



EUROPEAN PARLIAMENT

2009 - 2014

---

*Session document*

---

**A7-0015/2010**

17.2.2010

**\*\*\*I**  
**REPORT**

on the proposal for a 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  
(COM(2009)0091 – C6-0076/2009 – 2009/0028(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

### ***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 in the draft act.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the draft act has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the 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). Suggested corrections of this kind are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
AMENDMENTS BY PARLIAMENT .....	7
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL.....	7
DRAFT DECLARATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ..	14
EXPLANATORY STATEMENT.....	15
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS .....	18
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS .....	24
PROCEDURE .....	31



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a 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 (COM(2009)0091 – C6-0076/2009 – 2009/0028(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0091),
  - having regard to Article 251(2) and Article 62(2)(a) and (3) of the EC Treaty, pursuant to which the Commission submitted that proposal to Parliament (C6-0076/2009),
  - having regard to the Commission proposal to the Council (COM(2009)0090),
  - having regard to Article 67 and Article 63(3)(a) of the EC Treaty pursuant to which the Council consulted Parliament in relation to that proposal (C6-0107/2009),
  - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision-making procedures" (COM(2009)0665),
  - having regard to Article 294(3), Article 77(2)(b) and (c) and Article 79(2)(a) of the Treaty on the Functioning of the EU,
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis<sup>1</sup>,
  - having regard to Rules 55 and 37 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Legal Affairs (A7-0015/2010),
1. Adopts its position at first reading hereinafter set out;
  2. Considers procedure number 2009/0025 (COD) to have lapsed as a result of the incorporation into procedure number 2009/0028 (COD) of the contents of the Commission proposal (COM(2009)0090) and of the draft reports in relation thereto;
  3. 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;
  4. Instructs its President to forward its position to the Council, to the Commission and to the

---

<sup>1</sup> See Addendum to this report.

national parliaments.

## AMENDMENTS BY PARLIAMENT

### 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

---

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

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

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.

- (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.
- (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.***

---

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



- (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.
- (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,

---

<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.

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.*
- (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*

---

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

***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.

*Article 3*

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

*Article 4*

*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 5*

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

## **DRAFT DECLARATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL**

"The Council and the European Parliament 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."

---

## EXPLANATORY STATEMENT

### **Introduction**

The Schengen Convention stipulates that holders of a long-stay visa ('D visa') may only:

- stay in the territory of the Member State which issued the visa;
- transit through the territories of other Member States in order to reach that State, and may not travel to the other Member States or transit through the other Member States when returning to their country of origin.

Most Member States have introduced the procedure for converting this type of visa into a residence permit following entry into the country, which allows a third-country national holding such residence permit and a valid travel document to travel freely for up to three months in any half year within the territories of the other Member States.

However, in practice, there have been considerable delays in the conversion of such visas and, in some cases, they have not been converted at all. Under the Schengen Convention, this makes it impossible for such persons to travel to other Member States or to transit through them when returning to their countries of origin.

In response to this situation, a regulation was adopted in 2001 (Regulation No 1091/2001), introducing D+C visas, which allow holders of a long-stay D visa to move freely in the Schengen area during the first three months of the visa's period of validity, provided it has been issued in accordance with the rules governing short-stay visas (including checking against the SIS non-admissibility list).

Nevertheless, in practice most Member States still do not issue D+C visas or only issue very small numbers, the reasons being that:

- there is a lack of knowledge on the subject among consular officials;
- applicants are not informed of this possibility;
- national visa registration and processing programmes do not allow for the possibility of considering applications or issuing such visas.

Where a visa is issued and is not replaced by a residence permit by the end of the three-month period, the holder is no longer authorised to travel to another Member States. To do so, such persons are required to apply for a separate Schengen short-stay visa. However, some Member States refuse to issue such visas as such applicants have already stayed in the Schengen area for three months, on the basis of a D+C visa.

### **Schengen Borders Code and Community Code on Visas**

A number of issues need to be considered in connection with these instruments:

- The proposal for a Regulation establishing the Community Code on Visas provides for

- the abolition of the D+C visa in order to simplify matters and requires Member States to speed up the issuance of residence permits to third-country nationals.
- The Visa Code will need to be adopted at the same time as these Regulations. The date of application of these Regulations should be aligned with the application of the Visa Code, scheduled for 5 April 2010.
  - Article 5(1)(b) of Regulation (EC) No 562/2006 (Schengen Borders Code) also provides for the possibility for third-country nationals in possession of a valid residence permit to cross the external borders of another Member State without a visa for stays not exceeding three months.

**Scope of the proposals**

The proposals seek to make it easier for third-country nationals legally residing in a Member State to move in the Schengen area on the basis of a D long-stay visa issued by that Member State.

They are intended to provide a response to situations where Member States are unable, for various reasons, to issue residence permits in time to third-country nationals residing in their territory, by extending the existing principle of equivalence between a residence permit and short-stay C visas to long-stay D visas. A long-stay visa will thus have the same effects as a residence permit as regards circulation in the Schengen area. This will make it possible for anyone in possession of a document showing that he is legally resident in a Member State to move freely in the Schengen area for short periods of no more than three months in any half year.

Member States will still be required to issue residence permits, in keeping with the obligations laid down by a number of directives relating to the admission of certain categories of third-country nationals.

**Rapporteur's position**

It should be borne in mind that Schengen is about freedom of movement. Anyone in possession of a document showing that they are legally resident in a Member State should be able to travel freely in that area, which is free of internal borders.

The ideal solution would be for Member States to meet their obligation to grant a residence permit to third-country nationals holding this visa. However, in practice this is not what happens in most Member States.

The fact that a student who is granted a visa to attend a course in Belgium (not falling within the scope of Directive No 2004/114/EC) cannot travel to a specialised library in the Netherlands to obtain information for the purposes of writing his thesis or to Barcelona for a weekend visit is simply unacceptable. This is an example of how absurd situations can arise.

Given that the Community Code on Visas is due to enter into force in April 2010, a solution needs to be found to this problem as a matter of urgency.



The Commission's proposals seem reasonable, although some amendments will be necessary to remedy the problem relating to long-stay visas without calling into question or reducing security levels in the Schengen area, but with a view to putting an end to this violation of fundamental rights, as reflected by the thousands of complaints that have been received.

The requirement to consult the SIS when processing long-stay (D) visa applications will ensure the same control over long-stay visa applicants as the existing one applicable to third-country nationals holding a residence permit. This addresses the concern that insecurity is on the increase.

Moreover, a number of Member States have, under the present arrangements, issued D long-stay visas, and subsequently residence permits, to third-country nationals without prior consultation of the SIS (in particular the provisions of Article 96 on refusing entry). This tendency not only poses a threat to security in the Schengen area, but also creates considerable difficulties at the external borders, when the names of persons with valid D visas appear on SIS lists. This gives rise to complications and unnecessary problems for the persons themselves and for border officials, who need to carry out lengthy checks in order to ascertain whether visas have been falsified, the SIS data are inaccurate and should be removed, or the visas in question simply should never have been issued.

### **Impact of the Treaty of Lisbon**

The two Commission proposals underlying this report were pending when the Treaty of Lisbon entered into force on 1 December 2009. They were listed in annex 4 of the so-called "*omnibus*" **Communication** by the Commission on "Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision-making procedures". The omnibus Communication determined the new legal bases of the pending proposals as follows: For the proposal COM(2009)91, the former legal bases were Article 62 (2) (a) and (3) EC Treaty, and the new legal bases are Article 77 (2) (b) and (c) TFEU. For the proposal COM(2009)90, the former legal basis was Article 63 (3) (a) EC Treaty, and the new legal basis is Article 79 (2) (a) TFEU. Under the new legal bases the co-decision procedure or ordinary legislative procedure, with qualified majority vote in the Council, applies not only to the first, but to both Commission proposals. Therefore the Council, supported by the Commission, suggested to merge the two procedures. At its meeting of 11 January 2010 the Committee on Civil Liberties, Justice and Home Affairs agreed to merge the two procedures, provided that the Legal Affairs Committee approves the change in the legal basis triggered by the merger. Technically, the merger is done by integrating the text of the former consultation procedure in the co-decision procedure.

The rapporteur would like to draw attention to the fact that several national Parliaments have considered the Commission proposals and the Estonian and the Portuguese Parliaments have adopted opinions<sup>1</sup>.

---

<sup>1</sup> Opinions of the national Parliaments are available in the IPEX database at the following links:  
[http://www.ipex.eu/ipex/cms/home/Documents/dossier\\_COM20090090](http://www.ipex.eu/ipex/cms/home/Documents/dossier_COM20090090)  
[http://www.ipex.eu/ipex/cms/home/Documents/dossier\\_COD20090028](http://www.ipex.eu/ipex/cms/home/Documents/dossier_COD20090028)

29.1.2010

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a 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 (COM(2009)0091 – C7-0076/2009 – 2009/0028(COD))

Rapporteur: Cecilia Wikström

### SHORT JUSTIFICATION

#### *Background*

One of the most important factors in European integration has been the dismantling of our internal borders and the increased ability to travel freely between the Member States. It is therefore paradoxical that many holders of long-stay visas today enjoy less freedom of movement in the Schengen area than holders of short-stay visas. The paradox has arisen due to Member States practices concerning the conversion of long-stay visas to residence permits. Two closely related Commission proposals, one under the consultation procedure<sup>1</sup> and the other under the codecision procedure<sup>2</sup>, attempt to provide a solution to this paradox. If adopted, they would enable holders of long-stay visas to move freely throughout the Schengen area in an equivalent way to holders of short-stay visas.

The solution proposed by the Commission side-steps the practical disadvantages and delays observed in many Member States by long-stay visa holders concerning the issuing of residence permits. The previous arrangement<sup>3</sup> being judged rather unsatisfactory in practice and expiring on 5 April 2010, the question has become rather urgent.

---

<sup>1</sup> 2009/0025(CNS). Legal basis: Article 63(3)(a) EC.

<sup>2</sup> 2009/0028(COD). Legal basis: Articles 62(2)(a) and (3) EC.

<sup>3</sup> The "D + C visa" set up under Article 1 of Regulation 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa, OJ L 150/4, which provides that, for three months from their initial date of validity, long stay visas "shall be valid concurrently as uniform short-stay visas". This Regulation will be repealed by Article 56(2)(e) of the Community Code on Visas (Regulation 810/2009 of the European Parliament and the Council of 13 July 2009 establishing a Community Code on Visas, OJ L 243/1.

### ***Position of the rapporteur***

Your rapporteur agrees with the general approach of the proposal, and its underlying philosophy that people should be able to travel around the Schengen area for short stays for three months in any half year with the document on the basis of which they are legally present in a Member State.

It is unacceptable that third-country nationals able to prove that they are legally resident in a Member State cannot benefit from a level of freedom of movement which would accompany a residence permit. Such long-stay visa holders could for example be students or schoolchildren wanting to go to a field trip in another Member State<sup>1</sup>, scientists<sup>2</sup>, certain family members of third-country nationals<sup>3</sup> and Union citizens<sup>4</sup>, and certain long-term residents<sup>5</sup>. Guaranteeing this freedom of movement and cutting red tape would also, in the view of your rapporteur, contribute to attracting students, scientists and businesses to Europe.

Furthermore, your rapporteur also considers that the proposal, as it is an urgent solution to a complex problem, may have unintended consequences in the long term, particularly in the event that long-term visas are to be regulated at Union level. A reporting and review clause has therefore been inserted, requiring the Commission to submit a report on the application of the Regulation no later than 5 April 2012.

Your rapporteur considers that the application of Union law is also at the heart of this proposal, namely the failure of many Member States to issue residence permits within certain time-limits, even when this is set out in mandatory terms in legislation. For this reason, your rapporteur calls on the Commission to examine individual situations in the Member States, and where possible, start infringement procedures to ensure that legality is respected. The Commission should base itself on long-standing case-law according to which even relatively minor but general and persistent administrative practices may constitute an infringement, despite formally correct transposition by the Member State<sup>6</sup>. It should also be made clearer that the present proposals in no way excuse the Member States from their obligations, provided in various Community instruments, to issue residence permits.

Given the urgency of the file, your rapporteur reserves the possibility to complete this draft opinion, as the procedure progresses through the institutions, and in the light of the entry into force of the Treaty of Lisbon<sup>7</sup>, by tabling further amendments as per the usual procedure.

---

<sup>1</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375/12.

<sup>2</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289/15.

<sup>3</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12–18.

<sup>4</sup> Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158/77.

<sup>5</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53.

<sup>6</sup> For instance, see Case C-494/01 *Commission v. Ireland*, 26 April 2005, Grand Chamber.

<sup>7</sup> See in particular Article 77(2)(a) TFEU which provides for the ordinary legislative procedure.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a regulation

##### Recital 2

###### *Text proposed by the Commission*

(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 circulation in the Schengen area**.

###### *Amendment*

(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 **an increasing number of** 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 **for the circulation in the Schengen area of** third-country nationals legally staying in a Member State on the basis of a long-stay visa.

###### *Justification*

###### *Linguistic clarification*

### Amendment 2

#### Proposal for a regulation

##### Recital 6

###### *Text proposed by the Commission*

(6) This Regulation does not aim **at encouraging** Member States **not to issue**

###### *Amendment*

(6) This Regulation does not aim **to discourage** Member States **from issuing**

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.

residence permits and it should not affect the obligation *on* Member States to issue residence permits for certain categories of third-country nationals set out by other Community instruments.

*Justification*

*Linguistic clarification*

**Amendment 3**

**Proposal for a regulation**

**Article 2**

*Text proposed by the Commission*

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

*Amendment*

This Regulation shall not affect the obligation for Member States to issue residence permits to third-country nationals ***in compliance with time-limits and*** as provided by other instruments of Community law, ***in particular***

- ***Council Directive 2005/71/EC,***
- ***Council Directive 2004/114/EC,***
- ***Council Directive 2003/86/EC,***
- ***Council Directive 2004/38/EC, and***
- ***Council Directive 2003/109/EC.***

*Justification*

*It should also be made clearer that the present proposals in no way excuse the Member States from their obligations, provided in various Community instruments, to issue residence permits.*

**Amendment 4**

**Proposal for a regulation**

**Article 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 2a***

***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 and of Regulation [200X/0000] on movement of persons with a long-stay visa. If necessary, the report shall be accompanied by proposals to adapt this Regulation.***

*Justification*

*As an urgent solution to a complex problem, both Regulations may have unintended consequences in the long term, particularly in the event that long-term visas are to be regulated at Union level following the entry into force of the Treaty of Lisbon.*

## PROCEDURE

<b>Title</b>	Movement of persons with a long-stay visa
<b>References</b>	COM(2009)0091 – C6-0076/2009 – 2009/0028(COD)
<b>Committee responsible</b>	LIBE
<b>Opinion by</b> Date announced in plenary	JURI 19.10.2009
<b>Rapporteur</b> Date appointed	Cecilia Wikström 2.9.2009
<b>Discussed in committee</b>	2.12.2009
<b>Date adopted</b>	28.1.2010
<b>Result of final vote</b>	+: 21 –: 0 0: 0
<b>Members present for the final vote</b>	Raffaele Baldassarre, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Cecilia Wikström
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Sajjad Karim, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, Toine Manders, Arlene McCarthy

29.1.2010

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council regulation amending the Convention Implementing the Schengen Agreement as regards long stay visa and alerts in the Schengen Information System (COM(2009)0090 – C6-0107/2009 – 2009/0025(COD))

Rapporteur: Piotr Borys

### **SHORT JUSTIFICATION**

#### ***Background***

It may seem somewhat paradoxical that many holders of long-stay visas enjoy less freedom of movement in the Schengen area than holders of short-stay visas. Two closely related Commission proposals, one under the consultation procedure<sup>1</sup> and the other under the codecision procedure<sup>2</sup>, attempt to provide a solution to this paradox. If adopted, they would enable holders of long-stay visas to move freely throughout the Schengen area in an equivalent way to holders of short-stay visas.

The solution proposed by the Commission side-steps the practical disadvantages and delays observed in many Member States by long-stay visa holders concerning the issuing of residence permits.

The arrangement which is currently applicable<sup>3</sup> has been considered unsatisfactory in practice, and expires on 5 April 2010. This has rendered the question rather urgent.

#### ***Position of the rapporteur***

---

<sup>1</sup> 2009/0025/CNS. Legal basis: Article 63(3)(a) EC.

<sup>2</sup> 2009/0028/COD. Legal basis: Articles 62(2)(a) and (3) EC.

<sup>3</sup> The "D + C visa" set up under Article 1 of Regulation 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa, OJ L 150/4, which provides that, for three months from their initial date of validity, long stay visas "shall be valid concurrently as uniform short-stay visas". This Regulation will be repealed by Article 56(2)(e) of the Community Code on Visas (Regulation 810/2009 of the European Parliament and the Council of 13 July 2009 establishing a Community Code on Visas, OJ L 243/1.



Your rapporteur agrees with the general approach of the proposal, and its underlying philosophy that people should be able to travel around the Schengen area for short stays for three months in any half year with the document on the basis of which they are legally present in a Member State.

It is unacceptable that third-country nationals able to prove that they are legally resident in a Member State cannot benefit from a level of freedom of movement which would accompany a residence permit. Such long-stay visa holders could for example be students or schoolchildren wanting to go to a field trip in another Member State<sup>1</sup>, scientists<sup>2</sup>, certain family members of third-country nationals<sup>3</sup> and Union citizens<sup>4</sup>, and certain long-term residents<sup>5</sup>.

However, in order for such a system to function, and in order to avoid "visa shopping" whereby persons are able to circumvent the refusal of a visa by one Member State by applying to another, checks equivalent to those existing in other areas must be put in place in order to ensure proper communication between Member States and consistency between the issuing of long-stay visas, residence permits and alerts in the SIS.

Furthermore, your rapporteur also considers that the proposal, as it is an urgent solution to a complex problem, may have unintended consequences in the long term, particularly in the event that long-term visas are to be regulated at Union level. A reporting and review clause has therefore been inserted.

Your rapporteur considers that the application of Union law is also at the heart of this proposal, namely the failure of many Member States to issue residence permits within certain time-limits, even when this is set out in mandatory terms in legislation. It must be borne in mind that third countries also witness this state of affairs. The Union should therefore do its utmost to ensure that the procedures applying in different Member States are consistent. For this reason, your rapporteur calls on the Commission to examine individual situations in the Member States, and where possible, start infringement procedures to ensure that legality is respected. The Commission should base itself on long-standing case-law according to which even relatively minor but general and persistent administrative practices may constitute an infringement, despite formally correct transposition by the Member State<sup>6</sup>. It should also be made clearer that the present proposals in no way excuse the Member States from their obligations, provided in various Community instruments, to issue residence permits.

It must also be kept in mind that the present proposal is inextricably linked and should

---

<sup>1</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375/12.

<sup>2</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289/15.

<sup>3</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12–18.

<sup>4</sup> Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158/77.

<sup>5</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53.

<sup>6</sup> For instance, see Case C-494/01 *Commission v. Ireland*, 26 April 2005, Grand Chamber.

therefore be read together with the Commission proposal on the movement of persons with a long-stay visa (COM(2009)091). In your rapporteur's opinion, the right to free movement as laid down in the Article 21(1) of the Convention Implementing the Schengen Agreement, amended in the latter proposal, should 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 of the Convention and should be indicated accordingly on the visa sticker by a specification of the territory in which visa holder is entitled to travel.

Finally, your rapporteur recalls the absolute necessity of SIS II and VIS starting operations as soon as possible. He considers that SIS II will bring considerable improvements and new functionalities such as the introduction of biometric data and the interlinking of alerts, which will contribute to better control of external borders and strengthened security. The delayed timetable in the implementation of both systems is also prejudicial to the effectiveness of related legislation.

Given the urgency of the file, your rapporteur reserves the possibility to complete this draft opinion by tabling further amendments as per the usual procedure, as the procedure progresses through the institutions, and in the light of the entry into force of the Treaty of Lisbon<sup>1</sup>.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a regulation – amending act

#### Article 1 – point 1 a (new)

The Convention Implementing the Schengen Agreement

Article 25 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

***(1a) In Article 25, the first subparagraph of paragraph 1 is amended as follows:***

***"1. Where a Contracting Party considers issuing a residence permit, it shall carry out a search in the Schengen Information System. Where a Contracting Party considers issuing a residence permit to***

---

<sup>1</sup> See in particular Article 77(2)(a) TFEU which provides for the ordinary legislative procedure.

**an alien for whom an alert has been issued for the purposes of refusing entry, it shall first consult the Contracting Party issuing the alert and shall take account of its interests; the residence permit shall be issued *only* for substantive reasons *and where there is a substantial need for the Contracting Party concerned to do so*, notably on humanitarian grounds or by reason of international commitments."**

*Justification*

*This amendment has to be read in combination with Article 1(2) of the Commission's proposal which inter alia extends the above paragraph to long-stay visas. The amendment requests that the responsible authorities check SIS systematically before issuing residence permits or long-stay visas, thereby clarifying that there will be no extra security risk. In practice, this would help to combat the practice known as "visa shopping".*

**Amendment 2**

**Proposal for a regulation – amending act**

**Article 1 – point 1 b (new)**

The Convention Implementing the Schengen Agreement

Article 25 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

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

***"1a. Prior to issuing an alert for the purposes of refusing entry, the Contracting Party shall check its national records for issued long-stay visa or residence permits."***

*Justification*

*The amendment seeks to ensure that the information recorded in the SIS is coherent with the long-stay visas or permits issued.*

### **Amendment 3**

#### **Proposal for a regulation Article 1 a (new)**

*Text proposed by the Commission*

*Amendment*

##### *Article 1a*

***This Regulation shall not affect the obligation on Member States to issue residence permits to third-country nationals in compliance with time-limits and as provided for by other instruments of Community law, in particular***

- Council Directive 2005/71/EC,***
- Council Directive 2004/114/EC,***
- Council Directive 2003/86/EC,***
- Council Directive 2004/38/EC, and***
- Council Directive 2003/109/EC.***

##### *Justification*

*It should also be made clearer that the present proposals in no way excuse the Member States from their obligations, provided in various Community instruments, to issue residence permits.*

### **Amendment 4**

#### **Proposal for a regulation Article 1 b (new)**

*Text proposed by the Commission*

*Amendment*

##### *Article 1b*

***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 and Regulation [200X/0000] on movement of persons with a long-stay visa. If necessary, the report shall be accompanied by proposals to amend this Regulation.***

### *Justification*

*As an urgent solution to a complex problem, both Regulations may have unintended consequences in the long term, particularly in the event that long-term visas are to be regulated at Union level following the entry into force of the Treaty of Lisbon.*

## PROCEDURE

<b>Title</b>	Long stay visas and alerts in the Schengen Information System
<b>References</b>	COM(2009)0090 – C6-0107/2009 – 2009/0025(COD)
<b>Committee responsible</b>	LIBE
<b>Opinion by</b> Date announced in plenary	JURI 19.10.2009
<b>Rapporteur</b> Date appointed	Piotr Borys 5.10.2009
<b>Discussed in committee</b>	2.12.2009
<b>Date adopted</b>	28.1.2010
<b>Result of final vote</b>	+: 22 -: 0 0: 0
<b>Members present for the final vote</b>	Raffaele Baldassarre, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Diana Wallis, Cecilia Wikström
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Sajjad Karim, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, Toine Manders, Arlene McCarthy

## PROCEDURE

<b>Title</b>	Movement of persons with a long-stay visa
<b>References</b>	COM(2009)0091 – C6-0076/2009 – 2009/0028(COD)
<b>Date submitted to Parliament</b>	27.2.2009
<b>Committee responsible</b> Date announced in plenary	LIBE 19.10.2009
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 19.10.2009
<b>Rapporteur(s)</b> Date appointed	Carlos Coelho 2.9.2009
<b>Discussed in committee</b>	15.10.2009      1.12.2009      11.1.2010      4.2.2010
<b>Date adopted</b>	4.2.2010
<b>Result of final vote</b>	+:            45 -:            4 0:            0
<b>Members present for the final vote</b>	Sonia Alfano, Louis Bontes, Mario Borghezio, Rita Borsellino, Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Rosario Crocetta, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Monica Luisa Macovei, Clemente Mastella, Nuno Melo, Louis Michel, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Jacek Protasiewicz, Carmen Romero López, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Manfred Weber, Renate Weber, Tatjana Ždanoka
<b>Substitute(s) present for the final vote</b>	Elena Oana Antonescu, Andrew Henry William Brons, Ioan Enciu, Ana Gomes, Monika Hohlmeier, Jean Lambert, Petru Constantin Luhan, Mariya Nedelcheva, Michèle Striffler, Cecilia Wikström
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Françoise Grossetête