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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) and the Convention implementing the Schengen Agreement

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal contains a number of amendments to 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). These are the result of the experience gained during the first years of its application. The proposal also contains some closely related modifications to the Convention implementing the Schengen Agreement of 14 June 1985.

General context

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) entered into force.

After four years of practical application, the need for a number of limited technical amendments has emerged. The main sources for these amendments are:

- practical experiences of the Member States and the Commission in the application of the Schengen Borders Code, including the results of Schengen evaluations and the reports and requests submitted by Member States;
- the Commission report of September 2009 on the operation of the provisions on stamping of the travel documents of third-country nationals in accordance with Articles 10 and 11 of the Schengen Borders Code (COM(2009) 489);
- the Commission report of 13 October 2010 on the application of Title III (Internal Borders) of the Schengen Borders Code (COM(2010) 554);
- consistency considerations linked to other recently adopted legislation, in particular the Visa Code (Regulation (EC) No 810/2009 of 13 July 2009) and the Return Directive (Directive 2008/115/EC of 16 December 2008).

This proposal contains amendments that improve clarity and narrow the scope for divergent interpretations of the existing text as well as amendments responding to practical problems that have arisen during the first years of the Schengen Borders Code. Furthermore it provides for an explicit legal framework for bilateral agreements related to joint border checks on road traffic

New policy initiatives, such as the creation of an EU Entry/Exit System and an EU Registered Traveller Programme, will be the subject of specific proposals to be discussed separately.

Existing provisions

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) and the Convention implementing the Schengen Agreement of 14 June 1985.

2. CONSULTATION OF INTERESTED PARTIES

The proposed changes were the subject of an exchange of views with Member State experts at the meeting of the Immigration and Asylum Group on 16 March 2010.

On 7 May 2010, a special expert meeting allowed for an in-depth exchange of views on the proposed amendments. The Member State experts broadly supported the substance of the proposed changes as well as the approach of proposing technical amendments to make a limited number of practical and technical improvements to the Schengen Borders Code. Several experts emphasised the pressing practical need to address some of the issues raised in this proposal in a pragmatic way and expressed the hope that the amendments could be adopted rapidly.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary

The main proposed amendments concern the following issues:

- Clear definition of the method for calculating ‘stays not exceeding three months per six-month period’ (Article 5): following the judgment delivered by the ECJ on 3 October 2006 in Case C-241/05, *Bot*, (ECR 2006 p. I-09627) and the adoption of a related parallel provision in Article 2(2)(a) of the Visa Code, clarified and authentic legislative guidance on this issue is needed for the Schengen Borders Code.
- Clarification concerning the required period of validity of travel documents of non-visa holders (Article 5), in response to practical needs and in order to align the text with Article 12 of the Visa Code.
- Possibility to create separate lanes for visa-free travellers (Article 9) in order to provide additional flexibility and speed up border control in accordance with practical needs.
- Improved training of border guards in order to detect situations of particular vulnerability involving unaccompanied minors and victims of trafficking (Article 15); the need to pay specific attention to training for detecting such situations was recently confirmed by the Commission’s Action Plan on Unaccompanied Minors (2010 – 2014), COM(2010) 213 final of 6.5.2010.
- Possibility to provide for derogations related to the entry and exit of members of rescue services, police and fire brigades acting in emergency situations (Article 19).
- An explicit legal framework for joint border crossings (Annex VI): in order to enable bilateral agreements to be concluded between Member States and neighbouring third

countries on cooperation in border control with joint border crossing points, Annex VI of the Schengen Borders Code needs to be amended to expressly permit bilateral agreements for joint border checks on road traffic and to provide a legal framework on certain key issues, such as the situation of persons requesting international protection.

Legal basis

Article 77(1) as well as Article 77 (2) of the Treaty on the Functioning of the European Union.

This proposal amends 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) which was based on the equivalent provisions of the Treaty establishing the European Community, i.e. Articles 62(1) and (2)(a). It also amends Articles 21 and 22 of the Convention implementing the Schengen Agreement of 14 June 1985, which were determined by Decision 1999/436/EC to be based on Article 62(3) EC, as well as Article 136 of this Convention, which was determined to be based on Article 62(2) EC.

Subsidiarity principle

Article 77(1)(a) and (b) empowers the Union to develop a policy with a view to ‘ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders’ and ‘carrying out checks on persons and efficient monitoring of the crossing of external borders’.

The current proposal is within the limits set by these provisions. The objective of this proposal is to further develop and technically improve the measures of the Schengen Borders Code concerning the checks to which persons crossing external borders are subject and the absence of controls on persons when crossing internal borders. It cannot be sufficiently achieved by the Member States acting alone, because an amendment to an existing Union Act (the Schengen Borders Code) can only be achieved by the Union.

Proportionality principle

Article 5 (4) of the Treaty on European Union states that the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. The form chosen for this action must enable the proposal to achieve its objective and be implemented as effectively as possible.

The creation of the Schengen Borders Code in 2006 had to be in the form of a regulation, in order to ensure that it is applied in the same way in all the Member States that apply the Schengen *acquis*. The proposed initiative — amendment of the Schengen Borders Code — constitutes an amendment to an existing regulation and can only be achieved by means of a regulation. As to the content, this initiative is limited to improvements of the existing regulation and based on the policy orientations contained therein. The proposal therefore complies with the proportionality principle.

Choice of instrument

Proposed instrument: Regulation.

4. BUDGETARY IMPLICATIONS

The proposed amendment has no implications for the EU budget.

5. ADDITIONAL INFORMATION

Consequences of the various protocols annexed to the Treaties and of the association agreements concluded with third countries

The legal basis for this proposal is to be found in Title V of Part Three of the Treaty on the Functioning of the European Union, with the result that the system of ‘variable geometry’, provided for in the protocols on the position of the United Kingdom, Ireland and Denmark and the Schengen protocol applies. The proposal builds on the Schengen *acquis*. The consequences for the various protocols therefore have to be considered with regard to Denmark, Ireland and the United Kingdom; Iceland and Norway; and Switzerland and Liechtenstein. The detailed situation of each of these states is described in recitals 7-12 of this proposal.

Succinct overview of the proposed amendments

– Article 1 - Amendments to the Schengen Borders Code:

Horizontal changes

– Throughout the text, a certain number of changes resulting from the entry into force of the Lisbon Treaty are proposed (‘EU’ instead of ‘EC’; ‘European Union’ instead of ‘European Community’; updated references to Treaty provisions).

Article 2, Definitions

- Point 1: Amendment resulting from the changes proposed in points 4 and 4a.
- Point 4: Clarification, highlighting that Article 2 point 4 relates to ferry connections *between Member States only*.
- Point 4(a): The new definition will allow internal cargo operators to benefit from the absence of internal border controls in the same way as internal ferry operators.
- Point 15: The definition of residence permit is reshaped. In order to avoid any misunderstanding, it is made clear that visas (both long-stay and short-stay) can never be considered as ‘residence permits’ within the meaning of point 15(b). The outdated reference to ‘re-entry’ is removed. It is also clarified that national permits must be notified and published under Article 34 to be regarded as such.

Article 4, Crossing of external borders

In an effort to improve the overall structure and clarity of the text, the existing detailed derogations in points (a) and (b) are removed. To retain the substance of the deleted provisions, Articles 18 and 19 are amended to allow for derogations to Article 4 for various types of borders and categories of persons in general, in combination with the existing wording of Annex VI 3.2.5.–9. (pleasure boating and coastal fishing) and Annex VII 3.1

(seamen). The reference to ‘*occasional crossing*’ in paragraph 2 is intended to clearly distinguish the exceptions authorised under this provision from local border traffic regimes allowing for ‘*regular crossing*’ (governed by Article 35 and Regulation (EC) No 1931/2006). In addition, paragraph 2 expressly authorises bilateral agreements with neighbouring third countries in this field.

Article 5, Entry conditions for third-country nationals

- Paragraph 1: Duration of stay: following the judgment delivered by the ECJ on 3 October 2006 in Case C-241/05, *Bot*, and the adoption of a related parallel provision in Article 2(2)(a) of the Visa Code, clear legislative guidance for calculating the ‘three months per six-month period’ for the Schengen Borders Code is given by aligning the wording with the Visa Code. Valid travel documents: in response to practical needs, the text is aligned with Article 12 of the Visa Code, including the possibility for border guards to allow exceptions in justified cases of emergency.
- Paragraph 4: Removal of the outdated and misleading term ‘re-entry visa’. Replacement of the reference to Regulation (EC) No 415/2003 in Article 5(4)(b) by a reference to the new Visa Code. Given that Article 46 and Annex XII of the Visa Code require statistics to be compiled on visas for *each location* where Member States issue visas (this definition includes border crossing points where visas are issued), the second paragraph of Article 5(4)(b) has become redundant and should be replaced with a reference to the relevant provisions of the Visa Code.

Article 7, Border checks on persons

- Paragraph 5: Clarification of the existing obligation to provide information in written form.
- New paragraph 8: Since the exceptional circumstances listed in Article 4(2) (requirements of a special nature and emergency situations) may also make it necessary in practice to provide for certain derogations to Article 7, this is explicitly allowed.

Article 9, Separate lanes and information on signs

- Paragraph 2: The possibility of creating separate lanes for visa-free travellers is intended to provide additional flexibility and speed up border control in accordance with practical needs.

Article 10, Stamping of the travel documents of third-country nationals

- Paragraph 2: Correction of a linguistic mistake in the EN version of the text.
- Paragraph 3: The situation of train crews on international connections is comparable to pilots or seamen as these trains follow a fixed schedule. In its ‘stamping report’ (COM(2009) 489 final) of September 2009, the Commission already announced that it would introduce an exemption from stamping for this category of persons.

Article 11, Presumption as regards fulfilment of conditions for duration of stay

- Paragraph 3: Technical adaptation resulting from the adoption of new legislation (Return Directive 2008/115/EC).

- New paragraph 4: Technical adaptation to fill a gap in the current text (proof of exit in the absence of an exit stamp).

Article 12, Border surveillance

- Modification related to the power of the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

Article 13, Refusal of entry

- Paragraph 5: Technical adaptation resulting from the adoption of new legislation (Migration Statistics Regulation 862/2007).

Article 15, Implementation of controls

- Paragraph 1: Express mention is made of common core curricula for border guards developed by FRONTEX. The need to pay specific attention to training for detecting situations of particular vulnerability was recently highlighted by the Commission's Action Plan on Unaccompanied Minors (COM(2010) 213 final of 6.5.2010).

Article 18, Specific rules for the various types of borders and the various means of transport used for crossing external borders

- Last sentence: To complement the amendments to Article 4(2), a systematically coherent basis is provided for derogations to Article 4 for all types of borders and all means of transport in Annex VI.

Article 19, Specific rules for checks on certain categories of persons

- New paragraph 1(g): In order to allow for derogations related to the entry and exit of members of rescue services, police and fire brigades acting in emergency situations an express legal framework is required (addition of a new category in Article 19, accompanied by related provisions in Annex VII) including the possibility to conclude bilateral agreements on this issue.
- New paragraph 1(h): A special exemption is made for offshore workers (such as workers on oil-platforms or on maritime windparks) in Annex VII, point 8, providing for rules comparable to coastal fishing (Annex VI, points 3.2.8 and 9).
- Paragraph 1, second sentence: To complement the amendments to Article 4(2), a systematically coherent basis is provided for derogations to Article 4 for all categories of persons mentioned in Annex VII.

Article 21, Checks within the territory

- Point d: Many Member States do not implement Article 22 of the Schengen implementing Convention (reporting obligation for legally staying third-country nationals entering other Member States). Practical difficulties in verifying compliance with this general reporting obligation are broadly acknowledged and no convincing cost/benefit argument could be made to show that this rule has a significant impact on identifying illegally staying immigrants. The recent Commission report on the application of Title III (Internal Borders)

of the Schengen Borders Code (COM(2010) 554) therefore proposed repealing Article 22 Schengen implementing Convention as well as the corresponding reference to it in Article 21(d) Schengen Borders Code. The proposed amendment does not affect the right of Member States to provide for targeted checks to fight illegal immigration in their territory within the limits set out in Article 21, points a to c.

Article 32, Amendments to the Annexes

- Modification related to the power of the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

Article 33, Exercise of the delegation

- The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union has to be expressly delegated to the Commission. The proposal follows standard wording suggested in the draft Common Understanding of the European Parliament, of the Council and of the European Commission setting out a working method among the institutions on the implementation of Article 290. The wording may require further modification in order to take into account the results of the ongoing inter-institutional negotiations.

Article 34, Notification

- Paragraph 1: Clarification related to the amendments to Article 2(15). Given the legal effects which the Schengen Borders Code attaches to residence cards issued under Directive 2004/38/EC, this type of permits will have to be specifically highlighted as such.

Article 37, Notification of information by the Member States

- Alignment of reporting obligations, expressly obliging Member States to inform the Commission of all bilateral agreements authorised by the Schengen Borders Code.

Annex III

- Adaptation resulting from the amendment of Article 9(2) to allow for separate lanes for visa-free travellers.

Annex IV

- Paragraph 3: Technical adaptation. Given the standard size of the travel document (126 x 88 mm), visa sticker (105 x 74 mm) and entry/exit stamp (43 x 30 mm) it has become technically impossible to observe the rule that stamps should be affixed on the same page as the visa sticker without potentially affecting the legibility of the indications on the visa.

Annex VI

- New point 1.1.4.: To allow the conclusion of bilateral agreements between Member States and neighbouring third countries on cooperation in border control with joint border crossing points, an explicit legal framework is needed, also covering certain key issues such as the situation of persons requesting international protection. The proposed amendment allows Member States to conclude bilateral agreements (authorisation within the meaning of Article 2(1) TFEU), but does not oblige them to do so.

- Points 1.2.1. and 1.2.2.: For reasons of consistency, the rules for the conclusion of bilateral agreements on border checks in rail traffic are aligned with the legal framework proposed in point 1.1.4. for road traffic. Following the proposed change to Article 37, the last sentence of point 1.2.1. becomes redundant and should be deleted. Further flexibility on the place where checks may be carried out is provided for in line with practical needs.
- Point 3.1.1-3.1.5: Technical adaptations aligning the wording with terminology used in the FAL Convention (International Maritime Organisation's Convention on Facilitation of International Maritime Traffic) and Directive 2010/65/EU on reporting formalities for ships arriving in and/or departing from ports of the Member States¹, including introduction of the possibility to submit crew and passenger lists electronically; the introduction of a reference to information required by FAL Convention lists as endorsed by Directive 2002/6/EC; the possibility to submit lists via port authorities to border posts; deadlines for the transmission of lists; more specific guidance on administrative checking of the lists; and clarification on the need to check persons staying on board without disembarkation.
- Point 3.2.1: Adaptations resulting from modifications to point 3.1.
- Point 3.2.2.: Adaptation, in line with the changes proposed in point 3.1.4.
- Point 3.2.4.: In order to avoid overlap with point 3.1.2. as amended, point 3.2.4. should be deleted.
- Point 3.2.9.: The obligation to notify changes is already provided for in point 3.1.2. and does not need to be repeated in point 3.2.9.
- New point 3.2.10.(i): Clarification on the need to submit crew and passenger lists in the case of ferry connections, aligned with the provisions of the Maritime Safety Directive 98/41/EC.
- New point 3.2.11.: Clarification with regard to the regime applicable to ferries from a third country with more than one stop within the territory of the Member States, following the logic and wording of an existing parallel provision for air borders (point 2.1.2.(b) (iii)).

Annex VII

- Point 3.1.: Correction of an editorial mistake: most Member States have ratified the Seafarers Identity Documents Convention No C 108, while only three Member States have ratified the Seafarers Identity Documents Convention No C 185 (LT, HU, FR). Both Conventions should therefore be mentioned. Editorial improvement: ‘going ashore’ at a port implies not only entry but also the possibility to return to the ship (exit) once the stay ashore is finished.
- Deletion of the last sentence of points 3.1 and 3.2.: Point 3 deals with derogations to Article 4 and 7 only, *not* with derogations to Article 5. This text is thus misleading and should be deleted.

¹ Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC; OJ L 283, 29.10.2010, p.1

- Points 6.4. and 6.5.: A list of national contact points for consultation purposes on minors (currently established on a voluntary basis under section 3.7 and Annex 37 of the Schengen Handbook) now must be established and its use made obligatory.
- New point 7: See comment on Article 19(1)(g) above.
- New point 8: See comment on Article 19(1)(h) above.

Annex VIII

- Adaptation resulting from modification of Article 11.

Article 2 - Amendments to the Convention implementing the Schengen Agreement:

- Repeal Article 21(3): Given the notification obligations under Article 34 Schengen Borders Code, this provision has become redundant and needs to be repealed.
- Repeal Article 22: See comments on Article 21 (d) SBC above.
- Repeal of Article 136: The rules relating to border checks have been harmonised by EU law. This affects the power of Member States to conclude treaties in this field. The conclusion of bilateral agreements between a Member State and a third country on border checks without specific permission to do so in the Schengen Borders Code would affect EU law within the meaning of Article 3(2) TFEU and Article 2(1) TFEU. Article 136 of the Convention implementing the Schengen Agreement is incompatible with this principle. It should therefore be repealed.

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) and the Convention implementing the Schengen Agreement

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 Articles 77(1) and (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Union policy in the field of external borders aims for integrated management to ensure a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a fundamental component of an area of freedom, security and justice. To this end, common rules on standards and procedures for the control of external borders are 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 four years of practical application, the need for a number of amendments has emerged, based on the practical experiences of the Member States and the Commission in applying the Schengen Borders Code, including results from Schengen evaluations as well as reports and requests submitted by Member States.
- (4) The Commission report of September 2009 on the operation of the provisions on stamping of the travel documents of third-country nationals in accordance with Articles 10 and 11 of the Schengen Borders Code (COM(2009) 489) as well as the Commission report of 13 October 2010 on the application of Title III (Internal Borders) of the Schengen Borders Code (COM(2010) 554) contain concrete suggestions for technical amendments to the Schengen Borders Code.

² OJ L 105, 13.4.2006, p. 1.

- (5) Recently adopted 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.
- (6) In order to align the provisions of the Schengen Borders with the Treaty on the Functioning of the European Union (TFEU), the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union 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 in accordance with Article 32. 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 only be achieved at Union level, the European 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 this objective.
- (8) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and by the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*⁵, 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 Agreement⁶.
- (9) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement⁷.
- (10) As regards Liechtenstein, this Regulation constitutes a development of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the

³ OJ L 243, 15.9.2009, p. 1.

⁴ OJ L 348, 24.12.2008, p. 98.

⁵ OJ L 176, 10.7.1999, p. 36.

⁶ OJ L 176, 10.7.1999, p. 31.

⁷ OJ L 53, 27.2.2008, p. 1.

accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999, read in conjunction with Article 3 of Council Decision 2008/261/EC⁸.

- (11) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (12) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*⁹. 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 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*¹⁰. 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 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 and internal cargo connections;"
 - (b) in point 4 the words "regular ferry connection" is replaced by the words "regular internal ferry connection";
 - (c) the following point 4a is inserted:

⁸ OJ L 83, 26.3.2008, p. 5.

⁹ OJ L 131, 1.6.2000, p. 43.

¹⁰ OJ L 64, 7.3.2002, p. 20.

"4a 'internal cargo connection' means any cargo connection 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;"

- (d) in point 5 the phrase "persons enjoying the Community right of free movement" is replaced by the following "persons enjoying the right of free movement under Union law";
- (e) in point 5(a) the phrase "Article 17(1)" is replaced by the phrase "Article 20(1)";
- (f) in point 5(b) the word "Community" is replaced by the word "Union";
- (g) in point 6 the phrase "Article 17(1)" is replaced by the phrase "Article 20(1)";
- (h) Point 15 is replaced by the following:

“‘residence permit’ means:

- (a) all residence permits issued by the Member States according to the uniform format laid down by Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals and residence cards issued in accordance with Directive 2004/38/EC;
- (b) all other documents issued by a Member State to third-country nationals authorising a stay in its territory, that have been the subject of 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*

OJ L 105, 13.4.2006, p. 1–”;

- (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 following:

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

- (a) for individuals or groups of persons, where there is a requirement of a special nature for the occasional crossing of external borders outside border crossing

points or outside fixed opening hours, provided that they are in possession of the permits required by national law and that there is no conflict with the interests of public policy and the internal security of the Member States. Member States may make specific arrangements in bilateral agreements;

- (b) for individuals or groups of persons in the event of an unforeseen emergency situation."

(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 three months in any six-month period from the date of first entry in the territory of the Member States, the entry conditions for third-country nationals shall be the following:

- (a) they are in possession of a valid travel document or a document authorising them 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".

(b) paragraph 4 is amended as follows:

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

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

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

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

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

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".
- (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 written information 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 or long-stay visa 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. They shall decide whether to do so and at which border crossing points in accordance with practical needs."

(7) Article 10 is amended as follows:

(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:

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*.

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".

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

(9) Article 12(5) shall be 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 *."

* 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) in the first subparagraph, the following points (g) and (h) are added:

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

(h) offshore workers."

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

(14) In Article 21, point (d) is deleted.

(15) Article 32 shall be 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 shall be 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 delegation of power referred to in Articles 12(5) and 32 shall be conferred for an indeterminate period of time from X.X.2011. (Date of entry into force of this Regulation)
3. The delegation of powers referred to in Articles 12(5) and 32 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 12(5) and 32 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council."

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

"(a) the list of residence permits, distinguishing between those covered by point (a) of Article 2 point 15 and those covered by point (b) of Article 2 point 15 and accompanied by a specimen for permits covered by Article 2 point 15 (b). Residence cards issued in accordance with Directive 2004/38/EC shall be specifically highlighted as such."

(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), 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 are amended in accordance with the Annex to this Regulation.

Article 2

Amendment of the Convention implementing the Schengen Agreement

The Convention implementing the Schengen Agreement of 14 June 1985 is amended as follows:

- (1) Article 21 paragraph 3 is deleted;
- (2) Article 22 is deleted;

(3) Article 136 is deleted.

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*.

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 are 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".





- (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 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. Joint border crossing points

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

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

- (a) *International protection:* A third-country national asking for international protection on Member State territory shall be given access to relevant Member State procedures even if the third-country national has not yet passed exit control by third-country border guards present at the joint border crossing point.
- (b) *Arrest of a person or seizure of property:* If third-country border guards become aware of facts justifying the arrest or placing under protection of a person or seizure of property, they shall
- either inform Member State authorities of these facts and Member State authorities shall assure an appropriate follow-up in accordance with national, EU and international law, independently of the nationality of the concerned person,
 - or act in accordance with their national legislation. In this case the person concerned must, however, be offered access to Member States courts and dispose of remedies sufficient to ensure legal protection in the fields

covered by Union law in order to provide the legal protection which individuals derive from the rules of Union law and to ensure that those rules are fully effective.

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

1.1.4.3. *Joint border crossing points located on third-country territory:* Bilateral agreements establishing joint border crossing points located on third-country territory shall contain an authorisation for Member State border guards to exercise their tasks in the third country in accordance with the Schengen Borders Code and respecting the following principles:

- (a) *International protection:* A third-country national who has passed exit control by third-country border guards and subsequently asks Member State border guards present in the third country for international protection, shall be allowed access to the territory of the relevant Member State with a view to launching relevant procedures. Third-country authorities shall accept the transfer of the person concerned into Member State territory.
- (b) *Arrest of a person or seizure of property:* If Member State border guards become aware of facts justifying the arrest or placing under protection of a person or seizure of property, they shall act in accordance with their national and applicable Union legislation. Third-country authorities must accept a transfer of the concerned person or object into Member State territory.
- (c) *Third-country nationals entering their country of citizenship:* Member State border guards shall not prevent citizens of the third country concerned from entering their country of citizenship. If there are reasons justifying refusal of exit from the Member State under Member State legislation, Member State border guards shall inform third-country authorities of these reasons and third-country authorities shall assure an appropriate follow-up in accordance with national and international law.

1.1.4.4. Before concluding or amending any bilateral Agreement on joint border crossing points with a neighbouring third country, the Member State concerned shall consult the Commission as to the compatibility of the Agreement with this Regulation.

If the Commission considers the Agreement to be incompatible with this Regulation, 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 agreements on how to conduct those checks respecting the principles set out in point 1.1.4. Those checks shall be carried out in one of the following ways:

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

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

- in the stations in a third country where persons board the train,
- in the stations where persons disembark within the territory of the Member States,

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

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

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

"Member States may conclude bilateral agreements according to which checks may also be carried out during crossings or, upon the ship's arrival or departure, in the territory of a third country, respecting the principles set out in point 1.1.4.

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

"3.1.2. The master or any other person duly authorised by the operator of the ship (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 International Maritime Organization (IMO) Convention on Facilitation of International Maritime Traffic (FAL) form 5 (crew list) and 6 (passenger list) 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 relevant competent authority appointed by that Member State (border guards or port or other authorities, which shall forward it without delay to the border guards).

3.1.3. A confirmation of receipt shall be returned to the master, who shall produce it on request when the ship is in port.

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

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

By way of derogation from Articles 4 and 7, no systematic border checks shall be carried out on persons staying aboard. Nevertheless a physical inspection of the ship and personal checks of 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, within the time-limit set out in point 3.1.2."

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

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

(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, on the basis of an assessment of the risks related to internal security and illegal immigration, checks shall be carried out on the crew and passengers of those ships."

(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 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 passengers 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."

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

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

"By way of derogation from Articles 4 and 7, Member States may authorise seamen holding a seafarer's identity document issued in accordance with the International Labour Organization (ILO) Seafarers' Identity Documents Convention No 108 (1958) and No 185 (2003), the London Convention of 9 April 1965 and the relevant national law, to enter and exit 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 without presenting themselves at a border crossing point, on condition that they appear on the crew list, which has previously been submitted for checking by the competent authorities, of the ship to which they belong.

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

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

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

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

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

"7. Rescue services, police and fire brigades

The arrangements for the entry and exit of members of rescue services, police and fire brigades acting in emergency situations shall be laid down by national law and, where applicable, by bilateral agreements. These arrangements may provide for derogations from Articles 4, 5 and 7.

8. Offshore workers

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

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

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