External borders: simplified regime for control of persons, unilateral recognition by new Member States of documents issued by Schengen States as equivalent to their national visas for the purpose of transit

2005/0158(COD) - 22/08/2005 - Legislative proposal

PURPOSE: To introduce a simplified regime for permits issued by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia for the purpose of transit through their territories, based on unilateral recognition of documents.

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

CONTENT: Under the terms and conditions of the Schengen Agreement (encapsulated in Regulation 539 /2001), visas issued by one Schengen Member State are deemed valid for crossing the external borders of another Schengen Member State, both for short stay and transitory purposes. In addition, the current Schengen provisions foresee a system of mutual recognition of long-term visas and residence permits issued by Member States complying with the Schengen *acquis*.

Since the accession of the new Member States on 1 May 2004, a number of gaps in applying the provisions outlined above have arisen, which require urgent attention and which equally apply to the issuing of visas by Switzerland and Liechtenstein. It is these gaps, which the Commission is trying to plug, and which explains the Commission's need to present the attached proposal for a Decision.

To put it into context, prior to becoming new EU Member States, 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, states that from the moment of accession, the new Member States shall apply the provisions of the Schengen Agreement as outlined in Regulation 539/2001, - 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.

The existing, compromise solution, gives rise to a number of legal uncertainties. It does not, for example, foresee the equivalence between residence permits and visas. The result being that new Member States are obliged to issue national visas for entry into and transit through their territory to third country national, even if the persons concerned are holders of a Schengen residence permit or visa – or else are holders of national long term visas issued by a Schengen state. For many new Member States, this places a considerable administrative burden on their embassies and consular services. Further, given that persons holding a Schengen visa, are subject to rigorous controls by the Schengen Member State prior to the issuance of their visa, all relevant security concerns have, effectively, already been addressed.

The complexity of the current situation is particularly pertinent to nationals of both Liechtenstein and Switzerland, who for geographic reasons, are adversely affected by the need for transit visas. The current regime forces Swiss and Liechtenstein nationals to apply for a visa when transiting the territories of the new EU Member States. This becomes particularly problematic for holidaymakers who often just need to transit the territory of a new Member State, without necessarily wishing to stay in that territory, but who nevertheless need to apply for visas. According to a survey conducted in 2003 by Switzerland's Central

Register of Foreign Nationals, 514 250 persons were affected by the transit visa requirements, at the height of the holiday period.

In order to address this issue, the Swiss authorities are currently adopting a unilateral recognition of resident permits whereby holders of residence permits issued by a European Union Member State are exempted from visa requirements. It covers visas for short stay and transit purposes. In addition, the EU and Switzerland are in the process of ratifying an Agreement on the Schengen *acquis*. The Commission acknowledges, however, that this will take some time to come into force and an interim solution needs to be found.

To address the current impasse, the Commission is presenting two legal instruments. The first is this Council Decision, which is addressed to the new Member States, (here meaning: the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia). The second, (2005 /0159 COD) is addressed to Switzerland and Liechtenstein.

The Decision addressed to the new Member States, seeks to simplify procedures for controlling persons at external borders. It aims to do so by setting up a system, for a transitional period only, whereby new Member States agree to adopt common rules, which unilaterally recognise visa documents as equivalent to their national visas. The Commission is also proposing a simplified regime for the control of persons at the external borders of the new Member States, based on the principle of unilateral equivalence. The Common rules will only apply until an implementing Council Directive has been approved. Specifically speaking the Decision proposes the following provisions:

- The recognition of a document will be limited to the purpose of transit through the new Member States – and will not affect the possibility of a new Member State from issuing national visas for short term stay purposes.

- The common rules will only apply to short-term uniform visas, long stay visas and residence permits issued by those Member States, fully complying with the Schengen *acquis*.

- In return the new Member States will recognise, under common rules, the type of visas outlined above.