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COMMISSION OF THE EUROPEAN COMMUNITIES

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the operation of the provisions on stamping of the travel documents of third-country
nationals in accordance with Articles 10 and 11 of Regulation (EC) No 562/2006
establishing a Community Code on the rules governing the movement of persons across
borders (Schengen Borders Code)**

1. INTRODUCTION

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, from now on SBC)¹ entered into force. The SBC confirmed the obligation on systematic stamping of the travel documents of third-country nationals on entry and exit, introduced by Council Regulation (EC) No 2133/2004². The Code also provides for a list of documents in which an entry or exit stamp shall be affixed, as well as documents which shall be exempt from stamping. Moreover, a possibility has been introduced for the competent national authorities to presume that a third-country national holding a travel document without bearing an entry stamp does not fulfil the conditions of duration of stay within the Member State concerned. The third-country national has a possibility to rebut this presumption. If he/she does not rebut, the person may be expelled from the territory of the Member States concerned.

On 6 November 2006, the Commission adopted its recommendation establishing a common "Practical Handbook for Border Guards"³ (PHBG) with specific guidelines for the stamping of travel documents (Part two, section I, point 4), and particularly the exemptions from stamping, situations where there is no more available space for stamping in the travel document, stamping of travel documents of third-country nationals subject to the visa obligation, etc.

Under the terms of Article 10, paragraph 6 of the SBC, *the Commission shall report to the European Parliament and the Council by the end of 2008 on the operation of the provisions on stamping travel documents.*

For this purpose, in August 2008 the Commission carried out a questionnaire addressed to Member States in order to obtain information on the implementation of the provisions on the stamping of travel documents of third-country nationals. Several reminders were necessary in order to receive the requested information. This report has been prepared on the basis of the answers provided by twenty-five Schengen Member States. Two Member States (Malta and Portugal) did not provide the requested information.⁴

2. MAIN ELEMENTS OF THE STAMPING REGIME

Firstly, the obligation to stamp systematically travel documents on entry and exit of third-country nationals coming for a short stay, not exceeding three months per six-month period within the Schengen area, has to be observed.

¹ OJ L 105 of 13.4.2006, p. 1

² Council Regulation (EC) No 2133/2004 of 13 December 2004 on the requirement for the competent authorities of the Member States to stamp systematically the travel documents of third-country nationals when they cross the external borders of the Member States, OJ L 369 of 16.12.2004, p.5

³ Commission Recommendation of 6 November 2006 establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons, C (2006) 5186 final

⁴ Given the fact that Switzerland applies the Schengen acquis since 12 December 2008 only, no request has been made to Switzerland on its experience on stamping.

It has to be reiterated that in the event of relaxation of border checks under Article 8 of the SBC, border guards continue to have the obligation to stamp the travel documents of third-country nationals both on entry and exit.

Article 10, paragraph 3 of the SBC introduces exemptions from systematic stamping, such as travel documents of Heads of State and dignitaries whose arrival has been officially announced in advance through diplomatic channels and other categories as listed in the aforementioned Article.

No entry or exit stamp shall be affixed to the travel documents of nationals of the EU, Norway, Iceland, Liechtenstein and Switzerland. Moreover, no stamp shall be affixed to documents of border residents under the local border traffic regime, in accordance with Article 6 of Regulation (EC) No 1931/2006⁵. Travel documents of third-country nationals and family members of EU citizens are also exempt from stamping on entry and exit when they present a residence card issued by a Member State under Article 10 of Directive 2004/38/EC⁶.

The practical arrangements for stamping are set out in Annex IV of the SBC on affixing stamps, introducing for instance common rules on stamping of travel documents of third-country nationals subject to visa obligation or the obligation for Member States to designate national contact points responsible for exchanging information on the security codes of the entry and exit stamps used at their border crossing points.

Article 10, paragraph 3, last indent of the SBC introduces the possibility of an exceptional dispense from stamping, at the request of a third-country national, in case that the stamping might cause serious difficulties for the person (such as problems of political character). In that case, entry or exit has to be recorded on a separate sheet and shall be given to the third-country national.

Article 11 of the SBC introduces a possible presumption of illegal stay of a third-country national found on the territory of a Schengen Member State or when exiting the Schengen area without bearing an entry stamp. In this situation, the third-country national may rebut the presumption by providing, by any means, credible evidence, such as transport tickets or hotel bills, proof of his/her presence outside the Schengen area, that he/she has respected the condition of a short stay in the Schengen zone. In such a case, the competent national authorities shall indicate in the travel document, in accordance with national law and practice, the date and the place of the crossing of the external border of one of the Member States.

Moreover, a form as introduced in Annex VIII of the SBC may be delivered to the third-country national. The form is delivered solely in the event when the third-country national proves that he/she respected the condition of the duration of the authorised short stay, although his/her travel document does not bear an entry stamp.

If the person fails to rebut the presumption of illegal stay, he/she may be expelled by the competent authorities from the territory of the Member States concerned.

⁵ Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States, OJ L 405 of 30.12.2006, p.1

⁶ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158 of 30.4.2004, p. 77

Member States have the obligation to inform each other, the Commission and the Council General Secretariat of their national practices with regard to the presumption of illegal stay and its rebuttal.

3. GENERAL INFORMATION ON THE APPLICATION OF THE PROVISIONS ON STAMPING OF THE TRAVEL DOCUMENTS OF THIRD-COUNTRY NATIONALS AND ENCOUNTERED DIFFICULTIES

In their replies, Member States declare performing full, correct and systematic stamping of the travel documents of third-country nationals on entry and exit. Member States declare that no major problems have occurred during the performance of this exercise. Thus, no specific problems related to long waiting times at the external borders or to stamping in the event that border checks are relaxed under Article 8 of the SBC have been reported.

The encountered difficulties, as described by the Member States, are of the following nature:

- *Missing entry stamps from other Member States;*

The Commission stresses that only the systematic stamping makes it possible to establish, with certainty, the date and place of the crossing of the external border and is therefore necessary for the verification of the respect of the length of the authorised stay of a third-country national within the Schengen area (see also infra point 5).

- *Reading difficulties, stamps being affixed incorrectly (e.g. over the visa sticker so that the machine readable zone of the visa is covered and therefore not possible to check by using optical readers), over previously affixed stamps, partially (a part of the stamp is missing), chaotically and not chronologically, in a not clear and straight manner (e.g. over the edge of passport or unreadable zones with not enough ink);*

In order to be able to determine easily and correctly the length of the stay of a third-country national in the Schengen territory, the Commission recalls that recommended practices on the affixing of the stamps are available, as provided in Point 4.6 of the PHBG, and particularly:

- Stamps should be affixed, if possible, in chronological manner to make it easier to find the date at which the person has crossed the border the last time;
- The exit stamp should be affixed in the proximity of the entry stamp;
- The stamp should be affixed in a horizontal position so that it can be easily read;
- No stamp should be affixed over already existing stamps, including those affixed by other countries.

Moreover, it has to be reminded that Annex IV, point 3 of the SBC establishes rules governing the stamping of travel documents containing visas. Thus, [...], *the stamp will, if possible, be affixed so that it covers the edge of the visa without affecting the legibility of the indications on the visa or the security features of the visa sticker. If several stamps must be affixed [...], this shall be done on the page facing the one on which the visa is affixed. If that page cannot be used, the stamp shall be entered on the following page. The machine readable zone shall not be stamped.*

- *No more room for affixing the stamp in the travel document - in particular for lorry drivers or trans-frontier commuting crossing the external border frequently – and a lack of EU regulation regarding this issue;*

When presenting the PHBG, the Commission was aware that it may happen that the document enabling a third-country national to cross the border is no longer suitable for affixing a stamp, as there are no longer empty pages. In such a case, the third-country national is recommended to apply for a new passport, so that stamps can continue to be affixed there in the future. If the passport with no more room for stamping contains a valid visa, a new visa should be requested and affixed to the new passport.

Some Member States asked whether Article 10, paragraph 3 which allows exceptionally a dispense from stamping if insertion of an entry or exit stamp might cause serious difficulties for the third-country national, is applicable in case a third-country national does not have empty pages for affixing a stamp in his/her travel document. The Commission is of the opinion that this provision is not applicable in this case as dispense shall be granted for the sole reason of difficulties (e.g. of political character) that the stamping might cause to the person. Nevertheless, according to the recommendations of the Commission as provided in the PHBG⁷, exceptionally, and particularly in the case of regular cross-border commuters, a separate sheet can be used, to which further stamps can be affixed. The sheet must be given to the third-country national and should contain the information listed in the PHBG. In any case, the lack of empty pages in a passport is not, in itself, a valid and sufficient ground to refuse the entry of a person.

Certain Member States declare using such separate sheets for affixing the entry or exit stamps upon request of third-country nationals, particularly lorry drivers frequently crossing the external border. Attention should also be drawn to the trans-border commuters who are not eligible for the local border traffic permit. It is worth underlining that Hungary and Slovenia stamp separate sheets which accompany a Croatian identity card; those two Member States accept this on the basis of their bilateral agreements from 1997. According to the information provided by Slovenia, statistically, less than 0.5% of the lorry drivers ask for stamping on separate sheets yearly. The reason mentioned by third-country nationals when introducing this request is mainly the high costs of a new passport. In some cases, third-country nationals want to keep one blank page for a future visa or a residence permit.

The Commission is of the opinion that the above described cases should not be considered as a dispense from stamping as they do not fall within the application of Article 10, paragraph 3, last indent of the SBC.

- *Lack of a more unified procedure concerning the stamping of travel documents of third-country nationals travelling with children;*

The International Civil Aviation Organisation issued a number of recommendations of a not binding character, including the application of the principle of *"one person – one passport"*. This principle was endorsed at Community level⁸. If applied by third-countries, the principle

⁷ Point 4.5 of the PHBG.

⁸ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385 of 29.12.2004, p.1. All Member States apply this principle, except Austria and the Netherlands.

would allow the application of provisions on stamping of travel documents for each person respectively.

- *Questioning of the necessity of stamping the travel documents of third-country nationals who are in possession of a valid residence permit issued by a Schengen Member State.*

The Commission is of the opinion that travel documents of third-country nationals who are in possession of a valid residence permit issued by a Schengen Member State should not be stamped. The purpose of stamping a passport serves to establish whether a third country national respected the authorised length of a short stay within the Schengen area. This logic cannot be applied to third country nationals holding a valid residence permit, as the allowed period of stay in the Schengen Member State which issued the permit is determined by the validity of the residence permit. Stamping of the passport upon exit and re-entry cannot affect the length of stay authorised by the residence permit issued by a Schengen Member State. The verification of the respect of the length of the stay by persons holding a residence permit, involving the crossing of external borders and travelling to other Schengen Member States needs to rely on the reporting of the presence within another Schengen Member State in accordance with Article 22 of the Schengen Convention⁹. This instrument might not allow calculating the length of the stay as easily as checking stamps. However, this is a consequence of the establishment of an area without internal border control. It needs to be underlined that up to now, the Commission has not received any information on third-country nationals, holders of a residence permit issued by a Schengen Member State, abusing their right to travel in view of staying in another Member State for more than three months.

4. INFORMATION ON THIRD-COUNTRY NATIONALS DISPENSED FROM STAMPING (ARTICLE 10, PARAGRAPH 3) AND CASES OF EXEMPTION FROM STAMPING

Most of the Member States do not collect statistical data concerning the number of requests from third-country nationals to be dispensed from the stamping obligation or do not register such requests at all. Some Member States declare only a few requests from third-country nationals, which are considered individually.

Moreover, questions have been raised related to the stamping of travel documents and to the calculation of periods of stay of third-country nationals - family members of Union citizens - travelling with a residence card under Article 10 of Directive 2004/38/EC.

The Commission recalls that third-country nationals, family members of Union citizens, are exempt from stamping on entry and exit when travelling with a residence card issued by Member States under Article 10 of Directive 2004/38/EC, accompanying Union citizens who exercise the right of free movement or residence. On the contrary, a third-country national, family member of a Union citizen, is not dispensed from stamping when travelling alone or when the person, accompanying a Union citizen, does not present the aforementioned residence card (e.g. the person lives with an EU citizen outside the EU and does not hold the residence card).

It is not possible to avoid situations where a third-country national, family member of a Union citizen, combines travels where he/she accompanies or joins the EU citizen exercising his/her

⁹ OJ L 239 of 22.9.2000, p.19.

right of free movement and where the third-country national travels alone. The Commission is of the opinion that this situation might be confusing but does not really cause problems; when travelling alone a third-country national can not exceed the maximum duration of stay, i.e. three months, within the Schengen area. In case when a third-country national accompanies a Union citizen, the length of the authorised stay of a third-country national is not limited to three months per six-month period.

Finally, some Member States suggest completing the list of categories of persons whose travel documents should not be stamped with the crew of international connection passengers and goods trains. The Commission is favourable to this suggestion and will initiate an exception from stamping for train crews in relation with their professional activity comparable to pilots or seamen, as the trains follow a fixed schedule.

5. INFORMATION ON THIRD-COUNTRY NATIONALS FOUND WITHIN THE TERRITORY OF A MEMBER STATE OR WHEN EXITING THE SCHENGEN AREA WITHOUT BEARING AN ENTRY STAMP IN THE TRAVEL DOCUMENT WITH A REBUTTED OR NON-REBUTTED PRESUMPTION OF ILLEGAL STAY (ARTICLE 11)

A considerable number of Member States do not collect statistical data on the number of third-country nationals found on the territory of Member States or when exiting the Schengen area without bearing an entry stamp or on the number of persons being able to rebut or not to rebut the presumption of illegal stay in particular.

Some Member States (Slovenia, Belgium, Hungary, Romania, Italy and Estonia) provided exact statistical data with charts indicating the exact number of third-country nationals, places and dates of their entry into the Schengen area. Other Member States provided only general information on a significant or a low number of third-country nationals found without bearing an entry stamp in their travel document.

Article 11, paragraph 1 of the SBC introduces a possibility for competent national authorities to presume that the holder of a travel document not bearing an entry stamp does not fulfil the conditions of duration of stay applicable within the Member State concerned. Nevertheless, it is not clear from their replies if Member States' authorities always invoke the presumption of illegal stay when the entry stamp is missing in the passport of a third-country national.

Most of the Member States declare using the form of Annex VIII SBC upon approval of the evidence regarding the respect of the condition of the duration of the authorised short stay in cases where the travel document does not bear an entry stamp. Some Member States (Germany, France, Slovenia and Denmark) declare not to use the form but to stamp the travel document of the third-country national with a correction stamp mentioning the date and the place of entry into the Schengen area. Some Member States declare using the two tools (the form and the stamp).

Hungary declared having developed the national Border Registration System registering all third-country nationals entering or exiting through its external borders. The information may be used to rebut the presumption of illegal stay if the person entered the Schengen area in Hungary. Bulgaria describes a similar Automatic Information System "Border Control" and Romania a similar entry/exit database.

Most of the Member States declare that they do not collect any statistical information or to maintain any databases on the number of third-country nationals who could not rebut the presumption of illegal stay. Some Member States declare that there is no possibility to establish a distinction between persons expelled for non-rebuttal of the presumption of illegal stay or for other reasons. Most Member States specifically mention to have settled national procedures for the expulsion of illegal immigrants. Member States, who provided for concrete information on the number of returned third-country nationals (Estonia, Latvia, Slovenia, Netherlands and Lithuania), informed that in all cases, persons have been removed or expelled from the Schengen area.

6. OTHER INFORMATION RELATED TO THE APPLICATION OF THE PROVISIONS OF ARTICLES 10 AND 11

Greece informed about the introduction of automatic and daily change of the security code number of the entry and exit stamps through an electronic application that will be developed for this purpose.

Recently, a question has been raised by Poland in the Council Working Party on Frontiers on how to stamp travel documents when two or more Schengen visas "type C" of a parent and a child are placed in the parent's passport. Based on the information available from Member States, it can be observed that the procedural practice in these cases differs among the Member States, e.g. indicating the number of persons next to the stamp or the name of the child. The SBC does not contain any specific provision on the procedure in this case. The Commission is of the opinion that in principle, each visa sticker placed in the passport should be systematically stamped on entry and exit in accordance with Article 10 and Annex IV, point 3 of the SBC. Difficulties of identifying which stamp corresponds to the entry of which person could arise in case of a multiple entry visa and frequent travels of both persons. However, since there is no information available from Member States on the frequency of these cases occurring at the external borders and on practical difficulties encountered, the Commission does not consider appropriate to envisage any harmonisation of the procedures on stamping of travel documents in the above described cases.

The Commission would like to raise the question of stamping of the travel documents in case of temporary reintroduction of border control at internal borders pursuant to Article 23 and following of the SBC. Under Article 28, *where border control at internal borders is reintroduced, the relevant provisions of Title II shall apply mutatis mutandis*. Thus, certain relevant provisions related to external border control such as border checks on persons or refusal of entry will apply. However, stamping at the common borders between Schengen Member States should not be carried out, as the person remains within the Schengen area. The fact that internal border controls are temporarily reintroduced cannot affect the length of authorised stay of a third-country national within the Schengen area. Stamping would be misleading, as a second entry stamp would be placed without an exit having taken place. Therefore, the Commission is of the opinion that Article 10 is not applicable during a temporary reintroduction of border control at internal borders.

7. CONCLUSIONS

Based on the information provided, the Commission draws the following conclusions:

- (1) The current Community legislation provides for an obligation to systematically stamp travel documents of third-country nationals on entry and exit. The SBC provides for a list of documents in which an entry or exit stamp shall be affixed and documents which shall be exempt from stamping. Moreover, a possibility for the national authorities to presume that a person does not fulfil the conditions of duration of stay within the Member State concerned if his/her travel document does not bear an entry stamp has been introduced, as well as the possibility for the third-country national to rebut this presumption. According to Article 10, paragraph 6 of the SBC, the Commission shall report to the European Parliament and the Council by the end of 2008 on the operation of the provisions on stamping travel documents. The Commission regrets that it was not possible to respect this deadline. This delay is due to the late submission of information by several Member States.
- (2) The Commission underlines, as also stressed by a significant number of Member States, the necessity to strictly respect the rules for systematic, chronological and correct stamping as established by the SBC and the PHBG. The respect of these rules facilitates the correct performance of border checks and contributes to the reduction of waiting times at the external borders of the EU.
- (3) The Commission recalls that the common rules related to the stamping of travel documents of third-country nationals bearing a visa sticker are settled in Annex IV, point 3 of the SBC.
- (4) The Commission underlines that travel documents of third-country nationals who are in possession of a valid residence permit of a Schengen Member State are exempted from the stamping obligation on entry and exit.
- (5) The Commission considers that Article 10 of the SBC is not applicable during a temporary reintroduction of border control at internal borders pursuant to Article 23 and following of the SBC.
- (6) The Commission acknowledges the difficulties encountered by third-country nationals crossing the border frequently, such as lorry drivers or trans-frontiers commuters. However, difficulties of empty pages for stamping could be overcome only with an automated system of registering entry and exit which would render stamping superfluous. The Commission does not see a need to exempt lorry drivers from stamping in particular in the light of concerns expressed by Member States on the risk of illegal immigration and employment.
- (7) The Commission is of the opinion that there is no need to consider additional exemptions from stamping, except for train crews in relation with their professional activity comparable to pilots or seamen, as these trains follow a fixed schedule. The Commission will initiate measures to foresee an exemption from stamping for this category of persons.
- (8) According to the replies, an important number of Member States do not collect statistical data related to the number of third-country nationals found on their territory or when exiting the Schengen area without bearing an entry stamp, and to those third-country nationals who were able (or not) to rebut the presumption of the illegal stay. The Commission invites Member States to collect this information and to make this

data available in order to be able to better analyse the functioning of the provisions on stamping.

- (9) Finally, a number of Member States did not fulfil yet their obligation under Article 11, last indent, to inform each other and the Commission and the Council General Secretariat of their national practices with regard to the presumption of illegal stay and its rebuttal referred to in Article 11. The Commission invites those Member States to do so until one month after the adoption of the report.