Basic information

2009/0028(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Movement of persons with a long-stay visa Amending Regulation (EC) No 562/2006, Schengen Borders Code 2004/0127(COD) **Subject** 7.10 Free movement and integration of third-country nationals 7.10.02 Schengen area, Schengen acquis 7.10.04 External borders crossing and controls, visas 7.30 Police, judicial and customs cooperation in general	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	COELHO Carlos (PPE)	02/09/2009

Former committee responsible	Former rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs		

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	WIKSTRÖM Cecilia (ALDE)	02/09/2009

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs		

Committee for opinion on the legal basis	Rapporteur for opinion	Appointed
JURI Legal Affairs	LECHNER Kurt (PPE)	09/02/2010

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3005	2010-03-22

European Commission	Commission DG	Commissioner
	Justice and Consumers	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
27/02/2009	Legislative proposal published	COM(2009)0091	Summary
24/03/2009	Committee referral announced in Parliament, 1st reading		
19/10/2009	Resumption of business from the previous parliamentary term		
04/02/2010	Vote in committee, 1st reading		Summary
18/02/2010	Committee report tabled for plenary, 1st reading	A7-0015/2010	
09/03/2010	Decision by Parliament, 1st reading	T7-0049/2010	Summary
09/03/2010	Results of vote in Parliament		
09/03/2010	Debate in Parliament		
22/03/2010	Act adopted by Council after Parliament's 1st reading		
25/03/2010	Final act signed		
25/03/2010	End of procedure in Parliament		
31/03/2010	Final act published in Official Journal		

Technical information

Procedure reference	2009/0028(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 562/2006, Schengen Borders Code 2004/0127(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 077-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/00262

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary

Committee draft report		PE430.461	13/11/2009	
Committee opinion	JURI	PE430.705	29/01/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0015/2010	18/02/2010	
Specific opinion	JURI	PE439.434	08/03/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0049/2010	09/03/2010	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00005/2010	25/03/2010	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2009)0091	27/02/2009	Summary
Commission response to text adopted in plenary	SP(2010)2013	15/04/2010	
Follow-up document	C(2010)5559	16/08/2010	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2010/0265
OJ L 085 31.03.2010, p. 0001 Summary

Movement of persons with a long-stay visa

2009/0028(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: Regulation of the European Parliament and of the Council. 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:

- 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 – present 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;
- 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) – proposed parallel Regulation based on Articles 63 (3)(a) of the TEC and shall be adopted at unanimity in the Council after consulting the European Parliament.

It should be noted that contrary to the proposed parallel Regulation, this proposed Regulation does not make any changes to important provisions of the Schengen Convention as regards the security aspects (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).

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.

Movement of persons with a long-stay visa

2009/0028(COD) - 09/03/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 562 votes to 29 with 51 abstentions a legislative resolution setting out its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) on the proposal for a Regulation 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.

The amendments contained in Parliament's position were the result of a compromise negotiated with the Council:

Merging of related proposal: the entry into force of the Lisbon Treaty had resulted in changes to the legal bases of many ongoing procedures. One of the consequences of this was that the parallel proposal 2008/0025(COD) on amending the Convention implementing the Schengen Agreement as regards long-stay visas and alerts in the Schengen Information System, which had previously come under the consultation procedure, was now subject to the ordinary legislative procedure. Parliament agreed to the Council and Commission's suggestion that the two procedures be merged and that the contents of Commission proposal COM(2009)0090 and of the draft reports in relation thereto should be incorporated into procedure 2009/0028 (COD) which is the subject of this procedure file. It therefore considered procedure 2005/0025(COD) to have lapsed.

Long-stay visas: Members specifed that visas for stays exceeding three months ('long-stay visas') should be national visas issued by one of the Member States in accordance with its national law or Community law. Such visas should 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 should 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 should 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 should be replaced before the expiry of its period of validity by a residence permit.

Free movement with valid residence permits: Parliament said that aliens who hold valid residence permits issued by one of the Member States should be able, on the basis of that permit and a valid travel document, to 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: where a Member State considers issuing a residence permit, the responsible authority should 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 should first consult the Member State issuing the alert and take account of its interests; the residence permit should be issued for substantive reasons only, notably on humanitarian grounds or by reason of international commitments.

Where a residence permit is issued, the Member State issuing the alert should withdraw the alert but should be able to put the alien concerned on its national list of alerts.

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

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

Transit: third-country nationals who do not fulfill 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, should 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: Parliament stipulated that the Commission and the Member States should inform the third-country nationals concerned fully and accurately of this Regulation.

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

The Regulation should enter into force on 5 April 2010.

The European Parliament also approved a **joint declaration**, annexed to the resolution, whereby the Council and the Parliament recognised the need for a comprehensive and coherent set of rules, at EU level, to ensure a high level of personal data protection under SIS II. If there were major delays, beyond 2012, in implementing SIS II, the Commission should present legislative proposals amending the relevant provisions of the Schengen Convention in order to ensure a level of protection of the personal data entered into the Schengen Information System equivalent to the standards established for SIS II.

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.