006 as regards movement of persons with a long-stay visa**

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 Articles  
77 (2) b) and c) and Article 79 (2) a) thereof,

Having regard to the proposals from the Commission,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Convention 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<sup>1</sup> ("Convention") lays down rules on long-stay visas that enable their holders to transit through the territories of the Member States. Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 on the rules governing the movement of persons across borders (Schengen Borders Code)<sup>2</sup> lays down entry conditions for third country nationals. In order to facilitate the free movement of third country nationals - holders of national long-stay visas **within the territory of Member States fully implementing the Schengen acquis ("Schengen area")** – further measures should be taken.
  
- (2) Long-stay visas should be replaced by residence permits after the entry of third-country nationals into the territory of a Member State in due time in order to enable third-country nationals legally residing in one Member State on the basis of a long-stay visa to travel to the other Member States during their stay or transit through the territories of the other Member States when returning to their home country. However, long-stay visas are not replaced with residence permits by more and more Member States or are replaced only with considerable delays after the entry of third-country nationals into their territory. This legal and practical situation has important negative consequences on third-country nationals legally staying in a Member State on the basis of a long-stay visa regarding their **free movement (...)** in the Schengen area.

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<sup>1</sup> OJ L 239, 22.9.2000, p. 1.

<sup>2</sup> OJ L 105, 13.4.2006, p. 1.

- (3) In order to overcome the problems encountered by third-country nationals staying on the basis of a long-stay visa, this Regulation extends the principle of equivalence between residence permits and short-stay visas issued by the Member States fully implementing the Schengen acquis to long-stay visas. As a result, a long-stay visa should have the same effects as a residence permit as regards the **free movement (...)** in the Schengen area without internal borders.
- (4) Therefore, a third-country national holding a long-stay visa issued by a Member State should be allowed to travel to the other Member States for three months in any **six-month period**, under the same conditions as the holder of a residence permit. The rules regarding the **conditions for issuing** long-stay visas will not change.
- (5) Based on the current practice followed by the Member States, this Regulation establishes the obligation for Member States to issue the long-stay visas in the uniform format for visas as set out in Council Regulation (EC) No 1683/95 **of 29 May 1995 laying down a uniform format for visas**<sup>1</sup>.
- (6) The rules on consultation of the Schengen Information System and of the other Member States in case of an alert when processing an application for a residence permit should also apply to the processing of long-stay visa applications. Therefore, the free movement of holders of a long-stay visa in the other Member States should not constitute any extra security risk for Member States.
- (7) The Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 should be amended accordingly.

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<sup>1</sup> OJ L 164, 14.7.1995, p. 1.

- (8) This Regulation does not aim at encouraging Member States not to issue residence permits and it should not affect the obligation of Member States to issue residence permits for certain categories of third-country nationals set out by other Community instruments, **notably: Council Directive 2005/71/EC, Council Directive 2004/114/EC, Council Directive 2003/86/EC, Directive 2004/38/EC and Council Directive 2003/109/EC.**
- (9) **In accordance with Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State, such as a long-stay visa, should be required to go to the territory of that other Member State immediately.**
- (10) Since the objective of this Regulation, namely the establishment of the rules on the freedom of movement with a long-stay visa, cannot be sufficiently achieved by the Member States and can therefore be better achieved at **European Union** level, the **European Union** may adopt measures, in accordance with principle of subsidiarity as set out in Article 5 of the Treaty **on the European Union**. In accordance with principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (11) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the Member States' obligations as regards international protection and non-refoulement.

- (12) This instrument constitutes a development of the Schengen acquis, in accordance with the Protocol integrating the Schengen acquis into the framework of the European Union, as defined in Annex A to Council Decision 1999/435/EC<sup>1</sup> of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of 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 acquis.
- (13) As regards Iceland and Norway, this Regulation 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 acquis<sup>2</sup>, which falls within the area referred to in Article 1(B) of Council Decision 1999/437/EC<sup>3</sup> of 17 May 1999 on certain arrangements for the application of that Agreement.
- (14) As regards Switzerland, this Regulation 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 acquis<sup>4</sup>, which falls within the area referred to in Article 1(B) and (C) of Council Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>5</sup> of 28 January 2008.

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<sup>1</sup> OJ L 176, 10.7.1999, p. 1–16.

<sup>2</sup> OJ L 176, 10.7.1999, p. 36.

<sup>3</sup> OJ L176, 10.7.1999, p. 31.

<sup>4</sup> OJ L53, 27.2.2008, p.52.

<sup>5</sup> OJ L53, 27.2.2008, p. 1.



- (15) As regards Liechtenstein, this Regulation 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 falls within the area referred to in Article 1(B) and (C) of Council Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/261/EC<sup>1</sup> of 28 February 2008.
- (16) In accordance with Articles 1 and 2 of the Protocol **No 22** 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 Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis (...), Denmark should, in accordance with Article **4** of the said Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement this Regulation in its national law.
- (17) **This Regulation 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 acquis. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.**

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<sup>1</sup> OJ L83, 26.3.2008, p. 3.

- (18) **This Regulation 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 acquis. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.**
- (19) **This Regulation constitutes an act building on the Schengen acquis or otherwise related to it within the meaning of Article 3 (2) of the 2003 Act of Accession and Article 4 (2) of the 2005 Act of Accession.**

HAVE ADOPTED THIS REGULATION:

*Article 1*

1. The Convention Implementing the Schengen Agreement is amended as follows:

- (1) Article 18 is replaced by the following:

*" Article 18*

**1. Visas for stays exceeding three months ('long-stay visas') shall be national visas issued by one of the Member States in accordance with its national law or Community law. Such visas shall be issued in the uniform format for visas as set out in Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas with the heading specifying the type of the visa with the letter "D". They shall be filled out in accordance with the relevant provisions in Annex VII to Regulation (EC) No 810/2009 of the European Parliament and of the Council establishing a Community Code on Visas (Visa Code).**

**2. Long-stay visas shall have a period of validity of no more than one year. If a third-country national is allowed to stay for more than one year by a Member State, the long-stay visa shall be replaced before the expiry of its period of validity by a residence permit."**

**(2) Article 21, paragraph 1, is replaced by the following:**

"1. Aliens who hold valid residence permits issued by one of the **Member States** may, on the basis of that permit and a valid travel document, move freely for up to three months **in any six-month period** within the territories of the other **Member States**, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c) and (e) of **Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)** and are not on the national list of alerts of the **Member State** concerned.

**(3) In Article 21, the following paragraph 2a is inserted:**

"2a. The right of free movement laid down in paragraph 1 shall also apply to third-country nationals who hold a valid long-stay visa issued by one of the Member States as provided for in Article 18."

**(4) Article 25, paragraph 1, is replaced by the following:**

"1. **Where a Member State considers issuing a residence permit, the responsible authority shall systematically carry out a search in the Schengen Information System (SIS).** Where a **Member State** considers issuing a residence permit to an alien for whom an alert has been issued for the purposes of refusing entry, it shall first consult the **Member State** issuing the alert and shall take account of its interests; the residence permit shall be issued for substantive reasons only, notably on humanitarian grounds or by reason of international commitments.

If a residence permit is issued, the **Member State** issuing the alert shall withdraw the alert but may put the alien concerned on its national list of alerts".

**(5) In Article 25, the following paragraph 1a is inserted:**

**"1a. Prior to issuing an alert for the purposes of refusing entry within the meaning of Article 96, the responsible authorities of the Member States shall check their national records of long stay visas or residence permits issued."**

**(6) In Article 25, paragraph 3 is added:**

"3. Paragraphs 1 and 2 shall apply also in case of long-stay visas."

**2. Regulation (EC) No 562/2006 is amended as follows:**

**(1) Article 5, paragraph 1 point (b), is replaced by the following:**

"(b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 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, except where they hold a valid residence permit or a valid long-stay visa."

**(2) Article 5, paragraph 4 point (a), is replaced by the following:**

"(a) third-country nationals who do not fulfil all the conditions laid down in paragraph 1 but hold a residence permit, **a long-stay visa** or a re-entry visa issued by one of the Member States or, where required, **a residence permit or a long-stay visa and a re-entry visa**, shall be authorised to enter the territories of the other Member States for transit purposes so that they may reach the territory of the Member State which issued the residence permit, **long-stay visa** or re-entry visa, unless their names are on the national list of alerts of the Member State whose external borders they are seeking to cross and the alert is accompanied by instructions to refuse entry or transit;"

*Article 2*

This Regulation shall not affect the obligation for Member States to issue residence permits to third-country nationals as provided by other instruments of **the Union (...)**.

*New Article 2a*

**The Commission and the Member States shall inform the persons concerned fully and correctly of the provisions of this Regulation.**

*New Article 2b*

**Not later than 5 April 2012, the Commission shall submit to the European Parliament and the Council a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to modify this Regulation.**

*Article 3*

This Regulation shall enter into force on **5 April 2010** and should be published in the *Official Journal of the European Union*.

(...)

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the **Treaties (...)**.

Done at Brussels,

*For the Council*

*The President*

*For the European Parliament*

*The President*

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**Joint Statement by the European Parliament and the Council**

"The European Parliament and the Council recognise the importance of the existence of a comprehensive and coherent set of rules, at the level of the European Union, providing for a high level of protection of personal data in the framework of the second generation Schengen Information System (SIS II).

If there would be further, important delays in implementing the SIS II, that will go beyond 2012, the European Parliament and the Council invite the Commission to present the necessary legislative proposals amending the relevant provisions of the Convention Implementing the Schengen Agreement in order to ensure a level of protection of the personal data entered into the Schengen Information System equivalent to the standards established for SIS II."

**Statement by the Council**

"As it was highlighted by the European Council in Thessaloniki on 19-20 June 2003, "a coherent approach is needed in the EU on biometric identifiers or biometric data, which would result in harmonised solutions for documents for third country nationals, EU citizens' passports and information systems". Therefore, it is desirable that such a harmonised solution would in the future also cover long-stay visas.

The Council invites the Commission to study the possible use of biometric identifiers with respect to long-stay visas and to present the results of this study to the European Parliament and the Council by 31 July 2011."