



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**laying down rules on local border traffic at the external land borders
of the Member States and amending the Schengen Convention and the Common
Consular Instructions**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The Commission Communication *Towards integrated management of the external borders of the Member States of the European Union* (COM (2002)233, 7.5.2002) included the development of the *acquis* on “local border traffic”, i.e. the regular and frequent crossing of the border by persons residing in the border area of a neighbouring country, amongst the issues that needed to be addressed in the short term in order to complete and clarify the Community legal framework on external borders. Indeed, no specific Community provisions regulating the question of local border traffic currently exist¹.

The *Plan for the management of the external borders of the Member States of the European Union* - approved by the JHA Council on 13 June 2002 and subsequently endorsed by the Seville European Council of 21 and 22 June – confirmed the need to adopt measures on local border traffic, “particularly with a view to enlargement”.

Further, the Commission Communication on “Wider Europe” (COM(2003)104 final, 11.3.2003), clearly stressed that both the EU and its neighbours have a common interest in ensuring that the new external border is not a barrier to trade, social and cultural interchange or regional co-operation.

In order to respond to the Council’s request, the Commission put forward two proposals for Council Regulations already in August 2003². The two proposals were based on Article 62(2) of the EC Treaty (“measures on the crossing of the external borders of the Member States”), covering both “standards and procedures to be followed by Member States in carrying out checks on persons” (Article 62(2)(a)) and the “procedures and conditions for issuing visas by Member States” (Article 62(2)(b)(ii)), including “rules on a uniform visa” (Article 62(2)(b)(iv)).

Originally, the Commission considered that it would be possible to have the proposals adopted before 1st May 2004; however, discussions on these proposals within the Council have been very difficult and progress was thus very limited.

As of 1st May 2004 measures based on Article 62(2)(b)(ii) and on Article 62(2)(b)(iv) shall be adopted by the European Parliament and the Council in accordance with the co-decision procedure (Article 67(4)). Measures based on Article 62(2)(a) are still to be adopted unanimously by the Council after consulting the European Parliament.

¹ Some Member States have concluded bilateral agreements on local border traffic with their neighbours. To have an overview of such agreements, see the Commission working paper *Developing the acquis on local border traffic*, SEC(2002)947, of 9.9.2002.

² COM(2003)502 – 2003/0193 (CNS), on the establishment of a regime of local border traffic at the external land borders of the Member States, and COM(2003)502 – 2003/0194 (CNS), on the establishment of a regime of local border traffic at the temporary external land borders between Member States.

The two procedures being incompatible, in accordance with a well-established case-law of the Court of Justice³, it was no longer possible to have, within the same proposal, provisions related to checks at the external borders and provisions concerning the establishment of a specific visa to be issued to border residents on grounds of local border traffic.

This is the reason why it was decided to draft two new proposals, i.e.:

- 1) a first proposal for a Council Regulation, based on Article 62(2)(a) (consultation procedure), laying down general rules on local border traffic, with the exception of the provisions introducing the specific visa;
- 2) a second proposal for a European Parliament and Council Regulation, based on Article 62(2)(b), points ii) and iv) (co-decision procedure) establishing a specific “L” visa to be issued for the purpose of local border traffic.

When adopting the new proposals, the Commission would simultaneously withdraw those adopted on 14.8.2003.

Adoption of these new proposals by the College was planned in December 2004.

However, as a consequence of the adoption of “The Hague Programme” by the European Council of 4/5 November 2004, the Council took the decision of extending the co-decision procedure to certain areas covered by Title IV of the EC Treaty, including measures related to external borders.⁴

Consequently, from 1.1.2005 both the external borders and the visa-related aspects currently covered by the two proposals on local border traffic will be subject to the co-decision procedure.

This means that it is no longer necessary to make two separate proposals on local border traffic (one on border-related aspects and a second one on the special “L” visa) and that the two proposals can be merged into one.

This new, “merged” proposal will replace the 2003 proposals, which will be withdrawn by the Commission simultaneously with the adoption of the current one.

2. CONTENT OF THE PROPOSAL

The purpose of the proposed Regulation is to lay down common rules on the criteria and conditions for establishing a regime of local border traffic at the “external land borders” of the Member States, i.e. the common land border between:

- a) a Member State and a neighbouring third country (e.g., the border between Poland and Ukraine or between Slovenia and Croatia);

³ See, for instance, the Court’s judgement of 11 June 1991 in case C – 300/89 (Commission vs. Council).
⁴ Council Decision 2004/927/EC of 22 December 2004, providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty (OJ L 396 of 31.12.2004, p. 45).

- b) a Member State fully implementing the Schengen acquis and a Member State bound to apply such acquis in full but for which the Council decision authorising it to fully apply that acquis has not entered into force (e.g., the border between Austria and Hungary);
- c) two Member States bound to apply the Schengen acquis in full, but for which the Council decision authorising them to fully apply that acquis has not entered into force (e.g., the border between the Czech Republic and Poland).

Points b) and c) are the consequence of the so-called “two-phase implementation procedure” of the Schengen acquis, whereby new Member States only apply part of the Schengen acquis upon their accession (see also point 5.2 below). This includes the provisions on external border controls (to be applied at all borders) but, logically, not those related to the lifting of controls on persons at internal borders. This is why the proposed Regulation also covers the establishment of a local border traffic regime in order to facilitate the crossing of the “temporary external land borders” between Member States.

It shall be noted, however, that the personal scope of the draft Regulation only covers third-country nationals (with some exceptions – see below) lawfully resident in the border area of a neighbouring country for at least one year (“border residents”, as defined in Article 3(e)). EU citizens, as well as third country nationals enjoying the Community right to free movement (as defined in Article 3(d)), have been explicitly excluded from the scope because they already enjoy, under Community law, specific rights related to free movement which, generally speaking, go beyond what is foreseen in the present proposal (for instance, as regards time-limits for stay, or entry conditions). Community rules on local border traffic cannot, obviously, affect such rights.

However, where the facilitation of border crossing granted under a local border traffic regime to border residents goes beyond the right to free movement (for instance, by giving the possibility of crossing the border at specific border crossing points reserved to border residents, where there is a less systematic control, or outside authorised border crossing points and fixed hours), such facilitation shall be automatically extended to citizens of the Union and to third country nationals enjoying the Community right to free movement residing in the border area (Article 17(2)).

Apart from the practical ways of facilitating the crossing of the border provided for in Article 17, the draft Regulation defines the specific conditions and documents required for crossing the border for the purpose of local border traffic (Articles 4 and 5).

Furthermore, as regards border residents subject to the visa obligation, a specific visa (“L”, from “Local”) is introduced. The “L” visa would be a multiple-entry visa issued for at least one year and for maximum five years, entitling the holder to stay in the border area of the issuing Member State for 7 consecutive days maximum and without exceeding, in any case, three months within any half-year period.

The procedures and criteria to be followed for the issuing of such visas would be, for the Member States fully implementing the Schengen acquis, conforming to the provisions of the Common Consular Instructions (CCI)⁵. Member States not fully implementing the Schengen acquis would apply - until the Council authorises them to fully apply such acquis - their national legislation, which shall nevertheless be compatible with the rules laid down in this Regulation.

While this Regulation sets a Community regime on local border traffic, thus conferring on the Community external competence on this matter, it has been considered appropriate - taking into account the specific nature of a local border traffic regime, whose establishment largely depends on local geographical, social, economic and other considerations - to delegate to Member States the actual implementation of such regime via bilateral agreements. This Regulation therefore authorises Member States to negotiate bilaterally with their neighbours, if appropriate, the specific arrangements applicable to local border traffic at their common land border, provided that such arrangements comply with and do not affect the provisions established by this Regulation (see Article 14).

The possibility of envisaging a local border traffic regime with neighbouring third countries entails the need to ensure that an - at least - equivalent treatment is granted by such third countries to EU citizens and third-country nationals lawfully resident in the border area of a Member State, who wish to cross the border of a neighbouring third country and stay in its border area for the purpose of local border traffic (see Article 15).

Member States may also maintain or conclude agreements between themselves on local border traffic, provided that they are compatible with the present Regulation (Article 16). It is obvious that, once border controls will be lifted at the “temporary external borders”, these agreements will lose their *raison d’être*.

3. CHOICE OF THE LEGAL BASIS

Taking into account its content, the present Regulation is based on both Article 62(2)(a) (rules on “standards and procedures to be followed by Member States in carrying out checks on persons at [*external*] borders”) and Article 62(2)(b), points (ii) and (iv), concerning, respectively, rules on “the procedures and conditions for issuing visas by Member States” and “on a uniform visa”.

Following the entry into force, on 1st January 2005, of Council decision 2004/927/EC providing for certain areas covered by Title IV of Part three of the Treaty establishing the European Community to be governed by the procedure referred to in Article 251 of that Treaty, the current proposal will be subject to the co-decision procedure.

⁵ OJ C 313, 16.12.2002, p.1.

4. SUBSIDIARITY AND PROPORTIONALITY

The current Community provisions on the crossing of the external borders of the Member States, as well as those on the rules for issuing the uniform visa, are part of the Schengen acquis integrated into the European Union. Such acquis needs, however, to be developed and completed. The development of the existing acquis on external borders, by reasons of the scale and effects of the action, can only be achieved by adopting Community measures building upon it. As far as the rules on the uniform visa are concerned, including the procedures and conditions for issuing such visa, the Community competence is exclusive.

However, by its own nature, a regime of local border traffic can only be put in practice on the initiative of the concerned Member States, which are therefore authorised to conclude bilateral agreements with neighbouring third countries, if they consider it appropriate, in order to establish a local border traffic regime, while obviously respecting and complying with the conditions and criteria set by Community law.

Article 5 of the EC Treaty provides that “the action by the Community shall not go beyond what is necessary in order to achieve the objectives of this Treaty”. The form taken by Community action shall allow the proposal to attain its objective and to be implemented as efficiently as possible.

In this spirit, the legal instrument chosen to establish general rules on local border traffic is a Regulation addressed to the Member States, which sets the rules to be respected by Member States when establishing a local border traffic regime with neighbouring countries. As the proposed initiative is developing the Schengen acquis, the form of a Regulation has been chosen in order to assure a harmonised application in all Member States applying the Schengen acquis.

5. APPLICATION OF THE PROPOSAL TO THE DIFFERENT MEMBER STATES AND THIRD COUNTRIES ASSOCIATED TO THE DEVELOPMENT OF THE SCHENGEN ACQUIS

5.1 Consequences in relation to the various protocols annexed to the Treaties

The legal basis for proposals concerning measures on the crossing of the external borders of Member States, as well as rules on the uniform visa, falls within Title IV of the EC Treaty and thus implies the variable situation as laid down by the protocols on the position of the United Kingdom, Ireland and Denmark. The present proposal is building upon the Schengen acquis. In this regard, the situation of Norway, Iceland and Switzerland, countries associated to the development of such acquis, shall also be taken into account. Therefore the following consequences in relation to the various protocols have to be considered:

United Kingdom and Ireland

According to Article 4 and 5 of the Protocol integrating the Schengen acquis into the framework of the European Union, “Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of the acquis”.

This proposal constitutes a development of provisions of the Schengen acquis, in which the United Kingdom and Ireland do 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, and 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. The United Kingdom and Ireland are therefore not taking part in its adoption and are not bound by it or subject to its application.

Denmark

By the Protocol annexed to the Amsterdam Treaty on the position of Denmark, Denmark does not take part in the adoption by the Council of measures pursuant to Title IV of the EC Treaty, with the exception of “measures determining the third countries whose nationals must be in possession of visas when crossing the external borders, or measures relating to a uniform format for visas” (former Article 100c of the EC Treaty).

As this proposal constitutes a development of the Schengen acquis and following Article 5 of the Protocol, “Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, whether it will implement this decision in its national law”.

Norway and Iceland

In accordance with Article 6 first indent of the Schengen Protocol, an agreement has been signed on 18 May 1999 between the Council, Norway and Iceland in order to associate those two countries with the implementation, application and development of the Schengen acquis⁶.

Article 1 of this agreement stipulates that Norway and Iceland are associated with the activities of the EC and the EU in the areas covered by the provisions referred to in Annexes A (provisions of the Schengen acquis) and B (provisions of acts of the European Community, which have replaced corresponding provisions of, or adopted pursuant to, the Schengen Convention) of the agreement as well as by those which will follow from them.

According to Article 2 of the agreement, the provisions of all acts or measures taken by the European Union amending or building upon the integrated Schengen acquis (Annex A, B) shall be implemented and applied by Norway and Iceland.

The present proposal builds upon the Schengen acquis as defined in Annex A of the agreement.

As a consequence it has to be discussed in the "Mixed Committee" as provided for in Article 4 of the Agreement to give the possibility to Norway and Iceland "to explain the problems they encounter in respect of" the measure and "to express

⁶ OJ L 176, 10.07.99, p. 35

themselves on any questions concerning the development of provisions of concern to them or the implementation thereof".

Switzerland

As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 4(1) of Council decision 2004/860/EC on the signing, on behalf of the European Union, and on the provisional application of certain provisions, of that Agreement.

The Agreement with Switzerland, signed on 26.10.2004, provides for provisional application of certain provisions upon signature, in particular the participation of Switzerland in the Mixed Committee dealing with the development of the Schengen acquis.

5.2 Consequences in relation to the two-phase implementation procedure of acts building upon the Schengen acquis

Article 3(1) of the Act of Accession of the 10 new Member States provides that the provisions of the Schengen acquis, the acts building upon it or otherwise related to it, listed in the annex referred to in that Article, shall be binding on and applicable in the new Member States as from accession. The provisions and acts not referred to in that annex shall, while being binding on the new Member States as from accession, be applicable in the new Member States following a special Council decision to that effect, made in accordance with Article 3(2) of the Act of Accession.

With regard to the Schengen provisions on external borders, they are listed in that annex and are thus binding and applicable in the new Member States as from accession⁷.

The Schengen provisions on the uniform visa are not listed in that annex and therefore, while being binding upon accession, will be applicable in the new Member States only following the Council decision referred to above⁸.

Therefore, the current proposal is only partly applicable to the new Member States; in particular:

- Chapters I, II, IV, and V are fully applicable to the new Member States, with the exception of Articles 4(d) and 22;
- Chapter III (on the "L" visa) will only be applicable to the new Member States from the date in which the Council takes the decision referred to in Article 3(2)

⁷ With the exception of Article 5(1)(d) of the Schengen Convention, related to the consultation of the Schengen Information System.

⁸ With the exception of Annexes 1-3, 7, 8 and 15 of the Common Consular Instructions, which are both binding upon and applicable by the new Member States as from their accession.

of the Act of Accession. This means that, until then, the new Member States will issue national visas to border residents for the purpose of local border traffic, in accordance with their national procedures. However, such visas shall be issued in the uniform format (visa sticker) established by Council Regulation No 1683/95 (as amended by Council Regulation No 334/2003), since the said Regulation is included in the annex referred to in Article 3(1) of the Act of Accession⁹.

⁹ In this regard, it shall be noted that the letters indicating the type of visa issued ('A', 'B', 'C', 'D' and - following the entry into force of the present Regulation - 'L') are not part of the uniform format for visas. The use of the different letters for the various types of visas is fixed in the Common Consular Instructions (part VI, point 1.7) and is therefore not applicable by the new Member States before their full implementation of Schengen. However, as they do for the other types of visas, the new Member States can already use the letter "L" to indicate visas issued for the purpose of local border traffic on the basis of their national legislation.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission¹⁰,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹¹,

Whereas:

- (1) The need to develop rules on local border traffic in order to consolidate the Community legal framework on external borders has been highlighted in the Commission Communication “Towards an integrated management of the external borders of the Member States of the European Union”¹². It was confirmed by the Council on 13 June 2002, with the approval of the “Plan for the management of the external borders of the Member States of the European Union”, subsequently endorsed by the European Council held in Seville on 21 and 22 June 2002.
- (2) It is in the interest of the enlarged Community to ensure that the borders with its neighbours are not a barrier to trade, social and cultural interchange or regional co-operation. An efficient system for local border traffic should consequently be developed.
- (3) The Community should lay down the rules on criteria and conditions to be complied with when facilitating the crossing of the external land borders of the Member States to border residents for the purpose of local border traffic. Such rules should ensure a balance between, on the one hand, the facilitation of border crossing to *bona fide* border residents having legitimate reasons to frequently cross the external border of the Member States and, on the other hand, the need to prevent illegal immigration as well as potential threats to security posed by criminal activities.

¹⁰ OJ C [...], p. [...].

¹¹ OJ C [...], p. [...].

¹² COM (2002)233 final, 7.5.2002.

- (4) In order to address the situation of those border residents who require a visa pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement¹³, a specific short-stay visa, to be issued on grounds of local border traffic, should be established.
- (5) The Community should lay down rules on specific criteria and conditions for the issuing of visas to border residents for the purpose of local border traffic. These criteria and conditions should be consistent with the entry conditions imposed on border residents crossing the border for the purpose of local border traffic.
- (6) Due to the two-step implementation mechanism of the Schengen acquis as laid down in Article 3 of the 2003 Act of Accession, the new Member States are bound to implement the Schengen external border regime at all their borders, including the borders with other Member States, until the Council authorises them to fully apply the Schengen acquis and thus to lift controls at their common borders with other Member States. The same reasons justifying the creation of a regime of local border traffic at the land borders between Member States and third countries also fully justify application of the same regime to the common land borders between Member States until controls at such borders are to be abolished.
- (7) The rights to free movement enjoyed by citizens of the Union and members of their families, as well as by third-country nationals and their family members who under agreements between the Community and its Member States, on the one hand, and these countries, on the other hand, enjoy rights of free movement equivalent to those of citizens of the Union, should not be affected by the establishment of rules on local border traffic at Community level. However, where the facilitation of border crossing granted under a local border traffic regime to border residents implies a less systematic control, such facilitation should automatically be extended to both citizens of the Union and to third country nationals enjoying the Community right to free movement who are living in the border area.
- (8) For the application of the regime of local border traffic, Member States should be allowed to maintain or conclude bilaterally, if necessary, agreements with neighbouring third countries provided that they comply with the rules laid down in this Regulation. Member States may also negotiate local border traffic arrangements between themselves, at the land borders where the Schengen external border regime applies, provided that they comply with the rules set out in this Regulation.
- (9) This Regulation does not affect the specific arrangements applied in Ceuta and Melilla, as defined in the Declaration by the Kingdom of Spain on the towns of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985¹⁴.
- (10) Penalties, as provided for in national law, should be imposed by Member States on border residents in case of misuse of the local border traffic regime as established by this Regulation.

¹³ OJ L 81, 21.3.2001, p.1. Regulation as last amended by Regulation (EC) No 453/2003 (OJ L 69, 13.3.2003, p.10).

¹⁴ OJ L 239, 22.9.2000, p. 69.

- (11) The Commission should submit a report to the European Parliament and to the Council on the application of this Regulation accompanied, where necessary, by legislative proposals.
- (12) This Regulation respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (13) Since the objectives of the action to be taken, namely the definition of rules on the criteria and conditions for establishing a local border traffic regime at the external land borders of the Member States, directly affect the Community acquis on external borders and cannot thus be achieved sufficiently by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (14) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation, and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law.
- (15) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*¹⁵, which fall within the area referred to in Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement¹⁶.
- (16) 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*¹⁷. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (17) This Regulation constitutes a development of 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

¹⁵ OJ L 176, 10.7.1999, p. 36.

¹⁶ OJ L 176, 10.7.1999, p. 31.

¹⁷ OJ L 131, 1.6.2000, p. 43.

the Schengen *acquis*¹⁸. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

- (18) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 4(1) of Council Decision 2004/860/EC on the signing, on behalf of the European Community, and on the provisional application of certain provisions, of that Agreement¹⁹.
- (19) Articles 4(d) and 22, as well as Chapter III of this Regulation, constitute provisions building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.

HAVE ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1 *Subject matter*

1. This Regulation establishes a regime of local border traffic at the external land borders of the Member States and introduces, for that purpose, a specific visa ("L"), to be issued to border residents subject to a visa obligation pursuant to Regulation (EC) No 539/2001.
2. This Regulation authorises Member States to conclude or maintain bilateral agreements with neighbouring countries for the purpose of implementing the regime of local border traffic hereby established.

Article 2 *Scope*

1. This Regulation does not affect the provisions of Community and national law applicable to third-country nationals relating to:
 - (a) long-term stays;
 - (b) access to and exercise of economic activity;
 - (c) customs and taxation matters.

¹⁸ OJ L 64, 7.3.2002, p. 20.

¹⁹ OJ L 370, 17.12.2004, p. 78.

Article 3
Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) “external land border” means:
- (i) the common land border between a Member State and a neighbouring third country;
 - (ii) the common land border between a Member State fully implementing the Schengen acquis and a Member State bound to apply such acquis in full, in conformity with its Act of Accession, but for which the Council decision authorising it to fully apply that acquis has not entered into force;
 - (iii) the common land border between two Member States bound to apply the Schengen acquis in full, in conformity with their Acts of Accession, but for which the Council decision authorising them to fully apply that acquis has not entered into force;
- (b) “border area” means an area which, as the crow flies, does not extend more than 30 kilometres from the frontier. Within this area, the local administrative districts which are to be considered as part of the border area can be further specified by the concerned States. If part of any such district is situated at more than 30 kilometres from the frontier line, but not more than 35, it shall nevertheless be considered as part of the border area ;
- (c) “local border traffic” means the regular crossing of the external land border of a Member State by border residents in order to stay in the border area of that Member State for a period not exceeding the time limits laid down in this Regulation;
- (d) “third-country nationals enjoying the Community right to free movement” means:
- (i) third-country nationals who are members of the family of a Union citizen exercising his or her right to free movement to whom Directive 2004/38/EC of 29 April 2004²⁰ applies;
 - (ii) third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and these countries, on the other, enjoy a right to free movement equivalent to that of citizens of the Union.
- (e) “border residents” means third–country nationals who have been lawfully resident in the border area of a country neighbouring a Member State for at least one year, with the exception of the categories covered under point (d);

²⁰ OJ L 158, 30.4.2004, p. 77.

- (f) “visa” means:
- for the Member States fully implementing the Schengen acquis, the visa established by Article 8;
 - for the Member States not fully implementing the Schengen acquis, a national short-stay visa, issued according to national procedures.
- (g) “the Schengen acquis” means the acquis defined in Annex A to Council Decision 435/1999/EC²¹;
- (h) “the Schengen Convention” means the Convention implementing the Schengen agreement of 14 June 1985.

Chapter II

Local border traffic regime

Article 4 *Entry conditions*

By way of derogation to Article 5(1) of the Schengen Convention, border residents may cross the external land border of a neighbouring Member State for the purpose of local border traffic, provided they:

- (a) possess a valid document or documents, authorising them to do so, as referred to in Article 5;
- (b) are in possession of a visa, if required;
- (c) produce, if necessary, documents proving their status as border residents, the existence of legitimate reasons to frequently cross the border on grounds of local border traffic, such as family links, social, cultural or economic motives, as well as, where appropriate, the possession of sufficient means of subsistence in relation to the purpose of their stay;
- (d) are not persons for whom an alert has been issued for the purposes of refusing entry in the Schengen Information System (SIS);
- (e) are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States.

Article 5 *Documents*

Documents authorising border residents to cross the external land border of a neighbouring Member State for the purpose of local border traffic shall be:

²¹ OJ L 176, 10.7.1999, p.1.

- (a) for border residents subject to a visa obligation pursuant to Regulation (EC) No 539/2001, a passport or any other valid document authorising them to cross the external borders as defined in Article 17(3)(a) of the Schengen Convention;
- (b) for border residents not subject to a visa obligation pursuant to Regulation No 539/2001:
 - (i) the documents referred to in point (a), or
 - (ii) a specific border crossing permit, issued by the State of residence and countersigned by the competent authorities of the Member State whose border is crossed.

Article 6
Stay in the border area

For the purposes of this Regulation, border residents may stay in the border area of a neighbouring Member State for up to seven consecutive days. The total duration of their successive visits to that Member State shall not exceed three months within any half-year period.

The time-limits may be extended in exceptional circumstances.

Article 7
Entry and exit stamps

Member States may derogate from the obligation to affix entry and exit stamps on the travel documents of border residents crossing the external land borders for the purpose of local border traffic, provided that the following conditions are fulfilled:

- a) the holder of the travel document is not subject to a visa obligation pursuant to Regulation (EC) No 539/2001;
- b) compliance with the time-limits provided for in Article 6 is ensured by any other means, to be specified in the bilateral agreements referred to in Articles 14 and 16.

Chapter III

Visas issued for the purpose of local border traffic

Article 8
Visas issued for the purpose of local border traffic

1. A specific visa to be issued to border residents for the purposes of local border traffic is established.
2. The territorial validity of the visas referred to in paragraph 1 issued to border residents subject to a visa obligation pursuant to Regulation (EC) No 539/2001 shall be limited to the border area of the issuing Member State.

2. The visa referred to in paragraph 1 shall entitle the holder to multiple crossings of the external land border of the issuing Member State and to a stay within the border area of that Member State for up to seven consecutive days.

The total duration of the successive visits to that Member State shall not exceed three months within any half- year period.

Article 9
Format of the visa

The visas referred to in Article 8 shall be issued in the form of a uniform format (sticker) conforming to the rules and to the specifications of Council Regulation No 1683/95²² laying down a uniform format for visas. The uniform format issued for this purpose shall contain the distinctive letter “L” under heading 11 (“type of visa”).

Article 10
Issuing conditions

1. The visas referred to in Article 8 may be issued to border residents who:
 - (a) are in possession of a valid document authorising them to cross the external borders as defined in Article 17(3)(a) of the Schengen Convention;
 - (b) produce, if necessary, documents proving their status of border residents, and the existence of legitimate reasons to frequently cross the border on grounds of local border traffic, such as family links, social, cultural or economic motives, as well as, where appropriate, the possession of sufficient means of subsistence in relation to the purpose of their stay;
 - (c) are not persons for whom an alert has been issued for the purposes of refusing entry in the SIS;
 - (d) are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States.
2. The visas referred to in Article 8 shall not be issued at the border.

Article 11
Validity

The visas referred to in Article 8 shall be valid for a minimum period of one year and for a maximum period of five years.

²² OJ L 164, 14.7.1995, p.1.

Article 12
Administrative costs

1. The fees corresponding to the administrative costs of processing the application for the visas referred to in Article 8 shall be equivalent to the fees charged for processing applications for short-term multiple-entry visas having an equivalent validity.
2. By way of derogation from paragraph 1, Member States may decide to reduce or waive the fees corresponding to the administrative costs of processing the application for the visas referred to in Article 8.

Article 13
Relation with the Common Consular Instructions

Save where this Regulation provides otherwise and without prejudice to Article 22, the conditions and procedures for the issuing of the visas referred to in Article 8 shall be regulated by the Common Consular Instructions²³.

Chapter IV **Implementation of the local border traffic regime**

Article 14
Agreements between Member States and third countries

1. For the purposes of implementing a regime of local border traffic, Member States are authorised to conclude agreements with neighbouring third countries in conformity with the rules set out in this Regulation.

Member States may also maintain existing agreements with neighbouring third countries on local border traffic. To the extent that such agreements are not compatible with this Regulation, the Member States concerned shall amend the agreements in such a way as to eliminate the incompatibilities established.

2. Member States shall consult the Commission as to the compatibility of the agreement with this Regulation before concluding or amending any agreement on local border traffic with neighbouring third countries.

If the Commission considers the agreement to be incompatible with this Regulation, it shall notify the Member State concerned and shall require it to amend the agreement in such a way as to eliminate the incompatibilities established.

3. Member States shall transmit to the Commission a copy of the agreements referred to in paragraph 1, as well as any denunciation of, or amendments to, these agreements.

²³ OJ C 310, 19.12.2003, p.1.

Article 15
Reciprocity

In their agreements with neighbouring third countries, Member States shall ensure that the third country grants comparable treatment for citizens of the Union, as well as for third country nationals, lawfully resident in the border area of a Member State and wishing to travel to the border area of a neighbouring third country.

Article 16
Agreements between Member States

1. Member States referred to in Article 3(a), points (ii) and (iii), are authorised to conclude agreements on local border traffic between themselves in conformity with the rules set in this Regulation.
2. Those Member States referred to in paragraph 1 may maintain existing agreements on local border traffic between themselves, until the entry into force of the Council decision authorising the lifting of border controls at their common borders. To the extent that such agreements are not compatible with this Regulation, the Member States concerned shall amend the agreements in such a way as to eliminate the incompatibilities established.
3. Member States shall transmit to the Commission a copy of the agreements referred to in paragraphs 1 and 2, as well as any denunciation of, or amendments to, these agreements.

Article 17
Facilitation for border crossing

1. The agreements referred to in Articles 14 and 16 may contain provisions for the facilitation of border crossing, whereby Member States:
 - (a) set up specific border crossing points open only to border residents;
 - (b) reserve specific lanes to border residents at ordinary border crossing points;
 - (c) where there is a requirement of a special nature, taking into account the local circumstances, authorise border residents not subject to a visa obligation pursuant to Regulation (EC) No 539/2001 to cross their border at places other than authorised border crossing points and outside the fixed hours.
2. Where a Member States decides to facilitate border crossing to border residents in accordance with paragraph 1, such facilitation shall automatically be extended to any citizen of the Union, as well as to third country nationals enjoying the Community right to free movement, including those subject to the visa obligation, residing in the border area.
3. By way of derogation to Article 6 of the Schengen Convention, at the border crossing points referred to in paragraph 1, point (a), as well as at the lanes referred to in paragraph 1, point (b), persons who are known to the border guard by reason of their frequent crossing of the border shall be subject only to random checks.

Chapter V

Final provisions

Article 18 *Ceuta and Melilla*

The provisions of this Regulation shall not affect the special rules applying to the towns of Ceuta and Melilla, as defined in the Declaration by the Kingdom of Spain on the towns of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985²⁴.

Article 19 *Penalties*

1. Member States shall ensure that any misuse of the local border traffic regime, as established by this Regulation and as implemented by the bilateral agreements referred to in Articles 14 and 16, shall be subject to penalties as provided for in national law.

The penalties provided for shall be effective, proportionate and dissuasive and shall include the possibility of cancelling and revoking the specific border crossing permits referred to in point (b) of Article 5, as well as the visas issued for the purpose of local border traffic.

2. Member States shall keep record of all persons on whom penalties are imposed in accordance with paragraph 1. This information shall be transmitted, in respect of a six-month period, to the other Member States and to the Commission.

Article 20 *Report on the implementation of the regime*

At the latest two years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the functioning and implementation of the local border traffic regime, as established by the bilateral agreements concluded on the basis of and in conformity with this Regulation, accompanied where necessary by appropriate legislative proposals.

Article 21 *Amendment of the Schengen Convention*

Article 136(3) of the Schengen Convention is replaced by the following:

²⁴ OJ L 239, 22.9.2000, 69.

“3. Paragraph 2 shall not apply to agreements on local border traffic, for which the provisions of Article 14 of [Regulation No ... *this Regulation*] shall apply.”

Article 22
Amendment of the Common Consular Instructions

The Common Consular Instructions are amended as follows:

1) In part I, point 2, the following point 2.3a is inserted:

“2.3a Visas for the purpose of local border traffic

In the case of third-country nationals who frequently need to cross the border of a neighbouring Member State for the purpose of local border traffic, as defined by Regulation (EC) No [...]*, a visa whose territorial validity is limited to the border area of the issuing Member State may be issued. Such visa shall entitle the holder to multiple crossings of the border of the issuing Member State, provided that the total length of the successive stays in the border area of that Member State does not exceed three months in any half year.

In conformity with [Regulation (EC) No...*this Regulation*], such visa shall have a minimum validity of one year and a maximum validity of five years.

Visas issued for the purpose of local border traffic may not be issued at the border.

* OJ L”

2) In part V, point 1.4, the following indent is added:

– “Documents that may be required prior to the issuance of the “L” visa:

– A certificate attesting residence in the border area ;

– Any document justifying the need for frequent crossing of the border for local border traffic purposes such as certificates or attestations substantiating family ties, documents certifying ownership of a property over the border etc.”

3) In Part VI, point 1.1, the last indent is replaced by the following: “limited territorial validity may not apply to just part of the territory of a [*Member State*], except in the case of visas type “L”, issued for the purpose of local border traffic”;

4) Part VI, point 1.7 (TYPE OF VISA ‘*heading*’) is amended as follows:

– The first paragraph is replaced by the following:

“In order to facilitate matters for the control authorities, this heading shall specify the type of visa using the letters A, B, C ~~and~~ D and L as follows:”;

– After the indent “D+C [...]”, the following indent is added:

“L: visa issued for the purpose of local border traffic”

5) In Part VII, point 4, the following paragraph is added:

“The fees to be charged corresponding to the administrative costs for the issuing of visas for the purpose of local border traffic may be reduced or waived, in accordance with [Regulation (EC) No...*this Regulation*].”

Article 23

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

This Regulation shall be binding in its entirety and directly applicable in all Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX
COMMENTARY ON THE ARTICLES

Article 1

This Article specifies the purpose of the Regulation, which is to establish a local border traffic regime at the external land borders of the Member States, and to authorise them to conclude or maintain bilateral agreements with neighbouring countries for that purpose.

In order to take into account the situation of those third countries subject to a visa obligation, a specific “L” visa is also established.

Article 2

This Article specifies that the Regulation does not aim at regulating and thus does not affect provisions regulating long-term stays, the exercise of an economic activity, and those related to customs and taxation matters.

Article 3

This Article defines the terms used in the proposal.

- (a) The scope of the definition of ‘external land borders’ has already been explained under point 2 of the Explanatory Memorandum. This excludes the borders with those Member States who are not fully implementing, nor bound to implement in full, the Schengen acquis (i.e., the United Kingdom and Ireland).
- (b) The maximum width of the border area (30 and, in justified cases, 35 kilometres) is the result of the discussions had within the Council on this issue, when examining the 2003 proposals.
- (c) There is as yet no definition of ‘local border traffic’. This definition is therefore derived from existing practice (i.e., bilateral agreements). Two elements seem essential to define ‘local border traffic’: the residence in the border area and the regular crossing of the border in order to stay, for a limited period, in the border area of the neighbouring country.
- (d) This point defines those third country nationals enjoying the Community right to free movement, i.e.:
 - members of the family of Union citizens in those cases falling under the scope of Directive 2004/38/EC;
 - third country nationals, as well as members of their families, of those third countries which have concluded an agreement with the Community and its Member States on the right to free movement (currently, EEA countries and Switzerland).
- (e) Two conditions are established in order to be considered as ‘border resident’: the actual residence in the border area, as defined above under (b), and a

minimum residence period of one year in that area. It shall be noted that this definition does not cover EU citizens and third-country nationals enjoying the Community right to free movement, as defined under point (d) (the reasons are given in point 2 of the Explanatory Memorandum).

- (f) As regards the definition of ‘visa’, a distinction has been made between the Member States fully implementing the Schengen acquis (and thus issuing the uniform visa) and those not fully implementing the Schengen acquis. This distinction has been made because the latter do not apply the Schengen provisions on the uniform visa (including the Common Consular Instructions) and thus cannot issue the “L” visa until the date when the Council authorises them to fully implement the Schengen acquis.
- (g) This point clarifies the scope of the “Schengen acquis”.
- (h) This point specifies what is meant by “Schengen Convention”.

Article 4

The conditions listed in this Article for the entry of border residents are, to a great extent, those provided by Article 5(1) of the Schengen Implementing Convention (SIC). The differences concern the following elements:

- the documents valid for crossing the border (see below the commentary on Article 5);
- the need to prove, if necessary, the residence in the border area and the reasons for the frequent crossing of the border on grounds of local border traffic. The assessment of means of subsistence shall be linked to the purpose of stay.

It shall be noted that the reference to “threat to public health” has been introduced in order to ensure consistency with the proposal for a Council Regulation establishing a Community Code on the rules governing the movement of persons across borders (COM(2004)391 of 26.5.2004).

Article 5

Documents valid to cross the external land border of a Member State by a third country national are, generally speaking, a passport or an equivalent international travel document. In the framework of local border traffic, it is proposed to facilitate border crossing to *bona fide* border residents not requiring a visa by allowing them to cross the external land borders also on the basis of a specific border crossing permit, issued by the State of residence and countersigned by the competent authorities of the Member State whose border is crossed.

Article 6

The maximum duration of stay in the border area of a Member State for the purpose of local border traffic is fixed at seven consecutive days; this figure is inspired by the current practice (bilateral agreements). The maximum duration of the stay in the border area cannot exceed the general time-limit for a short stay, which is three months within any half-year period.

An extension of the above time-limits can be granted only in exceptional cases, such as for humanitarian reasons, illness, accidents etc.

Article 7

This Article derogates from the general obligation of affixing an entry and exit stamp on the travel documents of third country nationals. However, such derogation is only possible for border residents not subject to the visa obligation and provided that Member States are able to ensure by any other means (e.g., through electronic registers) the respect of time limits.

Article 8

This Article establishes the specific visa to be issued to border residents for the purpose of local border traffic (“L” visa) and defines its characteristics.

Article 9

The “L” visa will be issued in the same format (visa sticker) than other uniform visas, as laid down by Regulation No 1683/95 (as last amended by Regulation No 334/2002).

Article 10

The conditions for issuing the “L” visa are equivalent to the general entry conditions as laid down in Article 4 of this Regulation.

It is also specified that “L” visas cannot be issued at the border.

Article 11

This Article specifies the minimum and maximum validity of the “L” visa.

Article 12

This Article provides for the possibility of reducing or waiving the fees related to the issuing of the “L” visa.

Article 13

The provisions of the Common Consular Instructions shall apply to the issuing of the “L” visa, except for those aspects which are regulated differently in the present Regulation.

Article 14

This Article authorises Member States to maintain or conclude agreements with neighbouring third countries on local border traffic, provided that such agreements are compatible with the rules set out in the present Regulation. At the same time, Member States shall eliminate any incompatibility between existing agreements and the rules set in this Regulation.

In order to assess their compatibility with the present Regulation, such agreements, as well as their modification or denunciation, have to be transmitted to the Commission.

Article 15

The establishment of a local border traffic regime with a neighbouring third country aims at facilitating the crossing of the external land border of a Member State for *bona fide* third country nationals resident in the border area of that neighbouring country. This Article requests Member States to ensure that, at least, an equivalent treatment is reserved to both citizens of the Union and third country nationals, lawfully resident in their border areas, wishing to cross the border and stay in the border area of the neighbouring third country.

Article 16

A regime of local border traffic may also be established at the “temporary external borders” between Member States. The latter are therefore authorised to conclude bilateral agreements between them, provided that they are in compliance with this Regulation.

Article 17

This Article reflects, to a great extent, existing practices. In order to facilitate border crossing to border residents, Member States may, in their bilateral agreements implementing this Regulation, provide for the possibility of:

- (a) setting up specific border crossing points open solely for border residents;
- (b) reserving specific lanes to border residents;
- (c) authorising border residents not subject to the visa obligation to cross the border outside authorised border crossing points and hours, but only where circumstances justify it (for instance, in case of a village situated across the border). It shall be noted that this possibility is already envisaged both in Article 3(1) of the Schengen Implementing Convention and in point 1.3, Part I, of the Common Manual.

The second paragraph automatically extends the above facilitation, whenever granted, to Union citizens residing in the border area, as well as to third country nationals enjoying the Community right to free movement. This provision is needed since they are otherwise excluded from the scope of this Regulation because they already enjoy, under Community law, specific rights related to free movement which, generally speaking, go beyond what is foreseen in the present proposal (for instance, as regards time-limits for stay, or entry conditions).

The third paragraph provides for a less systematic check to be carried out at the border crossing points and at the lanes reserved to border residents. This is justified by the fact that most of the persons crossing the border at those border crossing points/lanes are well known to the border guard, due to the fact that they cross that very same border crossing point every day or, in any case, very frequently. Thus,

such persons do not need to be checked every time they cross the border. A similar provision is also contained in the Common Manual (see point 1.3.5.3 of part II).

Article 18

This Article specifies that the border crossing regime currently applied in the Spanish towns of Ceuta and Mellilla is not affected by the present Regulation.

Article 19

This Article obliges Member States to impose penalties against any misuse of the local border traffic regime, as well as to keep record of persons sanctioned. Such information, to be transmitted to the other Member States and to the Commission, will be important in order to monitor the implementation of the regime (Article 20).

Article 20

After two years from the entry into force of this Regulation, an assessment of the implementation of the regime will be made by the Commission, which will have to report on it to the EP and the Council and, if necessary, propose the appropriate legislative adaptations.

Article 21

Article 136, paragraph 3 of the Schengen Implementing Convention – related to the information to be provided to other Member States when concluding bilateral agreements on local border traffic - is replaced by the provisions of Article 14 of this Regulation.

Article 22

This Article amends the Common Consular Instructions in order to introduce the new type of visa (“L”) and specify its characteristics.

Article 23

Standard provision.