Movement of persons with a long-stay visa

2009/0028(COD) - 25/03/2010 - Final act

PURPOSE: to facilitate the free movement of third-country nationals who hold national long-stay visas within the territory of Member States fully implementing the Schengen acquis (the Schengen Area).

LEGISLATIVE ACT: Regulation (EU) No 265/2010 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.

BACKGROUND: in accordance with the Schengen acquis, a third-country national holding a long-stay visa (type D for a stay exceeding 3 months) is only authorised **to reside in the territory of the Member State that granted the visa** and is only allowed to transit through the territory of other Member States with the purpose of reaching that Member State. With this type of visa, he is therefore not permitted to travel in the other Member States during his stay nor to transit by the territory of the latter when returning to his country of origin, because the Schengen Convention does not make provision for it.

Under normal circumstances, Member States are required to replace long-stay visas by residence permits in due time following the entry into their territory of third-country nationals legally residing on the basis of a long-stay visa in order to enable them to travel freely within the Schengen Area.

In order to overcome this problem, this Regulation seeks to extend 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 freedom of movement of the holder in the Schengen Area.

CONTENT: long-stay visas, or so-called "D" visas, are visas issued to third country nationals for periods of stay longer than three months.

The new provisions in the Regulation concern mainly three aspects: free movement, maximum validity of long-stay visas, and security aspects.

- **free movement:** the Regulation puts third country nationals with a long-stay visa on the same footing as third country nationals holding valid residence permits. They will be able to move freely for up to three months in any six-month period within the territories of the other Schengen Member States. This is important for two reasons: firstly, for the general purpose of free travel within the Schengen area and secondly, for the specific purpose of transit through another Schengen state when returning from the country that issues the visa.
- **validity of long stay visas:** the Regulation also stipulates that long-term visas have a period of validity of **no more than one year**. If a Member State allows a third-country national to stay for more than one year, the long stay visa must be replaced before the expiry of its period of validity by a residence permit. In other words, Schengen States will in these cases be **obliged** to replace the long-stay visa with a residence permit.
- **security aspects of the Schengen area:** the new provisions oblige Member States considering the issuance of a long-stay visa to a third-country national to consult the Schengen Information System (SIS) in the same way as they need to do when considering the issuance of a residence permit. 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 long-stay visa issued by another State, the member state issuing the alert shall consult the other member state which issued the long-stay visa in order to determine whether there are sufficient reasons for withdrawing the long-stay visa. With these provisions, the free circulation of the holders of a long-stay visa will not constitute any additional security risk compared to the holders of Schengen residence permits and short-stay visas.

Information:the Commission and the Member States shall inform the third- country nationals concerned fully and accurately of this Regulation.

Report: by 5 April 2012, the Commission shall submit to the European Parliament and the Council a report on the application of the Regulation, accompanied if appropriate, by a proposal to amend the Regulation.

Territorial provisions: Norway, Iceland, Switzerland and Liechtenstein shall be associated with the implementation of this Regulation in accordance with the bilateral agreements concluded with the EU on the Schengen acquis. The United Kingdom and Ireland are not taking part in the adoption and implementation of this text, in accordance with the protocol annexed to the EU Treaty and subsequent decisions. For the same reasons, Denmark will not take part in the adoption of this text but may decide, within a period of six months, whether it will implement it in national law.

ENTRY INTO FORCE: 05/04/2010.