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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council repealing certain acts from the Schengen acquis – Outcome of the European Parliament's first reading (Strasbourg, 23 to 26 November 2015)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, 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 Claude MORAES (S&D-UK) presented one compromise amendment (amendment 1) to the proposal for a Regulation, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment 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 24 November 2015, the plenary adopted the compromise amendment (amendment 1) to the proposal for a Regulation.

The Commission's proposal as thus amended and the legislative resolution constitute the Parliament's first-reading position², it reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Repealing certain acts from the Schengen acquis *I**

European Parliament legislative resolution of 24 November 2015 on the proposal for a decision of the European Parliament and of the Council repealing certain acts in the Area of Freedom Security and Justice (COM(2014)0713 – C8-0277/2014 – 2014/0337(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2014)0713),
 - having regard to Article 294(2) and Article 77(2)(a),(b) and (d), Article 78(2)(e) and (g), Article 79(2)(c) and (d) and Article 87(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0277/2014),
 - 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 21 October 2015 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 59 and 50(2) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0250/2015),
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 24 November 2015 with a view to the adoption of *Regulation (EU) 2015/...* of the European Parliament and of the Council repealing certain acts *from the Schengen acquis*

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),(b) and (d), Article 78(2)(e) and (g), Article 79(2)(c) and (d) and Article 87(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 procedure³,

³ Position of the European Parliament of 24 November 2015.

Whereas:

- (1) Improving the transparency of Union law is an essential element of the better law-making strategy that the institutions of the Union are implementing. In that context, it is appropriate to repeal those acts which no longer serve any purpose.
- (2) A number of acts *belonging to the Schengen acquis* are no longer relevant *due to their temporary nature or* because their content has been taken up by successive acts.
- (3) Decision of the Executive Committee Sch/Com-ex (95) PV 1 rev⁴ referred to a very specific situation with regard to the prior consultation requested by Portugal vis-à-vis Indonesian visa applicants. That Decision became obsolete after the entry into force of Regulations (EC) No 810/2009⁵ and (EC) No 767/2008⁶ of the European Parliament and of the Council, which provide for new rules for the prior consultation of other Member States in relation to the issuance of visas.

⁴ Decision of the Executive Committee of 5 May 1995 on common visa policy. Decision contained in the minutes of the meeting of the Executive Committee held in Brussels on 28 April 1995 (SCH/Com-ex (95) PV 1 rev.) (OJ L 239, 22.9.2000, p. 175).

⁵ 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) (OJ L 243, 15.9.2009, p. 1).

⁶ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

- (4) Decision of the Executive Committee SCH/Com-ex (95)21⁷ provided for the obligation of Member States to exchange statistical information for better monitoring migration at external borders. That Decision became obsolete after the entry into force of Council Regulation (EC) No 2007/2004⁸, which entrusts Frontex with the tasks of carrying out risk analyses regarding emerging risks and the current state of affairs at the external borders and of developing and operating information systems enabling the exchange of such information.
- (5) Decision of the Executive Committee SCH/Com-ex (96) 13 rev 1⁹ established the principles regulating the rights and obligations of representing and represented Member States in respect of the issuance of Schengen visas in third countries where not all Schengen States are represented. That Decision became obsolete after the entry into force of Regulation (EC) No 810/2009, which provides for new rules on the representation arrangements in situations where a Member State agrees to represent another Member State for the purpose of examining applications and issuing visas on behalf of that Member State.

⁷ Decision of the Executive Committee of 20 December 1995 on the swift exchange between the Schengen States of statistical and specific data on possible malfunctions at the external borders (SCH/Com-ex (95) 21)(OJ L 239, 22.9.2000, p. 176).

⁸ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

⁹ Decision of the Executive Committee of 27 June 1996 on the principles for issuing Schengen visas in accordance with Article 30(1)(a) of the Convention implementing the Schengen Agreement (SCH/Com-ex (96) 13 rev 1) (OJ L 239, 22.9.2000, p. 180).

- (6) Decision of the Executive Committee SCH/Com-ex (97) 39 rev¹⁰ approved the guiding principles for means of proof and indicative evidence under readmission agreements between Schengen States. That Decision became obsolete after the entry into force of Council Regulation (EC) No 343/2003¹¹ and of Commission Regulation (EC) No 1560/2003¹², which provide for the elements of proof and circumstantial evidence that are to be used for determining the Member State responsible for examining the application for asylum.
- (7) Decision of the Executive Committee SCH/Com-ex (98) 1 rev 2¹³ provided for a number of measures aimed to increase the efficiency of checks at external borders. That Decision became obsolete after the entry into force of Regulation (EC) No 562/2006 of the European Parliament and of the Council¹⁴, which sets out the rules on crossing external borders, and of Regulation (EC) No 2007/2004, which entrusts Frontex with the task of facilitating the application of Community measures relating to the management of external borders by ensuring the coordination of Member States' actions in the implementation of those measures.

¹⁰ Decision of the Executive Committee of 15 December 1997 on the guiding principles for means of proof and indicative evidence within the framework of readmission agreements between Schengen States (SCH/Com-ex (97) 39 rev) (OJ L 239, 22.9.2000, p. 188).

¹¹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, (OJ L 50, 25.2.2003, p. 1).

¹² Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003 p. 3).

¹³ Decision of the Executive Committee of 21 April 1998 on the activities of the task force (SCH/Com-ex (98) 1 rev 2) (OJ L 239, 22.9.2000, p. 191).

¹⁴ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

- (8) Decision of the Executive Committee SCH/Com-ex (98) 18 rev¹⁵ provided for a procedure to be followed by the Schengen States experiencing serious difficulties in obtaining a laissez-passer to repatriate illegal foreign nationals. It also provided for the possibility to investigate, at the Union level, the need for using other means of a more binding nature against the countries posing problems in that regard. That Decision became obsolete after the Union concluded readmission agreements with a number of third countries. Those agreements set out the specific obligations and procedures to be complied with by the authorities of the third countries and of Member States with regard to the repatriation of foreign nationals who are irregularly residing in the Union.
- (9) Decision of the Executive Committee SCH/Com-ex (98) 21¹⁶ approved common rules for affixing stamps to the passports of all visa applicants as a means of preventing the same person from lodging multiple or successive visa applications. That Decision became obsolete after the entry into force of Regulation (EC) No 810/2009, which provided for a new set of rules for issuing visas and for stamping an applicant's travel document.

¹⁵ Decision of the Executive Committee of 23 June 1998 on measures to be taken in respect of countries posing problems with regard to the issue of documents required for expulsion from the Schengen territory (SCH/Com-ex (98) 18 rev) (OJ L 239, 22.9.2000, p. 197).

¹⁶ Decision of the Executive Committee of 23 June 1998 on the stamping of passports of visa applicants (SCH/Com-ex (98) 21) (OJ L 239, 22.9.2000, p. 200).

- (10) Decision of the Executive Committee SCH/Com-ex (98) 37 def 2¹⁷ established a set of measures aimed to establish an integrated approach for stepping up the fight against illegal migration. Those measures were put into effect by the Decision of the Central Group of 27 October 1998 on the adoption of measures to fight illegal immigration (SCH/C (98) 117). Those Decisions became obsolete after the entry into force of Council Regulation (EC) No 377/2004¹⁸, which establishes the common framework for posting immigration liaison officers in third countries, Regulation (EC) No 562/2006, which provides for a set of common measures on the control of external borders, and Council Decision 2009/371/JHA¹⁹, which entrusts Europol with specific tasks related to the exchange of information, including on countering irregular migration.
- (11) Decision of the Executive Committee SCH/Com-ex (98) 59 rev²⁰ provided for a set of guidelines for the coordinated deployment of document advisers for air and maritime traffic to consular representations of Member States with the aim to strengthen the combating of illegal immigration. That Decision became obsolete after the entry into force of Regulation (EC) No 377/2004, which establishes new rules for the deployment of liaison officers in third countries.

¹⁷ Decision of the Executive Committee of 27 October 1998 on the adoption of measures to fight illegal immigration (SCH/Com-ex (98) 37 def 2) (OJ L 239, 22.9.2000, p. 203).

¹⁸ Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network. (OJ L 64, 2.3.2004, p. 1).

¹⁹ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

²⁰ Decision of the Executive Committee of 16 December 1998 on coordinated deployment of document advisers (SCH/Com-ex (98) 59 rev) (OJ L 239, 22.9.2000, p. 308).

- (12) Decision of the Executive Committee SCH/Com-ex (99) 7 rev 2²¹ approved a plan for Member States' reciprocal secondment of liaison officers to advise and assist in the performance of security and checking tasks at external borders. That Decision became obsolete after the entry into force of Regulation (EC) No 562/2006 and Regulation (EC) No 2007/2004, which together introduced a new legal framework for cooperation between Member States with regard to the control of external borders, including secondment of liaison officers.
- (13) Council Regulation (EC) No 189/2008²² established specifications relevant to certain SIS II tests aimed to demonstrate that Central SIS II, the communication infrastructure and the interactions between Central SIS II and the national systems (N.SIS II) work in accordance with the technical and functional requirements set out in the SIS II legal instruments. That Regulation lost its legal effect once the SIS II became operational on 9 April 2013.
- (14) For reasons of legal certainty and clarity, those obsolete Decisions and Regulation should be repealed.

²¹ Decision of the Executive Committee of 28 April 1999 on liaison officers (SCH/Com-ex (99) 7 rev 2) (OJ L 239, 22.9.2000, p. 411).

²² Council Regulation (EC) No 189/2008 of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II) (OJ L 57, 1.3.2008, p. 1).

- (15) Since the objective of this **Regulation**, namely the repeal of a number of obsolete Union acts **belonging to the Schengen acquis** cannot be **sufficiently** achieved by **the** Member States but **can rather 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** (TEU). 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.
- (16) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the TEU 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.**

- (17) This **Regulation** constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC²³; the United Kingdom is therefore not taking part in its adoption **and is not bound by it or subject to its application**.
- (18) This **Regulation** constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC²⁴; Ireland is therefore not taking part in its adoption **and is not bound by it or subject to its application**.

²³ 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* (OJ L 131, 1.6.2000, p. 43).

²⁴ 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* (OJ L 64, 7.3.2002, p. 20).

- (19) 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 *acquis*²⁵ which fall within the area referred to in Article 1 of Council Decision 1999/437/EC²⁶.
- (20) As regards Switzerland, this **Regulation** constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded 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*²⁷, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/146/EC²⁸ and 2008/149/JHA²⁹.

²⁵ OJ L 176, 10.7.1999, p. 36.

²⁶ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999 p. 31).

²⁷ OJ L 53, 27.2.2008, p. 52.

²⁸ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, 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* (OJ L 53, 27.2.2008, p. 1).

²⁹ Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union 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* (OJ L 53, 27.2.2008, p. 50).

- (21) 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*³⁰ relating to the abolition of checks at internal borders and movement of persons, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2011/349/EU³¹ and 2011/350/EU³²,

HAVE ADOPTED THIS **REGULATION**:

³⁰ OJ L 160, 18.6.2011, p. 21.

³¹ Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union 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*, relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

³² Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

Article 1
Repeal of obsolete acts

The *following acts are repealed*:

- *Decision* Sch/Com-ex (95) PV 1 rev (*visa policy*);
- *Decision* SCH/Com-ex (95) 21 (*exchange of statistical information*);
- *Decision* SCH/Com-ex (96) 13 rev 1 (*issuance of Schengen visas*);
- *Decision* SCH/Com-ex (97) 39 rev (*evidence under readmission agreements*);
- *Decision* SCH/Com-ex (98) 1 rev 2 (*task force*);
- *Decision* SCH/Com-ex (98) 18 rev (*difficulties on obtaining laissez-passer*);
- *Decision* SCH/Com-ex (98) 21 (*stamping of passports*);
- *Decision* SCH/Com-ex (98) 37 def 2 (*fight against illegal immigration*);
- *Decision* SCH/C (98) 117 (*fight against illegal immigration*);
- *Decision* SCH/Com-ex (98) 59 rev (*document advisers*);
- *Decision* SCH/Com-ex (99) 7 rev 2 (*liaison officers*); and
- Regulation (EC) No 189/2008 (*SIS II tests*).

Article 2
Entry into force

This **Regulation** shall enter into force on the twentieth day following that of 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

For the Council

The President

The President
