Long stay visa and alerts in the Schengen Information System SIS

2009/0025(COD) - 27/02/2009 - Legislative proposal

PURPOSE: to facilitate the circulation within the Schengen area without internal borders of third-country nationals legally residing in one of the Member States on the basis of a long-stay "D" visa issued by that Member State.

PROPOSED ACT: Council Regulation.

BACKGROUND: in accordance with the current Schengen acquis, a third-country national holding a national long-stay visa ("D visa") for stays exceeding three months is allowed to stay only in the territory of the Member State which issued the visa and, pursuant to Article 18 of the Convention Implementing the Schengen Agreement, as amended by Regulation 1091/2001, is allowed to transit through the territories of the other Member States only in order to reach the State which issued the visa.

Thus, according to present Community law, D visa holders are not allowed to travel to the other Member States during their stay and nor are they allowed to transit through the other States when returning to their country of origin, as this is not provided for by the Schengen Convention.

The wording of the above provision of the Schengen Convention stems from the procedure generally applied at the time by the Member States whereby D visas are converted into a residence permit after arrival on the territory. On the basis of such a residence permit, third country nationals can then circulate within the Schengen area. For this reason, at the time of the conclusion of the Schengen Convention, Member States did not consider it necessary to regulate either the circulation and the return journey on the basis of a D visa, or a second transit to the Member State that had issued the D visa.

Therefore, the Schengen Convention only provides the principle of **equivalence** between Schengen residence permits and visas applicable in the Schengen area: a residence permit issued by a Member State allows a third country national, holding the residence permit and a valid travel document, to move freely for up to three months within the territories of the other Member States during his/her stay.

Article 5(1)(b) of Regulation (EC) No 562/2006 also provides for the possibility for third country nationals in possession of a valid residence permit issued by a Member State to cross the external borders of another Member State without a visa for stays not exceeding three months.

However, in practice this situation caused serious problems. More and more Member States do not replace D visas by residence permits after the entry of third-country nationals into their territory, or replace them only with considerable delays.

Therefore, the Commission proposes the introduction of the principle of **equivalence** between long-stay and short-stay visas issued by the Member States fully implementing the Schengen acquis in order to overcome the present problems encountered by third-country nationals legally staying in a Member State with a long-stay visa.

IMPACT ASSESSMENT: no impact assessment was carried out.

CONTENT: this proposal and the parallel draft Regulation extend the principle of equivalence between a residence permit and short-stay visas to long-stay D visas. Hence a long-stay visa would have the same effects as a residence permit as regards circulation in the Schengen area.

Principle: a third-country national holding a long-stay D visa issued by a Member State could travel to the other Member States for three months in any half year, under the same conditions as the holder of a residence permit.

The rules regarding the issuance of long-stay visas remain unchanged as it was the case with the rules on the issuance of residence permits when the principle of equivalence between a residence permit and a short-stay visa was introduced. This would restore the basic philosophy underlying the Schengen area without internal borders, i.e. that a person can travel around in the Schengen area for short stays for three months in any half year with the document on the basis of which he is legally present in a Member State.

Legal aspects: due to the conflicting decision making procedures attached to the different legal basis, the Commission had to draw up two separate proposals. Technically, the proposed Regulations will amend:

- Articles 18 and 25 of 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 borders) – this proposed Council Regulation based on Articles 63 (3)(a) of the TEC and shall be adopted at unanimity in the Council after consulting the European Parliament.
- Article 5(1)(b) of Regulation (EC) No 562/2006 of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), on the entry conditions for third-country nationals and Article 21 of the Convention Implementing the Schengen Agreement – parallel proposal for a Regulation based on Article 62 (2)(a) and (3) of the TEC and shall be adopted in accordance with the co-decision procedure;

Security aspects: Article 25 of the Convention obliges Member States considering the issuance of a residence permit to a third-country national to consult the SIS. In case the third-country national concerned is a person for whom an alert has been issued for the purpose of refusing entry, the Member State shall first consult that Member State which issued the alert and shall take account of its interests. In such cases the residence permit shall be issued only for substantive reasons, notably on humanitarian grounds or by reason of international commitments.

Similarly, in case an alert for the purpose of refusing entry has been issued for a third-country national who already holds a residence permit issued by another State, the Member State issuing the alert shall consult the other Member State which issued the residence permit in order to determine whether there are sufficient reasons for withdrawing the residence permit.

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 by adding a reference with the effect that the obligation to consult the SIS and the other Member States in case of an alert would also apply when Member States consider the issuance of a long-stay visa to a third-country national or when Member States discover an alert which has been issued to a third-country national who holds a valid long-stay visa. Thus, the free circulation of the holders of a long-stay visa in the other Member States will not constitute any additional security risk for Member States compared to the holders of Schengen residence permits and short-stay visas.

Territorial provisions: Norway, Iceland, Switzerland and Liechtenstein are associated with the implementation of this draft Regulation in accordance with bilateral agreements concluded with the EU on the Schengen acquis. The United Kingdom and Ireland is not participating in the adoption and the implementation of this text in accordance with the Protocol annexed to the Treaty on European Union.

Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. However, it may 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.

BUDGETARY IMPLICATIONS: the proposal has no implications for the Community budget.