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) - 14/06/2006 - Final act

PURPOSE: to introduce a simplified regime for permits issued by the ten new Member States for the purpose of transit through their territories, based on unilateral recognition of documents.

LEGISLATIVE ACT: Decision 895/2006/EC of the European Parliament and of the Council introducing 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 to their national visas for the purposes of transit through their territories.

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 had arisen, which required urgent attention and which equally applied to the issuing of visas by Switzerland and Liechtenstein. It is these gaps, which are filled by this Council 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 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. 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 situation was particularly pertinent to nationals of both Liechtenstein and Switzerland, who for geographic reasons, are 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. This became particularly problematic for holidaymakers who often just needed to transit the territory of a new Member State, without necessarily wishing to stay in that territory, but who nevertheless needed to apply for visas.

There are now two Council Decisions to remedy the situation. This Decision is addressed to the new Member States, (the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia). The second, (COD/2005/0159) is addressed to Switzerland and Liechtenstein.

This Decision introduces a simplified regime for the control of persons at the external borders whereby the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia may recognise unilaterally as equivalent to their national visas for the purpose of transit uniform visas, long-stay visas, residence permits, short-term visas, and long-term visas, issued by other new Member States to third-country nationals subject to a visa obligation pursuant to Regulation 539/2001/EC;

- 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;

- new Member States may only recognise documents as equivalent to their national visas for the purpose of transit, if the duration of the transit by the third-country national through the territory of the new Member State(s) does not exceed five days;

- any new Member State that decides to apply this Decision shall notify the Commission by 1 August 2006.

ENTRY INTO FORCE : 10/07/2006.