



Statewatch analysis:

Amending the EU's Borders Code

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Introduction

The basic rules concerning the control of the EU's external borders are set out in the Schengen borders Code (the 'Code'), which replaced a number of prior measures, including the 'Common Manual' for border guards drawn up to implement the Schengen Convention. In 2011, the Commission proposed two separate sets of amendments to the Code (the '2011 proposals'). The first set of amendments would make a number of largely technical changes to the rules, while the second addresses the controversial issue of the potential re-imposition of internal border controls. A third set of proposed amendments, concerning the creation of an 'entry-exit system' which would provide for the registration of the entry and departure of every visiting third-country national, is due to be proposed in September 2012, but the content of this proposal is not yet known.

This analysis examines the current state-of-play of the negotiation of the 2011 proposals, and indicates their possible impact.

Background

The Borders Code has already been amended on four occasions, by:

- (a) Reg. 296/2008 (OJ 2008 L 97/60), which amended the rules in the Code regarding "comitology" (Arts. 12, 32 and 33);
- (b) Reg. 81/2009 (OJ 2009 L 35/56), regarding the use of the Visa Information System at borders, which amended Art. 7(3) of the Code;
- (c) Reg. 810/2009 (OJ 2009 L 234/1), the EU's visa code, which amended Annex V of the borders code (see Art. 55 of the visa code); and
- (d) Reg. 265/2010 on long-stay visas (OJ 2010 L 85/1), which amended Arts. 5(1)(b) and 5(4)(a) of the Code.

However, the 2011 proposals would have a much bigger impact on the text of the Code. Between them, these proposals would amend nearly every provision of the Code, and add a number of new provisions.

In June 2012, the European Parliament (EP) and the Council (the Member States' home affairs ministers), which have joint decision-making power as regards both proposals, agreed on the first 2011 proposal (the technical amendments). However, the EP will not vote to approve this measure until the EP and the Council have agreed on a dispute concerning the 'legal base' of a separate proposal concerning Schengen evaluation.

As for the second 2011 proposal (concerning the re-imposition of border controls), the JHA Council defined its negotiating position in June 2012. The relevant EP committee also adopted a report on this proposal, but will not take further steps until the settlement of the dispute concerning the related proposal on Schengen evaluation.

As regards the second proposal, the Commission had proposed to give itself the power to decide upon the re-imposition of internal border controls in future in most cases (currently, it is up to each individual Member State to decide on this). However, the Council text retains the (sole) power for Member States to act individually, although such powers would be modestly clarified and restrained as compared to the current rules. The proposal also introduces a new possibility for the re-imposition of internal border controls as regards a Member State, if there are 'persistent serious difficulties or deficiencies' detected in that Member State's control of external borders. Here again, though, the Council draft would leave it up to Member States individually (although presumably acting collectively) to decide on the reimposition of internal border controls, although in this case the Council, possibly acting on a proposal from the Commission, would have the power to adopt recommendations.

Impact of the proposals

In order to demonstrate the impact of the 2011 proposals, the Annex to this analysis sets out the current text of the Borders Code (as amended up until 2010), except for its Annexes, with the changes that the 2011 proposals would make indicated in bold and italics (for added text) or brackets and strikethrough (for deleted text). The text which is bold, italics and underline has been added at the behest of the EP.

The amendments shown are those resulting from the agreed EP/Council text of the first 2011 proposal (technical amendments) and the agreed Council text of the second 2011 proposal (re-imposition of internal border controls). The second measure must still be negotiated with the EP, so its final text is likely to differ from the text presented here. The second 2011 proposal is the source of the proposed new Articles 19A, 23A, 26A and 33A, and the

amendments to Articles 23, 24, 25, 26, 27, 29 and 30. The first 2011 proposal is the source of all other amendments.

Sources

Proposal regarding internal border checks - Commission proposal:

http://ec.europa.eu/home-affairs/doc_centre/borders/docs/schengen/560%20en.pdf

Proposal regarding internal border checks - agreed Council text:

<http://register.consilium.europa.eu/pdf/en/12/st06/st06161-re04.en12.pdf>

Proposal regarding technical amendments to borders code - Commission proposal:

<http://www.statewatch.org/news/2011/mar/eu-com-prop-schengen-borders-com-118-11.pdf>

Proposal regarding technical amendments to borders code - latest EP/Council version:

<http://register.consilium.europa.eu/pdf/en/12/st11/st11463.en12.pdf>

Annex

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)

(OJ L 105, 13.4.2006, p. 1)

[original footnotes omitted]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62(1) and (2)(a) thereof,

Having regard to the proposal from the Commission,

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

Whereas:

(1) The adoption of measures under Article 62(1) of the Treaty with a view to ensuring the absence of any controls on persons crossing internal borders forms part of the Union's objective of establishing an area without internal

borders in which the free movement of persons is ensured, as set out in Article 14 of the Treaty.

(2) In accordance with Article 61 of the Treaty, the creation of an area in which persons may move freely is to be flanked by other measures. The common policy on the crossing of external borders, as provided for by Article 62(2) of the Treaty, is such a measure.

(3) The adoption of common measures on the crossing of internal borders by persons and border control at external borders should reflect the Schengen *acquis* incorporated in the European Union framework, and in particular the relevant provisions of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders and the Common Manual.

(4) As regards border control at external borders, the establishment of a 'common corpus' of legislation, particularly via consolidation and development of the *acquis*, is one of the fundamental components of the common policy on the management of the external borders, as defined in the Commission Communication of 7 May 2002 'Towards integrated management of the external borders of the Member States of the European Union'. This objective was included in the 'Plan for the management of the external borders of the Member States of the European Union', approved by the Council on 13 June 2002 and endorsed by the Seville European Council on 21 and 22 June 2002 and by the Thessaloniki European Council on 19 and 20 June 2003.

(5) The definition of common rules on the movement of persons across borders neither calls into question nor affects the rights of free movement enjoyed by Union citizens and members of their families and by third-country nationals and members of their families who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens.

(6) Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.

(7) Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.

(8) Border control comprises not only checks on persons at border crossing points and surveillance between these border crossing points, but also an

analysis of the risks for internal security and analysis of the threats that may affect the security of external borders. It is therefore necessary to lay down the conditions, criteria and detailed rules governing checks at border crossing points and surveillance.

(9) Provision should be made for relaxing checks at external borders in the event of exceptional and unforeseeable circumstances in order to avoid excessive waiting time at borders crossing-points. The systematic stamping of the documents of third-country nationals remains an obligation in the event of border checks being relaxed. Stamping makes it possible to establish, with certainty, the date on which, and where, the border was crossed, without establishing in all cases that all required travel document control measures have been carried out.

(10) In order to reduce the waiting times of persons enjoying the Community right of free movement, separate lanes, indicated by uniform signs in all Member States, should, where circumstances allow, be provided at border crossing points. Separate lanes should be provided in international airports. Where it is deemed appropriate and if local circumstances so allow, Member States should consider installing separate lanes at sea and land border crossing points.

(11) Member States should ensure that control procedures at external borders do not constitute a major barrier to trade and social and cultural interchange. To that end, they should deploy appropriate numbers of staff and resources.

(12) Member States should designate the national service or services responsible for border-control tasks in accordance with their national law. Where more than one service is responsible in the same Member State, there should be close and constant cooperation between them.

(13) Operational cooperation and assistance between Member States in relation to border control should be managed and coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States established by Regulation (EC) No 2007/2004.

(14) This Regulation is without prejudice to checks carried out under general police powers and security checks on persons identical to those carried out for domestic flights, to the possibilities for Member States to carry out exceptional checks on baggage in accordance with Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing, and to national law on carrying travel or identity documents or to the requirement that persons notify the authorities of their presence on the territory of the Member State in question.

(15) Member States should also have the possibility of temporarily reintroducing border control at internal borders in the event of a serious threat to their public policy or internal security. The conditions and procedures for doing so should be laid down, so as to ensure that any such measure is exceptional and that the principle of proportionality is respected. The scope and duration of any temporary reintroduction of border control at internal borders should be restricted to the bare minimum needed to respond to that threat.

(16) In an area where persons may move freely, the reintroduction of border control at internal borders should remain an exception. Border control should not be carried out or formalities imposed solely because such a border is crossed.

(17) Provision should be made for a procedure enabling the Commission to adapt certain detailed practical rules governing border control. In such cases, the measures needed to implement this Regulation should be taken pursuant to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(18) Provision should also be made for a procedure enabling the Member States to notify the Commission of changes to other detailed practical rules governing border control.

(19) Since the objective of this Regulation, namely the establishment of rules applicable to the movement of persons across borders cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(20) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the Member States' obligations as regards international protection and non-refoulement.

(21) By way of derogation from Article 299 of the Treaty, the only territories of France and the Netherlands to which this Regulation applies are those in Europe. It does not affect the specific arrangements applied in Ceuta and Melilla, as defined in the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985.

(22) In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its

application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law or not.

(23) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter'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 on certain arrangements for the application of that Agreement.

(24) An arrangement has to be made to allow representatives of Iceland and Norway to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchanges of Letters between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning committees which assist the European Commission in the exercise of its executive powers, annexed to the abovementioned Agreement.

(25) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation 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 4(1) of Council Decisions 2004/849/EC and 2004/860/EC.

(26) An arrangement has to be made to allow representatives of Switzerland to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchange of Letters between the Community and Switzerland, annexed to the abovementioned Agreement.

(27) 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*. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(28) 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*. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(29) In this Regulation, the first sentence of Article 1, Article 5(4)(a), Title III and the provisions of Title II and the annexes thereto referring to the Schengen Information System (SIS) constitute provisions building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession,

HAVE ADOPTED THIS REGULATION:

TITLE I GENERAL PROVISIONS

Article 1 Subject matter and principles

This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the European Union.

It establishes rules governing border control of persons crossing the external borders of the Member States of the European Union.

Article 2 Definitions

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

1. 'internal borders' means:

(a) the common land borders, including river and lake borders, of the Member States;

(b) the airports of the Member States for internal flights;

(c) sea, river and lake ports of the Member States for regular *internal* ferry connections;

2. 'external borders' means the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders;

3. 'internal flight' means any flight exclusively to or from the territories of the Member States and not landing in the territory of a third country;

4. 'regular *internal* ferry connection' means any ferry 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 and consisting of the transport of passengers and vehicles according to a published timetable;

5. 'persons enjoying the [Community] right of free movement *under Union law*' means:

(a) Union citizens within the meaning of Article [17]20(1) of the Treaty, and third-country nationals who are members of the family of a Union citizen exercising his or her right to free movement to whom Directive 2004/38/EC of 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 applies;

(b) third-country nationals and their family members, whatever their nationality, who, under agreements between the [Community] *Union* and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens;

6. 'third-country national' means any person who is not a Union citizen within the meaning of Article [17]20(1) of the Treaty and who is not covered by point 5 of this Article;

7. 'persons for whom an alert has been issued for the purposes of refusing entry' means any third-country national for whom an alert has been issued in the Schengen Information System (SIS) in accordance with and for the purposes laid down in Article 96 of the Schengen Convention;

8. 'border crossing point' means any crossing-point authorised by the competent authorities for the crossing of external borders;

8a 'shared border crossing point' means any border crossing point situated either on Member State territory or on third-country territory, at which Member State border guards and third-country border guards carry out the Member State and the border guards of the third country carry out exit and entry checks one after another in accordance with their own legislation and pursuant to a bilateral agreement;

9. 'border control' means the activity carried out at a border, in accordance with and for the purposes of this Regulation, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;

10. 'border checks' means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States or authorised to leave it;

11. 'border surveillance' means the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks;

12. 'second line check' means a further check which may be carried out in a special location away from the location at which all persons are checked (first line);

13. 'border guard' means any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out, in accordance with this Regulation and national law, border control tasks;

14. 'carrier' means any natural or legal person whose profession it is to provide transport of persons;

15. '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~~[, or re-entry into,]~~ its territory, *that have been subject to 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 of 29 May 1995 laying down a uniform format for visas*

16. 'cruise ship' means a ship which follows a given itinerary in accordance with a predetermined programme, which includes a programme of tourist activities in the various ports, and which normally neither takes passengers on nor allows passengers to disembark during the voyage;

17. 'pleasure boating' means the use of pleasure boats for sporting or tourism purposes;

18. 'coastal fisheries' means fishing carried out with the aid of vessels which return every day or within 36 hours to a port situated in the territory of a Member State without calling at a port situated in a third country;

18a. '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;

19. 'threat to public health' means any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States.

Article 3 *Scope*

This Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:

(a) the rights of persons enjoying the ~~Community~~ right of free movement under Union law;

(b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.

Article 3a *Fundamental Rights*

When applying this Regulation, Member States shall act in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union ("the Charter of Fundamental Rights"); the relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 ("the Geneva Convention"); obligations related to access to international protection, in particular the principle of non-refoulement; and fundamental rights. According to general principles of EU law, decisions taken under this Regulation should be adopted on an individual basis.

TITLE II
EXTERNAL BORDERS

CHAPTER I
Crossing of external borders and conditions for entry

Article 4
Crossing of external borders

1. External borders may be crossed only at border crossing points and during the fixed opening hours. The opening hours shall be clearly indicated at border crossing points which are not open 24 hours a day.

Member States shall notify the list of their border crossing points to the Commission in accordance with Article 34.

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

~~[(a) in connection with pleasure boating or coastal fishing;~~

~~[(b) for seamen going ashore to stay in the area of the port where their ships call or in the adjacent municipalities;]~~

~~[(c)]~~ (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. General exceptions provided for by national law and bilateral agreements shall be notified to the Commission pursuant to Article 34;*

~~[(d)]~~ (b) for individuals or groups of persons in the event of an unforeseen emergency situation.

(c) in accordance with the specific rules set out by Articles 18 and 19 in conjunction with Annexes VI and VII

3. Without prejudice to the exceptions provided for in paragraph 2 or to their international protection obligations, Member States shall introduce penalties, in accordance with their national law, for the unauthorised crossing of external borders at places other than border crossing points or at times other than the fixed opening hours. These penalties shall be effective, proportionate and dissuasive.

Article 5
Entry conditions for third-country nationals

1. For *intended stays in the territory of the Member States of [not exceeding three months per six month] a duration of no more than 90 days in any 180 day period, which entails considering the last 180-day period at each day of stay*, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document [~~or documents authorising them~~] *entitling the holder 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) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, except where they hold a valid residence permit or a valid long-stay visa;

(c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;

(e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.

1a. For the purposes of implementing paragraph 1, the day of entry shall be calculated as the first day of stay in the territory of the Member States and the day of exit shall be calculated as the last day of stay in the territory of the Member States. Periods of stay authorised under a national long-stay visa or residence permit shall not be taken into account.

2. A non-exhaustive list of supporting documents which the border guard may request from the third-country national in order to verify the fulfilment of the conditions set out in paragraph 1, point c, is included in Annex I.

3. Means of subsistence shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the

Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed.

Reference amounts set by the Member States shall be notified to the Commission in accordance with Article 34.

The assessment of sufficient means of subsistence may be based on the cash, travellers' cheques and credit cards in the third-country national's possession. Declarations of sponsorship, where such declarations are provided for by national law and letters of guarantee from hosts, as defined by national law, where the third-country national is staying with a host, may also constitute evidence of sufficient means of subsistence.

4. By way of derogation from paragraph 1:

a) third-country nationals who do not fulfil all the conditions laid down in paragraph 1 but who hold a residence permit^[7] *or* a long-stay visa [~~or a re-entry visa issued by one of the Member States or, where required, a residence permit or a long stay visa and a re-entry 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^[7] *or* long-stay visa [~~or re-entry 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;

(b) 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 [~~Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit~~] *Articles 35 and 36 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas**.

~~[Visas issued at the border shall be recorded on a list.]~~

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

If it is not possible to affix a visa in the document, it shall, exceptionally, be affixed on a separate sheet inserted in the document. In such a case, the uniform format for forms for affixing the visa, laid down by Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form, shall be used;

(c) third-country nationals who do not fulfil one or more of the conditions laid down in paragraph 1 may be authorised by a Member State to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations.

Where the third-country national concerned is the subject of an alert as referred to in paragraph 1(d), the Member State authorising him or her to enter its territory shall inform the other Member States accordingly.

CHAPTER II *Control of external borders and refusal of entry*

Article 6 **Conduct of border checks**

1. Border guards shall, in the performance of their duties, fully respect human dignity, *including in cases involving vulnerable persons*.

Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.

2. While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 7 **Border checks on persons**

1. Cross-border movement at external borders shall be subject to checks by border guards. Checks shall be carried out in accordance with this chapter.

The checks may also cover the means of transport and objects in the possession of the persons crossing the border. The law of the Member State concerned shall apply to any searches which are carried out.

2. All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border and of the presence of signs of falsification or counterfeiting.

The minimum check referred to in the first subparagraph shall be the rule for persons enjoying the [Community] right of free movement *under Union law*.

However, on a non-systematic basis, when carrying out minimum checks on persons enjoying the [Community] right of free movement *under Union law*,

border guards may consult national and European databases in order to ensure that such persons do not represent a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to the public health.

The consequences of such consultations shall not jeopardise the right of entry of persons enjoying the [Community] right of free movement *under Union law* into the territory of the Member State concerned as laid down in Directive 2004/38/EC.

3. On entry and exit, third-country nationals shall be subject to thorough checks.

(a) thorough checks on entry shall comprise verification of the conditions governing entry laid down in Article 5(1) and, where applicable, of documents authorising residence and the pursuit of a professional activity. This shall include a detailed examination covering the following aspects:

(i) verification that the third-country national is in possession of a document which is valid for crossing the border and which has not expired, and that the document is accompanied, where applicable, by the requisite visa or residence permit;

(ii) thorough scrutiny of the travel document for signs of falsification or counterfeiting;

(iii) examination of the entry and exit stamps on the travel document of the third-country national concerned, in order to verify, by comparing the dates of entry and exit, that the person has not already exceeded the maximum duration of authorised stay in the territory of the Member States;

(iv) verification regarding the point of departure and the destination of the third-country national concerned and the purpose of the intended stay, checking if necessary, the corresponding supporting documents;

(v) verification that the third-country national concerned has sufficient means of subsistence for the duration and purpose of the intended stay, for his or her return to the country of origin or transit to a third country into which he or she is certain to be admitted, or that he or she is in a position to acquire such means lawfully;

(vi) verification that the third-country national concerned, his or her means of transport and the objects he or she is transporting are not likely to jeopardise the public policy, internal security, public health or international relations of any of the Member States. Such verification shall include direct consultation of the data and alerts on persons and, where necessary, objects included in the SIS and in national data files and the action to be performed, if any, as a result of an alert;

(aa) if the third country national holds a visa referred to in Article 5(1)(b), the thorough checks on entry shall also comprise verification of the identity of the holder of the visa and of the authenticity of the visa, by consulting the Visa Information System (VIS) in accordance with Article 18 of Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation);

(ab) by way of derogation, where:

(i) traffic of such intensity arises that the waiting time at the border crossing point becomes excessive;

(ii) all resources have already been exhausted as regards staff, facilities and organisation; and

(iii) on the basis of an assessment there is no risk related to internal security and illegal immigration;

the VIS may be consulted using the number of the visa sticker in all cases and, on a random basis, the number of the visa sticker in combination with the verification of fingerprints.

However, in all cases where there is doubt as to the identity of the holder of the visa and/or the authenticity of the visa, the VIS shall be consulted systematically using the number of the visa sticker in combination with the verification of fingerprints.

This derogation may be applied only at the border crossing point concerned for as long as the above conditions are met;

(ac) the decision to consult the VIS in accordance with point (ab) shall be taken by the border guard in command at the border crossing point or at a higher level.

The Member State concerned shall immediately notify the other Member States and the Commission of any such decision;

(ad) each Member State shall transmit once a year a report on the application of point (ab) to the European Parliament and the Commission, which shall include the number of third-country nationals who were checked in the VIS using the number of the visa sticker only and the length of the waiting time referred to in point (ab)(i);

(ae) points (ab) and (ac) shall apply for a maximum period of three years, beginning three years after the VIS has started operations. The Commission shall, before the end of the second year of application of points (ab) and (ac), transmit to the European Parliament and to the Council an evaluation of their implementation. On the basis of that evaluation, the European

Parliament or the Council may invite the Commission to propose appropriate amendments to this Regulation.

(b) thorough checks on exit shall comprise:

(i) verification that the third-country national is in possession of a document valid for crossing the border;

(ii) verification of the travel document for signs of falsification or counterfeiting;

(iii) whenever possible, verification that the third-country national is not considered to be a threat to public policy, internal security or the international relations of any of the Member States;

(c) In addition to the checks referred to in point (b) thorough checks on exit may also comprise:

(i) verification that the person is in possession of a valid visa, if required pursuant to Regulation (EC) No 539/2001, except where he or she holds a valid residence permit; such verification may comprise consultation of the VIS in accordance with Article 18 of Regulation (EC) No 767/2008;

(ii) verification that the person did not exceed the maximum duration of authorised stay in the territory of the Member States;

(iii) consultation of alerts on persons and objects included in the SIS and reports in national data files.

(d) for the purpose of identification of any person who may not fulfil, or who may no longer fulfil, the conditions for entry, stay or residence on the territory of the Member States, the VIS may be consulted in accordance with Article 20 of Regulation (EC) No 767/2008.

4. Where facilities exist and if requested by the third-country national, such thorough checks shall be carried out in a private area.

5. *Without prejudice to the second subparagraph, third-country nationals subject to a thorough second line check shall be given information **in a language they understand or may reasonably be presumed to understand, in writing or in another effective way,** on the purpose of, and procedure for, such a check.*

This information shall be available in all the official languages of the Union and in the language(s) of the country or countries bordering the Member State concerned and shall indicate that the third-country national may request the name or service identification number of the border guards carrying out the thorough second line check, the name of the border crossing point and the date on which the border was crossed.

6. Checks on a person enjoying the [Community] right on free movement *under Union law* shall be carried out in accordance with Directive 2004/38/EC.

7. Detailed rules governing the information to be registered are laid down in Annex II.

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.

Article 8 **Relaxation of border checks**

1. Border checks at external borders may be relaxed as a result of exceptional and unforeseen circumstances. Such exceptional and unforeseen circumstances shall be deemed to be those where unforeseeable events lead to traffic of such intensity that the waiting time at the border crossing point becomes excessive, and all resources have been exhausted as regards staff, facilities and organisation.

2. Where border checks are relaxed in accordance with paragraph 1, border checks on entry movements shall in principle take priority over border checks on exit movements.

The decision to relax checks shall be taken by the border guard in command at the border crossing point.

Such relaxation of checks shall be temporary, adapted to the circumstances justifying it and introduced gradually.

3. Even in the event that checks are relaxed, the border guard shall stamp the travel documents of third-country nationals both on entry and exit, in accordance with Article 10.

4. Each Member State shall transmit once a year a report on the application of this Article to the European Parliament and the Commission.

Article 9 **Separate lanes and information on signs**

1. Member States shall provide separate lanes, in particular at air border crossing points in order to carry out checks on persons, in accordance with Article 7. Such lanes shall be differentiated by means of the signs bearing the indications set out in the Annex III.

Member States may provide separate lanes at their sea and land border crossing points and at borders between Member States not applying Article 20 at their common borders. The signs bearing the indications set out in the Annex III shall be used if Member States provide separate lanes at those borders.

Member States shall ensure that such lanes are clearly signposted, including where the rules relating to the use of the different lanes are waived as provided for in paragraph 4, in order to ensure optimal flow levels of persons crossing the border.

2. (a) Persons enjoying the [Community] 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 may use the lanes indicated by the sign in part B1 ("visa not required") 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 not required") of Annex III is an option and not obligatory. Member States shall decide whether to do so and at which border crossing points in accordance with practical needs.

3. At sea and land border crossing points, Member States may separate vehicle traffic into different lanes for light and heavy vehicles and buses by using signs as shown in Part C of Annex III.

Member States may vary the indications on those signs where appropriate in the light of local circumstances.

4. In the event of a temporary imbalance in traffic flows at a particular border crossing point, the rules relating to the use of the different lanes may be waived by the competent authorities for the time necessary to eliminate such imbalance.

~~5. The adaptation of existing signs to the provisions of paragraphs 1, 2 and 3 shall be completed by 31 May 2009. Where Member States replace existing signs or put up new ones before that date, they shall comply with the indications provided for in those paragraphs.~~

Article 10

Stamping of the travel documents [~~of third-country nationals~~]

1. The travel documents of third-country nationals shall be systematically stamped on entry and exit. In particular an entry or exit stamp shall be affixed to:

(a) the documents, bearing a valid visa, enabling third-country nationals to cross the border;

(b) the documents enabling third-country nationals to whom a visa is issued at the border by a Member State to cross the border;

(c) the documents enabling third-country nationals not subject to a visa requirement to cross the border.

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 [~~Article 10 of~~] that Directive, shall be stamped on entry or exit.

The travel documents of nationals of third countries who are members of the family of nationals of third countries enjoying the [~~Community~~] right of free movement *under Union law*, but who do not present the residence card provided for in [~~Article 10 of~~] Directive 2004/38/EC, shall be stamped on entry or exit.

3. No entry or exit stamp shall be affixed:

(a) to the travel documents of Heads of State and dignitaries whose arrival has been officially announced in advance through diplomatic channels;

(b) to pilots' licences or the certificates of aircraft crew members;

(c) to the travel documents of seamen who are present within the territory of a Member State only when their ship puts in and in the area of the port of call;

(d) to the travel documents of crew and passengers of cruise ships who are not subject to border checks in accordance with point 3.2.3 of Annex VI;

(e) to documents enabling nationals of Andorra, Monaco and San Marino to cross the border.

(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.

Exceptionally, at the request of a third-country national, 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 the name and passport number.

That sheet shall be given to the third-country national. *The competent authorities of the Member States may keep statistics of such exceptional cases and may provide those statistics to the Commission.*

4. The practical arrangements for stamping are set out in Annex IV.
5. Whenever possible, third-country nationals shall be informed of the border guard's obligation to stamp their travel document on entry and exit, even where checks are relaxed in accordance with Article 8.
6. 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.

Article 11

Presumption as regards fulfilment of conditions of duration of stay

1. If the travel document of a third-country national does not bear an entry stamp, the competent national authorities may presume that the holder does not fulfil, or no longer fulfils, the conditions of duration of stay applicable within the Member State concerned.
2. The presumption referred to in paragraph 1 may be rebutted where the third-country national provides, by any means, credible evidence, such as transport tickets or proof of his or her presence outside the territory of the Member States, that he or she has respected the conditions relating to the duration of a short stay.

In such a case:

- (a) where the third-country national is found on the territory of a Member State applying the Schengen *acquis* in full, the competent authorities shall indicate, in accordance with national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of one of the Member States applying the Schengen *acquis* in full;
- (b) where the third-country national is found on the territory of a Member State in respect of which the decision contemplated in Article 3(2) of the 2003 Act of Accession has not been taken, the competent authorities shall indicate, in accordance with national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of such a Member State.

In addition to the indications referred to in points (a) and (b), a form as shown in Annex VIII may be given to the third-country national.

Member States shall inform each other and the Commission and the Council General Secretariat of their national practices with regard to the indications referred to in this Article.

3. Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be ~~[expelled by the competent authorities from the territory of the Member States concerned]~~ *returned in accordance with 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 nationals* and with national legislation respecting that Directive.*

4. *The relevant provisions of paragraph 1 and 2 shall apply mutatis mutandis in the absence of an exit stamp.*

Article 12 Border surveillance

1. The main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally. *A person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject of procedures respecting 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 nationals*.*

2. The border guards shall use stationary or mobile units to carry out border surveillance.

That surveillance shall be carried out in such a way as to prevent and discourage persons from circumventing the checks at border crossing points.

3. Surveillance between border crossing points shall be carried out by border guards whose numbers and methods shall be adapted to existing or foreseen risks and threats. It shall involve frequent and sudden changes to surveillance periods, so that unauthorised border crossings are always at risk of being detected.

4. Surveillance shall be carried out by stationary or mobile units which perform their duties by patrolling or stationing themselves at places known or perceived to be sensitive, the aim of such surveillance being to apprehend individuals crossing the border illegally. Surveillance may also be carried out by technical means, including electronic means.

5. ~~[Additional measures governing surveillance may be adopted. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 33(2).]~~ *The Commission shall be empowered to adopt delegated acts in accordance with Article 33 concerning additional measures governing surveillance.*

Article 13 Refusal of entry

1. A third-country national who does not fulfil all the entry conditions laid down in Article 5(1) and does not belong to the categories of persons referred to in Article 5(4) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.

2. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.

The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.

3. Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national.

Lodging such an appeal shall not have suspensive effect on a decision to refuse entry.

Without prejudice to any compensation granted in accordance with national law, the third-country national concerned shall, where the appeal concludes that the decision to refuse entry was ill-founded, be entitled to correction of the cancelled entry stamp, and any other cancellations or additions which have been made, by the Member State which refused entry.

4. The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned.

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 yearly to the Commission (Eurostat) in accordance with*

Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection [~~Member States shall transmit those statistics once a year to the Commission. The Commission shall publish every two years a compilation of the statistics provided by the Member States~~].

6. Detailed rules governing refusal of entry are given in Part A of Annex V.

CHAPTER III
Staff and resources for border control and cooperation between Member States

Article 14
Staff and resources for border control

Member States shall deploy appropriate staff and resources in sufficient numbers to carry out border control at the external borders, in accordance with Articles 6 to 13, in such a way as to ensure an efficient, high and uniform level of control at their external borders.

Article 15
Implementation of controls

1. The border control provided for by Articles 6 to 13 shall be carried out by border guards in accordance with the provisions of this Regulation and with national law.

When carrying out that border control, the powers to instigate criminal proceedings conferred on border guards by national law and falling outside the scope of this Regulation shall remain unaffected.

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 and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of trafficking. Member States, with the support of Frontex, shall encourage border guards to learn languages, in particular those necessary for the carrying-out of their tasks.*

2. Member States shall notify to the Commission the list of national services responsible for border control under their national law in accordance with Article 34.

3. To control borders effectively, each Member State shall ensure close and constant cooperation between its national services responsible for border control.

Article 16
Cooperation between Member States

1. The Member States shall assist each other and shall maintain close and constant cooperation with a view to the effective implementation of border control, in accordance with Articles 6 to 15. They shall exchange all relevant information.

2. Operational cooperation between Member States in the field of management of external borders shall be coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States (hereinafter referred to as the Agency) established by Regulation (EC) No 2007/2004.

3. Without prejudice to the competences of the Agency, Member States may continue operational cooperation with other Member States and/or third countries at external borders, including the exchange of liaison officers, where such cooperation complements the action of the Agency.

Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.

Member States shall report to the Agency on the operational cooperation referred to in the first subparagraph.

4. Member States shall provide for training on the rules for border control and on fundamental rights. In that regard, account shall be taken of the common training standards as established and further developed by the Agency.

Article 17
Joint control

1. Member States which do not apply Article 20 to their common land borders may, up to the date of application of that Article, jointly control those common borders, in which case a person may be stopped only once for the purpose of carrying out entry and exit checks, without prejudice to the individual responsibility of Member States arising from Articles 6 to 13.

To that end, Member States may conclude bilateral arrangements between themselves.

2. Member States shall inform the Commission of any arrangements concluded in accordance with paragraph 1.

CHAPTER IV
Specific rules for border checks

Article 18

Specific rules for the various types of border and the various means of transport used for crossing the external borders

The specific rules set out in Annex VI shall apply to the checks carried out at the various types of border and on the various means of transport used for crossing border crossing points.

Those specific rules may contain derogations from Articles 4, 5 and 7 to 13.

Article 19

Specific rules for checks on certain categories of persons

1. The specific rules set out in Annex VII shall apply to checks on the following categories of persons:

- (a) Heads of State and the members of their delegation(s);
- (b) pilots of aircraft and other crew members;
- (c) seamen;
- (d) holders of diplomatic, official or service passports and members of international organisations;
- (e) cross-border workers;
- (f) minors.
- (g) rescue services, police and fire brigades and border guards;*
- (h) offshore workers.*

Those specific rules may contain derogations from Articles 4, 5 and 7 to 13.

2. Member States shall notify to the Commission the model cards issued by their Ministries of Foreign Affairs to accredited members of diplomatic missions and consular representations and members of their families in accordance with Article 34.

CHAPTER V
*Specific measures in case of serious difficulties or deficiencies
related to the external border control*

Article 19A
Measures at the external borders and Frontex support

1. Where serious difficulties or deficiencies in the carrying out of external border control are identified in an evaluation report established in accordance with Article 13 of the Regulation on the establishment of an evaluation and monitoring to verify the application of the Schengen acquis, and with a view to ensuring compliance with the recommendations referred to in Article 13(5) of that Regulation, the Commission may recommend to the evaluated Member State to take certain specific measures, which may include one or more of the following:

- initiation of the deployment of European Border Guard teams in accordance with the provisions of the Frontex Regulation;*
- submission of its strategic plans based on risk assessment, including information on the deployment of personnel and equipment, for opinion to Frontex;*

This implementing act shall be adopted in accordance with the examination procedure referred to in Article 33A(2).

2. The Commission shall inform the committee established in accordance with Article 33A on a regular basis on the progress in the implementation of the measures referred to in paragraph 1 and on its impact on the difficulties or deficiencies identified.

It shall also inform, as appropriate, the European Parliament and the Council.

3. Where, in an evaluation report as referred to in paragraph 1, the Commission had concluded that the evaluated Member State was seriously neglecting its obligations and therefore had to report on the implementation of the relevant action plan within three months in accordance with Article 13A(4) of the Regulation on the establishment of an evaluation and monitoring to verify the application of the Schengen acquis, and if, following that three months period, the Commission finds that the situation persists, it may trigger the application of the procedure provided for in Article 26 where the conditions for doing so are fulfilled.

4. This Article shall be without prejudice to the measures that may be adopted by the Council under Article 78(3) TFEU in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries.

TITLE III
INTERNAL BORDERS

CHAPTER I
Abolition of border control at internal borders

Article 20
Crossing internal borders

Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out.

Article 21
Checks within the territory

The abolition of border control at internal borders shall not affect:

(a) the exercise of police powers by the competent authorities of the Member States under national law, insofar as the exercise of those powers does not have an effect equivalent to border checks; that shall also apply in border areas. Within the meaning of the first sentence, the exercise of police powers may not, in particular, be considered equivalent to the exercise of border checks when the police measures:

(i) do not have border control as an objective,

(ii) are based on general police information and experience regarding possible threats to public security and aim, in particular, to combat cross-border crime,

(iii) are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders,

(iv) are carried out on the basis of spot-checks;

(b) security checks on persons carried out at ports and airports by the competent authorities under the law of each Member State, by port or airport officials or carriers, provided that such checks are also carried out on persons travelling within a Member State;

(c) the possibility for a Member State to provide by law for an obligation to hold or carry papers and documents;

(d) the *possibility for a Member State to provide by law for an* obligation on third-country nationals to report their presence on the territory of any Member State pursuant to the provisions of Article 22 of the Schengen Convention.

Article 22

Removal of obstacles to traffic at road crossing-points at internal borders

Member States shall remove all obstacles to fluid traffic flow at road crossing-points at internal borders, in particular any speed limits not exclusively based on road-safety considerations. At the same time, Member States shall be prepared to provide for facilities for checks in the event that internal border controls are reintroduced.

CHAPTER II

Temporary reintroduction of border control at internal borders

Article 23

General framework for the ~~[7]~~ temporary reintroduction of border control at internal borders

1. Where *in the area without border control at internal borders* there is a serious threat to public policy or internal security *in a Member State*, ~~[a]~~ *that* Member State may exceptionally reintroduce border control at ~~[its]~~ internal borders *at all or specific parts of its internal borders* for a limited period of no more than 30 days or for the foreseeable duration of the serious threat if its duration exceeds the period of 30 days ~~[, in accordance with the procedure laid down in Article 24 or, in urgent cases, with that laid down in Article 25].~~ The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat.

2. *Border control at internal borders may only be reintroduced in accordance with Articles 24, 25 and 26 of this Regulation. The criteria listed, respectively, in Articles 23A and 26A must be taken into account in each case where a decision on the reintroduction of border control at internal borders is contemplated pursuant, respectively, to Article 24 or 25 or Article 26.*

~~[2.]~~ 3. If the serious threat to public policy or internal security *in the Member State concerned* persists beyond the period provided for in paragraph 1, ~~[the]~~ *that* Member State may prolong border control *at its internal borders, taking account of the criteria listed in Article 23A*, on the same grounds as those referred to in paragraph 1 and, taking into account any new elements, for renewable periods of up to 30 days ~~[, in accordance with the procedure laid down in Article 26.]~~

4. *The total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 and prolongations under paragraph 3, shall not exceed six months.*

In cases of exceptional circumstances as referred to in Article 26, this total period may be extended to the maximum length of two years referred to in Article 26(1).

Article 23A

Criteria for the temporary reintroduction of border control at internal borders

1. *When a Member State, in cases referred to in Articles 23 and 25(1), decides the temporary reintroduction of border control at one or more internal borders or parts thereof or decides to prolong the temporary reintroduction of border control, it shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security, and shall assess the proportionality of the measure in relation to that threat. In making such an assessment, the following considerations shall in particular be taken into account in cases referred to in Articles 23 and 25:*

(a) the likely impact of any threats to public policy or internal security in the Member State concerned, including following terrorist incidents or threats as well as threats posed by organised crime;

(b) the likely impact of such a measure on free movement within the area without internal border controls.

Article 24

Procedure for ~~[foreseeable events]~~ the temporary reintroduction of border control at internal borders under Article 23(1)

1. Where a Member State is planning to reintroduce border control at internal borders under Article 23(1), it shall ~~[as soon as possible]~~ notify the other Member States and the Commission accordingly *at the latest four weeks before the planned reintroduction, or within a shorter period where the circumstances giving rise to the need to reintroduce border control at internal borders do not become known until less than four weeks before the planned reintroduction*, and shall supply the following information ~~[as soon as available]~~:

(a) the reasons for the proposed reintroduction, *including all relevant data* detailing the events that constitute a serious threat to public policy or internal security *in the Member State*;

(b) the scope of the proposed reintroduction, specifying ~~[where]~~ *at which part or parts of the internal borders* border control is to be reintroduced;

(c) the names of the authorised crossing-points;

(d) the date and duration of the ~~[proposed]~~ *planned* reintroduction;

(e) where appropriate, the measures to be taken by the other Member States.

Such a notification may also be submitted jointly by two or more Member States. The Member State may, when necessary and in accordance with national law, decide to classify some of the information.

If necessary, the Commission may request additional information from the Member State concerned.

2. The information referred to in paragraph 1 shall be submitted at the same time to the European Parliament and to the Council

~~[2.]~~ 3. Following the notification from the Member State concerned, and with a view to the consultation provided for in paragraph ~~[3]~~ 4, the Commission *or any of the other Member States* may issue an opinion without prejudice to Article ~~[64(1) of the Treaty]~~ 72 TFEU.

~~[3.]~~ 4. The information referred to in paragraph 1, as well as the opinion that the Commission *or any of the other Member States* may provide in accordance with paragraph ~~[2]~~ 3, shall be the subject of consultations between the Member State planning to reintroduce border control, the other Member States and the Commission, with a view to organising, where appropriate, mutual cooperation between the Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border control and the threats to public policy or internal security.

~~[4.]~~ 5. The consultation referred to in paragraph ~~[3]~~ 4 shall take place at least ~~[fifteen]~~ *ten* days before the date planned for the reintroduction of border control.

Article 25

Specific [P] procedure for cases requiring ~~[urgent]~~ immediate action

1. Where ~~[considerations of]~~ *a serious threat to* public policy or internal security in a Member State demands ~~[urgent]~~ *immediate* action to be taken, the Member State concerned may exceptionally and immediately reintroduce border control at internal borders, *for a limited period of no more than ten days*.

2. The Member State reintroducing border control at internal borders shall *at the same time* notify the other Member States and the Commission accordingly, ~~[without delay,]~~ and shall supply the information referred to in Article 24 (1) and the reasons that justify the use of this procedure. *The Commission may consult the other Member States immediately upon receipt of the notification.*

3. If the serious threat to public policy or internal national security persists beyond the period provided for in paragraph 1, the Member State may decide to prolong the border control at internal borders for renewable periods of up to 20 days. In doing so, the Member State

concerned shall take into account the criteria listed in Article 23A, including an updated assessment of the necessity and the proportionality of the measure, and take into account any new elements.

In the event of such a prolongation decision being taken, the provisions of Article 24(3) and (4) shall apply mutatis mutandis, and the consultation shall take place as soon as possible after the prolongation decision has been notified to the Commission and the Member States.

3a. Without prejudice to Article 23(4), the total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 and prolongations under paragraph 3, shall not exceed two months.

Article 26

~~*[Procedure for prolonging border control at internal borders]*~~

Specific procedure in cases of exceptional circumstances putting the overall functioning of the area without internal border controls at risk

~~*[1. Member States may only prolong border control at internal borders under the provisions of Article 23(2) after having notified the other Member States and the Commission.*~~

~~*2. The Member State planning to prolong border control shall supply the other Member States and the Commission with all relevant information on the reasons for prolonging the border control at internal borders. The provisions of Article 24(2) shall apply.]*~~

1. In exceptional circumstances where the overall functioning of the area without internal border controls is put at risk as a result of persistent serious difficulties or deficiencies related to external border control as referred to in Article 19A, and insofar as these circumstances constitute a serious threat to public policy or internal security within the area without internal border controls, border control at internal borders may be reintroduced in accordance with paragraph 2 for a period of no more than six months. This period can be prolonged by a further period of no more than six months if such circumstances still exist. No more than three such prolongations will be possible.

2. The Council may, as a last resort and as a measure to protect the common interests within the area without internal border controls, where all other measures, in particular those referred to in Article 19A(1), are incapable of effectively mitigating the serious threat identified, recommend one or more specific Member States to reintroduce border control at all or specific parts of its internal borders. The Member States may request the Commission to submit such a proposal to the Council for a recommendation.

In its recommendation, the Council shall at least indicate the elements referred to in points (a) to (e) of Article 24(1).

The Council may recommend a prolongation in accordance with the same conditions and procedures.

Before a Member State reintroduces border control at all or specific parts of its external borders under Article 26(2), it shall notify the other Member States and the Commission and European Parliament accordingly.

3. On duly justified grounds of urgency, related to situations where the circumstances giving rise to the need to prolong border control at internal borders, in accordance with paragraph 2, do not become known until less than 10 days before the end of the preceding reintroduction period, the Commission may adopt immediately any necessary recommendations. At the latest 14 days after its adoption, the Commission shall submit to the Council a proposal for a recommendation in accordance with paragraph 2.

4a. This Article shall be without prejudice to measures that may be adopted by the Member States in the event of a serious threat to public policy or internal security under Articles 23 to 25.

4b. This Article shall be without prejudice to the measures that may be adopted by the Council under Article 78(3) TFEU in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries.

Article 26A

Criteria for the temporary reintroduction of border control at internal borders in case of exceptional circumstances putting the overall functioning of the area without internal border control at risk

1. When, as a last resort, the Council recommends in accordance with Article 26(2) the temporary reintroduction of border control at one or more internal borders or parts thereof, the Council shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security within the area without internal border controls, and shall assess the proportionality of the measure in relation to that threat. This assessment shall be based on the detailed information submitted by the Member State(s) concerned and any other relevant information, including any information obtained pursuant to paragraph 2. In making such an assessment, the following considerations shall in particular be taken into account:

(a) the availability of technical or financial support measures which could be or have been resorted to at the national and/or European level, including assistance by Union bodies such as Frontex, the EASO or

Europol, and the extent to which such measures are likely to adequately remedy the threats to public policy or internal security within the area without internal border controls;

(b) the current and likely future impact of any serious difficulties or deficiencies related to external border control identified by Schengen evaluations in accordance with the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis; and the extent to which such serious difficulties or deficiencies constitute threats to public policy or internal security within the area without internal border controls;

(c) the likely impact of such a measure on free movement within the area without internal border controls.

2. Before adopting a proposal for a Council recommendation, in accordance with Article 26(2), the Commission may:

(a) request Member States, Frontex, Europol or other Union bodies to provide it with further information,

(b) carry out inspection visits, with the support of experts from Member States and of Frontex, Europol and any other relevant Union body, in order to obtain or verify information relevant for a recommendation to temporarily reintroduce border control at internal borders.

Article 27

Informing the European Parliament and the Council

The *Commission and the* Member State(s) concerned [~~or, where appropriate, the Council~~] shall inform the European Parliament *and the Council* as soon as possible of [~~the measures taken under~~] *any reasons which might trigger the application of* Articles [~~24, 25 and 26~~] *19A and 23 to 26A*. [~~As of the third consecutive prolongation pursuant to Article 26, the Member State concerned shall, if requested, report to the European Parliament on the need for border control at internal borders.~~]

Article 28

Provisions to be applied where border control is reintroduce at internal borders

Where border control at internal borders is reintroduced, the relevant provisions of Title II shall apply *mutatis mutandis*.

Article 29

Report on the reintroduction of border control at internal borders

At the latest four weeks after the lifting of border control at internal borders, [~~±~~] the Member State which has reintroduced *carried out* border control at internal borders under Article 23 shall confirm the date on which

~~that control is lifted and, at the same time or soon afterwards, present a report to the European Parliament, the Council and the Commission on the reintroduction of border control at internal borders, outlining, in particular, the operation of the checks and the effectiveness of the reintroduction of border control *at internal borders*.~~

Article 30
Informing the public

The *Member State concerned shall inform the public on a decision to reintroduce border control at internal borders* ~~[shall be taken in a transparent manner and the public informed in full thereof,]~~ *and indicate in particular the start and end date of such a measure*, unless there are overriding security reasons for not doing so.

Article 31
Confidentiality

At the request of the Member State concerned, the other Member States, the European Parliament and the Commission shall respect the confidentiality of information supplied in connection with the reintroduction and prolongation of border control and the report drawn up under Article 29.

TITLE IV
FINAL PROVISIONS

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 ~~[shall be amended in accordance with the regulatory procedure with scrutiny referred to in Article 33(2)].~~

Article 33
~~[Committee]~~
Exercise of the delegation

~~[1. The Commission shall be assisted by a committee, hereinafter 'the Committee'.~~

~~2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

~~3. The Committee shall adopt its rules of procedure.]~~

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. *The power to adopt delegated acts referred to in Articles 12(5) and 32 shall be conferred on the Commission for an indeterminate period of time from [xxx].*

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 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.*

Article 33A *Committee procedure*

1. *The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*

2. *Where reference is made to this paragraph Article 5 of Regulation (EU) No 182/2011 shall apply. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.*

3. *Where reference is made to this paragraph Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.*

Article 34 *Notifications*

1. Member States shall notify the Commission of:

(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 and specimen shall be provided for those residence cards which have not been issued in accordance with the uniform format laid down by Regulation (EC) No 1030/2002. [÷]

(b) the list of their border crossing points;

(c) the reference amounts required for the crossing of their external borders fixed annually by the national authorities;

(d) the list of national services responsible for border control;

(e) the specimen of model cards issued by Foreign Ministries.

2. The Commission shall make the information notified in conformity with paragraph 1 available to the Member States and the public through publication in the *Official Journal of the European Union*, C Series, and by any other appropriate means.

Article 35 **Local border traffic**

This Regulation shall be without prejudice to Community rules on local border traffic and to existing bilateral agreements on local border traffic.

Article 36 **Ceuta and Melilla**

The provisions of this Regulation shall not affect the special rules applying to the cities of Ceuta and Melilla, as defined in the Declaration by the Kingdom of Spain on the cities of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985.

Article 37 **Notification of information by the Member States**

~~[By 26 October 2006, †]~~ The Member States shall notify the Commission of national provisions relating to Article 21(c) and (d), the penalties as referred to in Article 4(3) and the bilateral arrangements ~~[concluded in accordance with Article 17(1)]~~ **authorised by this Regulation**. Subsequent changes to those provisions shall be notified within five working days.

The information notified by the Member States shall be published in the *Official Journal of the European Union*, C Series.

Article 38
Report on the application of Title III

The Commission shall submit to the European Parliament and the Council by 13 October 2009 a report on the application of Title III.

The Commission shall pay particular attention to any difficulties arising from the reintroduction of border control at internal borders. Where appropriate, it shall present proposals aimed at resolving such difficulties.

Article 39
Repeals

1. Articles 2 to 8 of the Convention implementing the Schengen Agreement of 14 June 1985 shall be repealed with effect from 13 October 2006.

2. The following shall be repealed with effect from the date referred to in paragraph 1:

(a) the Common Manual, including its annexes;

(b) the decisions of the Schengen Executive Committee of 26 April 1994 (SCH/Com-ex (94) 1, rev 2), 22 December 1994 (SCH/Com-ex (94)17, rev. 4) and 20 December 1995 (SCH/Com-ex (95) 20, rev. 2);

(c) Annex 7 to the Common Consular Instructions;

(d) Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance;

(e) Council Decision 2004/581/EC of 29 April 2004 determining the minimum indications to be used on signs at external border crossing points;

(f) Council Decision 2004/574/EC of 29 April 2004 amending the Common Manual;

(g) 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 and amending the provisions of the Convention implementing the Schengen agreement and the Common Manual to this end.

3. References to the Articles deleted and instruments repealed shall be construed as references to this Regulation.

Article 40
Entry into force

This Regulation shall enter into force on 13 October 2006. However, Article 34 shall enter into force on the day after 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 Treaty establishing the European Community.

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