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from: The Presidency

to: Coreper

No. prev. doc.: 7698/12 FRONT 45 CODEC 670 COMIX 171

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

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

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.

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 and by the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 1 December 2011.

At the JHA Counsellors/Mixed Committee meeting on 23 March 2012 a large majority of delegations supported the compromise text submitted by the Presidency as set out in doc. 7698/12, subject to a slightly revised text in point 3.2.12 in Annex VI of the Schengen Borders Code regarding internal cargo traffic. The revised text resulting from those proceedings is set out in the Annex. Certain comments and reservations on specific points by some delegations were maintained at this stage and are set out in the footnotes in the Annex. The Presidency took note of these comments and reservations and concluded that there was sufficient support to start negotiations with the European Parliament on the basis of the text resulting from the meeting.

The LIBE Committee had an orientation vote on the proposal at its meeting on 27 March 2012.

The Presidency invites Coreper to agree that the Presidency will proceed in the contacts with the European Parliament on the basis of the text of the draft Regulation as set out in the Annex.

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 767/2008¹

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) (a), (b) and (c) 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** to be established.
- (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)² 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.

¹ The amendments to the proposal as agreed by the JHA Counsellors and the Working Party appears in **bold or (...)**. The new text appears in **bold and underlined (...)**.

² OJ L 105, 13.4.2006, p. 1.

- (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 Code¹ (...) as well as the Commission report of 13 October 2010 on the application of Title III (Internal Borders) of the Schengen Borders Code² (...) 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)³ 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 nationals⁴ 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 borders⁵ (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.**
- (5b) Following Case C-241/05 Nicolae Bot v Préfet du Val-de-Marne⁶, 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)⁷, Regulation (EC) No 810/2009 of 13 July 2009 establishing a Community Code on Visas (Visa Code)⁸, 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 requirement⁹, Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas¹⁰ 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)¹¹, should be amended accordingly.**

¹ (COM(2009) 489)

² (COM(2010) 554)

³ OJ L 243, 15.9.2009, p. 1.

⁴ OJ L 348, 24.12.2008, p. 98.

⁵ OJ L 239, 22.9.2000, p. 19.

⁶ ECR 2006 Page I-09627.

⁷ OJ L 105, 13.10.2006, p. 1.

⁸ OJ L 243, 15.9.2009, p. 1.

⁹ OJ L 81, 21.3.2001, p. 1.

¹⁰ OJ L 164, 14.7.1995, p. 1.

¹¹ OJ L 218, 13.8.2008, p. 60.

- (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.
- (8) 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 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*¹, 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 Agreement².
- (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*³, 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/EC⁴ (...).
- (10) As regards Liechtenstein, this Regulation constitutes a development of the **provisions 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*⁵ 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 **2011/350/EC**⁶.

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 176, 10.7.1999, p. 31.

³ OJ L 53, 27.2.2008, p. 52.

⁴ OJ L 53, 27.2.2008, p. 1.

⁵ OJ L 160, 18.6.2011, p. 3.

⁶ OJ L 160, 18.6.2011, p. 19.

- (11) In accordance with Articles 1 and 2 of **the** 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 **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*¹; **the** United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (13) 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*²; 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";

¹ OJ L 131, 1.6.2000, p. 43.

² OJ L 64, 7.3.2002, p. 20.

(...)¹

- (c) 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";
- (d) in point 5(a) the phrase "Article 17(1)" is replaced by the phrase "Article 20(1)";
- (e) in point 5(b) the word "Community" is replaced by the word "Union";
- (f) in point 6 the phrase "Article 17(1)" is replaced by the phrase "Article 20(1)";
- (g) 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)² all other documents issued by a Member State to third-country nationals authorising a stay in³ 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**"

* OJ L 157, 15.6.2002, p. 1.

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

¹ EL preferred to keep the definition of "internal cargo connection" in the text as proposed by the Commission.

² SI has a reservation on this paragraph.

³ ES has a reservation on the deletion of the words "or re-entry into".

- (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;”
- (3) In Article 4, paragraph 2 is replaced by the following¹:
- "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;
- (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 (...), 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."

¹ **ES** and **EL** have a reservation on the deletion of the exceptions made to persons "in connection with pleasure boating or coastal fishing" and "for seamen going ashore to stay in the area of the port where their ships call or in the adjacent municipalities".

(abis) in paragraph 1, after point (e), the following subparagraph is inserted:

"When implementing these provisions, the day of entry is calculated as a first day of stay and the day of exit is calculated as a last day of stay in the territory of the Member States."

(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 visa¹ 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 thereof.** "

* OJ L243, 15.9.2009, p.1. "

(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".

¹ HU asked to add the words "and are in possession of a valid travel document".

- (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:
 "Third-country nationals subject to a thorough second line check shall be given information in writing **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 free") 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 (...) may use the lanes indicated by the sign in part B1 ("visa free") 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 free*") of Annex III is an option and not an obligation for Member States. **Member States** shall decide whether to do so and at which border crossing points in accordance with practical needs."

(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."

(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 their national legislation**".

(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".¹

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

¹ **ES, BE, and HU** have a reservation on this provision.

(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.";

(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 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***."

* 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 situations of particular vulnerability involving unaccompanied minors and victims of trafficking. Member States shall encourage border guards to learn languages, in particular those 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 follows¹.

“(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***. (...)

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.

¹ **SI** has a reservation on this amendment.

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."

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

(17) In Article 34(1), point (a) is replaced by the following¹:

"(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.

¹ **SI** has a reservation on this provision.

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**¹ 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.

¹ **SI** has a reservation on this amendment.

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*".

*** 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."

*** 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 free';



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".





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. **These Agreements shall:**

- **include provisions regarding the access to asylum procedures in the territory of the Member States and respect the principle of non-refoulement;**

- **regulate tasks exercised by border guards of both parties with particular focus on procedures related to arrest of a person or seizure of property, access to and guarantees for entry into territory of Member States of persons enjoying the right of free movement under EU law.**

- **guarantee ability of Member State border guards to use information systems processing personal data in accordance with Article 7 and allow to establish the technical and organizational security measures required by EU law to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access.**

1.1.4.2. **Shared** border crossing points may be located either on Member State territory or on third-country territory.

1.1.4.3. 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**.

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 VI¹, point 3 is amended as follows:

(a) in point 3.1.1., the second sentence is replaced by the following:

“3.1.1. Checks on ships shall be carried out at the port of arrival or departure, on board ship or in an area set aside for the purpose, located in the immediate vicinity of the vessel. 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. The purpose of checks is to ensure that both crew and passengers fulfil the conditions laid down in Article 5, without prejudice to Article 19(1) (c).”

(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.

¹ BE supported by CZ, HU, PT, SI and SK, submitted doc.18087/11 with a new text regarding points 2 and 2.1 in Annex VI for border crossing of airline crew.

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 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) points 3.2.2 and 3.2.3 are amended as follows:

"3.2.2. If the itinerary of a cruise ship comprises exclusively ports situated in the territory of the Member States, by way of derogation from Articles 4 and 7, no border checks shall be carried out and the cruise ship may dock at ports which are not border crossing points.

Nevertheless, checks (...) shall be carried out on the crew and passengers of those ships 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 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.

* 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."

- (k) 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 when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration.¹

¹ **PT** preferred the previous text suggested by the Presidency in doc. 7698/11.

(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 thereof¹. 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**

Member States may conclude bilateral agreements for the entry and exit of members of rescue services, police and fire brigades acting in emergency situations, **as well as border guards crossing the border in exercise of their professional tasks**. These arrangements may provide for derogations from Articles 4, 5 and 7.

8. Offshore workers²

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.

¹ **BE** has a reservation on this provision.

² **SI** has a reservation.

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".
