



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	General Secretariat
to:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) N° 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) – Outcome of the European Parliament's first reading (Strasbourg, 16 to 19 January 2012)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Mr Louis MICHEL (ALDE - BE) presented two amendments (amendments 1 and 2) to the proposal for a regulation, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. These amendments had been agreed during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 19 January 2012, the plenary adopted the two amendments to the proposal for a regulation. The amendments adopted correspond to what was agreed between the three institutions and ought therefore to be acceptable to the Council. Consequently the Council should now be in a position to adopt the legislative act.

The text of the amendments adopted and the European Parliament's legislative resolution are set out in the Annex hereto. The amendments are presented in the form of a consolidated text where added wordings are highlighted in ***bold and italics***, the symbol "■" indicates deleted text and the symbol "||" indicates changes of a linguistic or clerical nature.

Community Code on Visas *I**

European Parliament legislative resolution of 19 January 2012 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 810/2009 of 13 July 2009 establishing a Community Code on Visas (Visa Code) (COM(2011)0516 – C7-0226/2011 – 2011/0223(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0516),
 - having regard to Article 294(2) and point (a) of Article 77(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0226/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the undertaking given by the Council representative by letter of 12 December 2011 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0441/2011),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 19 January 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(a) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure¹,

Whereas:

- (1) It is necessary to clarify the rules on transit through international areas of airports to ensure legal certainty and transparency.
- (2) Third country nationals subject to the airport transit visa requirement under Article 3(1) and (2) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)², who hold a valid visa issued by a Member State, Canada, Japan or the United States of America or who hold a valid residence permit issued by a Member State, Andorra, Canada, Japan, San Marino or the United States of America, are exempt from the airport transit visa requirement. It should be clarified that this exemption also applies to holders of valid visas or residence permits issued by the Member States which do not take part in the adoption of Regulation (EC) No 810/2009 and by the Member States which do not yet apply the provisions of the Schengen *acquis* in full.
- (3) As regards persons holding a valid visa, the exemption should apply when they travel to the issuing country or any other third country and when they return from the issuing country after having used the visa.
- (4) Since the objective of this Regulation, namely, to clarify the rules on transit through international areas of airports, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (5) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen

¹ Position of the European Parliament of 19 January 2012.

² OJ L 243, 15.9.2009, p. 1.

*acquis*¹ which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement².

- (6) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*³ which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁴.
- (7) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁵ which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁶.
- (8) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (9) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*⁷; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (10) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*⁸; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 176, 10.7.1999, p. 31.

³ OJ L 53, 27.2.2008, p.52.

⁴ OJ L 53, 27.2.2008, p. 1.

⁵ OJ L 160, 18.6.2011, p. 21.

⁶ OJ L 160, 18.6.2011, p. 19.

⁷ OJ L 131, 1.6.2000, p. 43.

⁸ OJ L 64, 7.3.2002, p. 20.

- (11) As regards Cyprus, this Regulation constitutes an act building upon or otherwise related to the Schengen *acquis* within the meaning of **Article 3(1)** of the 2003 Act of Accession.
- (12) As regards Bulgaria and Romania, this Regulation constitutes an act building upon or otherwise related to the Schengen *acquis* within the meaning of **Article 4(1)** of the 2005 Act of Accession,

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 3 (5) of Regulation (EC) No 810/2009, points (b) and (c) are replaced by the following:

- "(b) third-country nationals holding a valid residence permit issued by a Member State which does not take part in the adoption of this Regulation or by a Member State which does not yet apply the provisions of the Schengen *acquis* in full, or holding one of the valid residence permits listed in Annex V issued by Andorra, Canada, Japan, San Marino or the United States of America guaranteeing the holder's unconditional readmission;
- (c) third country nationals holding a valid visa for a Member State which does not take part in the adoption of this Regulation or for a Member State which does not yet apply the provisions of the Schengen *acquis* in full, Canada, Japan or the United States of America, when travelling to the issuing country or any other third country, or when, having used the visa, they return from the issuing country;"

Article 2

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ,

For the European Parliament
The President

For the Council
The President