Movement of persons with a long-stay visa

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Carlos COELHO (EEP, PT) on the proposal for a regulation amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa. It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Legal base: following the entry into force of the Lisbon Treaty, it was determined that the new legal bases for this proposal and the parallel proposal are as follows: for this proposal, 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 parallel proposal, 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 votes in Council, applies not only to this proposal, but to both Commission proposals. Therefore the Council, supported by the Commission, suggested merging the two procedures. At its meeting of 11 January 2010 the Committee on Civil Liberties, Justice and Home Affairs agreed to this, 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.

Long-stay visas: Members specify that 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 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 on the Visa Code. 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."

Free movement with valid residence permits: the committee states that 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 Regulation (EC) No 562/2006 on the Schengen Borders Code and are not on the national list of alerts of the Member State concerned.

Searching the SIS: Members stipulate that 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.

Prior to issuing an alert for the purposes of refusing entry, Member States must check their national records of long stay visas or residence permits issued.

These provisions **also apply to long-stay visas**.

The committee notes that 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.

Transit: third-country nationals who do not fulfil all the conditions laid down in the text 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.

Information: the Commission and Member States shall inform the persons concerned fully and correctly of the provisions of the Regulation.

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