EUROPEAN PARLIAMENT

2004 *2009*

Committee on Legal Affairs
The Chairman

Mr Jean-Marie Cavada
Chairman
Committee on Civil Liberties, Justice and Home Affairs
BRUSSELS

Subject: Legal basis of the proposal for a Council regulation establishing a Community Code on the rules governing the movement of persons across borders (COM(2004)0391 – C6-0080/2004 – 2004/0127(COD))[1]

Dear Mr Chairman,

By letter of 30 March 2005 you asked the Committee on Legal Affairs pursuant to Rule 35(2) to consider whether the legal basis of the above Commission proposal was valid and appropriate.

The Committee considered the above question at its meeting of 21 April 2005.

The legal basis proposed for this regulation is Article 62(1) and (2)(a) of the EC Treaty. The rapporteur for the Committee on Civil Liberties, Justice and Home Affairs, Mr Michael Cashman, proposes adding Article 62(3) of the EC Treaty as an additional legal basis made necessary by the introduction of certain amendments.

In this connection the rapporteur proposes repealing Article 22 of the Convention implementing the Schengen Agreement of 14 June 1985 (Amendments 85 and 70)[2].

It should first be borne in mind that, in accordance with Council Decision 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the

[1] Not yet published in OJ.
[2] Article 22 of the Schengen Convention states that 'aliens' are required to report to the competent authorities 'either on entry or within three working days of entry'. The Member States are to lay down the conditions and exemptions for this.

provisions or decisions which constitute the Schengen acquis, the legal basis for the Article 22 in question is Article 62(3) of the EC Treaty (see Annex A and Article 2 of the above Decision).

It follows, clearly, that Article 62(3) of the EC Treaty constitutes the appropriate legal basis for any action by the legislator the subject of which is the said Article 22 of the Convention implementing the Schengen Agreement.

Second, it should be observed that the proposed addition would not have the effect of changing the procedure for adopting the act, since codecision is required in both cases, under Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty.

In view of these considerations and on a proposal by its draftsman Mr Manuel Medina Ortega, at its meeting of 21 April 2005 the Committee on Legal Affairs accordingly decided unanimously[1] to deliver a favourable opinion on the tabling of an amendment adding Article 62(3) of the EC Treaty as an additional legal basis to Article 62(1) and (2)(a) of the EC Treaty as proposed by the Commission.

Yours sincerely,

Giuseppe Gargani

[1] The following were present for the final vote: Giuseppe Gargani (chairman), Manuel Medina Ortega (draftsman and for Maria Berger), Marek Aleksander Czarnecki, Kurt Lechner (for Bert Doorn), Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Aloyzas Sakalas, József Szájer (for Rainer Wieland), Nicola Zingaretti and Jaroslav Zvěřina.