COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

DECISION 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 Bulgaria, the Czech Republic, Cyprus, Latvia, Hungary, Malta, Poland, Romania, Slovenia and Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Decision N° 896/2006/EC 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.

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

On June 14, 2006, the European Parliament and the Council adopted two Decisions establishing a simplified regime for the control at the external borders of the Union of third country nationals who are subject to a visa obligation according to Council Regulation (EC) 539/2001[1]:

- Decision N° 895/2006/EC[2] 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, and

- Decision N° 896/2006/EC[3] 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.

This was the first time that basic common rules on unilateral recognition of visas and residence permits were introduced into the Community acquis on visas.

Decision N° 895/2006/EC takes into consideration the specific needs in the area of visa policy of Member States that acceded to the European Union in 2004, in particular their visa requirements during the transitory period till their full integration into the Schengen area. In fact, the decision remedies the significant additional administrative burden accounted by the consular offices of these countries which had to issue national transit visas for persons who do not represent any risk for the Member States.

Without creating any new obligations in addition to those listed in the 2003 Act of Accession, the Decision N° 895/2006/EC introduces an optional regime based on common rules allowing these Member States to simplify controls at their external borders of third country nationals who hold certain documents issued by Member States fully implementing the Schengen acquis as well as similar documents issued by other Member States not yet fully implementing the Schengen acquis. The common rules are applicable till the end of the transitory period i.e. the full participation of these Member States in the area without internal borders, date from which the mutual recognition of such documents becomes compulsory.

This unilateral recognition regime is limited to the purpose of transit, the duration of which can not exceed five days. Such a limitation has been considered necessary in order to avoid any risk of confusion or wrong implementation of the current Schengen rules on visa which define the state responsible for processing a visa application (it is either the State in whose territory is located the main destination of the visit or the State of the first entry).

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1 OJ L 81, 21.3.2001, p.1 as last amended by Regulation (EC) No 1932/2006 (OJ L 405, 30.12.2006, p.23)

2 OJ L 167, 20.6.2006, p1.

3 OJ L 167, 20.6.2006, p. 8.

The same approach has been followed for the Decision N° 896/2006/EC, which takes into consideration the administrative difficulties that Member States face when they have to issue visas for third country nationals residing legally in Switzerland and Liechtenstein. Given the important seasonal mobility (during the summer holiday period), the consular offices of certain Member States in Switzerland and Liechtenstein which were in particular concerned by these movements because of their geographical location, faced a heavy administrative burden due to the need to issue the required visas in a timely manner during the said periods.

The Decision N° 896/2006/EC introduces common rules for the unilateral recognition by Member States of certain residence permits issued by Switzerland and Liechtenstein as equivalent to their transit visas. The new rules are mandatory for Member States fully participating in the common area without internal borders and optional for Member States that joined the Union in 2004. This distinction has been considered necessary in order to avoid imposing additional obligations upon new Member States during the transitory period till their full integration into the Schengen area.

As provided in Article 5 of the Decision N° 895/2006/EC and Article 4 of the Decision N° 896/2006/EC[4], the Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Slovenia and Slovakia notified the Commission of their decision to implement the common regime for both Decisions. In particular, as regards Decision N° 895/2006/EC, these countries opted also for the unilateral recognition of all the documents listed in the annex issued by other Member States not yet fully implementing the whole of the Schengen acquis.

The Commission published the notified information in the Official Journal[5]. The starting date for the implementation of the common rules varies from one Member State to another. In the absence of specific provisions in the text of the Decisions, some Member States opted for immediate implementation of the common rules (Slovenia and Cyprus) whereas others decided, for administrative reasons, to start the implementation from a later date. From December 1st, 2006, the common rules are applicable by the Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Slovenia and Slovakia.

In order to ensure an effective implementation of the common rules, Member States raised questions (within the framework of the relevant Council Working Party) on specific issues related to Decision N° 895/2006/EC and requested the Commission services to provide advise and interpretation as regards the scope of certain provisions.

Responding to these questions the Commission services recalled the purpose of the introduction of the common rules, stressing the limitation of their scope to the transit purpose. This common regime is applicable during the transitory period till the full integration of the Member States concerned into the Schengen area (first Decision) and till the full implementation of the Schengen acquis by Switzerland and Liechtenstein (second Decision).

The Commission services stressed that the purpose of the introduction of the common rules was to simplify the transit of certain categories of persons and to eliminate any unjustified administrative burdens on consular offices in relation to visa applicants presenting no risk for Member States.

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4 Member States acceded to the European Union in 2004 had to notify to the Commission by 1 August 2006 their decision to apply the common rules.

5 OJ C 251, 17.10.2006, p.20.

The introduction of these new rules has no effect on the implementation by Member States of all the other provisions of the Community "acquis" on visas and external borders which remain applicable. In particular, these common rules do not affect provisions in the "acquis" related to visas with limited territorial validity, airport transit visas or checks of persons at the external borders.

Regarding this last point, the Commission underlined that the checks on persons at the external borders should be carried out in compliance with Articles 5 to 13 and 18 to 19 of Regulation (EC) N° 562/2006[6]. Border guards must proceed with checks at the external borders taking into consideration the simplification introduced by the common rules and avoiding any misuse of the provisions of Decision N° 895/2006/EC. These checks shall, therefore, be balanced and proportionate to the objectives pursued. The border guards should assess in each individual case whether the third country nationals could be beneficiaries of the simplified rules and whether they fulfil the entry conditions and respect the time limit provided for transit in Decision N° 895/2006/EC. Depending on the assessment carried out by the border guard, in case of violation by a person of the authorised duration of transit, this person could be refused entry. Other administrative measures, more appropriate to the specific case (e.g. fines), could also be imposed.

Based on the successful experience with these two decisions, the EU should extend the simplified regime to Bulgaria and Romania who joined the European Union on January 1st, 2007, and are not yet covered by the current common rules. Indeed, the reasons underlying the two Decisions mentioned above are equally valid for Bulgaria and Romania.

For these two Member States, as for the previous 2004 enlargement, the so-called "Schengen two-phase implementation process" has been followed in matters related to the visa acquis (Article 4 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded (hereinafter: the 2005 Act of Accession)). This implies that Bulgaria and Romania have to apply, from the date of accession (1.1.2007), the provisions of Regulation (EC) 539/2001 and thus, to subject third country nationals listed in its Annex I to a visa requirement, while continuing to issue their national visas until the date to be decided by the Council authorizing their full integration into the Schengen area. As the Schengen mutual recognition rules for transit and short stay purposes do not apply to Bulgaria and Romania from the date of their accession, these Member States have the obligation from January 1st, 2007, to issue national visas for entry into and transit through their territory, to third country nationals subject to a visa obligation under Regulation (EC) 539/2001, even if the persons concerned hold a Schengen visa or residence permit, or a national long term visa issued by a Schengen state. The same applies for similar documents issued by other Member States which joined the Union in 2004 and which do not yet fully implement the Schengen acquis.

In addition, the Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Slovenia and Slovakia, that implemented the common regime of Decision N° 895/2006/EC since December 1st, 2006 and which are not yet fully integrated into the Schengen area, did not have the possibility to unilaterally recognise residence permits and visas issued by Bulgaria and Romania for the purpose of transit through their territory.

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6 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

The existing rules do not allow Bulgaria and Romania to recognise residence permits issued by Switzerland and Liechtenstein.

2. TWO PROPOSALS

In the absence of specific provisions providing a positive response to the administrative burden faced by Bulgarian and Romanian consulates and in order to address the specific needs of other Member States after the accession of Bulgaria and Romania to the European Union, the Commission considers necessary to review the common rules established by Decisions N° 895/2006/EC and 896/2006/EC.

To this end, the Commission has taken into consideration:

- the specific needs of Bulgaria and Romania in the area of visa policy, the new problems for Member States after the last enlargement and during the period until the full integration into the Schengen area of Member States that joined the European Union in 2004 and 2007, and,

- the strict controls and screening to which have been submitted the third country nationals concerned by the Member State having issued a short stay visa or residence permit as well as the low level of risk that this category of persons represents for other Member States.

Consequently two instruments are hereby proposed:

2.1. An EP and Council Decision introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Czech Republic, Cyprus, Latvia, Hungary, Malta, Poland, Romania, Slovenia and Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories.

The proposed Decision is based on Article 62(2) of the Treaty establishing the European Community and is addressed to Bulgaria and Romania as well as to the Member States that decided to implement Decision N° 895/2006/EC.

In the absence of any provision in the text of Decision N° 895/2006/EC allowing the extension, after the last enlargement of the European Union, of the simplified regime for the controls at the external borders of certain categories of persons who hold certain types of documents, the revision of the common rules has been considered necessary to respond to the specific needs created by the accession in 1 January 2007 of Bulgaria and Romania.

The extension of the unilateral recognition regime by a Community instrument would not impose any new obligations to Member States in addition to those listed in the 2003 Act of Accession and in the 2005 Act of Accession. It would thus not constitute a derogation from these two Accession Treaties.

The proposed regime will be implemented on an optional basis: Member States concerned have the possibility either to implement the new instrument or to continue issuing national visas as required by the Accession Treaties.

The new proposal should enable Bulgaria and Romania, which joined the European Union in 2007, to unilaterally recognise as equivalent to their national visas, visas and residence permits issued by Schengen states, as well as similar documents issued by these two countries and by Member States which acceded to the Union in 2004 which are not yet fully integrated into the Schengen area.

In addition, Member States that decided to implement the Decision N° 895/2006/EC and which are not yet fully integrated in the area without internal borders should be allowed to unilaterally recognise visas and residence permits issued by Bulgaria and Romania. Member States that did not decide to implement this Decision N° 895/2006/EC should not be allowed to implement the present decision as they believe that only residence permits and visas issued by Member States fully implementing the Schengen acquis can be deemed equivalent to their own national visa for the purpose of transit.

The simplified regime is based on the consideration that the third country nationals who would benefit from the system have already passed a strict screening process by a Member State and are not considered a threat to public policy or a risk in terms of illegal immigration.

This regime will be applicable till the end of the transitory period and the full participation of the Member States concerned in the area without internal borders, date from which the mutual recognition of such documents becomes compulsory.

As in Decision N° 895/2006/EC, the recognition regime will be limited to the purpose of transit through the territory of the Member States concerned. The duration of the transit period may not exceed five days. The aim of this regime is not to replace the issuing of national visas by the Member States concerned for short stay. Furthermore, in compliance with the existing rules, these Member States have the possibility to issue multi-entry national visas for short stay which could be valid for one or more years in order to facilitate the mobility of third country nationals, holders of Schengen documents, who need to travel frequently to their territory.

The documents selected for the recognition regime are:

- the uniform visa issued by a Schengen State in compliance with the common rules laid down in the Common Consular instructions (transit, short term or travel, group visa);

- national long stay visas issued by a Schengen State according to their national legislation;

- residence permits issued by a Schengen State and which are included in Annex IV of the Common Consular Instructions which lists the documents entitling their holders to enter the Schengen area without a visa ;

- national short term and long term visas as well as residence permits issued by Member State that joined the European Union in 2004 as listed in the annex of Decision N° 895/2006/EC;

- national short term and long term visas as well as the residence permits issued by Bulgaria and Romania.

Should they opt for the implementation of the common regime, Bulgaria and Romania will have to accept all documents issued by Member States fully implementing the Schengen acquis, thus avoiding any distinction as regards the issuing Authority.

Member States concerned have to communicate their decision to the Commission. The Commission will publish this information in the Official Journal of the European Union and ensure in this way that the whole system is transparent. Member States could nevertheless refuse entry to third country nationals whose names figure on their national list of alerts.

This instrument will be adopted by co-decision.

2.2. EP and Council Decision amending Decision N° 896/2006/EC 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.

The Decision proposed is based on Article 62(2) (a) of the Treaty establishing the European Community.

The proposed Decision takes into consideration the accession of Bulgaria and Romania to the European Union in January 2007 and aims to amend Decision N° 896/2006/EC in order to enable Bulgaria and Romania to apply a simplified regime for the control of persons at their external borders based on the unilateral recognition regime by these two Member States of certain residence permits issued by Switzerland or Liechtenstein and listed in the Annex to Decision N° 896/2006/EC. The proposed Decision is based on the consideration that third country nationals who are in possession of a resident permit from Switzerland or Liechtenstein, would not be a threat to public policy for Member States or a risk in terms of illegal immigration.

The recognition is limited to the transit purpose. If Bulgaria and Romania decide to participate in the EP and Council Decision allowing the unilateral recognition by them of documents issued by Schengen States and other Member States as equivalent to national visas for the transit purpose, the implementation of the present instrument is optional during the transitory period till the date to be decided by the Council for their full integration into the Schengen area.

Bulgaria and Romania have the possibility to decide whether they will participate in the recognition regime and they have to notify their decision to the European Commission. The Commission will ensure the publication of the relevant information.

The system proposed does not in any way affect the rules of the Schengen acquis as regards procedures and verifications required for crossing the external borders.

As the proposed system is limited to transit, it does not affect the possibility of Bulgaria and Romania to issue multi-entry visas for short stay, valid for one or more years in order to facilitate the mobility of third country nationals, holders of residence permits issued by Switzerland and Liechtenstein.

This instrument will be adopted by co-decision.

3. SUBSIDIARITY AND PROPORTIONALITY

Article 5 of the EC Treaty provides that "action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty". Action taken by the Community must be the simplest form of action possible that enables the proposal to attain its objective and to be implemented as efficiently as possible. In this spirit, for the revision of the common rules for the unilateral recognition regime established by Decisions N° 895/2006/EC and 896/2006/EC, the proposed legal instruments chosen are:

- a Decision allowing Bulgaria, Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Romania, Slovenia and Slovakia to recognise unilaterally certain documents as equivalent to their national visas for the purposes of transit through their territories during the transitory period till the full integration of these Member States into the common area without internal borders. Participation in the regime is optional;

- an Amendment of Decision N° 896/2006/EC 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. The aim of the proposed amendment is to extend to Bulgaria and Romania the simplified regime for transit via their territory by forgoing the need for transit visas for holders of such residence permits issued by these two countries.

Participation in the recognition regime is optional for the Member States that joined the European Union in 2004 and 2007 during the transitory period till the date of their full integration into the common area without internal borders, date from which the mutual recognition regime becomes compulsory between the Member States fully participating in the area without internal borders.

The objective pursued by the above-mentioned proposals, that is the introduction on a temporary basis of common rules on unilateral recognition of certain documents by Bulgaria, Romania and by Member States already implementing Decision N° 895/2006/EC as well as the extension to Bulgaria and Romania of a common regime for unilateral recognition of certain residence permits issued by Switzerland and Liechtenstein, can only be attained through action at the Community level, as no Member State would have the possibility to adopt purely national measures achieving the desired effect.

The Community action has opted for measures that would allow the proposal to attain its objective and be implemented as efficiently as possible. In this spirit, in line with the two Decisions of 14 June 2006, two different legal instruments have been chosen taking into account the objectives foreseen. For the first proposal, an EP and Council Decision is the appropriate legal instrument for the optional implementation by the Member States concerned of common unilateral recognition rules which constitute a temporary derogation from the existing rules for mutual recognition. For the second proposal, the amendment of the Decision N° 896/2006/EC by a new EP and Council Decision is chosen in view of extending the common rules and allowing the unilateral recognition by Bulgaria and Romania of certain residence permits issued by Switzerland and Liechtenstein.

4. CONSEQUENCES IN RELATION TO THE VARIOUS PROTOCOLS ANNEXED TO THE TREATY

The first proposed EP and Council Decision is addressed exclusively to Bulgaria, Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Romania, Slovenia and Slovakia introducing a specific transitory regime allowing them to unilaterally recognise certain documents issued by the Member States as equivalent to their national transit visas. The proposed Decision is optional and would be applicable by the Member States concerned till the date to be decided by the Council in compliance with Article 3 paragraph 2 of the 2003 Act of Accession and Article 4 paragraph 2 of the 2005 Act of Accession.

By its own nature, the regime established by this proposal can not imply the variable situation as laid down by the protocols on the position of the United Kingdom, Ireland and Denmark.

This Decision, addressed exclusively to Member States that are bound by the Schengen acquis without being fully integrated yet into the common area without internal borders, does not constitute a development of the Schengen acquis within the meaning of the Agreement signed on 18 May 1999 between the Council, Norway and Iceland in order to associate these two countries with the implementation, application and development of the Schengen acquis.[7] However, for the coherence and proper functioning of the Schengen system, this Decision also covers visas and residence permits issued by Norway and Iceland, countries associated with the implementation, application and development of the Schengen acquis and fully implementing the Schengen acquis.

This Decision, addressed exclusively to Member States that are bound by the Schengen acquis without being fully integrated yet into the common area without internal borders, does not constitute a development of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis[8] which fall within the area referred to in Article 4 (1) of the Council decision on the signing, on behalf of the European Community, and on the provisional application.

The proposed EP and Council Decision amending Decision N° 896/2006/EC is addressed to Bulgaria and Romania to enable these two Member States to unilaterally recognise certain residence permits issued by Switzerland and Liechtenstein as equivalent to their transit visas. By its own nature, the regime established by this proposal can not imply the variable situation as laid down by the protocols on the position of the United Kingdom, Ireland and Denmark.

The decision does not constitute a development of the Schengen acquis within the meaning of the Agreement signed on May 18, 1999, between the Council, Norway and Iceland in order to associate these two countries with the implementation, application and development of the Schengen acquis, since the new element introduced by this Decision refers to the extension to Bulgaria and Romania of the simplified regime of Decision N° 896/2006/EC without amending the basic rules and principles.

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7 OJ L 176, 10.7.99, p. 35.

8 Council document 13054/04

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introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, the Czech Republic, Cyprus, Latvia, Hungary, Malta, Poland, Romania, Slovenia and Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2) thereof,

Having regard to the proposal from the Commission[9],

Acting in accordance with the procedure laid down in Article 251 of the Treaty

Whereas:

(1) Pursuant to Article 4 (1) of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded (hereinafter: the 2005 Act of Accession), Bulgaria and Romania which acceded to the Union on 1 January 2007 are required from that date to submit nationals of third countries, which are listed in Annex I of the Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals who are exempt from that requirement[10], to a visa obligation.

(2) According to Article 4 (2) of the 2005 Act of Accession, the provisions of the Schengen acquis on the conditions and criteria for issuing short term uniform visas, as well as the provisions on mutual recognition of visas and on the equivalence between residence permits and visas only apply in Bulgaria and Romania after adoption of a Council Decision to that effect. However, they are binding on those Member States from the date of accession.

(3) Bulgaria and Romania are therefore required to issue national visas for entry or transit through their territory to third country nationals holding a uniform visa or long stay visa or residence permit issued by a Member State fully implementing the

9 OJ C […], […], p. […].

10 OJ L 81, 21.3.2001, p.1. Regulation as last amended by Regulation (EC) No 1932/2006 (OJ L 405, 30.12.2006, p.23).

Schengen acquis or similar document issued by Member States not yet fully implementing the Schengen acquis.

(4) The holders of documents issued by Member States fully implementing the Schengen acquis and similar documents issued by Member States not yet fully implementing the Schengen acquis, do not represent any risk for Bulgaria and Romania as they have been submitted to all necessary controls by other Member States. In order to avoid imposing unjustified additional administrative burdens on Bulgaria and Romania, the common rules introduced by European Parliament and Council Decision N° 895/2006/EC of 14 June 2006 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories[11] should be extended to these countries.

(5) The new common rules should authorize Bulgaria and Romania to unilaterally recognise certain documents issued by Member States fully implementing the Schengen acquis, similar documents issued by them and documents listed in the annex of Decision N° 895/2006/EC, issued by Member States that joined the European Union in 2004, as equivalent to their national visas and to establish a simplified regime for the controls of persons at the external borders based on this unilateral equivalence.

(6) Considering that the Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Slovenia and Slovakia notified the Commission of their decision to apply the simplified regime introduced by Decision N° 895/2006/EC, the new common rules should also enable these Member States to recognise visas and residence permits issued by Bulgaria and Romania as equivalent to their national visas for the purpose of transit through their territory.

(7) The new common regime should apply for a transitional period, until the date to be determined in a Council Decision as referred to in the first subparagraph of Article 3(2) of the 2003 Act of accession and Article 4 (2) of the 2005 Act of Accession.

(8) The recognition of a document should be limited to the purpose of transit through the territory of Bulgaria, the Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Romania, Slovenia and Slovakia. The participation in the common system should be optional, without imposing additional obligations for the Member States as defined by the 2003 Act of Accession and the 2005 Act of Accession.

(9) The common rules should apply to short term uniform visas, long stay visas and residence permits issued by Member States fully implementing the Schengen acquis, similar documents issued by Member States not yet fully implementing the Schengen acquis as well as to short term visas, long term visas and residence permits issued by Bulgaria and Romania.

11 OJ L 167, 20.6.2006, p.1.

(10) The entry conditions laid down in Article 5(1) of Regulation (EC) N°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)[12] have to be fulfilled, with the exception of the condition laid down in Article5(1)(b) thereof, insofar as this Decision extending the common rules provided in Decision N° 895/2006/EC, sets up a regime of unilateral recognition by Bulgaria and Romania of certain documents issued by Member States fully implementing the Schengen acquis, similar documents issued by Member States not yet fully implementing the Schengen acquis as well as short term visas, long term visas and residence permits issued by Bulgaria and Romania for the purpose of transit and, in addition, enables the Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Slovenia and Slovakia, which apply the simplified regime introduced by Decision N° 895/2006/EC, to recognise similar documents issued by Bulgaria and Romania.

(11) Since the objective of this Decision, namely the introduction of a unilateral recognition regime to be applied by Member states that joined the Union in 2004 and 2007 cannot be achieved sufficiently by Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve this objective.

(12) This Decision does not constitute 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 association of these two States with the implementation, application and development of the Schengen acquis, as it is addressed only to Member States that joined the European Union in 2004 and 2007 that do not yet fully implement the Schengen acquis. However, for the coherence and proper functioning of the Schengen system, this Decision also covers visas and residence permits issued by third countries associated with the implementation, application and development of the Schengen acquis and fully implementing the Schengen acquis, such as Iceland and Norway.

(13) In accordance with Articles 1 and 2 of the Protocol on the Position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, those Member States are not taking part in the adoption of this Decision.

(14) In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision.

12 OJ L 105, 13.4.2006, p.1.

HAVE ADOPTED THIS DECISION:

Article 1

This Decision introduces a simplified regime for the control of persons at the external borders whereby:

- Bulgaria and Romania may recognise unilaterally as equivalent to their national visas for the purpose of transit, the documents referred to in Articles 2 and 3, as well as those referred to in Article 4 issued by these two countries to third country nationals subject to a visa obligation pursuant to Regulation (EC) N° 539/2001.

- the Czech Republic, Cyprus, Hungary, Latvia, Malta, Poland, Slovenia and Slovakia which have notified the Commission of their decision to apply the simplified regime introduced by Decision N° 895/2006/EC, may recognise unilaterally as equivalent to their national visas for the purpose of transit the documents referred to in Article 4, issued by Bulgaria and Romania to third country nationals subject to a visa obligation pursuant to Regulation (EC) N° 539/2001.

Article 2

1. Bulgaria and Romania may consider as equivalent to their national visa for the purpose of transit the following documents issued by the Member States fully implementing the Schengen acquis, irrespective of the nationality of the holders:

(i) a "uniform visa" as referred to in Article 10 of the Convention implementing the Schengen Agreement ;

(ii) a "long stay visa" as referred to in Article 18 of the Convention implementing the Schengen Agreement ;

(iii) a "residence permit" as included in Annex IV of the Common Consular Instructions.

2. If Bulgaria and Romania decide to apply this Decision, they shall recognise all the documents referred to in paragraph 1, regardless of which State issued the document.

Article 3

If Bulgaria and Romania decide to apply Article 2, they may, in addition, recognise national short term visas, long term visas and resident permits issued by one or more other Member States that joined the Union in 2004 and not yet fully implementing the Schengen acquis, as equivalent to their national visa for the purpose of transit.

Documents issued by Member States not yet fully implementing the Schengen acquis, which may be recognised are listed in the Annex to Decision N° 895/2006/EC.

Article 4

Moreover, Bulgaria and Romania may, also, recognise national short term visas, long term visas and resident permits issued by them as equivalent to their national visa for the purpose of transit.

Documents issued by Bulgaria and Romania, which may be recognised pursuant to this Decision are listed in the Annex.

Article 5

The Czech Republic, Cyprus, Latvia, Hungary, Malta, Poland, Slovenia and Slovakia may also recognise Bulgarian and Romanian documents listed in the Annex to this Decision for the purpose of transit.

Article 6

Bulgaria, the Czech Republic, Cyprus, Latvia, Hungary, Malta, Poland, Romania, Slovenia and Slovakia 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 their territory does not exceed five days.

The period of validity of the documents referred to in Articles 2, 3 and 4 shall cover the duration of the transit.

Article 7

Bulgaria, the Czech Republic, Cyprus, Latvia, Hungary, Malta, Poland, Romania, Slovenia and Slovakia shall notify the Commission within 10 working days of the entry into force of this Decision, if they decide to apply this Decision. The Commission shall publish the information communicated by these Member States in the Official Journal of the European Union.

Article 8

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

It shall apply until the date to be determined by the Council Decision adopted pursuant to Article 4(2) of the 2005 Act of Accession.

Article 9

This Decision is addressed to Bulgaria, the Czech Republic, Cyprus, Latvia, Hungary, Malta, Poland, Romania, Slovenia and Slovakia.

Done at Brussels, […]

For the European Parliament	*For the Council*
The President	*The President* *[…]*

ANNEX

List of documents issued by BULGARIA

- Visas

1. Виза за летищен транзит (виза вид "A") - Airport transit visa (type „A”)

2. Визи за транзитно преминаване (виза вид "B") - Transit visas (type „B”)

   – Еднократна транзитна виза - Single-transit visa

   – Двукратна транзитна виза - Double-transit visa

   – Многократна транзитна виза - Multiple- transit visa

3. Визи за краткосрочно пребиваване (виза вид "C") - Short-stay visas (type „C”)

   – Еднократна входна виза - Single-entry visa

   – Многократна входна виза - Multiple-entry visa

4. Виза за дългосрочно пребиваване (виза вид "D") - Long-stay visa (type „D”)

- Residence permits

1. Карта на продължително пребиваващ в Република България чужденец – Long-stay Residence Permit

2. Карта на постоянно пребиваващ в Република България чужденец - Permanent Residence Permit

3. Карта на бежанец – Refugee Residence Permit

4. Удостоверение за пътуване зад граница на чужденец с хуманитарен статут - Residence Permit to a third country national granted a humanitarian protection status by the Republic of Bulgaria

List of documents issued by ROMANIA

- Visas

– viză de tranzit, identificată prin simbolul B (transit visa, identified by B symbol)

– viză de scurtă şedere, identificată prin simbolul C (short-stay visa, identified by C symbol)

– viză de lungă şedere, identificată prin unul dintre următoarele simboluri, în funcție de activitatea pe care urmează să o desfăşoare în România străinul căruia i-a fost acordată:

(i) desfăşurarea de activități economice, identificată prin simbolul D/AE

(ii) desfăşurarea de activități profesionale, identificată prin simbolul D/AP

(iii) desfăşurarea de activităţi comerciale, identificată prin simbolul D/AC

(iv) angajare în munca, identificată prin simbolul D/AM

(v) studii, identificată prin simbolul D/SD

(vi) reîntregirea familiei, identificată prin simbolul D/VF

(vii) intrarea în România a străinilor căsătoriţi cu cetăţeni români, identificată prin simbolul D/CR

(viii) activităţi religioase sau umanitare, identificată prin simbolul D/RU

(ix) viză diplomatică şi viză de serviciu, identificată prin simbolul DS

(x) alte scopuri, identificată prin simbolul D/AS

(long stay visa, identified by one of the following symbols, according to the activity that the alien receiving the visa is to perform in Romania:

(i) economic activities, identified by D/AE symbol

(ii) professional activities, identified by D/AP symbol

(iii) commercial activities, identified by D/AC symbol

(iv) employment, identified by D/AM symbol

(v) studies, identified by D/SD symbol

(vi) family reunification, identified by D/VF symbol

(vii) entry on the Romanian territory of aliens married to Romanian citizens, identified by D/CR symbol

(viii) religious or humanitarian activities, identified by D/RU symbol

(ix) diplomatic visa and service visa, identified by DS symbol

(x) other purposes, identified by D/AS symbol)

- Residence permits

- Permis de şedere temporară (temporary residence permit)
- Permis de şedere permanentă (permanent residence permit)
- Carte de rezidenţă - pentru străinii membri de familie ai cetăţenilor români (residence card - for aliens who are family members of Romanian citizens)
- Carte de rezidenţă permanentă - pentru străinii membri de familie ai cetăţenilor români (permanent residence card - for aliens who are family members of Romanian citizens)

2007/0186 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Decision N° 896/2006/EC 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.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2) (a) thereof,

Having regard to the proposal from the Commission[13],

Acting in accordance with the procedure laid down in Article 251 of the Treaty

Whereas:

(1) Decision N° 896/2006/EC establishes common rules on unilateral recognition by Member States of certain residence permits issued by Switzerland and Liechtenstein allowing a simplified regime for the control at the external borders of third countries nationals who hold these documents.

(2) As a result of the two step implementation of the Schengen acquis, Member States that joined the European Union on 1 May 2004 were required from that date, to issue national visas to third country nationals, holders of a residence permit issued by Switzerland and Liechtenstein, who are subject to a visa obligation under Council Regulation (EC) No 539/2001. This obligation created additional administrative burdens on the consulates of these Member States in Switzerland and Liechtenstein.

(3) It did not appear necessary for Member States to require this category of persons to hold a visa, as they represent a low illegal immigration risk for the Member States,

(4) Considering that the same reasoning applies to Bulgaria and Romania, the simplified regime introduced by Decision N° 896/2006/EC[14] should be extended to Bulgaria and Romania.

(5) Such amendment of Decision N° 896/2006/EC, should allow Bulgaria and Romania, if they decide to apply Decision No …/2007/EC to unilaterally recognise the

13 OJ C […], […], p. […]
14 OJ L 167, 20.6.2006

residence permits issued by Switzerland and Liechtenstein, which are listed in the annex of the Decision N° 896/2006/EC as equivalent to their national visas for the purpose of transit.

(6) Recognition should be limited to the purpose of transit through the territory of Bulgaria and Romania and should not affect the possibility of these two Member States to issue visas for short term stay.

(7) The possibility for Bulgaria and Romania not to apply this Decision should be limited to the transitional period until the date to be determined by the Council, in accordance with Article 4(2) of the 2005 Act of Accession.

(8) The entry conditions laid down in Article 5(1) of Regulation (EC) N°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)[15] have to be fulfilled, with the exception of the condition laid down in Article5(1)(b) thereof, insofar as the Decision sets up an equivalence regime between transit visas issued by Bulgaria and Romania and certain residence permits issued by Switzerland and Liechtenstein.

(9) Since the objective of the action to be taken directly affects the Community "acquis" on visas and cannot be achieved sufficiently by the Member States acting alone and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.

(10) In accordance with Articles 1 and 2 of the Protocol on the Position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, those Member States are not taking part in the adoption of this Decision.

(11) In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

HAVE ADOPTED THIS DECISION:

Article 1

The following subparagraph shall be added to Article 2 of Decision N° 896/2006/EC as a third subparagraph:

"If Bulgaria and Romania decide to apply Decision No …./2007/EC, they may unilaterally recognise the residence permits listed in the Annex to this Decision as equivalent to their national transit visa until the date to be determined by the Council, in accordance with the

15 OJ L 105, 13.4.2006, p.1.

Article 4(2) of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded."

Article 2

If Bulgaria and Romania decide to apply this Decision, they shall notify the Commission thereof within 10 working days of the date of entry into force of this Decision.. The Commission shall publish the information communicated by them in the Official Journal of the European Union.

Article 3

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

Article 4

This Decision is addressed to Bulgaria and Romania.

Done at Brussels, […]

For the European Parliament	*For the Council*
The President	*The President* *[…]*