

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

2011/0051(COD) - 12/06/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 506 votes to 121, with 55 abstentions, a legislative resolution on the 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 adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and the Council. They amend the proposal as follows:

Title: the draft Regulation should relate not only the amendment of Regulation (EC) No 562/2006 but also the Convention implementing then Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2998 and (EC) No 810/2009 of the European Parliament and of the Council concerning visa policy.

Legal basis: the legal base would be Article 77(2) of the Treaty on the Functioning of the European Union (TFEU) instead of Article 77(1) and (2) of the TFEU.

Enhancing free movement within the Schengen area while improving border controls: it is recalled that the free movement of persons within the Schengen area was one of Europe's greatest achievements. Freedom of movement is a fundamental right, the conditions for the exercise of which are laid down in the Treaty. A necessary corollary of this frontier-free area is the integrated management of external borders ensuring a uniform and high level of control and surveillance. This management is based on common rules on standards and procedures for the control of external borders should be established, taking into account the **specific and disproportionate pressures faced by some Member States** at their external borders. The rules set shall be governed by the principle of **solidarity** between Member States.

Moreover, the abolition of **internal border** controls requires full mutual trust between Member States in their capacity to fully implement the accompanying measures allowing those controls to be lifted.

Definitions: the following aspects are defined:

- **“shared border-crossing point”** means any border crossing point situated either on the territory of a Member State or on the territory of a third country, at which Member State border guards and third-country border guards carry out exit and entry checks one after another;
- **“offshore worker”** means a person working on an offshore installation located in the territorial waters or in an area of exclusive maritime economic exploitation of the Member States as defined by international maritime law, and who returns regularly by sea or air to the territory of the Member States.

Amendments to technical rules: a number of cross-cutting technical measures have been provided for in the text. Of these, the amendments relating to the **calculation of the authorised length of short-term stay visas** deserve mention: the phrase stating validity was of “three months in any six-month period”, has been replaced by “**90 days in any 180-day period**”.

Other technical measures regarding the stamping of travel documents:

- exceptionally, at the request of a third-country national, the insertion of an entry or exit stamp may be dispensed with if insertion might cause serious difficulties for that person. In that case, entry or exit shall be recorded on a separate sheet indicating that person’s name and passport number. That sheet shall be given to the third-country national.
- technical measures relating to checking procedures on maritime traffic (on ships, or in port of arrival or departure) have also been amended.

Respect for fundamental rights: when applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union, the Geneva Convention, obligations related to access to international protection, in particular the principle of *non-refoulement*; and fundamental rights.

In this respect, border guards shall, in the performance of their duties, fully respect human dignity, in particular in cases involving vulnerable persons.

Delegated acts: lastly, amendments were made to the provisions regarding amendments to the annexes by means of delegated acts. The power to adopt delegated acts is conferred on the Commission. The delegation of powers may be revoked at any time by the European Parliament or by the Council.

A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.