

External borders: recognition by new Member States and Schengen States of residence permits issued by Switzerland and Liechtenstein as equivalent to their national visas for the purpose of transit (Regulation (EC) No 539/2001)

2005/0159(COD) - 14/06/2006 - Final act

PURPOSE: to introduce a simplified regime for permits issued by Switzerland and Liechtenstein for the purpose of transit through their territories, based on unilateral recognition of documents.

LEGISLATIVE ACT: Decision 896/2006/EC of the European Parliament and of the Council establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory.

BACKGROUND: the current Schengen “acquis” establishes the principle of mutual recognition of uniform visas, of long term visas and of residence permits issued by Member States fully implementing the Schengen acquis for transit and short stay purposes. This is a basic principle underpinning the creation of the area without internal borders. It enables a third country national holder of certain documents issued by a Member State fully participating in the Schengen area to enter and/or circulate freely within the common space without being subject to any additional requirement.

As regards residence permits issued by Switzerland and Liechtenstein, the existing Schengen acquis does not allow Member States fully implementing the Schengen acquis to recognise these for transit purposes into the Schengen territory.

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. This Council Decision aims to fill the gaps.

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, stated that from the moment of accession, the new Member States shall apply the provisions of the Schengen Agreement as outlined in Regulation 539/2001/EC, - 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 had, effectively, already been addressed.

The complexity of the situation was particularly pertinent to nationals of both Liechtenstein and Switzerland, who for geographic reasons, were adversely affected by the need for transit visas. The result was that Swiss and Liechtenstein nationals needed to apply for a visa when transiting the territories of the new EU Member States. This became particularly problematic for holiday makers 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. 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.

This Decision specifically concerns Switzerland and Liechtenstein. The second Decision ([COD/2005/0158](#)) is addressed to the new Member States.

This Decision establishes a simplified regime for the control of persons at the external borders based on the **unilateral recognition by Member States of residence permits issued by Switzerland and Liechtenstein to third-country nationals subject to a visa obligation pursuant to Regulation 539/2001/EC as equivalent to their uniform or national visas for the purpose of transit**. The implementation of this Decision will not affect the checks to be carried out on persons at the external borders in compliance with Regulation 562/2006/EC.

Member States fully implementing the Schengen acquis shall unilaterally recognise the residence permits issued by Switzerland and Liechtenstein which are listed in the Annex to the Decision.

New Member States which apply Decision 895/2006/EC (see [COD/2005/0158](#)) may unilaterally recognise the residence permits listed in the Annex to this Decision as equivalent to their national transit visas until the date to be determined by the Council.

The **duration of the transit** of the third-country national through the territory of the Member State(s) shall **not exceed 5 days**.

Territorial measures: this Decision is addressed to the Member States. Iceland and Norway will also be associated in this Decision.

The United Kingdom, Ireland and Denmark shall not participate in the adoption of the present Decision.

Denmark could however decide, within a period of 6 months after the date of adoption of this Decision, to implement it into its national law.

ENTRY INTO FORCE: this Decision shall enter into force on 10 July 2006. It shall apply until the date on which the provisions of Article 21 of the Schengen Convention take effect for Switzerland and Liechtenstein pursuant to Article 15 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. Any new Member State that decides to apply this Decision must notify the Commission by 1 August 2006.