

ROADMAP

Title of the initiative:

Legislative proposal amending the Schengen Borders Code. Schengen Borders Code amendment (resulting from Regulation on Entry/Exit System and Registered Traveller Programme

Amendment of the Schengen Borders Code in order to further facilitate and harmonise specific aspects of border checks

Type of initiative: CWP

Lead DG: DG HOME

Expected date of adoption of the initiative: 2011

Date of modification: August 2010

Version No: -

This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

2010/JLS/002: Hand in hand with the proposals for an Entry/Exit System 2010/JLS/004 and a Registered Traveller Programme 2010/JLS/004, technical changes in the Schengen Borders Code will have to be proposed containing certain technical amendments resulting from these initiatives.

2010/JLS/008: Moreover, after more than three years of practical application of the Schengen Borders Code, the need to provide for a number of limited technical amendments has emerged. The main sources for identifying possible amendments are:

- Practical experiences made by Member States and the Commission in the application of the provisions of the Schengen Borders Code, including results from Schengen Evaluations as well as reports and requests submitted by Member States;
- The September 2009 Commission report 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 (COM(2009) 489);
- Feedback received from Member States in view of preparing the upcoming Commission report on the application of Title III (Internal Borders) of the Schengen Borders Code (likely to be presented in the next months);
- Consistency considerations linked to other recently adopted legislation, such as in particular the Visa Code and the Return Directive as well as the introduction of biometrics in passports.

The upcoming proposal is planned to be a technical amendment

What are the main problems identified?

Need for:

- Adaptations resulting from the proposals for an Entry/Exit System and a Registered Traveller Programme.
- Provide for an express legal frame for bilateral agreements between Member States and neighbouring third countries concerning cooperation in emergency situations as well as for the setting up of joint border crossing points;
- Improved training of border guards in order to detect particularly vulnerable situations related to unaccompanied minors
- Provide for further clarification on the checks of passports (length of the stay, validity of passport, authenticity of chips contained in biometric passports)

Who is affected?

Persons applying the Schengen Borders Code (Member State administrations) as well as persons subject to border control (absence of border control).

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

Technical amendment to an already existing piece of legislation (Schengen Borders Code).

The Schengen Borders Code establishes rules applicable to the movement of persons across borders. This cannot be sufficiently achieved by the Member States and can be better achieved at Community level. The Schengen Borders Code – and the technical adaptation that will be proposed - do not go beyond what is necessary in order to achieve that objective.

B. Objectives of EU initiative

What are the main policy objectives?

The upcoming proposal is planned to be a limited technical amendment, basing itself on the existing text of the Schengen Border Code and its policy orientations. In this light, the Commission will seek to only include amendments which aim at providing for more clarity and narrowing the scope for divergent interpretations of the existing text. Providing for answers to practical problems which manifested themselves when applying Regulation (EC) No 562/2006 and adaptations resulting from the proposals for an Entry/Exit System and a Registered Traveller Programme.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

No – technical adaptations.

C. Options

(i) What are the policy options?

1. no amendment
2. "soft law" approach (providing clarification by means of interpretative Guidance instrument, such as Commission Communication or Commission recommendation)
3. Propose technical amendments

(ii) What legislative or 'soft law' instruments could be considered?

Commission Communication or Commission recommendation

(iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

No.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The proposal will go hand in hand with the proposals for an Entry/Exit System 2010/JLS/004 and a Registered Traveller Programme 2010/JLS/003.

Explain how the options respect the proportionality principle

Horizontal guidance concerning the interpretation and application of rules contained in the Schengen Borders Code cannot be provided for by the Member States and can be better achieved at Community level. – A Commission Communication or Commission recommendation for this purpose does not go beyond what is necessary in order to achieve that objective.

The Schengen Borders Code establishes rules applicable to the movement of persons across borders. This cannot be sufficiently achieved by the Member States and can be better achieved at Community level. The Schengen Borders Code – and the technical adaptation that would be proposed - do not go beyond what is necessary in order to achieve that objective.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

1. the scope for divergent interpretations of the existing text would be maintained and no answers to the practical problems which manifested themselves when applying Regulation (EC) No 562/2006 would be given. Adaptations resulting from the proposals for an Entry/Exit System and a Registered Traveller Programme cannot be realised.

2. the scope for divergent interpretations of the existing text could be – to a certain extent - reduced and answers to some practical problems which manifested themselves when applying Regulation (EC) No 562/2006 could be given. The solutions proposed would, however, not be legally binding and no guarantee for their uniform application could be given. Moreover not all problems - notably the lack of an express legal basis for joint border crossings and the lack of an express legal frame for bilateral agreements between Member States and neighbouring third countries concerning cooperation in emergency situations as well as adaptations resulting from the proposals for an Entry/Exit System and a Registered Traveller Programme - could be tackled by using this option.

3. The legislative amendments would provide for more clarity and narrow the scope for divergent interpretations of the existing text. They would provide for answers to practical problems which manifested themselves when applying Regulation (EC) No 562/2006 and contain the necessary adaptations resulting from the proposals for an Entry/Exit System and a Registered Traveller Programme

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No financial impact.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

The absence of an express legal basis for joint border crossings and for bilateral agreements between Member States and neighbouring third countries concerning cooperation in emergency situations has an impact on relations with neighbouring third countries.

Options 1 and 2 would provide no solution on this issue. Option 3 would provide for a solution

E. Planning of further impact assessment work

When will the impact assessment work start?

Impact assessment work is already being carried out to inform possible policy changes - see information in roadmaps for 2010/JLS/003 and 004 (Legislative proposals setting up an Entry-Exit System and a Registered Traveller Programme). However, a separate IA will not be provided for these technical changes of the Schengen Borders Code, which are the direct consequence of the possible policy change.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

See information in roadmaps for 2010/JLS/003 and 004 on plans for analysis in support of possible policy changes.

(i) As regards the technical changes of the Schengen Borders Code, these are the consequences of the changes introduced by possible establishment of an Entry/Exit System and a Registered Traveller System, both subject of an IA. (2010/JLS/03 and 04). (ii-v) No formal impact assessment and no further evidence-gathering is planned for these technical changes.

Which stakeholders & experts have been/will be consulted, how and at what stage?

See information in roadmaps for 2010/JLS/003 and 004.