

External and internal borders: rules on movement of persons across borders (Schengen Borders Code)

2011/0051(COD) - 10/03/2011 - Legislative proposal

PURPOSE: to amend [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 to take account of the experience gained since the entry into force of these legal instruments.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: on 13 October 2006, 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) 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](#) 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 and [Commission report](#) on the application of Title III (Internal Borders) of the Schengen Borders Code;
- consistency considerations linked to other recently adopted legislation, in particular the [Visa Code](#) (Regulation (EC) No 810/2009) and the [Return Directive](#) (Directive 2008/115/EC).

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.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 77(1) and 77(2) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT:

The main proposed amendments concern the following issues:

Definitions: the proposal provides a 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*, 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.

The definition of residence permit is also 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).

Duration of the validity of certain travel documents: a clarification is made 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.

Creating separate lanes for certain travellers: the proposal foresees the 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.

Stamping of the travel documents of third-country nationals: the situation of train crews on international connections is comparable to pilots or seamen as these trains follow a fixed schedule. The Commission already announced that it would introduce an exemption from stamping for this category of persons.

Border guard training: the proposal provides measures to improve training of border guards in order to detect situations of particular vulnerability involving unaccompanied minors and victims of trafficking (Article 15).

Rescue services: 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. In addition, 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.

Checks within the territory: 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 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.

Delegated acts: 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** as well as amendments to the annexes.

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

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.

Amendments to the Annexes: a number of technical amendments have been made to the Annexes.

Repealing certain articles of the Convention: 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

It should be noted that throughout the text, a certain number of changes resulting from the entry into force of the Lisbon Treaty are proposed ('EU' instead of 'EC').

BUDGETARY IMPLICATIONS: this proposal has no implications for the EU budget.