Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa

REGULATION (EU) No 265/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa

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)(b) and (c) and Article 79(2)(a) thereof,

Having regard to the proposals from the European Commission,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) 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 common borders[(2)] (the Schengen Convention) lays down rules on long-stay visas that enable their holders to transit through the territories of the Member States. 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)[(3)] lays down entry conditions for third-country nationals. In order 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), further measures should be taken.

(2) Member States should 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 to other Member States during their stay or to transit through the territories of other Member States when returning to their home country. However, following the entry of third-country nationals into their territory, Member States increasingly do not replace long-stay visas by residence permits or do so only after considerable delay. This legal and practical situation has significant negative consequences on the freedom of movement within the Schengen Area of third-country nationals legally residing in a Member State on the basis of a long-stay visa.

(3) In order to overcome the problems encountered by third-country nationals residing in a Member State on the basis of a long-stay visa, this Regulation should 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.

(4) A third-country national holding a long-stay visa issued by a Member State should therefore be allowed to travel to other Member States for three months in any six-month period, under the same conditions as the holder of a residence permit. This Regulation does not affect the rules regarding the conditions for issuing long-stay visas.

(5) In line with the current practice of the Member States, this Regulation establishes the obligation for Member States to issue long-stay visas in the uniform format for visas as set out in Council Regulation (EC) No 1683/95[(4)].

(6) The rules on consulting the Schengen Information System and the other Member States in the event of an alert when processing an application for a residence permit should also apply to the processing of long-stay visa applications. The freedom of movement of a holder of a long-stay visa in the other Member States therefore should not constitute any additional security risk for the Member States.

(7) The Schengen Convention and Regulation (EC) No 562/2006 should be amended accordingly.

(8) This Regulation does not aim at discouraging Member States from issuing residence permits and it should not affect the obligation of Member States to issue residence permits for certain categories of third-country nationals as provided for by other Union instruments, in particular: Directive 2005/71/EC[(5)], Directive 2004/114/EC[(6)], Directive 2004/38/EC[(7)], Directive 2003/109/EC[(8)] and Directive 2003/86/EC[(9)].

(9) In accordance with Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals[(10)], third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit, or other authorisation offering a right to stay issued by another Member State such as a long-stay visa, should be required to go to the territory of that other Member State immediately.

(10) Since the objective of this Regulation, namely the establishment of the rules on the freedom of movement with a long-stay visa, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects be better achieved at Union level, the Union may adopt measures, in accordance with principle of subsidiarity as set out in Article 5 of the Treaty on the 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.

(11) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the Member States' obligations as regards international protection and non-refoulement.

(12) 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 latters' association with the implementation, application and development of the Schengen *acquis*[(11)], 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 Agreement[(12)].

(13) 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*[(13)], which fall within the area referred to in Article 1, points (B) and (C), of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[(14)].

(14) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed 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*, which fall in the area referred to in Article 1, points (B) and (C) of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC[(15)].

(15) In accordance with Articles 1 and 2 of 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.

(16) 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*[(16)]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(17) 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*[(17)]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(18) As regards Cyprus, this Regulation constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.