



**COUNCIL OF  
THE EUROPEAN UNION**

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**"I" ITEM NOTE**

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from: General Secretariat

to: Coreper

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No. prev. doc.: 10911/12 FRONT 89 CODEC 1562 COMIX 362

No. Cion prop.: 7661/11 FRONT 31 CODEC 404 COMIX 158

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Subject: Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the Convention implementing the Schengen Agreement  
- Approval of the final compromise text with a view to an agreement at first reading

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1. The Commission transmitted on 11 March 2011 the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the Convention implementing the Schengen Agreement as set out in doc. 7661/11.
2. The proposal was examined by the Working Party on Frontiers/Mixed Committee at the meetings on 8 June, 6 July, 15 September, 13 October, 18 November, 15 December 2011 and 25 January and 23 February 2012, by the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 1 December 2011 and by JHA Counsellors on 23 March, 13 April, 24 May and 13 June 2012.

4. For the purpose of starting negotiations with the European Parliament with a view to reaching a first reading agreement, Coreper agreed on 4 April 2012 on a Presidency compromise text set out in doc. 8264/12 FRONT 50 CODEC 853 COMIX 199.
5. The Presidency has met the EP rapporteur and representatives of the Commission on 24 April, 15 May and 4 June 2012. In this context, the Presidency submitted to the Group of JHA Counsellors at its meeting on 13 June 2012 the outcome of the negotiations with the EP rapporteur as set out in the four-column table in doc.10911/12 FRONT 89 CODEC 1562 COMIX 362. The Presidency concluded that a large majority of delegations generally supported the text of the draft Regulation as agreed with the EP rapporteur, subject to certain reservations and comments. The Presidency took note of indications given by some delegations that they would probably be able to lift their reservations before or in Coreper.

In relation to the agreed text regarding EP AM 26 (procedure to be followed where a third-country national has been apprehended in the course of border surveillance activities for having illegally crossed the border), which includes a reference to the applicability of the Return Directive, the Presidency would like to reiterate that the agreed text aims at preserving the current Member States' practices and does not imply in any way a revision of the current applicable rules, such as in particular the possibility, offered by Article 2(2) of the Return Directive, not to apply this Directive to border cases and border-like cases.

6. The LIBE Committee of the European Parliament is expected to adopt its report on the proposal on the basis of the text of the draft Regulation as set out in the Annex to this Note.

*The Permanent Representatives Committee is on this basis invited to:*

- *approve the amended text of the draft Regulation as set out in the Annex;*
- *take note that the Presidency will inform the Chairman of the LIBE Committee of the European Parliament accordingly by a letter in order to reach agreement at first reading.*

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Regulation (EC) No 810/2009, Regulation (EC) No 539/2001, Regulation (EC) No 1683/95 and Regulation (EC) No 767/2008**

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) 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 procedure,

Whereas:

- (1) Union policy in the field of external borders aims for integrated management to ensure a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a fundamental component of an area of freedom, security and justice. To this end, common rules on standards and procedures for the control of external borders *should* be established, *taking into account the specific and disproportionate pressures faced by some Member States at their external borders. The rules set should be governed by the principle of solidarity between Member States..*
- (1a) *The free movement of people within the Schengen area has been one of the biggest achievements of European integration. Freedom of movement is a fundamental right, the conditions for the exercise of which are laid down in the Treaties and in Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States<sup>1</sup>.*
- (1b) *The abolition of internal border controls requires full mutual trust between Member States in their capacity to fully implement the accompanying measures allowing those controls to be lifted.*

- (2) On 13 October 2006, 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)<sup>1</sup> entered into force.
- (3) After *several* years of practical application, the need for a number of amendments has emerged, based on the practical experiences of the Member States and *of* the Commission in applying the Schengen Borders Code, including results from Schengen evaluations as well as reports and requests submitted by Member States, *as well as the legislative initiatives and developments in primary and secondary Union law, and the need for clarification and more efficient mapping of critical technical issues.*
- (4) The Commission report of *21* September 2009 on the operation of the provisions on stamping of the travel documents of third-country nationals in accordance with Articles 10 and 11 of the Schengen Borders Code<sup>2</sup> as well as the Commission report of 13 October 2010 on the application of Title III (Internal Borders) of the Schengen Borders Code<sup>3</sup> contain concrete suggestions for technical amendments to the Schengen Borders Code.
- (5) Recently adopted *Union* legislation, in particular 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)<sup>4</sup> and 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<sup>5</sup> require certain amendments to the Schengen Borders Code.
- (5a) Equally, certain provisions of 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<sup>6</sup> (hereinafter referred to as "the Convention implementing the Schengen Agreement") should be amended in order to reflect the changes in the Schengen Borders Code and the current legal situation.*

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<sup>1</sup> OJ L 105, 13.4.2006, p. 1.

<sup>2</sup> (COM(2009) 489)

<sup>3</sup> (COM(2010) 554)

<sup>4</sup> OJ L 243, 15.9.2009, p. 1.

<sup>5</sup> OJ L 348, 24.12.2008, p. 98.

<sup>6</sup> OJ L 239, 22.9.2000, p. 19.

- (5b) *Following Case C-241/05 Nicolae Bot v Préfet du Val-de-Marne<sup>1</sup>, the need to amend the rules dealing with the calculation of the authorised length of short term stays in the Union has arisen. Clear, simple and harmonised rules in all legal acts dealing with this issue would benefit both travellers as well as border and visa authorities. For those reasons, the Convention implementing the Schengen Agreement, Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across the borders (Schengen Borders Code)<sup>2</sup>, Regulation (EC) No 810/2009 of 13 July 2009 establishing a Community Code on Visas (Visa Code)<sup>3</sup>, 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 are exempt from that requirement<sup>4</sup>, Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas<sup>5</sup> and Regulation (EC) No 767/2008 of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)<sup>6</sup>, should be amended accordingly.*
- (5c) *The adoption of Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union<sup>7</sup> (Frontex) improves the integrated management of the external borders and provides a further enhancement of the role of the Agency in line with the objective of the Union to develop a policy with a view to the gradual introduction of the concept of Integrated Border Management.*
- (6) In order to align the provisions of the Schengen Borders Code with the Treaty on the Functioning of the European Union (TFEU), the power to adopt acts in accordance with Article 290 of the *TFEU* should be delegated to the Commission in respect of the adoption of additional measures governing surveillance in accordance with Article 12(5), as well as amendments to the Annexes *of that Regulation*, in accordance with Article 32 *of that Regulation*. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (7) Since the objective of this Regulation, namely to provide for technical amendments to the existing rules of the Schengen Borders Code, can *not (...)* 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 also set out in that Article, this Regulation does not go beyond what is necessary in order to achieve *that* objective.

<sup>1</sup> ECR 2006 Page I-09627.

<sup>2</sup> OJ L 105, 13.10.2006, p. 1.

<sup>3</sup> OJ L 243, 15.9.2009, p. 1.

<sup>4</sup> OJ L 81, 21.3.2001, p. 1.

<sup>5</sup> OJ L 164, 14.7.1995, p. 1.

<sup>6</sup> OJ L 218, 13.8.2008, p. 60.

<sup>7</sup> OJ L 304, 22.11.2011, p. 1.

- (8) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and by the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*<sup>1</sup>, which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC on certain arrangements for the application of that Agreement<sup>2</sup>.
- (9) 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*, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement<sup>3</sup>.
- (10) As regards Liechtenstein, this Regulation constitutes a development 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* which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999, read in conjunction with Article 3 of Council Decision 2008/261/EC<sup>4</sup>.
- (11) 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.
- (12) 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/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*<sup>5</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

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<sup>1</sup> OJ L 176, 10.7.1999, p. 36.

<sup>2</sup> OJ L 176, 10.7.1999, p. 31.

<sup>3</sup> OJ L 53, 27.2.2008, p. 1.

<sup>4</sup> OJ L 83, 26.3.2008, p. 5.

<sup>5</sup> OJ L 131, 1.6.2000, p. 43.

- (13) 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/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*<sup>1</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

HAVE ADOPTED THIS REGULATION:

*Article 1*

*Amendment of the Schengen Borders Code*

Regulation (EC) No 562/2006 is **hereby** amended as follows:

(1) Article 2 is amended as follows:

(a) In point 1, point (c) is replaced by the following:

"(c) sea, river and lake ports of the Member States for regular internal ferry connections (...);";

(b) in point 4 the words "regular ferry connection" is replaced by the words "regular internal ferry connection";

(...)

(d) in point 5 the phrase "persons enjoying the Community right of free movement" is replaced by the following "persons enjoying the right of free movement under Union law";

(e) in point 5(a) the phrase "Article 17(1)" is replaced by the phrase "Article 20(1)";

(f) in point 5(b) the word "Community" is replaced by the word "Union";

(g) in point 6 the phrase "Article 17(1)" is replaced by the phrase "Article 20(1)";

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<sup>1</sup> OJ L 64, 7.3.2002, p. 20.

*new (ga) The following point 8a is inserted:*

***"8a 'shared border crossing point' means any border crossing point situated either on Member State territory or on third-country territory, at which Member State border guards and third-country border guards carry out entry and exit checks one after another in accordance with their own legislation and pursuant to a bilateral agreement;"***

(h) Point 15 is replaced by the following:

“residence permit” means:

- (a) all residence permits issued by the Member States according to the uniform format laid down by Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals\* and residence cards issued in accordance with Directive 2004/38/EC;
- (b) all other documents issued by a Member State to third-country nationals authorising a stay in its territory, that have been (...) subject *to* a notification and subsequent publication in accordance with Article 34, with the exception of:
  - (i) temporary permits issued pending examination of a first application for a residence permit as referred to in point (a) or an application for asylum and
  - (ii) visas issued by the Member States in the uniform format laid down by Council Regulation (EC) No 1683/95 *of 29 May 1995 laying down a uniform format for visas\*\**

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\* *OJ L 157, 15.6.2002, p. 1.*

\*\* *OJ L 164, 14.7.1995, p. 1."*

*new (ha) the following point 18a is inserted:*

***"'offshore worker' means a person working on an offshore installation located in the territorial waters or in an area of exclusive maritime economic exploitation of the Member States as defined by international maritime law, and who returns regularly by sea or air to the territory of the Member States;***



(2) In Article 3 point (a) is replaced by the following:

“(a) the rights of persons enjoying the right of free movement under Union law;”

*New (2a) The following Article 3a is inserted:*

**"Article 3a  
"Fundamental Rights"**

***"When applying this Regulation, Member States shall act in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union ("the Charter of Fundamental Rights"); the relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 ("the Geneva Convention"); obligations related to access to international protection, in particular the principle of non-refoulement; and fundamental rights. According to general principles of EU law, decisions taken under this Regulation should be adopted on an individual basis."***

(3) In Article 4, paragraph 2 is replaced by the following:

"2. By way of derogation from paragraph 1, exceptions to the obligation to cross external borders only at border crossing points and during fixed opening hours may be allowed:

- (a) for individuals or groups of persons, where there is a requirement of a special nature for the occasional crossing of external borders outside border crossing points or outside fixed opening hours, provided that they are in possession of the permits required by national law and that there is no conflict with the interests of public policy and the internal security of the Member States. Member States may make specific arrangements in bilateral agreements. ***General exceptions provided for by national law and bilateral agreements shall be notified to the Commission pursuant to Article 34;***
- (b) for individuals or groups of persons in the event of an unforeseen emergency situation.
- (c) ***in accordance with the specific rules set out by Articles 18 and 19 in conjunction with Annexes VI and VII"***

(4) Article 5 is amended as follows:

(a) in paragraph 1, the introductory wording and point (a) are replaced by the following:

"For intended stays in the territory of the Member States of a duration of no more than **90 days** in any **180 day**-period (...), **which entails considering the last 180-day period at each day of stay**, the entry conditions for third-country nationals shall be the following:

- (a) they are in possession of a valid travel document **entitling the holder** to cross the border satisfying the following criteria:
- (i) its validity shall extend at least three months after the intended date of departure from the territory of the Member States. In a justified case of emergency, this obligation may be waived.
  - (ii) it shall have been issued within the previous 10 years."

**new (aa) in paragraph 1, after point (e), the following subparagraph is inserted:**

**"1a. For the purposes of implementing paragraph 1, the day of entry shall be calculated as the first day of stay in the territory of the Member States and the day of exit shall be calculated as the last day of stay in the territory of the Member States. Periods of stay authorised under a national long-stay visa or a residence permit shall not be taken into account in the calculation."**

(b) paragraph 4 is amended as follows:

"(i) point (a) is replaced by the following:

(a) third-country nationals who do not fulfil all the conditions laid down in paragraph 1 but who hold a residence permit or a long-stay visa shall be authorised to enter the territories of the other Member States for transit purposes so that they may reach the territory of the Member State which issued the residence permit or long-stay visa, unless their names are on the national list of alerts of the Member State whose external borders they are seeking to cross and the alert is accompanied by instructions to refuse entry or transit;"

(ii) in point (b), the first and second paragraphs are replaced by the following:

"third-country nationals who fulfil the conditions laid down in paragraph 1, except for that laid down in point (b), and who present themselves at the border may be authorised to enter the territories of the Member States, if a visa is issued at the border in accordance with Articles 35 and 36 of Regulation (EC) No 810/2009 of the European Parliament and of the Council **of 13 July 2009 establishing a Community Code on Visas\***.

Member States shall compile statistics on visas issued at the border in accordance with Article 46 (...) of Regulation (EC) No 810/2009 *and Annex XII thereto.* "

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\* OJ L243, 15.9.2009, p.1. "

*new (4a) In Article 6(1), the first subparagraph is replaced by the following:*

***"1. Border guards shall, in the performance of their duties, fully respect human dignity, including in cases involving vulnerable persons."***

(5) Article 7 is amended as follows:

- (a) In the second subparagraph of paragraph 2 the phrase "persons enjoying the Community right of free movement" is replaced by "persons enjoying the right of free movement under Union law".
- (b) In the third subparagraph of paragraph 2 the phrase "persons enjoying the Community right of free movement" is replaced by "persons enjoying the right of free movement under Union law".
- (c) In the fourth subparagraph of paragraph 2 the phrase "persons enjoying the Community right of free movement" is replaced by "persons enjoying the right of free movement under Union law".
- (d) the first subparagraph of paragraph 5 is replaced by the following:  
***"Without prejudice to the second subparagraph, third-country nationals subject to a thorough second line check shall be given written information in a language they understand or may reasonably be presumed to understand, or in another effective way on the purpose of, and procedure for, such a check."***
- (e) in paragraph 6, the word 'Community' is deleted and the phrase 'under Union law' is inserted after the word 'movement';
- (f) the following paragraph 8 is added:  
**"8. Where points (a) or (b) of Article 4(2) apply, Member States may also provide derogations from the rules set out in this Article."**

(6) In Article 9, paragraph 2 is replaced by the following:

"2.(a) Persons enjoying the right of free movement under Union law are entitled to use the lanes indicated by the sign in part A ("EU, EEA, CH") of Annex III. They may also use the lanes indicated by the sign in part B1 ("**visa not required**") and B2 ("all passports") of Annex III.

Third-country nationals who are not obliged to possess a visa when crossing the external borders of the Member States in accordance with Regulation (EC) No 539/2001 and third-country nationals who hold a valid residence permit or long-stay visa may use the lanes indicated by the sign in part B1 ("**visa not required**") of Annex III to this Regulation. They may also use the lanes indicated by the sign in B2 ("all passports") of Annex III to this Regulation."

(b) All other persons shall use the lanes indicated by the sign in part B2 of Annex III.

The indications on the signs referred to in points (a) and (b) of the first subparagraph may be displayed in such language or languages as each Member State considers appropriate.

The provision of separate lanes indicated by the sign in part B1 ("**visa not required**") of Annex III is **not obligatory (...)**. **Member States** shall decide whether to do so and at which border crossing points in accordance with practical needs."

*new (6a) In Article 9, paragraph 5 is deleted.*

(7) *The title and paragraph 2 of Article 10 are (...)* amended as follows:

*"Article 10 - Stamping of the travel documents (...)"*

(a) Paragraph 2 is replaced by the following:

"2. The travel documents of nationals of third countries who are members of the family of a Union citizen to whom Directive 2004/38/EC applies, but who do not present the residence card provided for in that Directive, shall be stamped on entry and exit.

The travel documents of nationals of third countries who are members of the family of nationals of third countries enjoying the right of free movement under Union law, but who do not present the residence card provided for in Directive 2004/38/EC, shall be stamped on entry and exit. "

(b) In paragraph 3, the following points (f) and (g) are added:

- "(f) to the travel documents of crews of passengers and goods trains on international connections;
- (g) to the travel documents of nationals of third countries who present a residence card provided for in Directive 2004/38/EC."

**(bb) In paragraph 3, the second subparagraph is replaced by the following:**

"Exceptionally, at the request of a third-country national, insertion of an entry or exit stamp may be dispensed with if insertion might cause serious difficulties for that person. In that case, entry or exit shall be recorded on a separate sheet indicating the name and passport number. That sheet shall be given to the third-country national. ***The competent authorities of the Member States may keep statistics of such exceptional cases and may provide those statistics to the Commission.***"

(8) Article 11 is amended as follows:

(a) Paragraph 3 is replaced by the following:

"Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be returned 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\* and with national legislation respecting that Directive***".

(b) A new paragraph 4 is added:

"The relevant provisions of paragraph 1 and 2 shall apply *mutatis mutandis* in the absence of an exit stamp".

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***\* OJ L 348, 24.12.2008, p. 98.***

(9) Article 12 ***paragraph 5 is*** replaced by the following:

"5. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 concerning additional measures governing surveillance.";

**(9a) In Article 12 add a second sentence at the end of paragraph 1:**

**" A person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject of procedures respecting 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\*"**.

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**\* OJ L 348, 24.12.2008, p. 98."**

(10) In Article 13, paragraph 5 is replaced by the following:

"5. Member States shall collect statistics on the number of persons refused entry, the grounds for refusal, the nationality of the persons refused and the type of border (land, air or sea) at which they were refused entry and submit them **yearly to the Commission (Eurostat)** in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council **of 11 July 2007 on Community statistics on migration and international protection.**"

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**\* OJ L 199, 31.7.2007, p. 23.**

(11) In Article 15(1), the third subparagraph is replaced by the following:

"Member States shall ensure that the border guards are specialised and properly trained professionals, taking into account common core curricula for border guards established and developed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States established by Council Regulation (EC) No 2007/2004. Training curricula shall include specialised training for detecting **and dealing with** situations involving **vulnerable persons, such as** unaccompanied minors and victims of trafficking. Member States, **with the support of Frontex**, shall encourage border guards to learn languages necessary for the carrying-out of their tasks."

(12) In Article 18, second paragraph, the reference "4," is added after the word "Articles".

(13) In Article 19, paragraph 1 is amended as follows:

(a) (...) the following points (g) and (h) are added *to the first subparagraph*:

"(g) rescue services, police and fire brigades **and border guards**;

(h) offshore workers."

(b) in the second subparagraph the reference "4," is added after the word "Articles".

(14) In Article 21, point (d) is *amended as follows*.

***“(d) the possibility for a Member State to provide by law for an obligation on third-country nationals to report their presence on the territory of any Member State pursuant to the provisions of Article 22 of the Schengen Convention.”***

(15) Article 32 *is* replaced by the following:

"Article 32

Amendments to the Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 33 concerning amendments to Annexes III, IV and VIII.";

(16) Article 33 *is* replaced by the following:

"Article 33

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The (...) power *to adopt delegated acts* referred to in Articles 12(5) and 32 shall be conferred **on the Commission** for an indeterminate period of time from\*. (...)

3. The delegation of powers referred to in Articles 12(5) and 32 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 12(5) and 32 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of *two* months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by *two* months at the initiative of the European Parliament or *of* the Council."

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*\* OJ: please insert the date of entry into force of this Regulation. "*

(17) In Article 34(1), point (a) is replaced by the following:

"(a) the list of residence permits, distinguishing between those covered by point (a) of Article 2 point 15 and those covered by point (b) of Article 2 point 15 and accompanied by a specimen for permits covered by Article 2 point 15 (b). Residence cards issued in accordance with Directive 2004/38/EC shall be specifically highlighted as such *and specimen shall be provided for those residence cards which have not been issued in accordance with the uniform format laid down by Regulation (EC) No 1030/2002.*"

(18) In Article 37, the first sentence is replaced by the following:

"The Member States shall notify the Commission of national provisions relating to Article 21(c) *and (d)*, the penalties as referred to in Article 4(3) and the bilateral agreements authorised by this Regulation."

(19) Annexes III, IV, VI, VII and VIII *to Regulation (EC) No 562/2006* are amended in accordance with the Annex to this Regulation.



## Article 2

### *Amendment of the Convention implementing the Schengen Agreement*

The Convention implementing the Schengen Agreement (...) is **hereby** amended as follows:

***(-1a) in Article 18(1), first sentence, the words "three months" are replaced by the words "90 days";***

***(-1b) in Article 20(1), the words "three months during the six months following the date of first entry" are replaced by the words "90 days in any 180-day period";***

***(-1c) in Article 20 (2), the words "three months" are replaced by the words "90 days";***

***(-1d) in Article 21(1), the words "three month in any six-month" are replaced by the words "90 days in any 180-day";***

(1) Article 21 paragraph 3 is deleted;

(2) Article 22 is ***amended as follows:***

***"Aliens who have legally entered the territory of one of the Contracting Parties may be obliged to report, in accordance with the conditions laid down by each Contracting Party, to the competent authorities of the Contracting Party whose territory they enter. Such aliens shall report either on entry or within three working days of entry, at the discretion of the Contracting Party whose territory they enter."***

(3) Article 136 is deleted.

## Article 2a

### *Amendment to Regulation (EC) No 810/2009*

***Regulation (EC) No 810/2009 is hereby amended as follows:***

***(1) in Article 1(1), the words "three months in any six-month" are replaced by the words "90 days in any 180-day";***

***(2) in point (a) of Article 2(2), the words "three months in any six-month period from the date of first entry" are replaced by the words "90 days in any 180-day period";***

*(3) in point (b) of Article 25(1), the words "six-month" are replaced by the words "180-day" in both places and the words "three months" are replaced by "90 days";*

*(4) in point (iv) of Article 32(1)(a), the words " three months" are replaced by the words "90 days" and the words "six-month" are replaced by the words "180-day";*

*(5) in point 4 of the standard form set out in Annex VI to Regulation (EC) No 810/2009 the words "three months" are replaced by the words "90 days" and the words "six-month" are replaced by the words "180-day";*

*(6) in point 4, last sentence of Annex VII to Regulation (EC) No 810/2009 the words "every six-month" are replaced by the words "any 180-day";*

*(7) in Article 5(2) of Annex XI to Regulation (EC) No 810/2009 the words "three months" are replaced by the words "90 days".*

#### *Article 2b*

#### *Amendment to Regulation (EC) No 539/2001*

*Regulation (EC) No 539/2001 is hereby amended as follows:*

*(1) in Article 1(2), the words "three months in all" are replaced by the words "90 days in any 180-day period";*

*(2) Article 2 shall be replaced by the following:*

*"For the purposes of this Regulation, the definition of „visa" as defined in Article 2(2)(a) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas shall apply\*".*

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*\* OJ L 243, 15.9.2009, p.1."*

*New Article 2c*  
*Amendment to Regulation (EC) No 1683/95*

*Article 5 of Regulation (EC) No 1683/95 is replaced by the following:*

***" For the purpose of this Regulation, the definition of „visa” as defined in Article 2(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\* shall apply."***

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***\* OJ L 243, 15.9.2009, p.1."***

*Article 2d*  
*Amendment to Regulation (EC) No 767/2008*

*Regulation No 767/2008 is hereby amended as follows:*

***In point (iv) of Article 12(2)(a) the words " three months" are replaced by the words "90 days" and the words "six-month" are replaced by the words "180-day".***

*Article 3*

*Entry into force*

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

***Articles 2a, 2b, 2c and 2d of this Regulation shall enter into force 90 days after the date stipulated in the first paragraph of this Article.***

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*

ANNEX

Annexes III, IV, VI, VII and VIII *to Regulation (EC) No 562/2006* are *hereby* amended as follows:

(1) Annex III is amended as follows:

(a) Part B is replaced by the following:

"PART B1: 'visa *not required*';

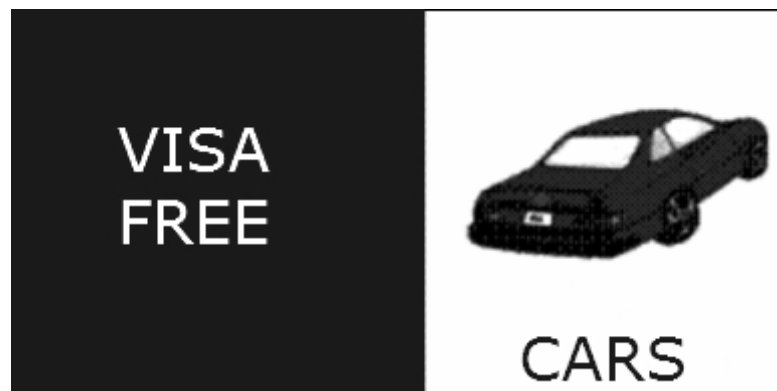


PART B2: 'all passports'.

# ALL PASSPORTS

"

(b) in Part C, the following signs are inserted between the signs "EU, EEA, CH" and the signs "ALL PASSPORTS"<sup>1</sup>.



<sup>1</sup> The new wording "Visa not required" should be inserted in the three pictures in Part C and replace the words "Visa Free".



*Amendments to the Annexes*

- (2) In Annex IV point 3 the first paragraph is replaced by the following:

"On the entry and exit of third-country nationals subject to the visa obligation, the stamp shall be done **as a general rule** on the page facing the one on which the visa is affixed."

- (3) In Annex VI, point 1 is amended as follows:

- (a) the following point 1.1.4. is inserted:

*"1.1.4. (...) **Shared border crossing points***

1.1.4.1. Member States may conclude **or maintain** bilateral agreements with neighbouring third countries concerning the establishment of **shared** border crossing points at which **the Member State and the border guards of the third country carry out one after another** exit and entry checks in accordance with their legislation on the territory of the other party. **Shared** border crossing points may be located either on Member State territory or on third-country territory.

1.1.4.2. **Shared border crossing points located on Member State territory:** Bilateral agreements establishing **shared** border crossing points located on Member State territory shall contain an authorisation for third-country border guards to exercise their tasks in the Member State, respecting the following principles:

**(a) International protection:** A third-country national asking for international protection on Member State territory shall be given access to relevant Member State procedures (...) **in accordance with the EU Asylum acquis.**

**(b) Arrest of a person or seizure of property:** If third-country border guards become aware of facts justifying the arrest or placing under protection of a person or seizure of property, they shall (...) inform Member State authorities of these facts and Member State authorities shall assure an appropriate follow-up in accordance with national, EU and international law, independently of the nationality of the concerned person. (...)

**(c) Persons enjoying the right of free movement under Union law entering EU territory:** Third-country border guards shall not prevent persons enjoying the right of free movement under Union law from entering EU territory. If there are reasons justifying refusal of exit from the third country concerned, third-country border guards shall inform Member State authorities of these reasons and Member State authorities shall assure an appropriate follow-up in accordance with national, EU and international law.

1.1.4.3. **Shared border crossing points located on third-country territory:** Bilateral agreements establishing **shared** border crossing points located on third-country territory shall contain an authorisation for Member State border guards to exercise their tasks in the third country. **For the purpose of this Regulation, any check performed by Member States border guards in a shared border crossing point located in the territory of a third country shall be deemed to be carried out in the territory of the Member State concerned. Member States border guards shall exercise their tasks** in accordance with the Schengen Borders Code and respecting the following principles:

**(a) International protection:** A third-country national who has passed exit control by third-country border guards and subsequently asks Member State border guards present in the third country for international protection, shall be **given** access to **relevant Member States procedures in accordance with EU Asylum acquis**. Third-country authorities shall accept the transfer of the person concerned into Member State territory.

**(b) Arrest of a person or seizure of property:** If Member State border guards become aware of facts justifying the arrest or placing under protection of a person or seizure of property, they shall act in accordance with (...) national, (...) **EU and international law**. Third-country authorities shall accept a transfer of the concerned person or object into Member State territory.

**(c) (...) Access to IT Systems:** **Member States border guards shall be able to use information systems processing personal data in accordance with Article 7. Member States shall be allowed to establish the technical and organisational security measures required by EU law to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, including access by third-country authorities.**

1.1.4.4. Before concluding or amending any bilateral Agreement on **shared** border crossing points with a neighbouring third country, the Member State concerned shall consult the Commission as to the compatibility of the Agreement **with relevant EU legislation. Already existing bilateral agreement shall be notified to the Commission within 6 months of the entry into force of this Regulation.**

If the Commission considers the Agreement to be incompatible with (...) **relevant EU legislation**, it shall notify the Member State concerned. The Member State shall take all appropriate steps to amend the Agreement within a reasonable period in such a way as to eliminate the incompatibilities established.

(b) points 1.2.1. and 1.2.2. are replaced by the following:

“1.2.1 Checks shall be carried out both on train passengers and on railway staff on trains crossing external borders, including those on goods trains or empty trains. Member States may conclude bilateral **or multilateral** agreements on how to conduct those checks respecting the principles set out in point 1.1.4. Those checks shall be carried out in one of the following ways”:

- in the first station of arrival or last station of departure on the territory of a Member State,
- on board the train, during transit between the last station of departure in a third country and the first station of arrival on the territory of a Member State or vice versa,
- in the last station of departure or the first station of arrival on the territory of a third country.

1.2.2. In addition, in order to facilitate rail traffic flows of high-speed passenger trains, the Member States on the itinerary of these trains from third countries may also decide, by common agreement with third countries concerned respecting the principles set out in point 1.1.4, to carry out entry checks on persons in trains from third countries in either one of the following ways:

- in the stations in a third country where persons board the train,
  - in the stations where persons disembark within the territory of the Member States,
- on board the train during transit between stations on the territory of a third country and stations on the territory of the Member States, provided that the persons stay on board the train."

(4) In Annex VI, point 3 is amended as follows:

(a) point 3.1.1. (...) is replaced by the following:

“3.1.1. Checks on ships shall be carried out at the port of arrival or departure, (...) or in an area set aside for the purpose, located in the immediate vicinity of the vessel **or on board ship in the territorial waters as defined by the United Nations Convention on the Law of the Sea**. Member States may conclude (...) agreements according to which, checks may also be carried out during crossings or, upon the ship's arrival or departure, in the territory of a third country, respecting the principles set out in point 1.1.4.”



(b) points 3.1.2., 3.1.3., 3.1.4. and 3.1.5. are replaced by the following:

“3.1.2. The master, the ship's agent or some other person duly authorized by the master *or authenticated in a manner acceptable to the public authority concerned (...)* (in both cases hereinafter referred to as ‘master’), shall draw up a list of the crew and any passengers containing the information required in the *forms 5 (crew list) and 6 (passenger list) of the Convention on Facilitation of International Maritime Traffic (FAL Convention) (...)* as well as, where applicable, the visa or residence permit numbers at the latest

- twenty-four hours before arriving in the port, or
- at the latest at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours, or
- if the port of call is not known or it is changed during the voyage, as soon as this information is available.

The master shall communicate the list(s) to the (...) border guards or, *if national law provides for, to other relevant authorities which* shall forward the lists without delay to the border guards.”

3.1.3. A confirmation of receipt (*signed copy of the lists or an electronic receipt confirmation*) shall be returned to the master *by the border guards or by the authorities referred to in point 3.1.2.*, who shall produce it on request when the ship is in port.

3.1.4. The master shall promptly report to the competent authority any changes to the composition of the crew or the number of passengers.

In addition, the master shall notify the competent authorities promptly, and within the time-limit set out in point 3.1.2., of the presence on board of stowaways. Stowaways will, however, remain under the responsibility of the master.

By way of derogation from Articles 4 and 7, no systematic border checks shall be carried out on persons staying aboard. Nevertheless a (...) *search* of the ship *and (...) checks on* the persons staying aboard shall be carried out by border guards *only when this is justified* on the basis of an assessment of the risks related to internal security and illegal immigration.

3.1.5. The master shall notify the competent authority of the ship's departure in due time and in accordance with the rules in force in the port concerned.”

(c) point 3.2.1. is replaced by the following:

“3.2.1. The cruise ship's master shall transmit to the respective competent authority the itinerary and the programme of the cruise, *as soon as they have been established and no later than (...)* within the time-limit set out in point 3.1.2.”

(d) in point 3.2.2., the second subparagraph is replaced by the following:

“Nevertheless, (...) checks shall be carried out on the crew and passengers of those ships **only when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration.**”

(e) in points 3.2.3.(a) and 3.2.3.(b) the reference "point 3.2.4" is replaced by the reference "point 3.1.2."

(f) in point 3.2.3.(e), the second subparagraph is replaced by the following:

“Nevertheless, (...) checks shall be carried out on the crew and passengers of those ships **only when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration.**”

(g) point 3.2.4. is deleted;

(h) in point 3.2.9. the second subparagraph is deleted

(i) in point 3.2.10., the following point (i) is added:

"(i) Point 3.1.2. (obligation to submit passenger and crew lists) does not apply. If a list of the persons on board has to be drawn up in accordance with Council Directive 98/41/EC\*, a copy of this list shall be transmitted not later than thirty minutes after departure from a third-country port by the master to the competent authority of the port of arrival in the territory of the Member States.

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\* OJ L 188, 2.7.1998, p. 35."

(j) the following point 3.2.11. is added:

"3.2.11. Where a ferry **coming** from a third country with more than one stop within the territory of the Member States takes passengers on board only for the remaining leg within that territory, these passengers shall be subject to an exit check at the port of departure and an entry check at the port of arrival.

Checks on **persons** who, during those stop-overs, are already on board the ferry and have not boarded in the territory of the Member States shall be carried out at the port of arrival. **The reverse procedure shall apply where the country of destination is a third country.**"

*new(ja) the following point 3.2.12 is added:*

***"Cargo connections between Member States***

***3.2.12. By derogation from Article 7, no border checks shall be carried out on cargo connections between the same two or more ports situated in the territory of the Member States, not calling at any ports outside the territory of the Member States and consisting of the transport of goods.***

***Nevertheless, checks shall be carried out on the crew and passengers of those ships only when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration. "***

(5) Annex VII point 3 is amended as follows:

(a) point 3.1. and point 3.2. are replaced by the following:

“3.1. By way of derogation from Articles 4 and 7, Member States may authorize seamen holding a seafarer's identity document issued in accordance with the International Labour Organization (ILO) Seafarers' Identity Documents Convention No 108 (1958) *or (...) No 185 (2003)*, the London Convention of 9 April 1965 and the relevant national law, to enter the territory (...) of the Member States by going ashore to stay in the area of the port where their ships call or in the adjacent municipalities, ***or exit by returning to their ships***, without presenting themselves at a border crossing point, on condition that they appear on the crew list, which has previously been submitted for checking by the competent authorities, of the ship to which they belong.”

However, according to the assessment of the risks of internal security and illegal immigration, seamen shall be subject to a check in accordance with Article 7 by the border guards before they go ashore.”

(6) In Annex VII point 6, the following points 6.4. and 6.5. are added:

"6.4. Member States shall nominate national contact points for consultation on minors and inform the Commission thereof. A list of these national contact points shall be made available to Member States by the Commission.

6.5. In case of doubt as to any of the circumstances set out in points 6.1., 6.2. and 6.3., border guards shall make use of the list of national contact points for consultation on minors."

(7) In Annex VII the following points 7 and 8 are added:

"7. Rescue services, police, fire brigades **and border guards**

The arrangements for the entry and exit of members of rescue services, police, fire brigades acting in emergency situations *as well as border guards crossing the border in exercise of their professional tasks* shall be laid down by national law. *Member States may conclude bilateral agreements with third countries on* the entry and exit of these categories of persons. These arrangements and bilateral agreements may provide for derogations from Articles 4, 5 and 7.

8. Offshore workers

By way of derogation from Articles 4 and 7, offshore workers (working on oil-platforms, maritime wind parks etc.) who regularly return by sea or air to the territory of the Member States without having stayed in the territory of a third country shall not be systematically checked.

Nevertheless, an assessment of the risks of illegal immigration, in particular where the coastline of a third country is located in the immediate vicinity of an offshore site, shall be taken into account in order to determine the frequency of the checks to be carried out."

(8) In Annex VIII in the standard form, the phrase "entry stamp" is replaced by the phrase "entry or exit stamp" and the word "entered" is replaced by the phrase "entered or left".

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