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*Committee on Civil Liberties, Justice and Home Affairs*

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**2011/0051(COD)**

18.1.2012

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the Convention implementing the Schengen Agreement  
(COM(2011)0118 – C7-0070/2011 – 2011/0051(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Georgios Papanikolaou

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the Convention implementing the Schengen Agreement  
(COM(2011)0118 – C7-0070/2011 – 2011/0051(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0118),
  - having regard to Article 294(2) and Article 77(1) and (2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0070/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation – amending act Recital 1**

*Text proposed by the Commission*

(1) Union policy in the field of external borders aims for integrated management to ensure a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a

*Amendment*

(1) Union policy in the field of external borders aims for integrated management to ensure a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a

fundamental component of an area of freedom, security and justice. To this end, common rules on standards and procedures for the control of external borders are to be established.

fundamental component of an area of freedom, security and justice. To this end, common rules on standards and procedures for the control of external borders are to be established, *taking into account the specific and disproportionate pressures faced by some Member States at their external borders. The rules set should be governed by the principle of solidarity between Member States.*

Or. en

## Amendment 2

### Proposal for a regulation – amending act Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

*(1a) The free movement of people within the Schengen area has been one of the biggest achievements of European integration and the Schengen acquis has a positive impact on the lives of hundreds of thousands of citizens of the Union, both by facilitating border crossing and by boosting the economy. Freedom of movement is a fundamental right and a pillar of citizenship of the Union, the conditions for the exercise of which are laid down in the Treaties and in 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<sup>1</sup>.*

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<sup>1</sup> OJ L 158, 30.4.2004, p. 77.

Or. en

### **Amendment 3**

#### **Proposal for a regulation – amending act Recital 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***(1b) The abolition of internal border controls requires full mutual trust between Member States in their capacity to fully implement the accompanying measures allowing those controls to be lifted.***

Or. en

### **Amendment 4**

#### **Proposal for a regulation – amending act Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) The creation of the Schengen area defined a common external border, responsibility for the protection of which should be shared amongst Member States in accordance with the principle of solidarity and fair sharing, as defined in Article 80 of the Treaty on the Functioning of the European Union. The strengthening of the Schengen governance helps to ensure that each Member State can control effectively its part of the external borders and builds trust in the effectiveness of the Union system of migration management.***

Or. en

## Amendment 5

### Proposal for a regulation – amending act Recital 3

*Text proposed by the Commission*

(3) After four years of practical application, the need for a number of amendments has emerged, based on the practical experiences of the Member States and the Commission in applying the Schengen Borders Code, including results from Schengen evaluations *as well as* reports and requests submitted by Member States.

*Amendment*

(3) After four years of practical application, the need for a number of amendments has emerged, based on the practical experiences of the Member States and the Commission in applying the Schengen Borders Code, including results from Schengen evaluations, reports and requests submitted by Member States, *as well as the legislative initiatives and developments in primary and secondary Union law, and the need for clarification and more efficient mapping of critical technical issues.*

Or. en

## Amendment 6

### Proposal for a regulation – amending act Recital 5 a (new)

*Text proposed by the Commission*

*Amendment*

*(5a) The adoption of Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union<sup>1</sup> (Frontex) improves the integrated management of the external borders and provides a further enhancement of the role of the Agency in line with the objective of the Union to develop a policy with a view to the gradual introduction of the concept of Integrated Border Management.*



Or. en

## **Amendment 7**

### **Proposal for a regulation – amending act Recital 6**

#### *Text proposed by the Commission*

(6) In order to align the provisions of the Schengen Borders with the Treaty on the Functioning of the European Union (TFEU), the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adoption of additional measures governing surveillance in accordance with Article 12(5) as well as amendments to the annexes in accordance with Article 32. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

#### *Amendment*

(6) In order to align the provisions of the Schengen Borders **Code** with the Treaty on the Functioning of the European Union (TFEU), the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adoption of additional measures governing surveillance in accordance with Article 12(5) as well as amendments to the annexes in accordance with Article 32. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Or. en

#### *Justification*

*Technical amendment: a word is missing in the English version of the proposal.*

## Amendment 8

### Proposal for a regulation – amending act

#### Article 1 – point 1 – point c

Regulation (EC) No 562/2006

Article 2 – point 4 a (new)

#### *Text proposed by the Commission*

"4a 'internal cargo connection' means any cargo 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;"

#### *Amendment*

"4a 'internal cargo connection' means any cargo 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 goods according to a predetermined itinerary***;"

Or. en

## Amendment 9

### Proposal for a regulation – amending act

#### Article 1 – point 1 – point g a (new)

Regulation (EC) No 562/2006

Article 2 – point 8 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(ga) the following point 8a is inserted:***

***"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 entry and exit checks in accordance with their own legislation and pursuant to a bilateral agreement;"***

Or. en

## **Amendment 10**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 1 – point h a (new)**

Regulation (EC) No 562/2006

#### **Article 2 – point 18 a (new)**

*Text proposed by the Commission*

*Amendment*

***(ha) the following point 18a is inserted:***

***"18a 'offshore worker' means a person working on an offshore installation located outside the territorial waters but 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;"***

Or. en

## **Amendment 11**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 1 – point h b (new)**

Regulation (EC) No 562/2006

#### **Article 2 – point 19 a (new)**

*Text proposed by the Commission*

*Amendment*

***(hb) the following point 19a is inserted:***

***"19a 'one month' means 30 days."***

Or. en

## **Amendment 12**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 3**

Regulation (EC) No 562/2006

#### **Article 4 – paragraph 2 – point a**

*Text proposed by the Commission*

(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;

*Amendment*

(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. ***Those exceptions shall be notified to the Commission pursuant to Article 34;***

Or. en

**Amendment 13**

**Proposal for a regulation – amending act**

**Article 1 – point 3**

Regulation (EC) No 562/2006

Article 4 – paragraph 2 – point b

*Text proposed by the Commission*

(b) for individuals or groups of persons in the event of an unforeseen emergency situation."

*Amendment*

(b) for individuals or groups of persons in the event of an unforeseen emergency situation, ***in compliance with international and Union law in the field of fundamental rights.***"

Or. en

**Amendment 14**

**Proposal for a regulation – amending act**

**Article 1 – point 4 – point a**

Regulation (EC) No 562/2006

Article 5 – paragraph 1 – introductory wording

*Text proposed by the Commission*

"For intended stays in the territory of the Member States of a duration of no more than ***three months in any six-month period from the date of first entry in the territory of the Member States***, the entry conditions for third-country nationals shall be the following:

*Amendment*

"1. For intended stays in the territory of the Member States of 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:

Or. en

**Amendment 15**

**Proposal for a regulation – amending act**

**Article 1 – point 4 – point a a (new)**

Regulation (EC) No 562/2006

Article 5 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) the following paragraph 1a is inserted:***

***"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."***

Or. en

**Amendment 16**

**Proposal for a regulation – amending act**

**Article 1 – point 4 a (new)**

Regulation (EC) No 562/2006

Article 6 – paragraph 1– subparagraph 1

*Text proposed by the Commission*

*Amendment*

***(4a) In Article 6(1), the first***

*subparagraph is replaced by the following:*

**"1. Border guards shall, in the performance of their duties, fully respect human dignity and fundamental rights. Special care shall be taken in cases involving particularly vulnerable persons."**

Or. en

## **Amendment 17**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 5 – point d**

Regulation (EC) No 562/2006

Article 7 – paragraph 5 – subparagraph 1

#### *Text proposed by the Commission*

“Third-country nationals subject to a thorough second line check shall be given written information **on** the purpose of, and procedure for, such a check.”

#### *Amendment*

**"5. Third-country nationals subject to a thorough second line check shall be given written information *in a language they understand or may reasonably be presumed to understand, and if necessary in another form, stating* the purpose of, and procedure for, such a check."**

Or. en

#### *Justification*

*The wording of this article is taken from the Return Directive 2008/115/EC that has been adopted in Parliament, with purpose to align and maintain a coherent right to information of third country nationals amongst the various EU legislation dealing with third country nationals within Member States.*

## **Amendment 18**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 6**

Regulation (EC) No 562/2006

Article 9 – paragraph 2 – point a – subparagraph 1

*Text proposed by the Commission*

"2. (a) Persons enjoying the 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.

*Amendment*

"2. (a) Persons enjoying the 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 **not required**") and B2 ("all passports") of Annex III.

Or. en

**Amendment 19**

**Proposal for a regulation – amending act**

**Article 1 – point 6**

Regulation (EC) No 562/2006

Article 9 – paragraph 2 – point a – subparagraph 2

*Text proposed by the Commission*

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 **or long-stay visa** may use the lanes indicated by the sign in part B1 ("visa **free**") 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.

*Amendment*

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.

Or. en

**Amendment 20**

**Proposal for a regulation – amending act**

**Article 1 – point 6**

Regulation (EC) No 562/2006

Article 9 – paragraph 2 – point b – subparagraph 3

*Text proposed by the Commission*

The provision of separate lanes indicated by the sign in part B1 ("visa **free**") of Annex III is ***an option and*** not ***an obligation*** for Member States. They shall decide whether to do so and at which border crossing points in accordance with practical needs."

*Amendment*

The provision of separate lanes indicated by the sign in part B1 ("visa **not required**") of Annex III is not ***obligatory*** for Member States. They shall decide whether to do so and at which border crossing points in accordance with practical needs."

Or. en

**Amendment 21**

**Proposal for a regulation – amending act**

**Article 1 – point 6 a (new)**

Regulation (EC) No 562/2006

Article 9 – paragraph 5

*Text proposed by the Commission*

*Amendment*

***(6a) In Article 9, paragraph 5 is deleted.***

Or. en

**Amendment 22**

**Proposal for a regulation – amending act**

**Article 1 – point 7 – point -a (new)**

Regulation (EC) No 562/2006

Article 10 – title

*Text proposed by the Commission*

*Amendment*

***(-a) the title is replaced by the following:  
"Stamping of travel documents"***

Or. en



## **Amendment 23**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 7 – point b a (new)**

Regulation (EC) No 562/2006

#### **Article 10 – paragraph 3 – subparagraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) in the first subparagraph of paragraph 3, the following point (h) is added:***

***"(ga) to the travel documents of border residents who hold a local border traffic permit in accordance with Article 6 of Regulation (EC) No 1931/2006 of the European Parliament and Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States<sup>1</sup> and pursuant to a relevant bilateral agreement."***

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<sup>1</sup> ***OJ L 405, 30.12.2006, p. 1.***

Or. en

### *Justification*

*The combination of Articles 4 § 1 and 6 § 2 of Regulation 1931/2006/EC of the European Parliament and the Council results in that those subject to special arrangements for local border traffic, as established by the aforementioned Regulation, do not require entry or exit stamps to their passports when they enter or exit the Schengen area. The provisions of s. 4 and 6 establish for residents in the border area an exception from the obligations which arise under this Regulation, as is also expressly stated in the explanatory note, paragraph No. 3, of the above Regulation. In light of the amendments to the present Regulation, harmonisation of both regulations is required.*

## **Amendment 24**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 7 – point b b (new)**

Regulation (EC) No 562/2006

#### **Article 10 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***(bb) in paragraph 3, the second subparagraph is replaced by the following:***

***"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 shall keep statistics of such exceptional cases and shall provide those statistics to the Commission."***

Or. en

## **Amendment 25**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 8**

Regulation (EC) No 562/2006

Article 11 – paragraph 3

*Text proposed by the Commission*

"Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be returned in accordance with Directive 2008/115/EC of the European Parliament and of the Council.

*Amendment*

"3. Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be 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 implementing that Directive.***

Or. en

## **Amendment 26**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 8 a (new)**

Regulation (EC) No 562/2006

#### **Article 12 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(8a) In Article 12, the following paragraph 4a is inserted:***

***"4a. Member States shall inform the European Parliament, the Council and the Commission if, in the conduct of border surveillance, there is a noted increase in levels of unauthorised border crossings and/or an increase in levels of criminality directly related to acts or omissions by a third country. This information shall be taken into account by the competent institutions with a view to considering restrictive measures in accordance with Article 215 of the Treaty on the Functioning of the European Union."***

Or. en

## **Amendment 27**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 10 a (new)**

Regulation (EC) No 562/2006

#### **Article 15 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) In Article 15(1), the following subparagraph is inserted after the first subparagraph:***

***"The border guards shall ensure that a person who wishes to make an application for international protection has an effective opportunity to lodge the application as soon as possible, fulfilling***

*their tasks in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union and the relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 ("the Geneva Convention").*

Or. en

## Amendment 28

### Proposal for a regulation – amending act

#### Article 1 – point 11

Regulation (EC) No 562/2006

Article 15 – paragraph 1 – subparagraph 3

#### *Text proposed by the Commission*

"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 situations ***of particular vulnerability*** involving unaccompanied minors and victims of trafficking. Member States shall encourage border guards to learn languages, ***in particular those*** necessary for the carrying-out of their tasks."

#### *Amendment*

"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 necessary for the carrying-out of their tasks ***and shall ensure that border guards receive training with regard to the protection of fundamental rights in general and the rights of specific categories of vulnerable persons.***"

Or. en

## Amendment 29

### Proposal for a regulation – amending act

#### Article 1 – point 13 – point a

Regulation (EC) No 562/2006

Article 19 – paragraph 1 – subparagraph 1 – point g

#### *Text proposed by the Commission*

"(g) rescue services, police **and** fire brigades;

#### *Amendment*

"(g) rescue services, police, fire brigades **and border guards**;

Or. en

## Amendment 30

### Proposal for a regulation – amending act

#### Article 1 – point 14

Regulation (EC) No 562/2006

Article 21 – point d

#### *Text proposed by the Commission*

(14) In Article 21, point (d) is **deleted**.

#### *Amendment*

(14) In Article 21, point (d) is **replaced by the following**:

**"(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."**

Or. en

## Amendment 31

### Proposal for a regulation – amending act

#### Article 1 – point 17 a (new)

Regulation (EC) No 562/2006

Article 34 – paragraph 1 – point e a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**(17a) In Article 34(1), the following point**

*(ea) is added:*

*"(ea) the exceptions to the rules regarding the crossing of the external borders referred to in point (a) of Article 4(2);"*

Or. en

## **Amendment 32**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 17 b (new)**

Regulation (EC) No 562/2006

Article 34 – paragraph 1– point e b (new)

*Text proposed by the Commission*

*Amendment*

*(17b) In Article 34(1), the following point (eb) is added:*

*"(eb) the statistics referred to in Article 10(3)."*

Or. en

## **Amendment 33**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 18**

Regulation (EC) No 562/2006

Article 37 – first sentence

*Text proposed by the Commission*

*Amendment*

"The Member States shall notify the Commission of national provisions relating to Article 21(c), the penalties as referred to in Article 4(3) and the bilateral agreements authorised by this Regulation."

"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 agreements authorised by this Regulation."

Or. en

## Amendment 34

### Proposal for a regulation – amending act

#### Article 2 – point 2

Convention implementing the Schengen Agreement

Article 22

*Text proposed by the Commission*

(2) Article 22 is **deleted**;

*Amendment*

(2) Article 22 is **amended as follows**:

**1. Aliens who have legally entered the territory of one of the Contracting Parties *may* be obliged to report, in accordance with the conditions laid down by each Contracting Party, to the competent authorities of the Contracting Party whose territory they enter. Such aliens may report either on entry or within three working days of entry, at the discretion of the Contracting Party whose territory they enter.**

**2. Aliens resident in the territory of one of the Contracting Parties who enter the territory of another Contracting Party *may* be required to report to the authorities, as laid down in paragraph 1.**

**3. [...].**

Or. en

## Amendment 35

### Proposal for a regulation – amending act

#### Annex – point 1 – point a

Regulation (EC) No 562/2006

Annex III – PART B1

*Text proposed by the Commission*

"PART B1: 'visa **free**';"

*Amendment*

"PART B1: 'visa **not required**';"

Or. en

## Amendment 36

### Proposal for a regulation – amending act

#### Annex – point 3 – point a

Regulation (EC) No 562/2006

Annex VI – point 1.1.4

#### *Text proposed by the Commission*

(a) the following point 1.1.4. is inserted:

"1.1.4. **Joint** border crossing points

1.1.4.1. Member States may conclude bilateral agreements with neighbouring third countries concerning the establishment of **joint** border crossing points at which border guards of one party carry out entry and/or exit checks in accordance with their legislation on the territory of the other party. **Joint border crossing points may be located either on Member State territory or on third-country territory.**

#### *Amendment*

(a) the following point 1.1.4. is inserted:

"1.1.4. **Shared** border crossing points

1.1.4.1. Member States may conclude bilateral agreements with neighbouring third countries concerning the establishment of **shared** border crossing points at which border guards of one party carry out entry and/or exit checks in accordance with their legislation on the territory of the other party. **Applicable national legislation of the third country at shared border crossing points shall respect the legal protection granted in the fields derived from Union legislation. In particular, such agreements shall contain provisions:**

**– regulating the tasks performed and measures taken by border guards of both parties. Particular care shall be taken regarding procedures relating to interception of a person or persons, seizure of property, access to asylum procedures in the territory of the Member States, and guarantees for entry into the territory of the Member State of persons enjoying the right of free movement under Union law. Those provisions shall be implemented both in the territory of the Member States and in the territory of third countries;**

**– guaranteeing the ability of Member State border guards to use information systems processing personal data in accordance with Article 7 and allowing the establishment of the technical and organisational security measures required by Union law to protect personal data**



*against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access. Access to those information systems by third-country border guards shall be prohibited.*

1.1.4.2. **Joint** border crossing points located on Member State territory: *Bilateral agreements establishing joint border crossing points located on Member State territory shall contain an authorisation for third-country border guards to exercise their tasks in the Member State, respecting the following principles:*

*(a) International protection: A third-country national asking for international protection on Member State territory shall be given access to relevant Member State procedures even if the third-country national has not yet passed exit control by third-country border guards present at the joint border crossing point.*

*(b) Arrest of a person or seizure of property: If third-country border guards become aware of facts justifying the arrest or placing under protection of a person or seizure of property, they shall*

*- either inform Member State authorities of these facts and Member State authorities shall assure an appropriate follow-up in accordance with national, EU and international law, independently of the nationality of the concerned person,*

*- or act in accordance with their national legislation. In this case the person concerned must, however, be offered access to Member States courts and dispose of remedies sufficient to ensure legal protection in the fields covered by Union law in order to provide the legal protection which individuals derive from the rules of Union law and to ensure that those rules are fully effective.*

*(c) Persons enjoying the right of free movement under Union law entering EU*

1.1.4.2. **Shared** border crossing points *may be located either on Member State territory or on third-country territory.*

*territory: Third-country border guards shall not prevent persons enjoying the right of free movement under Union law from entering EU territory. If there are reasons justifying refusal of exit from the third country concerned, third-country border guards shall inform Member State authorities of these reasons and Member State authorities shall assure an appropriate follow-up in accordance with national, EU and international law.*

*1.1.4.3. Joint border crossing points located on third-country territory: Bilateral agreements establishing joint border crossing points located on third-country territory shall contain an authorisation for Member State border guards to exercise their tasks in the third country in accordance with the Schengen Borders Code and respecting the following principles:*

*(a) International protection: A third-country national who has passed exit control by third-country border guards and subsequently asks Member State border guards present in the third country for international protection, shall be allowed access to the territory of the relevant Member State with a view to launching relevant procedures. Third-country authorities shall accept the transfer of the person concerned into Member State territory.*

*(b) Arrest of a person or seizure of property: If Member State border guards become aware of facts justifying the arrest or placing under protection of a person or seizure of property, they shall act in accordance with their national and applicable Union legislation. Third-country authorities must accept a transfer of the concerned person or object into Member State territory.*

*(c) Third-country nationals entering their country of citizenship: Member State border guards shall not prevent citizens of*

*the third country concerned from entering their country of citizenship. If there are reasons justifying refusal of exit from the Member State under Member State legislation, Member State border guards shall inform third-country authorities of these reasons and third-country authorities shall assure an appropriate follow-up in accordance with national and international law.*

**1.1.4.4.** Before concluding or amending any bilateral Agreement on *joint* border crossing points with a neighbouring third country, the Member *State concerned* shall consult the Commission as to the compatibility of the Agreement with *this Regulation*.

If the Commission considers the Agreement to be incompatible with *this Regulation*, it shall notify the Member State concerned. The Member State shall take all appropriate steps to amend the Agreement within a reasonable period in such a way as to eliminate the incompatibilities established."

**1.1.4.3.** Before concluding or amending any bilateral Agreement on *shared* border crossing points with a neighbouring third country, the Member *States* shall consult the Commission, *which shall give a prior favourable opinion* as to the compatibility of the Agreement with *the relevant Union legislation*.

If the Commission considers the *draft* Agreement to be incompatible with *the relevant Union legislation*, it shall notify the Member State concerned. The Member State shall *not conclude the agreement and shall* take all appropriate steps to amend the *draft* Agreement within a reasonable period in such a way as to eliminate the incompatibilities established."

Or. en

## **Amendment 37**

### **Proposal for a regulation – amending act**

#### **Annex – point 3 – point b**

Regulation (EC) No 562/2006

Annex VI – point 1.2.1 – introductory wording

#### *Text proposed by the Commission*

"1.2.1. Checks shall be carried out both on train passengers and on railway staff on trains crossing external borders, including those on goods trains or empty trains. Member States may conclude bilateral

#### *Amendment*

"1.2.1. Checks shall be carried out both on train passengers and on railway staff on trains crossing external borders, including those on goods trains or empty trains. Member States may conclude bilateral

agreements on how to conduct those checks *respecting the principles set out in point 1.1.4*. Those checks shall be carried out in one of the following ways:

agreements on how to conduct those checks. Those checks shall be carried out in one of the following ways:

Or. en

## **Amendment 38**

### **Proposal for a regulation – amending act**

#### **Annex – point 3 – point b**

Regulation (EC) No 562/2006

Annex VI – point 1.2.2 – introductory wording

#### *Text proposed by the Commission*

1.2.2. In addition, in order to facilitate rail traffic flows of high-speed passenger trains, the Member States on the itinerary of these trains from third countries may also decide, by common agreement with third countries concerned *respecting the principles set out in point 1.1.4*, to carry out entry checks on persons in trains from third countries in either one of the following ways:

#### *Amendment*

1.2.2. In addition, in order to facilitate rail traffic flows of high-speed passenger trains, the Member States on the itinerary of these trains from third countries may also decide, by common agreement with third countries concerned, to carry out entry checks on persons in trains from third countries in either one of the following ways:

Or. en

## **Amendment 39**

### **Proposal for a regulation – amending act**

#### **Annex – point 4 – point -a (new)**

Regulation (EC) No 562/2006

Annex VI – point 3.1.1

#### *Text proposed by the Commission*

#### *Amendment*

*(-a) in point 3.1.1., the following sentence is inserted after the first sentence:*

*"In exceptional cases, checks may also be carried out during the passage of the vessel within the territorial sea of the Member State concerned, as defined by*

#### **Amendment 40**

##### **Proposal for a regulation – amending act**

##### **Annex – point 4 – point a**

Regulation (EC) No 562/2006

Annex VI – point 3.1.1 – second sentence

##### *Text proposed by the Commission*

"Member States may conclude bilateral agreements according to which checks may also be carried out during crossings or, upon the ship's arrival or departure, in the territory of a third country, ***respecting the principles set out in point 1.1.4.***

##### *Amendment*

"Member States may conclude bilateral agreements according to which checks may also be carried out during crossings or, upon the ship's arrival or departure, in the territory of a third country.

#### **Amendment 41**

##### **Proposal for a regulation – amending act**

##### **Annex – point 7**

Regulation (EC) No 562/2006

Annex VII – point 7 – title

##### *Text proposed by the Commission*

"7. Rescue services, police ***and*** fire  
brigades

##### *Amendment*

"7. Rescue services, police, fire brigades  
***and border guards***

## Amendment 42

### Proposal for a regulation – amending act

#### Annex – point 7

Regulation (EC) No 562/2006

Annex VII – point 7

#### *Text proposed by the Commission*

The arrangements for the entry and exit of members of rescue services, police **and** fire brigades acting in emergency situations shall be laid down by national law and, where applicable, by bilateral agreements. These arrangements may provide for derogations from Articles 4, 5 and 7.

#### *Amendment*

The arrangements for the entry and exit of members of rescue services, police, fire brigades **and border guards** acting in emergency situations shall be laid down by national law and, where applicable, by bilateral agreements. These arrangements may provide for derogations from Articles 4, 5 and 7.

Or. en

## **EXPLANATORY STATEMENT**

### **Introduction**

The creation of the Schengen area in the late 1980s was one of Europe's greatest achievements. The adoption of the Schengen Agreement on 14 June 1985 led to the abolishment of systematic border controls at the internal borders of the countries participating in the Schengen area and guaranteed the free movement of persons in this area. Over those 25 years, the contractual and legal framework that the European Schengen area has become, resulted in what we now proudly call the Schengen acquis. Schengen area, initially counted 5 members, now is comprised of 25 member countries with Bulgaria and Romania soon to be integrated.

Regulation 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) is an important milestone in this legislative effort to promote and enhance the Schengen acquis. It applies to any person crossing the internal or external borders of the European Union laying down standards for checks at border crossing points of the Schengen area. Its legal framework focuses on the protection of the interests of the Union and ensures the free movement of EU citizens and other persons enjoying the same right, but at the same time it protects the rights of individuals and the rights of particular vulnerable groups of persons that do not enjoy the privileges of the right of free movement.

The main purpose of this Regulation is to modify the existing legislation on border checks carried out on persons and enhance the integrated border management policy by improving the rules on crossing external borders.

### **Scope of the Commission proposal**

Coming in a very crucial and historical for EU timing, the Commission proposal aims to make the Schengen Border Code a more clear and comprehensive mechanism.

Being primarily technical in nature, it concerns the updating of the rules and legal developments that have taken place since the establishment of Regulation 562/2006 and since the taking into force of the Lisbon Treaty.

It also takes under consideration practical experiences of the Member States in the application of the Schengen Borders Code.

The Commission proposal contains finally closely related modifications to the Convention implementing the Schengen Agreement of 14 June 1985.

### **Rapporteur's position**

Taking into account the proposal by the European Commission and the recent developments both in legal and practical terms of the Schengen acquis, the rapporteur agrees with the

Commission on the need to amend the existing Schengen Border Code. It is vital to maintain the notion that the removal of controls at the internal borders between Member States goes hand in hand with the need of effective controls, deeper cooperation and mutual trust at the external borders of the Schengen area. In particular this period, during which urgent developments in EU external borders have taken place (i.e. radical political changes in North Africa) that affect deeply the migration flows directed towards the EU.

In this context, the rapporteur presents amendments that ameliorate the existing frame and which are mainly guided by two principles: First, by enhancing the rules that facilitate, simplify and further develop the free movement within the European Schengen area and secondly, by supporting a rigorous framework for control and security at the external borders of the territory of the Member States.

The rapporteur further agrees that it is important for the strengthening of the Schengen acquis that bilateral agreements are concluded between Member States and third countries for common crossing points. Such agreements should be compatible with European law and values. As seen in existing examples of agreements such as the ones concluded between Ukraine and Poland or Hungary and Croatia, these agreements can act as tools enhancing the protection and border checks of persons attempting to cross at external border crossing points.

The strengthening of the external borders will create legal certainty, it will strengthen the solidarity amongst the Member States and it will provide further economic development. In any case it should be noted that these proposals shall take into great consideration the protection of individual rights of all persons entering or attempting to enter the Schengen area by using the long standing political and legal tradition of the European Union. In addition, the rapporteur notes, that when it has been shown that acts or omissions by a third country have caused disturbances to the external borders of the Schengen area, Member States, in the conduct of border surveillance, should be concerned and act under Article 215 of TFEU.

Whilst drafting the amendments to the present proposal, apart from the newly established Lisbon Treaty and the EU legislation on the protection of human rights, the rapporteur took also into consideration recently adopted European legislation such as the newly adopted Visas Code, the Return Directive and the recent amendments to the regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) that offers new fields of action in order to improve the integrated management of the Union's external borders.

Thus, the current proposal, even though it is more technical in nature, is an added value to the evolution of the Schengen acquis. It offers immediate benefits while facilitates and evolves border controls and develops the trust and solidarity in the Schengen area. The message that it conveys is crystal clear; despite the difficult period the European Union faces, it remains committed to its integration process and faithful to its values that guarantees peace, security and prosperity in the continent. Convinced that common challenges can only be tackled with shared goals and visions can only be achieved through cooperation and mutual solidarity.