External borders: simplified regime for the control of persons based on the unilateral recognition by Bulgaria, Cyprus and Romania of certain documents as equivalent to their national visas for the purposes of transit through their territories

2007/0185(COD) - 11/09/2007 - Legislative proposal

PURPOSE: to introduce a simplified regime for the control of persons at the external borders of the EU to Bulgaria and Romania.

PROPOSED ACT: Decision of the European Parliament and of the Council.

BACKGROUND: this proposal is linked to both the first and second wave of EU enlargement (in 2004 and 2007 respectively) and implementation of the Schengen acquis in the new Member States.

Prior to joining the European Union, it was agreed that the acceding countries would apply the so-called 'Schengen two phase process'. This process, set out in the Act of Accession (2004 and 2007), states that from the moment of accession, the new Member States shall apply Regulation 539/2001listing 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 - whilst simultaneously issuing their own national visas until such a time that an EU Council Decision authorising their full integration into the Schengen area has been agreed upon.

In practice the compromise solution gave rise to a number of legal uncertainties. It did not, for example, foresee the equivalence between residence permits and visas. The result was that new Member States were obliged to issue national visas for entry into and transit through their territory to third country national, even if the persons concerned were holders of a Schengen residence permit or visa – or else were holders of national long term visas issued by a Schengen state. For many new Member States, this placed a considerable administrative burden on their embassies and consular services.

The complexity of the situation was particularly pertinent to nationals of both Liechtenstein and Switzerland, who for geographic reasons, have been adversely affected by the need for transit visas. The regime forced Swiss and Liechtenstein nationals to apply for a visa when transiting the territories of the new EU Member States.

To address this problem, in 2006, two Decisions were adopted namely:

- Decision No 895/2006/ECintroducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia of certain documents as equivalent other national visas for the purposes of transit through their territories (see COD /2005/0158).

- Decision No 896/2006/ECestablishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory (see COD/2005/0159).

The main purpose of the two Decisions is the introduction of common rules in order to simplify the *transit* of certain categories of persons and to thereby eliminate any unjustified administrative burdens on consular offices. The scope of both Decisions is limited to "transit" purposes only. They will cease to apply once the new Member States participate fully in the area without internal borders.

CONTENT: the purpose of this proposal is to extend the simplified regime, outlined above, to Bulgaria and Romania based on the success of the 2006 Decisions. This proposal is being presented alongside a proposal to amend Decision No 896/2006/EC affecting Switzerland and Liechtenstein (See COD/2007/0186).

The proposed Decision is addressed to Bulgaria and Romania as well as to the Member States that decided to implement the 2006 Decision. Again it is limited in scope to transit through the territory of the Member State concerned and the duration of **the transit period may not exceed five days**. It is not the aim of the proposal to replace the issuing of national visas for short stay purposes.

The proposed regime will be implemented on an optional basis: the Member States concerned have the possibility either to implement the new instrument or to continue issuing national visas as required by the Accession Treaty. If adopted, Bulgaria and Romania will be allowed to unilaterally recognise, as equivalent to their national visas, visas and residence permits issued by Schengen states as well as similar documents issued by these two countries and by Member States which acceded to the Union in 2004 but which are not yet fully integrated into the Schengen area.

In return Member States who decided to implement the 2006 Decision will be allowed to unilaterally recognise visa and residence permits issued by Bulgaria and Romania. The list of documents selected for the recognition regime are:

- uniform visas issued by a Schengen State;
- national long stay visas issued by a Schengen State according to their national legislation;
- residence permits issued by a Schengen State listed in Annex IV of the Common Consular Instructions;
- national short term and long term visas as well as residence permits issued by Member States that join the EU in 2004; and
- national short-term and long term visas as well as residence permits issued by Bulgaria and Romania.

Should Bulgaria and Romania decided to implement the common regime, Bulgaria and Romania will have to accept all documents issued by Member States fully implementing the Schengen acquis, thus avoiding any distinction as regards the issuing authority.

Territorial measures: the proposal is addressed exclusively to Bulgaria, Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Romania, Slovenia and Slovakia. By its own nature, the regime established by this proposal can not imply the variable situation as laid down by the protocols on the position of the United Kingdom, Ireland and Denmark.

It does not constitute a development of the Schengen acquis within the meaning of the Agreement signed on 18 May 1999, between the Council, Norway and Iceland in order to associate these two countries with the implementation, application and development of the Schengen acquis.