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REPORT

on the proposal for a Council regulation laying down 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 convention implementing the Schengen agreement and the common manual to this end
(COM(2003) 664 – C5-0580/2003 – 2003/0258(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Roberta Angelilli

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 28 November 2003 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the proposal for a Council regulation laying down 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 convention implementing the Schengen agreement and the common manual to this end (COM(2003) 664 – 2003/0258(CNS)).

At the sitting of 3 December 2003 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0580/2003).

The committee had appointed Roberta Angelilli rapporteur at its meeting of 25 November 2003.

It considered the Commission proposal and draft report at its meetings of 22 January, 18 February and 18 March 2004.

At the last meeting it adopted the draft legislative resolution by 19 votes to 6, with 1 abstention.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Giacomo Santini (vice-chairman), Roberta Angelilli (rapporteur), Regina Bastos (for Mary Elizabeth Banotti pursuant to Rule 153(2)), María Luisa Bergaz Conesa (for Ilka Schröder pursuant to Rule 153(2)), Alima Boumediene-Thiery, Kathalijne Maria Buitenweg, Giorgio Calò (for Baroness Ludford pursuant to Rule 153(2)), Gérard M.J. Deprez, Antonio Di Pietro (for Francesco Rutelli), Timothy Kirkhope, Helmuth Markov (for Fodé Sylla, pursuant to Rule 153(2)), Pasqualina Napoletano (for Adeline Hazan, pursuant to Rule 153(2)), Marcelino Oreja Arburúa, Josu Ortuondo Larrea (for Pierre Jonckheer, pursuant to Rule 153(2)), Elena Ornella Paciotti, Fernando Pérez Royo (for Margot Keßler, pursuant to Rule 153(2)), Hubert Pirker, Martine Roure, Olle Schmidt (for Johanna L.A. Boogerd-Quaak), Ingo Schmitt (for Bernd Posselt), Ole Sørensen (for Bill Newton Dunn), Patsy Sørensen, The Earl of Stockton (for Eva Klamt), Joke Swiebel, Anna Terrón i Cusí and Christian Ulrik von Boetticher.

The report was tabled on 5 April 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation laying down 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 convention implementing the Schengen agreement and the common manual to this end

(COM(2003) 664 – C5-0580/2003 – 2003/0258(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2003) 664)¹,
 - having regard to Article 62 of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0580/2003),
 - having regard to the Protocol integrating the Schengen *acquis* into the framework of the European Union,
 - having been informed by the Council that the Republic of Ireland and the United Kingdom of Great Britain and Northern Ireland do not wish to participate in adopting and applying the measure concerned in the Commission proposal,
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0229/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

Amendment 1

TITLE

on the Commission proposal for a Council regulation laying down 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 convention implementing the Schengen agreement and the *common manual* to this end

on the Commission proposal for a Council regulation laying down 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 convention implementing the Schengen agreement and the **Common Borders Manual** to this end

(This amendment applies to the whole of the legislative text; if it is adopted, the entire text must be adjusted accordingly.)

Justification

Those who know and use the manual tend to refer to it as the 'common manual', on the understanding that this is the manual which lays down detailed instructions for representatives of the Member States carrying out checks on persons crossing external borders. For those not involved in such activities, however, the term 'common manual' does not mean anything. This amendment seeks to remedy this shortcoming by including the word 'borders', so as to ensure that there can be no confusion about the manual's contents.

Amendment 2

RECITAL 1

(1) The European Council held in Seville on 21 and 22 June 2002 called for closer co-operation in combating illegal immigration and **called on** the Commission and the Member States to take operational steps to ensure an equivalent level of control and surveillance **of external borders**.

(1) The European Council held in Seville on 21 and 22 June 2002 called for closer co-operation in combating illegal immigration and **requested the Council, the Commission and the Member States, each within its respective sphere of responsibility, to take operational steps to ensure that, among themselves, Member States achieve coordinated, integrated management of the external borders and an equivalent level of control and surveillance.**

Justification

To bring the text into line with points 31 and 32 of the Seville European Council Presidency Conclusions.

Amendment 3
RECITAL 1 a (new)

(1a) Given that it is in the shared interests of the Member States to introduce more effective arrangements for managing the external borders, the Thessaloniki European Council of 19 and 20 June 2003 called on the Commission to submit proposals on the recasting of the Common Borders Manual, including the stamping of travel documents of third-country nationals.

Justification

In point 16 of the Presidency Conclusions, the Thessaloniki European Council asked the Commission to present, as soon as possible, proposals on the recasting of the Common Borders Manual, including the stamping of travel documents of third-country nationals.

Nonetheless, recasting the Common Manual, which contains provisions on entry conditions and controls at the external borders (including the stamping of travel documents), will be an extremely complex task. It will therefore take a long time for the recast manual to be adopted, which is why the Commission has opted to push ahead with provisions on the stamping of travel documents, putting forward a legal instrument binding on the Member States (a regulation), with a view to ensuring uniform implementation in the Member States to which it is addressed.

Amendment 4
RECITAL 2

(2) The provisions ***of*** the convention implementing the Schengen Agreement of 14 June 1985, and of the ***common manual concerning the crossing of*** external borders lack ***clarity and*** precision as regards the obligation to affix stamps to the travel documents of third-country nationals when they cross external borders. Consequently, they lead to divergent practices in the Member States and make it difficult to check whether the duration of

(2) The provisions ***concerning the crossing of external borders set out in*** the convention implementing the Schengen Agreement of 14 June 1985, ***signed in Schengen on 19 June 1990, stipulate that an equal degree of control shall be exercised at*** external borders. ***However, these provisions*** lack precision as regards the obligation to affix stamps to the travel documents of third-country nationals when they cross external borders. Consequently,

short stays for such third-country nationals on the territory of the Member States is adhered to, namely a maximum of three months in any six-month period.

they lead to divergent practices in the Member States and make it difficult to check whether the duration of short stays for such third-country nationals on the territory of the Member States is adhered to, namely a maximum of three months in any six-month period.

Justification

Article 6(5) of the convention implementing the 1985 Schengen Agreement on the gradual abolition of checks at common borders, which was itself signed in Schengen in 1990, stipulates that an equal degree of control shall be exercised at external borders. The convention does not, however, lay down an obligation to stamp travel documents or visas of third-country nationals crossing the external borders.

The reference to the Common Manual has been deleted since section 2.1 of Part II thereof contains quite detailed provisions on the stamping of travel documents of third-country nationals when they cross external borders of the States party to the Schengen Agreement, both when entering the Member States' territory and when leaving it (in cases where the travel documents contain a multiple-entry visa).

Amendment 5 RECITAL 2 a (new)

(2a) The Common Borders Manual contains provisions on the stamping of travel documents of third-country nationals when they cross the external borders of Member States that have adopted the Schengen acquis; these provisions should be amended and brought together in a European Community legal instrument that is binding in its entirety.

Justification

See the second paragraph of the justification for the amendment to Recital 2.

Account should also be taken of the fact that most of the Common Borders Manual was adopted by the Executive Committee (whose duties have now been taken over by the Council, following the entry into force of the Amsterdam Treaty and the Protocol integrating the Schengen acquis into the institutional and legal framework of the European Union) set up

under the convention implementing the Schengen Agreement, and has since been amended on several occasions, whence the need for it to be recast.

Nonetheless, while the Common Manual is being recast into a Community legal instrument, the provisions regarding the stamping of travel documents of third-country nationals should be brought together in a clear and precise form in a compulsory legal instrument (a regulation).

Amendment 6
RECITAL 2 b (new)

(2b) On 19 December 2002 the Justice and Home Affairs Council adopted conclusions on external border checks and combating illegal immigration and called on the Commission to clarify the existing rules of the Schengen acquis in this area, to put forward relevant amendments and to consider the possibility of greater harmonisation of the procedures to be applied during border checks.

Justification

The JHA Council meeting of 19 December 2002 represented a major step forward as regards the tightening up of control procedures at points of entry to the Schengen area.

Amendment 7
RECITAL 4

(4) The conclusions adopted by the Justice and Home Affairs Council of 8 May 2003 concerning the installation of separate lanes at external borders, duly differentiated by signs depending on the nationality of travellers, and the presentation of a proposal intended to lay down specific rules on local border traffic will improve the management of external borders by the services responsible, making it easier to overcome any practical difficulties arising from the requirement to stamp third-country nationals' travel documents systematically. These measures will also help to ensure that any measures relaxing checks on persons at external borders are exceptional.

(4) The conclusions adopted by the Justice and Home Affairs Council of 8 May 2003 concerning the installation of separate **control** lanes at external borders, duly differentiated by signs depending on the nationality of travellers, and the presentation of a proposal intended to lay down specific rules on local border traffic will improve the management of external borders by the services responsible, making it easier to overcome any practical difficulties arising from the requirement to stamp third-country nationals' travel documents systematically. These measures will also help to ensure that any measures relaxing checks on persons at external borders are exceptional.

Justification

The above conclusions refer to the introduction of separate control lanes at external land border-crossing points for entry checks, in order to bring the arrangements into line with those applied at sea and air border-crossing points (international airports, ports and ferry ports).

Amendment 8
RECITAL 5

(5) The obligation on the Member States to stamp third-country nationals' travel documents systematically when they enter the territory of the Member States and the limitation regarding the circumstances in which measures relaxing checks on persons at external borders may be adopted provide the possibility of presuming, in the absence of a stamp on such travel documents, that their holder is in an illegal situation as regards the condition of the duration of a short stay. However, it must be possible to overturn this presumption by any form of proof that can demonstrate the legality of the duration of the stay.

(5) The obligation on the Member States to stamp third-country nationals' travel documents systematically when they enter the territory of the Member States **by crossing the external borders of the Schengen area** and the limitation regarding the circumstances in which measures relaxing checks on persons at external borders may be adopted provide the possibility of presuming, in the absence of a stamp on such travel documents, that their holder is in an illegal situation as regards the condition of the duration of a short stay. However, it must be possible to overturn this presumption by any form of **documentary** proof that can demonstrate the legality of the duration of the stay.

Justification

To stipulate that only documentary proof will be admissible.

Furthermore, it must be made perfectly clear that entry to the territory of a Member State must involve crossing an external border of the Schengen area.

Amendment 9
RECITAL 7

(7) The **convention implementing the Schengen Agreement** and the **common manual** must be amended accordingly.

(7) The Schengen Convention and the **Common Borders Manual** must be amended accordingly.

Justification

See justifications for amendments 1 (to the title) and 4 (to Recital 2).

Amendment 10
RECITAL 9

(9) As far as Iceland and Norway are concerned, this Regulation constitutes a development of the provisions of the Schengen acquis, as provided for in the Agreement *concluded* by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis falling within the area referred to in Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement.

(9) As far as Iceland and Norway are concerned, this Regulation constitutes a development of the provisions of the Schengen acquis, as provided for in the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway *and signed in Brussels on 18 May 1999*, concerning the association of those two States with the implementation, application and development of the Schengen acquis falling within the area referred to in Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement.

Justification

Given the agreement's importance, its date and place of signing should be specified.

Amendment 11
RECITAL 10

(10) This Regulation constitutes a development of the provisions of the Schengen acquis in which the United Kingdom is not participating, in accordance with Council Decision 2000/365/EC of 29 May 2000 on the request by the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis. Consequently, the United Kingdom is not taking part in its adoption and is not bound by it or subject to its application.

(10) This Regulation constitutes a development of the provisions of the Schengen acquis in which the United Kingdom *of Great Britain and Northern Ireland* is not participating, in accordance with Council Decision 2000/365/EC of 29 May 2000 on the request by the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis. Consequently, the United Kingdom *of Great Britain and Northern Ireland* is not taking part in its adoption and is not bound by it or subject to its application.

Justification

Given that the Council decision and the Schengen Protocol use the full name, we should do so here as well.

Amendment 12
ARTICLE 2, POINT 1

Article 6, paragraph 2, point (e) (Convention implementing the Schengen Agreement)

e) if in exceptional and unforeseen circumstances requiring immediate measures such checks cannot be carried out, priorities must be set. In that case, entry checks shall as a rule take priority over exit checks. The Member State concerned must inform the Council and Commission accordingly **as quickly as possible**.

e) if in exceptional and unforeseen circumstances requiring immediate measures such checks cannot be carried out, priorities must be set. In that case, entry checks shall as a rule take priority over exit checks. The Member State concerned must **immediately** inform the Council and Commission **Secretariats of the unforeseen measures taken**.

Justification

Owing to the major impact that measures totally or partially preventing checks being carried out at external borders may have, the Council Secretariat should be notified immediately.

Amendment 13
ARTICLE 2, POINT 3

Article 23 a, paragraph 2 (Convention implementing the Schengen Agreement)

2. This presumption **may** be overturned **by the third-country national by demonstrating by any means that he** has respected the condition relating to the duration of short stay. **To this end, he may provide evidence such as transport tickets, proof of his presence abroad or declarations pursuant to Articles 22 and 45.**

2. This presumption **and any legal step that may ensue from it has to be** overturned **without delay if the third-country national demonstrates by documentary evidence that he/she** has respected the condition relating to the duration of a short stay.

Justification

The presentation of clear documentary evidence has to be sufficient for overturning the presumption. This has to be stated clearly.

Amendment 14
ARTICLE 2, POINT 3

Article 23 a, paragraph 3 (Convention implementing the Schengen Agreement)

3. In the event of the presumption aimed at paragraph 1 not being overturned, the competent authorities **may** apply the provisions of Article 23(3)(4) and (5).

3. In the event of the presumption aimed at paragraph 1 not being overturned, the competent authorities **shall** apply the provisions of Article 23(3)(4) and (5).

Justification

The arguments put forward in the second paragraph of the justification for amendment 13 (Article 23a(1) (new) of the Schengen Convention) apply mutatis mutandis to this amendment.

Amendment 15 ARTICLE 3, INTRODUCTION and POINT 1 Point 1.3.5 (Common Manual)

Part II of the *common manual* is amended as follows:

1. Point 1.3.5 is replaced by the following:
“Checks at land borders *may* be relaxed as a result of exceptional and unforeseen circumstances. ***This will be the case where unforeseen events lead to such intensity of traffic that the delay in the time taken to reach checking posts becomes excessive, and all resources have been exhausted as regards staff, facilities and organisation.***”

Part II of the *Common Borders Manual* is amended as follows:

1. Point 1.3.5 is replaced by the following:
“Checks at land, *sea or air* borders *shall* be relaxed as a result of ***uniformly defined*** exceptional and unforeseen circumstances.”

Justification

Checks by a Member State at external borders are for the benefit not just of the State at whose external border they are carried out, but of all the States in the Schengen area, whose interests must be given equal protection. Therefore, the exceptional circumstances justifying the relaxation of checks and how they are carried out must be defined clearly and precisely, without leaving any scope for disparities in interpretation between Member States.

Amendment 16 ARTICLE 3, POINT 3 Point 2.1.1, paragraph 1, introductory part, point (a) (Common Manual)

“When the territory of a Member State is entered, a stamp shall be affixed to: [...]”.

“When the territory of a Member State is entered, ***if an external border is crossed***, a stamp shall be affixed to: [...]”.

Justification

It should be stipulated that entry to the territory of a Member State must involve crossing an external border of the Schengen area.

Amendment 17
ARTICLE 3, POINT 5
Point 3.4.2.3, paragraph 3 (Common Manual)

“Even in the event of a relaxation of the checks, the officials responsible must proceed in accordance with point 1.3.5.4.”

“Even in the event of a relaxation of the checks ***due to exceptional circumstances***, the officials responsible must proceed in accordance with point 1.3.5.4.”

Justification

In keeping with amendment 16 (to point 1.3.5 of the Common Borders Manual), which removes the option of relaxing checks in the event of special circumstances. This is acceptable only in exceptional circumstances that have been uniformly defined and will be uniformly implemented in all the Schengen States.

Point 3.4.2.3. of the Common Borders Manual is reduced to the above text, which replaces the two paragraphs authorising the relaxation of border checks in special circumstances brought about by heavy traffic in particular.

Amendment 18
ARTICLE 4

The Member States shall take all appropriate measures to inform third-country nationals of the implementation of this Regulation.

The Member States, ***the Commission and the Council*** shall take all appropriate measures to inform third-country nationals of the implementation of this Regulation.

Justification

Both the Commission and Council should be involved together with the Member States in drawing up and implementing a common information strategy which will ensure that third-country nationals are aware of the new measures that will apply systematically when they cross external borders of the Schengen area.

EXPLANATORY STATEMENT

I. INTRODUCTION

Before the Schengen Agreement entered into force each Member State carried out its own controls on people entering their territory, bearing in mind that Article 54 of the EC Treaty had established the principle of freedom of movement for workers originating in the Member States, and consequently that the requirements to hold an entry permit between Member States had been abolished.

The Schengen Agreement on the phasing out of controls at common borders was signed on 14 June 1985 between France, Germany and the Benelux countries, in the context of intergovernmental cooperation, as not all the Member States of the European Community at that time were in favour of opening up the European area to the free movement of persons, whether they were European citizens or from third countries.

The convention implementing the Schengen Agreement was signed between the same Member States on 19 June 1990 and entered into force on 26 March 1995. Since then all the Union States have acceded to the agreement with the exception of the United Kingdom and Ireland. The 13 countries are joined by Iceland and Norway as associate countries.

The purpose of the agreement is to phase out controls between the internal borders of the Member States, transferring these controls to their external borders, and increasing judicial, customs and police cooperation with 'compensatory measures' to safeguard the security of European Union territory. One of the main measures is the Schengen Information System (SIS).

The Treaty of Amsterdam, signed on 2 October 1997, entered into force on 1 May 1999 and maintained as one of its 'flanking measures' the strategy of abolishing controls on persons at the EU's internal borders, as laid down in Article 61 of the EC Treaty.

At present controls on the entry of citizens from third countries into countries that are signatories to the Schengen Agreement are carried out at the external borders of countries forming part of the 'Schengen area'. These borders are known as 'external borders', to distinguish them from the 'internal borders' which separate the Member States from one another.

II. ABOLITION OF CONTROLS AT THE EU'S INTERNAL FRONTIERS AND TRANSFER OF CONTROLS TO THE EXTERNAL FRONTIERS

The Treaty of Amsterdam gave decisive impetus to the policy of phasing out controls at the Member States' internal borders and transferring the controls to the external borders. Under a protocol annexed to the Treaty, Member States party to the Schengen agreements (all except the United Kingdom and Ireland) are authorised to establish closer cooperation among themselves for matters within the scope of the Schengen area.

Control measures at the external borders are laid down in the Convention implementing the Schengen Agreement. The Common Manual is the Convention's implementing instrument. The manual is in two parts: 'Conditions for entering the territory of the Member States' and 'Frontier controls'.

III. PROPOSAL FOR A COUNCIL REGULATION LAYING DOWN 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

The gradual creation of the Schengen area has resulted in various procedures in each Member State for controlling its own external borders.

This has adversely affected efforts to check compliance with short-stay conditions by third countries citizens on the territory of the Member States.

For this reason the Commission has produced a proposal for a Council regulation with the aim of making it obligatory to systematically stamp the travel documents of such citizens during immigration controls at the external borders.

IV. ASSESSMENT OF THE LEGISLATIVE PROPOSAL

The rapporteur agrees with the Commission proposal that systematic stamping of travel documents could be an effective way of helping to combat illegal immigration.

It is also important to adopt a Community instrument so as to establish an equivalent level of control in a uniform manner at the external borders, where the responsibility of the Member State carrying out the controls also applies to the other countries in the Schengen area.

The amendments tabled are simply intended to clarify the content of the proposal.

In particular, it would seem desirable to specify throughout the legislative text that wherever there is reference to the 'Common Manual' this means the Common Manual on the External Borders.

A further clarification concerns the proof to be provided by third-country citizens who do not have the entry stamp on their travel document to demonstrate their legality: it seems more appropriate, from the legal point of view, to speak of 'documentary proof' rather than 'any form of proof' or 'demonstrating by any means' followed, in the Commission text, by a list of possible justifications.

Clarification is also required for the exceptional circumstances in which frontier controls can be relaxed: as they are controls carried out for the benefit of all the Member States forming the Schengen area the circumstances need to be defined in a uniform manner.

However, the rapporteur believes that the regulation is a first step towards a more comprehensive reform of the present system, which would also require systematic stamping for those leaving the Schengen area. There actually are documents that authorise their holders to cross borders several times during a limited stay. As a result, in the absence of an exit stamp it is almost impossible to prove how long a third-country citizen has in fact been in the territory of the Member States.