EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2004/0127(COD)

15.3.2005

***I
DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders
(COM(2004)0391 – C6-0080/2004 – 2004/0127(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Michael Cashman

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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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on establishing a Community Code on the rules governing the movement of persons across borders
(COM(2004)0391 – C6-0080/2004 – 2004/0127(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0391)[1],

– having regard to Article 251(2) and Articles 62(1) and (2)(a) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0080/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Development (A6-0000/2005),

1. Approves the Commission proposal as amended;

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 and Commission.

Text proposed by the Commission	Amendments by Parliament
Amendment 1 Citation 1	
Having regard to the Treaty establishing the European Community, and in particular ***Articles 62(1) and (2)(a)*** thereof,	Having regard to the Treaty establishing the European Community, and in particular ***Articles 62(1) and (2)(a) and 62(3)*** thereof,
Justification	
This legal basis is added to cover the proposed change in Article 34.1.	
Amendment 2 Citation 3	

[1] Not yet published in OJ.

Having regard to the Opinion of the European Parliament,

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

Justification

By letter of 13 January 2005, the EP was officially informed by the Commission that the procedure changed to codecision. This follows the Council Decision 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 (2004/927/EC)[1].

Amendment 3
Recital 6

(6) Border checks are in the interest not only of the States at whose external borders they are carried out but of all Member States which have abolished checks at their internal borders. They ***must*** 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. ***The performance of border checks must be proportionate to these objectives.***	(6) Border checks are in the interest not only of the States at whose external borders they are carried out but of all Member States which have abolished checks at their internal borders. They ***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. *("Must" should be replaced by "should" throughout the recitals. Adoption of this amendment will necessitate corresponding changes throughout the recitals)*

Justification

The last sentence is included in the new recital 6a. In the recitals English generally uses the auxilliary "should".

Amendment 4
Recital 6 a (new)

	(6a) Given that border checks constitute a legitimate infringement of fundamental rights, in particular the right to free movement, such checks should be conducted in such a way as to fully respect human dignity. Border checks

[1] OJ L 396, 31.12.2004, p. 45.

	should be carried out in a professional and courteous manner and be proportionate to the objectives pursued.

Amendment 5
Recital 8

(8) Provision ***must*** be made for relaxing checks at external borders in the event of exceptional and unforeseen circumstances.	(8) ***To avoid excessive waiting time at land borders,*** provision ***should*** be made for relaxing checks at external borders in the event of exceptional and unforeseen circumstances.

Justification

The recitals should state the reasons for the main provisions of the enacting terms.

Amendment 6
Recital 13

(13) ***With regard to the crossing of*** internal borders***,*** checks should not be carried out or formalities imposed solely because such a border is crossed.	(13) ***In an area where persons may move freely, the reintroduction of checks on persons at*** internal borders ***should remain an exception.*** Checks should not be carried out or formalities imposed solely because such a border is crossed.

Amendment 7
Recital 14

(14) It ***must*** nevertheless be made clear that this Regulation is without prejudice to the checks carried out under general police powers and the security checks on persons identical to those carried out for national flights***, to the possibilities for Member States to carry out exceptional checks on baggage in accordance with Council Regulation (EEC) No 3925/91 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***	(14) It ***should*** nevertheless be made clear that this Regulation is without prejudice to the checks carried out under general police powers and the security checks on persons identical to those carried out for national flights and to national legislation on carrying travel or identity documents.

an intra-Community sea crossing, and to national legislation on carrying travel or identity documents ***or the requirement that persons notify the authorities of their presence on the territory of the Member State in question***.

Justification

This provision is too detailed and does not relate to the enacting terms.

Amendment 8
Recital 15

(15) ***A*** Member ***State*** should also have the possibility of temporarily reintroducing checks at ***its*** borders in the event of a serious threat to its public policy, internal security or public health. The conditions and procedures for doing so must be laid down, so as to guarantee the exceptional nature of the measure and the principle of proportionality.	(15) Member ***States*** should have the possibility of temporarily reintroducing checks at ***internal*** borders in the event of a serious threat to public policy, internal security or public health. The conditions and procedures for doing so should be laid down, so as to guarantee the exceptional nature of the measure and the principle of proportionality. ***The scope and duration of the checks should be restricted to the bare minimum needed to respond to that threat.***

Amendment 9
Recital 16

(16) In the event of an exceptionally serious threat to public policy, internal security or public health affecting one or more Member States, the Council must be in a position to decide immediately to reintroduce checks at all internal borders or at specific borders of all or several Member States. The scope and duration of the checks must be restricted to the bare minimum needed to respond to this threat.	***deleted***

Justification

The content of this recital is already covered in recital 15.

Amendment 10
Recital 17

(17) In an area where persons may move freely, the reintroduction of checks on persons at internal borders must remain an exception and, consequently, the Member State using this measure must inform the other Member States and the Commission in detail of the reasons prompting it to introduce or extend the measure for more than 30 days, in order to engage in a debate and jointly to consider whether alternative measures might be possible. The information sent must be capable of being classified as confidential or secret. The Member State that invoked the safeguard clause must report to the other Member States, the European Parliament and the Commission once the checks have been lifted. The public must also be informed in an appropriate manner of the reintroduction of checks at internal borders and of the authorised crossing-points, save where this is precluded by the reasons for their reintroduction.	***deleted***

Justification

Recitals are meant to give the reasons of the main enacting terms. Recital 15 already covers the reintroduction of internal border controls. The present recital is too detailed.

Amendment 11
Recital 18

(18) Provision must be made for a procedure enabling the Commission to adapt the detailed practical rules governing border checks.	***deleted***

Justification

This recital has no expression in the enacting terms.

Amendment 12
Recital 19

(19) 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.	(19) 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.***As co-legislators the European Parliament and Council should have the possibility of revoking the delegation of implementing powers.***

Justification

See justification for amendment on Article 30, paragraph 3a (new).

Amendment 13
Recital 19 a (new)

	(19a) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[1] applies to the processing of personal data by the Member States in application of this Regulation.
	[1] OJ L 281, 23.11.1995, p. 31.

Justification

The regulations provides in certain cases for the exchange of personal data for which the directive 95/46 is applicable. This needs to be recalled.

Amendment 14
Recital 22

(22) This Regulation replaces the Common Manual and the provisions of the Convention implementing the	***deleted***

Schengen Agreement of 14 June 1985 on the crossing of internal and external borders. The Schengen Executive Committee decisions of 22 December 1994 (SCH/Com-ex (94)17, rev. 4)[1] and 20 December 1995 (SCH/Com-ex (95) 20, rev. 2),[2] and 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,[3] should also be repealed.

Justification

It is not necessary in the recitals to quote the legal acts that will be repealed by this act.

Amendment 15
Recital 25 a (new)

(25a) As regards Switzerland, this Regulation constitutes a development of the 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[1], which falls within the area referred to in Article 1, point G of Decision 1999/437/EC[2] read in conjunction with Article 4(1) of the Council Decisions of 25 October 2004 on the signing on behalf of the European Union, and on the signing on behalf of the European Community, and on the provisional application of certain provisions of that Agreement[3] .

[1] Council doc. 13054/04 accessible on http://register.consilium.eu.int.
[2] OJ L 176, 10.7.1999, p. 31.

[3] OJ L 368, 15.12.2004, p.26. and OJ L 370, 17.12.2004, p. 78 .

Justification

Since the Agreement with Switzerland was signed on 26 October, any legislative act that constitutes a development of the Schengen Acquis for the purposes of the Agreement should be identified as such using a recital. This Regulation is a development of the Schengen Acquis and so requires a recital concerning Switzerland.

Amendment 16
Article 2, point 5

5) "third-country national" means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty;	5) "third-country national" means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty ***and does not enjoy the Community right of free movement***;

Justification

In the context of this regulation third-country nationals enjoying the Community right to free movement enjoy better rights than other third-country nationals. This should be clearly stated.

Amendment 17
Article 2, point 7 a (new)

	7a) "threat to public health" means any of the diseases mentioned in the International Health Regulations of the World Health Organisation;

Justification

"Threat to public health" is one of the reasons to refuse entry to the Schengen territory (Article 5). In the Commission's proposal this expression is not defined. In the explanatory statement the Commission makes reference to directive 2004/38 (article 29). This directive refers to "the relevant instruments of the WHO" without specifying them. A list of diseases is mentioned in annex A of directive 64/221 which was, however, repealed by directive 2004/38. Given the potentially serious consequences (refusal of entry into the Schengen territory) the terms needs to be absolutely clearly defined. The diseases mentioned in the International Health Regulations are cholera, plague and yellow fever.

Amendment 18
Article 2, point 10

10) "border guard" means any public servant assigned to a border crossing point	10) "border guard" means any ***authorised*** public servant assigned to a border

or along the external land or sea border or the immediate vicinity of that border who is responsible, in accordance with the national legislation of each Member State, for carrying out border control tasks;	crossing point or along the external land or sea border or the immediate vicinity of that border who is responsible, in accordance with ***this Regulation and*** the national legislation of each Member State, for carrying out border control tasks;

Amendment 19
Article 2, point 14

14) "cruise ship" means a ship which follows a given itinerary in accordance with a predetermined programme, whose passengers take part in a collective programme of tourist activities in the various ports and ***which normally neither takes passengers on nor allows passengers to disembark during the voyage***;	14) "cruise ship" means a ship which follows a given itinerary in accordance with a predetermined programme, whose passengers ***may*** take part in a collective programme of tourist activities in the various ports and ***whose passenger list normally remains the same during the entire voyage***;

Amendment 20
Article 2, point 15

15) "pleasure boating" means the use of pleasure boats ***equipped with sails and/or an engine for private use which are used*** for sporting or tourism purposes;	15) "pleasure boating" means the use of pleasure boats for sporting or tourism purposes;

Amendment 21
Article 3, point (-a) (new)

	(-a) the right of Union citizens to leave and enter the Member State of which they are a national and other Member States;

Justification

This right is part of international law which should be recalled here. At the same time the provision of Art. 4.2d) is deleted. In addition, in Community law there is a right of entry for EU citizens into other Member States.

Amendment 22
Article 3, point (a)

(a) the rights of persons enjoying the Community right of free movement;	(a) the rights of ***other*** persons enjoying the Community right of free movement;

Amendment 23
Article 3, point (b)

(b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement;	(b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement***, who have the right to remain on the territory of the Member States until a final decision is taken on their request for asylum***;

Amendment 24
Title II, Chapter I, Title

Chapter I	***deleted***
Crossing of external borders and conditions for entry	

Justification

The amendment intends to simplify the text: It is not necessary to provide for separate chapters if they contain only very few articles.

Amendment 25
Article 4, paragraph 1, subparagraphs 1 and 2

1. External borders may be crossed only at authorised border crossing-points and during the fixed opening hours. The opening hours ***must*** be clearly indicated at border posts.	1. External borders may be crossed only at authorised border crossing-points and during the fixed opening hours. The opening hours ***shall*** be clearly indicated at border posts.
Specific crossing-points reserved for residents of border areas may be provided for under the regime of local border traffic.	Specific crossing-points reserved for residents of border areas may be provided for under the regime of local border traffic. ***This shall be clearly indicated at those***

crossing-points.

Justification

For the first part: In the enacting terms of binding acts English generally uses the auxiliary "shall".

Amendment 26
Article 4, paragraph 2, point (d)

(d) for nationals of Member States crossing the border of the Member State whose nationality they hold;	***deleted***

Justification

See justification for amendment on Article 3, letter -a) (new).

Amendment 27
Article 4, paragraphe 2, point (ea) (new)

	(ea) for individuals or groups of persons in the event of an unforeseen emergency.

Justification

See justification for amendment on Article 3.

Amendment 28
Article 5, paragraph 1, introductory part

1. For stays not exceeding 90 days, third-country nationals ***may*** be granted entry into the territory of the Member States provided they fulfil the following conditions:	1. For stays not exceeding 90 days, third-country nationals ***shall*** be granted entry into the territory of the Member States provided they fulfil ***all of*** the following conditions:

Justification

Once a third-country national fulfils all conditions the rule of law requires Member States to grant entry. This idea is already reflected in the standard form for refusal (Annex VIII B) which has no category of reasons for refusal like "other grounds". All grounds relate to the conditions for entry.

Amendment 29
Article 5, paragraph 1, point (b)

(b) they are in possession of a valid visa if required;	(b) they are in possession of a valid visa if required ***pursuant to Regulation (EC) No 539/2001***[1];
	[1] OJ L 81, 21.3.2001, p.1. Regulation as last amended by Regulation (EC) No 435/2003, OJ L 69, 13.3.2003, p.10.

Amendment 30
Article 5, paragraph 1, point (c)

(c) they produce, if ***necessary***, documents justifying the purpose and conditions of the intended stay***, including evidence of travel insurance,*** and they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;	(c) they produce, if ***requested by the border guard***, documents justifying the purpose and conditions of the intended stay and they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;

Justification

The first part of the amendment intends to make the text clearer.
As regards the second part: In practice, the travel insurance is not checked at the border.

Amendment 31
Article 5, paragraph 2, subparagraph 2

The supporting documents used to verify fulfilment of the conditions set out in paragraph 1 ***are specified in Annex II.***	The supporting documents used to verify fulfilment of the conditions set out in paragraph 1(***c) shall be:***
	- in the case of third-country nationals subject to the visa requirement pursuant to Regulation (EC) No 539/2001, copies of the documents requested by the diplomatic

	mission or consular post for the examination of the visa application pursuant to the relevant provisions of the Common Consular Instructions;
	- in the case of third-country nationals not subject to the visa requirement pursuant to Regulation (EC) No 539/2001, the documents specified in Annex II.

Justification

For third-country nationals subject to the visa requirement there is a double-check. It is first up to the consulate to examine the visa application. The Common Consular Instructions lists in detail the purpose of the visa application examination, the supporting documents that can be requested as well as the procedure to be followed (personal interview etc.). At the border, after the person was issued a visa, another check is made. The purpose is to check whether in the time since the visa was issued the requirements are still met (for ex: that there is now no data in the SIS to refuse entry).
To avoid situations in which the border guard asks for different documents than the consulate a provision should be included that only those documents can be requested by the border guard that were also requested for the visa.

Amendment 32
Article 5, paragraph 3

3. Means of subsistence shall be assessed in accordance with the purpose of the stay ***and*** by reference to average prices for board and lodging. The reference amounts set each year by each of the Member States are shown in Annex III.	3. Means of subsistence shall be assessed in accordance with the purpose***, duration and conditions*** of the stay***. Where a third-country national stays with a host, a letter of guarantee from that host shall be sufficient. Where a third-country-national does not stay with a host the means of subsistence shall be assessed*** by reference to average prices for board and lodging ***in budget accommodation multiplied by the number of days stayed***. The reference amounts set each year by each of the Member States are shown in Annex III.

Justification

The amendment seeks to introduce a few general principles in the legal text since the annex III is subject to change by the comitology procedure.

Amendment 33
Article 5, paragraph 3 a (new)

3a. By way of derogation from paragraph 1, in case of doubts about the intended purpose of stay of a third-country national not subject to the visa requirement pursuant to Regulation (EC) No 539/2001, the third-country national shall be interviewed by a specially trained border guard or other official with the aim of assessing the risk of illegal immigration. The border guard or other official shall examine the supporting documents and the third-country national's ties with his country of residence. To that end, the third-country national may be requested to produce proof of place of residence and professional activity in his country of residence. Unemployed persons shall provide convincing arguments and documentation for the purpose of their stay and in particular their intention to return to the country of residence.

Justification

For third country nationals there is no first check before they arrive at the border like in the case of persons needing a visa. It seems therefore appropriate to introduce special rules as regards the risk of illegal immigration on this group of persons for the situation that a border guard has doubts about the intended purpose of the stay.

Amendment 34
Article 5, paragraph 3 b (new)

3b. Third-country nationals shall be informed which documents they must be able to provide at the border crossing-point. In the case of third-country nationals subject to the visa requirement pursuant to Regulation (EC) No 539/2001, the diplomatic mission or consular post issuing the visa shall inform them that they must carry with them copies of all the documents requested for the visa application. In the case of third-country nationals not subject to the visa requirement pursuant to Regulation (EC) No 539/2001, Member State representations in the countries listed in

	Annex II to Regulation (EC) No 539/2001 shall communicate the list of documents specified in Annex II of the present Regulation and the provisions of Article 5(3a) in an appropriate way.

Amendment 35
Article 5 a (new)

	Article 5a
	Conduct of border checks
	1. Border guards shall, in the performance of their duties, fully respect human dignity and shall carry out border checks in a professional and respectful manner. Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.
	2. While performing border checks, border guards shall not discriminate against persons on any of the grounds referred to in Article 13 of the Treaty.

Justification

There is no article on the way in which border guards should act. This amendment rectifies this omission.

Amendment 36
Chapter II, Title

Chapter II	***deleted***
Control of external borders and refusal of entry	

Justification

The amendment intends to simplify the text: It is not necessary to provide for separate chapters if they contain only very few articles.

Amendment 37

Article 6, paragraph 1

1. Cross-border movement at external borders shall be subject to checks by the national border guards. Checks shall be carried out in accordance with ***paragraphs 2 and 3***.	1. Cross-border movement at external borders shall be subject to checks by the national border guards. Checks shall be carried out in accordance with ***this Regulation***.

Justification

Checks are not only carried out in accordance with paragraphs 2 and 3 of Article 6 but also in accordance with Articles 5, 5a new, 7, 9 etc.

Amendment 38
Article 6, paragraph 2

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***.	2. All persons shall undergo a minimum check ***of their travel documents*** in order to establish their ***identity. The minimum check shall consist of an identity check*** on the basis of the ***travel documents presented and a rapid and straightforward check to ascertain whether the document(s) authorising the holder to cross the border are valid and whether there are any signs of falsification or counterfeiting. Union citizens shall not be subject to any further checks***.
The checks shall be carried out by each Member State in accordance with ***its*** legislation, in particular where searches are involved. The checks ***may*** also cover the vehicles and objects in the possession of the persons crossing the border.	The checks shall be carried out by each Member State in accordance with ***this Regulation and the relevant national*** legislation, in particular where searches are involved. The checks ***shall*** also cover the vehicles and objects in the possession of the persons crossing the border.

Justification

The amendments on Article 6.2 and 6.3 incorporate the text of annex IV (checks at authorised border crossing-points) in the text of Article 6. Annex IV as proposed by the Commission is very short and in part repeats provisions of Article 6. It is therefore better to delete annex IV and to word Article 6 in a more comprehensive way.

Amendment 39
Article 6, paragraph 3, point (a)

(a) the verification of travel documents and the other conditions governing entry and residence laid down in Article 5(1) and, where applicable, documents authorising residence and the pursuit of a professional activity;	(a) the verification of travel documents and the other conditions governing entry and residence laid down in Article 5(1) and, where applicable, documents authorising residence and the pursuit of a professional activity***, including the scrutiny of the travel documents for signs of falsification or counterfeiting***;

Amendment 40
Article 6, paragraph 3, point (b)

(b) the ***detection and prevention of threats to the internal security, public policy and public health of the Member States, and the recording of offences, particularly through direct consultation of reports on persons and objects included*** in the Schengen Information System (SIS) and in national data files.	(b) the ***ascertaining whether the person, his vehicle and the objects he is transporting are likely to jeopardise the public policy, internal security, public health or international relations of any of the Member States. This shall include consulting directly the data and alerts on persons and objects contained*** in the Schengen Information System (SIS) and in national data files ***and the action, if any, to be taken as a result of an alert. Where the search of the SIS brings to light the fact that an alert, as referred to in Articles 95 and 100 of the Schengen Convention, has been issued, the action requested which appears on the screen must be taken immediately***.

Amendment 41
Article 6, paragraph 4

4. ***Detailed rules governing the checks provided for by paragraphs 2 and 3 are in Annex IV.***	4. ***Third-country nationals subject to a thorough check shall have the right to request that such checks not be made in a public area.***

Amendment 42
Article 6, paragraph 4a (new)

	4a. Third-country nationals subject to a thorough check in the second line shall be provided immediately with an information sheet outlining the purpose and procedure of the thorough check in the second line. This standard information sheet shall be available in all the official languages of the Community and the United Nations and in the languages of the countries bordering the European Union. At the end of a thorough check in the second line they shall be provided with a notice explaining why they were subject to a second line check, the name of the officers requesting and conducting the second line check and the stamp of the border crossing-point. This notice shall be provided in the language of the country and, if requested by the third-country national, in English.

Amendment 43
Article 7, paragraph 1

1. Checks at land borders may be relaxed as a result of exceptional and unforeseen circumstances requiring immediate measures to be taken.	1. Checks at land borders may be relaxed as a result of exceptional and unforeseen circumstances requiring immediate measures to be taken. ***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 becomes excessive and all resources are exhausted as regards staff, facilities and organisation.***

Justification

The amendments on Article 7.1, 7.2 and 7.3 seek to integrate annex V into Article 7. Annex V is very short and also repeats provisions of Article 7.
A small change is introduced: The events leading to the relaxation of checks need to be "unforeseeable" instead of "unforeseen". It needs to be clear that relaxation is only possible in case it was absolutely impossible to know in advance that there will be many people wanting to cross the border. This is for example not the case in the holiday period (we know when a lot of traffic can be expected).

Amendment 44
Article 7, paragraph 2

2. ***If the checks provided for by Article 6 cannot be carried out systematically by reason of exceptional and unforeseen circumstances as referred to in paragraph 1, priorities must be set***.	2. ***Where checks are relaxed, checks on entry movements shall normally take priority over checks on exit movements***.

Amendment 45
Article 7, paragraph 3

3. ***Detailed rules governing the relaxation of checks and the priority criteria are laid down in Annex V***.	3. ***The border guard who relaxes checks must exercise discretion. Such relaxation of checks shall be sanctioned by a superior officer, may only be temporary, must be adapted to the circumstances justifying it and must be introduced gradually***.

Amendment 46
Article 7, paragraph 4

4. ***The relevant Member State shall inform the other Member States and the Commission at the earliest possible opportunity of the measures taken in accordance with paragraphs 1 and 2.***	4. ***Each Member State shall transmit once a year a report on the application of this Article to the European Parliament and the Commission.***

Justification

To relax checks is a very sensitive decision which should only be taken in rare cases. The Parliament and the Commission should receive information in order to evaluate the use of this possibility.

Amendment 47
Article 7, paragraph 5

5. Even where checks are relaxed, ***third-country nationals must be able to request and obtain stamps in their*** travel document in accordance with Article 9.	5. Even where checks are relaxed, ***the border guard shall stamp the*** travel document ***of third-country nationals both on entry and exit,*** in accordance with

Article 9.

Justification

This brings the provision in line with Council Regulation 2133/2004[1] on stamping.

Amendment 48
Article 7 a (new)

Article 7a

Persons frequently crossing the border

Individuals who are known personally to the border guard on the basis of a minimum check, have not been the subject of an alert in the SIS or in a national data file and possess a valid document authorising them to cross the border, shall be subject only to random checks to ensure that they hold that document. This shall apply in particular to those persons who frequently cross the border at the same crossing-point. Thorough checks must be carried out on such persons from time to time, without warning and at irregular intervals.

Justification

Integrates paragraph 4 of Annex V and point 4 of Annex XI with some minor linguistic modifications.

Amendment 49
Article 8, paragraph 1

1. Member States shall establish separate lanes at authorised crossing-points on their external air borders so that border checks can be carried out on persons in accordance with Article 6. Such lanes shall be identified by the signs provided for by paragraph 2.	1. Member States shall establish separate lanes at authorised crossing-points ***in particular*** on their external air borders so that border checks can be carried out on persons in accordance with Article 6. Such lanes shall be identified by the signs provided for by paragraph 2.
The establishment of separate lanes shall be optional at Member States' authorised	The establishment of separate lanes shall be optional at Member States' authorised

[1] OJ L 369, 16.12.2004, p. 5.

maritime and land crossing-points and at borders between Member States not applying Article 18.	maritime and land crossing-points and at borders between Member States not applying Article 18. ***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 people crossing the border-points.***

Amendment 50
Article 9, paragraph 2, subparagraph 2

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 must be recorded on a separate sheet indicating the name and passport number.	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 must be recorded on a separate sheet indicating the name and passport number. ***This sheet shall be given to the third-country national.***

Amendment 51
Article 9, paragraph 4 a (new)

	4a. Third-country nationals shall be informed in an appropriate way of the fact that the border guards are obliged to stamp their travel document even where checks are relaxed.

Justification

The stamping regulation puts the burden to stamp on the border guard even if checks are relaxed. Third-country nationals should know this in order to request, in case that the border guard does not stamp, a stamp. Without a stamp the burden of proof for correct entry falls on the third-country national.

Amendment 52
Article 9, paragraph 4 b (new)

4b. The Commission shall report to the European Parliament and the Council on the operation of the provisions on stamping travel documents by the end of 2008.

Justification

Article 5 of Council Regulation 2133/2004[1] provides for such a report only to Council. Since Parliament is now a colegislator in this field, the report should also go to Parliament.

Amendment 53
Article 10, numbering of article

Article ***10***	Article ***11***
Surveillance between border crossing-points	Surveillance between border crossing-points

Justification

The sequence of Articles 10 and 11 is changed because it seems more logical to deal with surveillance, which does not refer to checks at a border crossing-point, after all the articles relating to checks at border crossing-points.

Amendment 54
Article 10 a (new)

Article 10a

Recording of service information

1. At all border (land, sea and airport) posts, all service information and any other particularly important information shall be entered in a register. The following information shall be entered:

- the names of the border guard responsible locally for border checks and of the other officers in each team, with the time during which they were on duty;

- the number of persons crossing the border;

- relaxation of checks on persons applied

[1] OJ L 369, 16.12.2004, p. 5.

in accordance with Article 7;

- the issuing of documents in place of passports and of visas or permits issued at the border;

- persons apprehended (criminal offences and administrative breaches);

- complaints from persons subject to checks;

- persons refused entry or exit (number, grounds for refusal and nationalities);

- other particularly important police or judicial measures;

- particular occurrences.

Justification

This includes point 3 of the deleted Annex IV as a separate article. A few additions (grounds for refusals, number of persons crossing the border) and clarifications are proposed.

Amendment 55
Article 10 b (new)

Article 10b

Resources for border checks

1. The border checks provided for by this Regulation shall be carried out by the services of the Member States responsible for border guard duties in accordance with national law and this Regulation.

2. When carrying out these duties, border guards shall be vested with the powers of border police and the powers to instigate criminal proceedings conferred on them by national law.

3. National services responsible for border guard duties shall be staffed with specialised and properly trained professionals. Member States shall ensure that all border guards receive training on the relevant Community legislation in the field of border control and as regards fundamental rights. Member States shall also ensure that border guards fulfilling

	their duties at authorised border crossing-points speak at least two languages which are relevant for their work. Member States shall encourage border guards to learn more languages.
	4. Member States shall deploy appropriate staff and resources in sufficient numbers to carry out checks at the external borders, in accordance with this Regulation, in such a way as to ensure effective and efficient checks at their external borders. The services responsible for border guard duties shall aim to avoid disproportionate waiting time for travellers.
	5. The list of national services responsible for border guard duties under the national law of each Member State is given in Annex IX.
	6. To control borders effectively, the Member States shall ensure close, permanent cooperation between all national services responsible for border guard duties.

Justification

Rewording of Articles 12 and 13 of the Commission's proposal and new location for the reworded Article. Part of the original Articles 12 and 13 also went to Article 5a new.

Amendment 56
Article 11, numbering of article

Article ***11***	Article ***10***
Refusal of entry	Refusal of entry

Justification

See amendment on numbering of Article 10.

Amendment 57
Article 11, paragraph 3

3. Entry ***shall*** be refused by a substantiated decision taken by ***the*** authority empowered to do so by national law***, which shall state the procedures for appeal; it*** shall take effect immediately ***or, where appropriate, on expiry of the time limit laid down by national law.***	3. ***Before a final decision to refuse entry is taken the border guard responsible shall seek a second opinion from a superior officer.*** Entry ***may only*** be refused by a substantiated decision ***stating the precise reasons for the refusal. The decision must be*** taken by ***an*** authority empowered to do so by national law***. It*** shall take effect immediately***. Member States may suspend the entry into force of the decision if they consider it appropriate to do so.*** ***Persons refused entry shall have the right to appeal. The authority empowered by national law to refuse entry shall accompany the substantiated decision with a written and oral explanation of the procedures for appeal. Member States shall appoint an authority which shall be competent to represent third-country nationals, if they wish to be represented, during the appeal. Should the appeal conclude that the decision to refuse entry was ill-founded, the third-country national concerned shall be entitled to compensation from the Member State which is responsible for the damage suffered.***
The standard form for refusal of entry is given in Annex VIII, Part B. The third-country national concerned must acknowledge receipt of the decision to refuse entry by means of that form.	The standard form for refusal of entry is given in Annex VIII, Part B. The third-country national concerned must acknowledge receipt of the decision to refuse entry by means of that form ***and receive a copy thereof***.

Justification

The amendment seeks to strengthen the procedural rights of persons refused entry at the border.

Amendment 58
Article 11, paragraph 4a (new)

	4a. Member States shall collect statistics on the number of persons given leave to

	enter, the number of persons refused entry, the grounds for refusal, the nationality of the persons refused and the type of border (land, air, water) at which they were refused entry. Member States shall transmit these statistics once a year to the Commission. The Commission shall publish annually a compilation of the statistics provided by the Member States.

Justification

Transparency of the practical application of this regulation is important.

Amendment 59
Chapter III, Title

Chapter III	***deleted***
Resources for border checks and cooperation between Member States	

Justification

The amendment intends to simplify the text: It is not necessary to provide for separate chapters if they contain only very few articles.

Amendment 60
Article 12

Article 12	***deleted***
Resources for border checks	
Member States shall deploy appropriate staff and resources in sufficient numbers to carry out checks at the external borders, in accordance with Articles 6 to 11, in such a way as to ensure a high level of checks at their external borders.	

Justification

Content is included in new Article 5a and 10 b.

Amendment 61

Article 13

Article 13	***deleted***
Implementation of checks	
1. The border checks provided for by Articles 6 to 11 of this Regulation shall be carried out by the services of the Member States responsible for border guard duties in accordance with national law.	
When carrying out these duties, border guards are vested with the powers of border police and the powers to instigate criminal proceedings conferred on them by national law.	
National services responsible for border guard duties shall be staffed with specialised and properly trained professionals.	
2. Measures taken in the performance of border guard duties shall be carried out in proportion to the objectives pursued by such measures.	
3. The list of national services responsible for border guard duties under the national law of each Member State is given in Annex IX.	
4. To control borders effectively, the Member States shall ensure close, permanent cooperation between all national services responsible for border guard duties.	

Justification

Content is included in new Article 5a and 10 b.

Amendment 62
Article 14, paragraph 1

1. The Member States shall assist each other and shall maintain constant, close cooperation with a view to the effective implementation of border checks.	1. The Member States shall assist each other and shall maintain constant, close cooperation with a view to the effective implementation of border checks. ***They shall exchange all relevant information.***

Amendment 63
Article 15, paragraph 1, subparagraph 1

1. Member States which do not apply Article 18 to their common land borders may, up to the date of application of this Article, jointly control those common borders, without prejudice to Articles 6 to 11.	1. Member States which do not apply Article 18 to their common land borders may, up to the date of application of this Article, jointly control those common borders***, in which case a person may be stopped only once for the purpose of carrying outentry and exit control procedures***, without prejudice to Articles 6 to 11.

Justification

This amendment includes the basic idea of the Council conclusions on the adoption of bilateral cooperation arrangements in the field of controls on persons at common land borders between certain member States and the European Union after enlargement.

Amendment 64
Article 15, paragraph 2

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

Justification

This provision should be included in Article 32.

Amendment 65
Chapter IV, Title

Chapter IV ***Special detailed rules for border checks and specific procedures***	***deleted***

Justification

The amendment intends to simplify the text: It is not necessary to provide for separate chapters if they contain only very few articles.

Amendment 66
Article 16, introductory part

Special detailed rules ***such as those provided for by Annex X shall be determined*** for different types of border and the different means of transport used for crossing the Member States' external borders:	***Annex X contains*** special detailed rules for different types of border and the different means of transport used for crossing the Member States' external borders:

Justification

Illustrative provisions might give rise to problems of interpretation.

Amendment 67
Article 16, point (b)

(b) air borders (international airports, aerodromes, ***internal*** flights);	(b) air borders (international airports, aerodromes, ***private*** flights);

Justification

Corrects a mistake in the text.

Amendment 68
Article 17, title

Specific ***arrangements***	Specific ***rules for checks on certain categories of persons***

Justification

The proposed new title better reflects the content of the Article.

Amendment 69
Article 17, paragraph 1, introductory part

1. Special arrangements ***such as those provided for by Annex XI shall be determined*** for certain categories of persons:	1. ***Annex XI contains*** special arrangements for certain categories of persons:

Justification

Illustrative provisions might give rise to problems of interpretation.

Amendment 70
Article 19, point (d)

(d) the obligation on third-country nationals to report their presence on the territory of any Member State pursuant to Article 22 of the Schengen Convention.	***deleted***

Justification

See justification for amendment on Article 34.1.

Amendment 71
Article 19 a (new)

	Article 19a
	Removal of obstacles on 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 have to be prepared to provide for facilities for checks in case internal border controls are reintroduced.

Justification

This amendment includes the basic ideas of the decision SCH/Com-ex (94) 1 rev 2 which should be repealed since the present regulation is also a consolidation with regard to the Schengen acquis.

Amendment 72
Article 20, paragraph 1

1. A Member State may reintroduce border checks at its internal borders for a limited period of no more than 30 days in the event of a serious threat to public policy, public health or internal security, in accordance with the procedure laid down in Article 21	1. A Member State may ***exceptionally*** reintroduce border checks at its internal borders for a limited period of no more than 30 days in the event of a serious threat to public policy, public health or internal security, in accordance with the procedure

or, in an emergency, with that laid down in Article 22. The scope and duration of the checks ***may*** not exceed what is strictly necessary to respond to the serious threat.	laid down in Article 21 or, in an emergency, with that laid down in Article 22. The scope and duration of the checks ***must*** not exceed what is strictly necessary to respond to the serious threat.

Amendment 73
Article 22, paragraph 1

1. If considerations of public policy, internal security or public health in a State demand emergency action, the Member State concerned may immediately reintroduce checks at internal borders.	1. If considerations of public policy, internal security or public health in a State demand emergency action, the Member State concerned may ***exceptionally and*** immediately reintroduce checks at internal borders.

Amendment 74
Article 23, paragraph 2 a (new)

	2a. As of the third consecutive prolongation, the requesting Member State shall justify to the European Parliament the need for checks at internal borders to be prolonged.

Amendment 75
Article 24, title

Joint reintroduction of checks at internal borders because of ***a cross-border terrorist*** threat	Joint reintroduction of checks at internal borders because of ***an exceptionally serious*** threat

Justification

Terrorist threats should not be the only "exceptionally serious threat[s]" in the sense of Article 24.1.

Amendment 76
Article 24, paragraph 1

1. In the event of an exceptionally serious threat to public policy, internal security or public health affecting several Member States, ***for example in the event of a cross-border terrorist threat,*** the Council, acting on a proposal by the Commission, may ***decide*** by qualified majority to reintroduce checks immediately at all internal borders or at particular borders of all or several Member States. The scope and duration of these checks may not exceed what is strictly necessary for responding to the exceptional seriousness of the threat.	1. In the event of an exceptionally serious threat to public policy, internal security or public health affecting several Member States, the Council, acting on a proposal by the Commission, may**,** by qualified majority**,** ***decide*** to reintroduce checks immediately at all internal borders or at particular borders of all or several Member States. The scope and duration of these checks may not exceed what is strictly necessary for responding to the exceptional seriousness of the threat.

Amendment 77
Article 24, paragraph 3

3. The European Parliament shall be informed of the measures taken under paragraphs 1 and 2 without delay.	***deleted***

Justification

Content is included in new Article 24a.

Amendment 78
Article 24 a (new)

	Article 24a
	Informing the European Parliament
	The Member State concerned or, where appropriate, the Council shall inform the European Parliament without delay of the measures taken under Articles 21 to 24.

Justification

The European Parliament should in all circumstances be informed.

Amendment 79
Article 26

The Member State which has reintroduced checks at internal borders under Article 20 shall confirm the date on which these controls are 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 checks at internal borders.	The Member State which has reintroduced checks at internal borders under Article 20 shall confirm the date on which these controls are lifted and ***within 30 days*** present a report to the European Parliament, the Council and the Commission on the reintroduction of checks at internal borders ***outlining, in particular, the operation of the checks and the effectiveness of reintroducing them***.

Amendment 80
Article 29

Annexes I ***to*** XII shall be ***amended*** in accordance with the procedure provided for in Article 30(2).	Annexes I***, III, VI, VII, IX and*** XII shall be ***updated*** in accordance with the procedure provided for in Article 30(2).

Justification

The annexes as contained in the Commission's proposal are in fact annexes of various kinds: On the one hand there are annexes which are of a purely technical nature and at the same time subject to frequent change. This is for example the case for the list of border crossing-points (I), the list of national services responsible for border controls (IX) or the reference amounts required for crossing borders (III). On the other hand, there are annexes which contain general and abstract norms. It would be impossible for Parliament to accept that they be agreed in the codecision procedure and become later subject to change by the comitology procedure. This is for example the case for the rules governing checks on road, rail, air or maritime traffic (X) or the special arrangements for certain categories of persons (like seamen, cross-border workers or minors) (XI).

Amendment 81
Article 30, paragraph 3 a (new)

	3a. The European Parliament and the Council may decide to revoke the delegation of implementing powers to the Commission at any time.

Justification

As a safeguard clause both Parliament and Council, as the two institutions delegating powers with this legislation to the Commission, should have the possibility to revoke this delegation of powers in case of arising problems. To illustrate this: recently LIBE had two negative

cases in which it opposed comitology decision by invoking Article 8 of the Comitology Decision. These decisions were, however, nevertheless taken by the Commission (safe harbour agreement and PNR transmission to the US adequacy finding). Such a right to call back is as well forseen in the Constitution (I-36.2a).

Amendment 82
Article 32, paragraph 1

Within ten working days of the entry into force of this Regulation, the Member States shall notify the Commission of national provisions relating to ***Article 19(c) and (d)***. Subsequent changes to these provisions shall be notified within five working days.	Within ten working days of the entry into force of this Regulation, the Member States shall notify the Commission of national provisions relating to ***Article 19(c), the penalties as referred to in Article 4(3) and the bilateral arrangements concluded in accordance with Article 15(1)***. Subsequent changes to these provisions shall be notified within five working days.

Amendment 83
Article 32 a (new)

	Article 32a
	Control of implementation by the Commission
	The Commission shall be responsible for controlling the implementation of this Regulation by the Member States. To that end, it shall have the competence to carry out unannounced inspections at the external borders. The Commission may entrust this task to an independent group of qualified inspectors. Inspection reports shall be sent to the European Parliament and Council.

Justification

So far the control of implementation does not follow the usual system of checks by the Commission but there is the system of Schengen evaluations. Decision SCH/ Com-ex (98)26 def.) provides for the setting up of a standing committee within Council for 1) to check whether countries wanting to join the Schengen area are ready and 2) "to lay the foundations so that the Executive Committee can ensure the proper application of the Convention" These reports have no judicial follow-up, are not made public, are neither sent to the European Parliament nor to national parliaments etc. In addition, this system of peer-review is also

criticised as too soft and not efficient.

Amendment 84
Article 32 b (new)

Article 32b

Jurisdiction of the Court of Justice

The Court of Justice of the European Communities shall have jurisdiction to rule on every provision contained in this Regulation, including matters concerning the maintenance of law and order and the safeguarding of internal security pursuant to Decision [.../...].

Justification

Pursuant to Article 68.2 TEC the European Court of Justice is not competent for the introduction of internal border controls. Decisions of Member States in this field remain therefore without judicial control. Art. 67.2 2nd indent last part TEC provides for the adaptation of the powers of the Court. Council should have adopted the powers of the Court at the same time as it extended the codecision procedure (the treaty speaks of "and"). The Commission made a declaration deploring this. "it is unacceptable that the decision foresees no adaptation of the powers of the Court, thus perpetuating a situation where access to the Court of Justice remains limited. The Commission is absolutely convinced that, in this area which so closely touches on the rights of individuals, an increased access to justice is equally essential to enhance legitimacy." The EP requested the abolition of the limitation in the report Bourlanges (T6-0105/2004[1]) on the extension of codecision.

Amendment 85
Article 34, paragraph 1

1. Articles 2 to 8 of the Convention implementing the Schengen Agreement of 14 June 1985 shall be deleted with effect from ... [date of entry into operation of this Regulation].	1. Articles 2 to 8 ***and Article 22*** of the Convention implementing the Schengen Agreement of 14 June 1985 shall be deleted with effect from ... [date of entry into operation of this Regulation].

Justification

Article 22 of the Schengen Convention requires "aliens" to report "either on entry or within three working days of entry" to the competent authorities. Member States shall lay down the conditions and exemptions. This provision should be repealed for three reasons:

[1] OJ L 396, 31.12.2004, p. 45.

Firstly, in practice nobody has an overview about these rules and many Member States simply excempt everybody from this obligation. The situation is therefore one of great legal uncertainty.
Secondly, with the rules on stamping as introduced here the date of entry is already recorded.
Thirdly, in the case of Russia (negotiations on visa facilitation agreement) it is precisely this registration requirement for EU citizens on Russian territory that the EU side criticises.

Amendment 86
Article 34, paragraph 2, indent 2

- the decisions of the Schengen Executive Committee of 22 December 1994 (SCH/Com-ex (94)17, rev. 4) and 20 December 1995 (SCH/Com-ex (95) 20, rev. 2);	- the decisions of the Schengen Executive Committee of 22 December 1994 (SCH/Com-ex (94)17, rev. 4), ***of 26 April 1994 (SCH/Com-ex (94) 1 rev 2*** and 20 December 1995 (SCH/Com-ex (95) 20, rev. 2); ***the provisions concerning part II of the mandate of decision (SCH(Com-ex (98) 26 def);***

Justification

See justification of amendment on Articles 19 a and 32 a.

Amendment 87
Annex II, title

Documentary evidence establishing the likelihood of the reasons for entry	Documentary evidence establishing the likelihood of the reasons for entry ***in the case of third-country nationals not subject to the visa requirement pursuant to Regulation (EC) No 539/2001***

Amendment 88
Annex II, paragraph 1, introductory part

1. The documentary evidence referred to in Article 5(2) is the following:	1. The documentary evidence referred to in Article 5(2) is ***exclusively*** the following:

Justification

The amendments on Annex II seek to make the rules clearer.

Amendment 89
Annex II, paragraph 1, point (a), indent 3

- entry tickets for fairs and congresses.	- entry tickets for fairs and congresses ***if attending one***.

Amendment 90
Annex II, paragraph 1, point (c), indent 1

- an invitation from the host;	- an invitation from the host ***if staying with one; or***

Amendment 91
Annex II, paragraph 1, point (c), indent 2

- a supporting document from the establishment providing lodging;	- a supporting document from the establishment providing lodging; ***or***

Amendment 92
Annex II, paragraph 1, point (c), indent 2 a (new)

	- any other appropriate document indicating the accommodation envisaged;

Amendment 93
Annex II, paragraph 1, point (c), indent 3

- confirmation of the booking of an organised trip;	- confirmation of the booking of an organised trip ***or any other appropriate document indicating the envisaged travel plans***;

Amendment 94
Annex II, paragraph 1, point (c), indent 4

- a return or round-trip ticket.	- a return or round-trip ticket ***or any other appropriate document indicating the***

	means of transport envisaged for the return.

Amendment 95
Annex II, paragraph 1, point (e), introductory part

e) for journeys undertaken for ***another reason***:	e) for journeys undertaken for ***political, scientific, cultural, sports or religious events or other reasons***:

Amendment 96
Annex II, paragraph 1, point (e), indent 1

- invitations, enrolments or programmes;	- invitations, ***entry tickets,*** enrolments or programmes ***stating wherever possible the name of the host organisation and the length of stay***;

Amendment 97
Annex II, paragraph 1, point (e), indent 2

- attendance certificates, entry tickets, receipts, etc.,	***deleted***

Amendment 98
Annex II, paragraph 1, point (e), last sentence

for political, scientific, cultural, sports or religious events, stating wherever possible the name of the host organisation and the length of stay.	***deleted***

Amendment 99
Annex II, paragraph 3

3. Where the travel insurance provided for by Article 5(1)(c) is not required, in	***deleted***

accordance with Part V, point 1.4, second paragraph, third indent of the Common Consular Instructions, the exemption will be indicated in the national entries section of the visa sticker ("NO INSURANCE REQUIRED").

Justification

This deletion is a consequence of the deletion in Article 5.1c).

Amendment 100
Annex IV

Annex IV	***deleted***
Checks at authorised border crossing-points	
1. The minimum check referred to in Article 6(2) which is intended to establish a person's identity, consists of an identity check on the basis of the travel documents produced or presented and in rapid and straightforward verification of the validity of the document authorising the holder to cross the border and of the presence of signs of falsification or counterfeiting.	
2. The thorough check on third-country nationals provided for by Article 6(3) shall include in particular:	
a) a detailed examination of the following aspects:	
- verification of the validity of the document presented and, where applicable, of the requisite visa;	
- scrutiny of the document for signs of falsification or counterfeiting;	
b) verification regarding the origin and destination of the individual and the purpose of the journey and, if necessary, checking the corresponding supporting documents;	
c) verification that the individual has sufficient means of subsistence for the length of stay envisaged, for his return or	

transit to a third country, or that he can obtain these means legally, and that he has travel insurance where applicable;

d) verification that the person, his vehicle and the objects he 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 objects contained in the Schengen Information System (SIS) and in national data files and the action to be performed, if any, as a result of an alert. If consultation of the SIS reveals that an alert has been made as defined in Articles 95 and 100 of the Schengen Convention, the action requested which appears on the screen must first be performed.

3. At all border (land, sea and airport) posts, all service information and any other particularly important information shall be entered in a register. The message should include the following information in particular:

- the names of the border guard responsible locally for border checks and of the other officers in each team;

- relaxation of checks on persons applied in accordance with Article 7;

- the issuing of documents in place of passports and of visas or permits issued at the border;

- persons apprehended and complaints (criminal offences and administrative breaches);

- persons refused entry or exit (number and nationalities);

- other particularly important police or judicial measures;

- particular occurrences.

Justification

Content is included in revised Article 6 and in new Article 10a.

Amendment 101
Annex V

Annex V	***deleted***
Relaxation of checks at land borders	
1. The exceptional and unforeseen circumstances referred to in Article 7(1) are met 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.	
2. Where checks are relaxed in accordance with Article 7(1) and (2), checks on entry movements shall normally take priority over checks on exit movements.	
3. The border guard who relaxes checks must show discretion. Such relaxation of checks may only be temporary, must be adapted to the circumstances justifying it and must be introduced gradually.	
4. Individuals known personally to the border guard, and whom he knows, on the basis of an initial check, have not been the subject of an alert in the SIS or in a national data file and who possess a valid document authorising them to cross the border, will be subject only to random checks to ensure that they hold that document. This applies in particular to those persons who frequently cross the border at the same crossing-point. Thorough checks must be carried out on this group of persons from time to time, without warning and at irregular intervals.	

Justification

Content is included in revised Article 7. Paragraph 4 becomes new Article 7a.

Amendment 102
Annex VIII, Part B, point (E)

(E) Has no appropriate documentation justifying the purpose and conditions of stay	(E) Has no appropriate documentation justifying the purpose and conditions of stay ***The following document(s) could not be provided: _____***

Justification

The amendment seeks to increase transparency.

Amendment 103
Annex X, paragraph 1.1.1.

1.1.1. To ensure effective checks on persons, while ensuring the safety and smooth flow of road traffic, movements at border crossing-points ***must*** be regulated in an appropriate manner. In case of need, ***measures*** to channel and block traffic ***will be taken in compliance with the agreements on collocated national control offices***.	1.1.1. To ensure effective checks on persons, while ensuring the safety and smooth flow of road traffic, movements at border crossing-points ***shall*** be regulated in an appropriate manner. In case of need, ***Member States may conclude bilateral agreements*** to channel and block traffic***.*** ***They shall inform the Commission thereof pursuant to Article 32***. *("Must" should be replaced by "shall" throughout Annex X. Adoption of this amendment will necessitate corresponding changes throughout the Annex)*

Justification

This is to avoid the technical expression "agreements on collotated national control offices"; in case agreements are concluded the Commission should always be informed so that at least one kind of "central register" of all arrangements and agreements is kept.

Amendment 104
Annex X, paragraph 1.1.2.

1.1.2. At land borders, Member States may, where they deem appropriate and if circumstances allow, install channels or operate separate control lanes at certain border crossing-points, in accordance with Article 8.	
Separate channels or lanes may be dispensed with at any time by the Member States' competent authorities, in exceptional circumstances and where traffic and infrastructure conditions so require.	
Member States ***may*** cooperate with neighbouring countries with a view to the installation of separate channels and lanes at external border crossing-points.	Member States ***should*** cooperate with neighbouring countries with a view to the installation of separate channels and lanes at external border crossing-points. ***The provisions of Article 8 apply.***

Justification

First part: this point is already covered in article 8.1.
Second part: this point is covered in article 8.4.

Amendment 105
Annex X, paragraph 1.1.3., subparagraph 1

1.1.3. Where a Member State decides to install channels or operate separate lanes, the rules set out in Article 8(2) and (3) on the minimum indications to be used on signs shall apply.	***deleted***

Justification

This should go to article 8, as 8.4 a new.

Amendment 106
Annex X, paragraph 1.1.4.

1.1.4. As a general rule, persons travelling in vehicles may remain inside them during checks. Checks ***must*** be made outside the checkpoint kiosk, beside the vehicle. Thorough checks ***must*** take place, if local circumstances allow, beside the highway in	1.1.4. As a general rule, persons travelling in vehicles may remain inside them during checks. Checks ***shall*** be made outside the checkpoint kiosk, beside the vehicle. Thorough checks ***shall*** take place, if local circumstances allow, beside the highway in

areas designated for that purpose. In the interests of staff safety, checks shall be carried out by at least two border guards.	areas designated for that purpose. In the interests of staff safety, checks shall be carried out by at least two border guards.
In the event of heavy traffic, bus passengers on regular local lines ***must*** be checked first ***where the local situation allows***.	In the event of heavy traffic, bus passengers on regular local lines ***shall*** be checked first.

Amendment 107
Annex X, paragraph 1.2.1., introductory part

1.2.1. Checks ***on rail traffic*** may be carried out in the following two ways:	1.2.1. Checks ***shall be carried out both on train passengers and on railway staff. These checks*** may be carried out in the following two ways:

Amendment 108
Annex X, paragraph 1.2.1., subparagraph 2

When carrying out these checks, the provisions of agreements on collocated national control offices shall be taken into account.	***Member States may conclude bilateral agreements on how to conduct these checks. They shall inform the Commission thereof pursuant to Article 32.***

Amendment 109
Annex X, paragraph 1.2.2., subparagraph 1

1.2.2. To facilitate rail traffic flows of international passenger trains, the States directly affected by the transit of trains may decide, by common agreement, to carry out checks on passengers from third countries either in the stations of destination***, and/or*** on board the train during transit between these stations, provided that the passengers stay on board the train in the previous station/stations.	1.2.2. To facilitate rail traffic flows of international passenger trains, the States directly affected by the transit of trains may decide, by common agreement, to carry out checks on passengers from third countries either in the stations of destination ***or*** on board the train during transit between these stations, provided that the passengers stay on board the train in the previous station/stations.

Justification

If they decide to do the check by 'common agreement', then it does not make sense to have two checks.

Amendment 110
Annex X, paragraph 1.2.3.

1.2.3. Passengers who wish to take the train in the circumstances described under point 1.2.2 on the territory of the Member States shall receive clear notification prior to the train's departure that they might be subject to personal checks during the journey or at the station of destination.	1.2.3. Passengers who wish to take the train in the circumstances described under point 1.2.2 on the territory of the Member States shall receive clear notification prior to the train's departure ***from the rail transport carrier when they buy the ticket*** that they might be subject to personal checks during the journey or at the station of destination.

Amendment 111
Annex X, paragraph 2.1.3.

2.1.3. Checks on persons shall not be carried out on the aircraft. In order to ensure that, at the airports designated as authorised border crossing-points, passengers may be checked in accordance with the rules set out in ***Articles 6 to 11***, Member States ***must***, in agreement with the airport authorities and the transport undertaking, take the appropriate measures to ensure that passenger traffic is channelled to facilities reserved for checks.	2.1.3. Checks on persons shall not be carried out on the aircraft. In order to ensure that, at the airports designated as authorised border crossing-points, passengers may be checked in accordance with the rules set out in ***this Regulation***, Member States ***shall***, in agreement with the airport authorities and the transport undertaking, take the appropriate measures to ensure that passenger traffic is channelled to facilities reserved for checks. ***Checks may exceptionally be carried out directly at the arrival gate if the flight is considered to present a high risk in terms of illegal immigration.***
The airport operator ***must*** take the necessary measures to prevent unauthorised persons entering and leaving the reserved areas, for example the transit area.	The airport operator ***shall*** take the necessary measures to prevent unauthorised persons entering and leaving the reserved areas, for example the transit area.

Amendment 112
Annex X, paragraph 2.1.3.a (new)

	2.1.3.a Checks at international airports shall not be relaxed in accordance with Article 7.

Amendment 113
Annex X, paragraph 2.1.4.

2.1.4. Where, in cases of force majeure or imminent danger or on the instructions of the authorities, an aircraft on an international flight has to land on a landing ground which is not an authorised border crossing-point, that aircraft may continue its flight only after authorisation from the authorities responsible for border checks and surveillance and from customs. The same shall apply where a foreign aircraft lands without permission. In any event, ***Articles 6 to 11*** shall apply to checks on passengers on such aircraft.	2.1.4. Where, in cases of force majeure or imminent danger or on the instructions of the authorities, an aircraft on an international flight has to land on a landing ground which is not an authorised border crossing-point, that aircraft may continue its flight only after authorisation from the authorities responsible for border checks and surveillance and from customs. The same shall apply where a foreign aircraft lands without permission. In any event, ***this Regulation*** shall apply to checks on passengers on such aircraft.

Amendment 114
Annex X, paragraph 2.2.1.

2.2.1. It ***must*** be ensured that passengers are also checked, in accordance with the rules set out in ***Articles 6 to 11***, in airports which do not hold the status of international airport under the relevant national law ("aerodromes") but through which the routing of international flights is authorised.	2.2.1. It ***shall*** be ensured that passengers are also checked, in accordance with the rules set out in ***this Regulation***, in airports which do not hold the status of international airport under the relevant national law ("aerodromes") but through which the routing of international flights is authorised.

Amendment 115
Annex X, paragraph 2.3.1.

2.3.1. In the case of private flights the captain ***must*** transmit to the border authorities of the Member State of	2.3.1. In the case of private flights the captain ***shall*** transmit to the border authorities of the Member State of

destination and, where appropriate, of the Member State of first entry, prior to take-off, a general declaration comprising ***inter alia*** a flight plan in accordance with Annex 2 to the Convention on International Civil Aviation and information concerning passengers' identity.	destination and, where appropriate, of the Member State of first entry, prior to take-off, a general declaration comprising a flight plan in accordance with Annex 2 to the Convention on International Civil Aviation and information concerning passengers' identity.

Justification

Illustrative clauses may give rise to problems in interpretation.

Amendment 116
Annex X, paragraph 3.1.2.

3.1.2. In the event of exceptional and unforeseen circumstances, checks on shipping traffic may be relaxed in accordance with Article 7.	***deleted***

Justification

It is difficult to imagine unforeseen circumstances in this context.

Amendment 117
Annex X, paragraph 3.2.1.

3.2.1. If a cruise ship calls in succession at several ports situated in the territory of the Member States without calling at a port situated outside this territory, checks shall normally be carried out ***only at the first and last port situated within the territory of the Member States***.	3.2.1. If a cruise ship calls in succession at several ports situated in the territory of the Member States without calling at a port situated outside this territory, checks shall ***not*** normally be carried out.
Nevertheless, according to the assessment of the risks of illegal immigration, checks may also be carried out ***at the other intermediate ports***.	Nevertheless, according to the assessment of the risks of illegal immigration, checks may also be carried out.

Amendment 118
Annex X, paragraph 3.2.2.

3.2.2. The list of passengers shall in all	3.2.2. The list of passengers shall in all

cases be forwarded upon departure from one port to the subsequent port of arrival***, at which the competent authorities shall systematically carry out at least an administrative check***.	cases be forwarded upon departure from one port to the subsequent port of arrival.

Amendment 119
Annex X, paragraph 3.2.3.a (new)

	3.2.3.a If a cruise ship calls in succession at several ports situated in the territory of the Member States and outside that territory, entry checks shall be carried out at the first port in the territory of the Member States.

Amendment 120
Annex X, paragraph 3.2.4.

3.2.4. ***Member States shall require*** pleasure boats coming from ***a port of anchorage other than their own to dock in an authorised port of entry in order to carry out checks, on entry and exit, on the persons on board.***	3.2.4. ***By way of derogation from Articles 4 and 6, persons on board*** pleasure boats coming from ***or departing to a port situated in a Member State shall not be subject to border checks and may enter a port which is not a border crossing-point.*** ***According to the assessment of the risks of illegal immigration, and in particular where the coastline of a third State is located in the immediate vicinity of the territory of the Member State concerned, personalised spot checks and/or a physical search of the vessel shall, however, be carried out.***

Amendment 121
Annex X, paragraph 3.2.4.a (new)

	3.2.4.a Member States shall require pleasure boats coming from a port of anchorage situated in a third country to dock in an authorised port of entry in

	order to carry out checks, on entry and exit, on the persons on board.

Amendment 122
Annex X, paragraph 3.2.5.

3.2.5. Persons engaged in pleasure boating who leave and return within the same day or within a short period to their boat's usual port of anchorage located within the territory of a Member State, and who are known to the port authorities, shall not be systematically checked. According to the assessment of the risks of illegal immigration, and in particular where the coastline of a third State is located in the immediate vicinity of the territory of the Member State concerned, personalised spot checks and/or a physical search of the vessel must be carried out.	***deleted***

Amendment 123
Annex X, paragraph 3.2.6.

3.2.6. Where a pleasure boat wishes, exceptionally, to enter a port which is not an authorised border crossing-point, the authorities responsible for checks ***must*** be notified ***if possible*** before the vessel enters the port***, and in any event upon its arrival***. The declaration regarding passengers shall be made by lodging the list of persons on board with the port authorities. This list shall be made available to the authorities responsible for carrying out checks.	3.2.6. Where a pleasure boat ***coming from a port of anchorage situated in a third country*** wishes, exceptionally, to enter a port which is not an authorised border crossing-point, the authorities responsible for checks ***shall*** be notified before the vessel enters the port. The declaration regarding passengers shall be made by lodging the list of persons on board with the port authorities. This list shall be made available to the authorities responsible for carrying out checks.
Likewise, if for reasons of force majeure the vessel has to dock in a port other than an authorised border crossing-point, the port authorities ***must*** contact the authorities in the nearest authorised port of entry in order to report the vessel's presence.	Likewise, if for reasons of force majeure the vessel has to dock in a port other than an authorised border crossing-point, the port authorities ***shall*** contact the authorities in the nearest authorised port of entry in order to report the vessel's presence.

Amendment 124
Annex X, paragraph 3.2.10., point (d)

(d) ferry passengers travelling by coach shall be considered as foot passengers. These passengers shall alight from the coach for the checks;	***deleted***

Justification

The rules for c) should be sufficient.

Amendment 125
Annex X, paragraph 3.2.10., point (f)

(f) to ensure that checks are carried out quickly, there shall be an adequate number of gates. If necessary, ***a second gate*** shall be established;	(f) to ensure that checks are carried out quickly, there shall be an adequate number of gates. If necessary, ***additional gates*** shall be established;

Amendment 126
Annex X, paragraph 3.2.10., point (g)

(g) so as to detect illegal immigrants in particular, random checks shall***, at the very least,*** be made on the vehicles used by the passengers, and where applicable on the loads and other goods stowed in the vehicle;	(g) so as to detect illegal immigrants in particular, random checks shall be made on the vehicles used by the passengers, and where applicable on the loads and other goods stowed in the vehicle;

Amendment 127
Annex XI, paragraph 1.1, introductory part

1.1. The holders of a pilot's licence or a crew member certificate as provided for in Annex 9 to the Civil Aviation Convention of 7 December 1944 may, in the course of their duties and on the basis of those	1.1. The holders of a pilot's licence or a crew member certificate as provided for in Annex 9 to the Civil Aviation Convention of 7 December 1944 may, in the course of their duties and on the basis of those

documents:	documents ***and their passport***:

Amendment 128
Annex XI, paragraph 1.1, indent 3

- go, by any means of transport, to ***an*** airport situated in the territory of a Member State in order to embark on an aircraft departing from that same airport.	- go, by any means of transport, to ***another*** airport situated in the territory of a Member State in order to embark on an aircraft departing from that same airport.

Amendment 129
Annex XI, paragraph 1.2

1.2. ***Articles 6 to 11*** shall apply to checks on aircraft crew members. Wherever possible, priority ***must*** be given to checks on aircraft crews. Specifically, they shall be checked either before passengers or at special locations set aside for the purpose. Crews known to staff responsible for checks in the performance of their duties may be subject to random checks only.	1.2. ***This Regulation*** shall apply to checks on aircraft crew members ***and pilots***. Wherever possible, priority ***shall*** be given to checks on aircraft crews ***and pilots***. Specifically, they shall be checked either before passengers or at special locations set aside for the purpose. Crews known to staff responsible for checks in the performance of their duties may be subject to random checks only. *("Must" should be replaced by "shall" throughout Annex XI. Adoption of this amendment will necessitate corresponding changes throughout the Annex)*

Amendment 130
Annex XI, paragraph 2.1, subparagraph 2

According to the assessment of the risks, with special reference to illegal immigration and security, seamen ***must*** also be ***visually*** checked by the competent authorities before they go ashore.	According to the assessment of the risks, with special reference to illegal immigration and security, seamen ***shall*** also be checked by the competent authorities before they go ashore.

Amendment 131

Annex XI, paragraph 2.2

2.2. Seamen who intend to stay outside the municipalities situated in the vicinity of ports ***must*** comply with the conditions for entry to the territory of the Member States, as laid down in Article 5(1).	2.2. Seamen who intend to stay outside the municipalities situated in the vicinity of ports ***shall*** comply with the conditions for entry to the territory of the Member States, as laid down in Article 5(1). ***By way of derogation Article 4(1(b) and (d) of Regulation (EC) No 539/2001 applies.***

Amendment 132
Annex XI, paragraph 2.3, subparagraph 2

In such cases, holders of a seafarer's identity document who are required to hold a visa on account of their nationality and are not in possession of one when entering the territory of a Member State may be issued with a visa at the border in accordance with ***the provisions*** of Regulation (EC) No 415/2003.	In such cases, holders of a seafarer's identity document who are required to hold a visa on account of their nationality and are not in possession of one when entering the territory of a Member State may be issued with a visa at the border in accordance with ***Article 2*** of Regulation (EC) No 415/2003.

Amendment 133
Annex XI, paragraph 3.1, subparagraph 1

3.1. In view of the special privileges or immunities they enjoy, the holders of diplomatic, official or service passports issued by States or Governments recognised by the Member States, as well as the holders of documents issued by the international organisations listed in point 3.4, who are travelling in the course of their duties may be granted favourable treatment by being given priority over other travellers at border checks even ***though they remain, where necessary,*** subject to the requirement for a visa.	3.1. In view of the special privileges or immunities they enjoy, the holders of diplomatic, official or service passports issued by States or Governments recognised by the Member States, as well as the holders of documents issued by the international organisations listed in point 3.4, who are travelling in the course of their duties may be granted favourable treatment by being given priority over other travellers at border checks even ***where they are*** subject to the requirement for a visa***. Article 4(1)(a) of Regulation (EC) No 539/2001 applies***.

Amendment 134
Annex XI, paragraph 3.3

3.3. Accredited members of diplomatic missions and of consular representations and their families may enter the territory of the Member States on presentation of the card referred to in Article 17(2) and of the document authorising them to cross the border. Moreover, border guards ***may*** not ***in any circumstances*** refuse the holders of diplomatic, official or service passports entry to the territory of the Member States without first consulting the appropriate national authorities. This shall also apply where an alert has been entered in the SIS for this person.	3.3. Accredited members of diplomatic missions and of consular representations and their families may enter the territory of the Member States on presentation of the card referred to in Article 17(2) and of the document authorising them to cross the border. Moreover, border guards ***shall*** not refuse the holders of diplomatic, official or service passports entry to the territory of the Member States without first consulting the appropriate national authorities. This shall also apply where an alert has been entered in the SIS for this person.

Amendment 135
Annex XI, paragraph 3.4, introductory part

3.4. The documents issued by the international organisations for the purposes specified in point 3.1 are ***in particular*** the following:	3.4. The documents issued by the international organisations for the purposes specified in point 3.1 are the following:

Amendment 136
Annex XI, point 4

4. Cross-border workers	***deleted***
4.1. The procedures for checking cross-border workers are governed by the general rules on border controls, in particular Articles 6 and 11. Checks may, however, be relaxed in accordance with Article 7.	
4.2. Where a Member State decides to adopt a local border traffic regime, the practical simplifications introduced under the regime, as provided for in Articles 4(1) and (2) and 9(1)(d), shall automatically apply to cross border workers.	

Justification

Cross-border workers fall under the provisions of Article 7a (new).

Amendment 137
Annex XI, paragraph 5.1.

5.1. Minors crossing the external border shall be subject to the same checks on entry and exit as adults, as provided for in ***Articles 6 to 11***.	5.1. Minors crossing the external border shall be subject to the same checks on entry and exit as adults, as provided for in ***this Regulation***.

EXPLANATORY STATEMENT

For a general presentation of the Commission's proposal as well as for the general political objectives and guiding principles for its examination the rapporteur would like to refer to his working documents of 17 December 2004 which were presented in committee on 19 January 2005.

The present texts seeks to explain the amendments suggested by the rapporteur. They can be grouped under the following headlines:

Situating border control in the Community legal framework

Since the Treaty of Amsterdam "standards and procedures to be followed by Member States in carrying out checks on persons at such borders [external border]" (Art. 62.2a) and "measures with a view to ensuring [...] the absence of any controls on persons [...] when crossing internal borders" (Art. 62.1) fall into the competence of the Community. At the same time the Schengen acquis was integrated in the Union framework. Despite the fact that the Treaty of Amsterdam is in force since almost six years there remain leftovers from the period in which the Schengen cooperation was developed outside the treaties. The rapporteur is of the opinion that these leftovers need to be addressed now because otherwise the legislation under examination here cannot have the indended effect, namely, as the Commission states, to consolidate and develop further the acquis.

First of all, the European Court of Justice needs to be competent to rule on all parts of the border code. Currently it is not competent for the reintroduction of internal border controls (Art. 68.2 TEC, Art. 2.3, 3rd indent of the protocol integrating the Schengen acquis).[1] It is evident that a law whose respect by Member States cannot be controlled by the Court of Justice cannot be accepted in the Community framework. The rapporteur requests Council to adjust the power of the Court as provided for in Art. 67.2 2nd indent in order to close this gap as already requested by Parliament and Commission.

Secondly, so far the control of the implementation of the Schengen acquis does not follow the Community method. Decision SCH/ Com-ex (98)26 def.) of 1998, i.e. taken after the signature of the Treaty of Amsterdam but before its entry into force, provides for the setting up of a standing committee within Council for 1) to check whether countries wanting to join the Schengen area are ready and 2) "to lay the foundations so that the Executive Committee can ensure the proper application of the Convention." These so-called Schengen evaluations (part 2) cannot and should not replace the Community method. The reports produced have no judicial follow-up, are secret, are not send to the European Parliament or to national

Parliaments and are criticised as too soft.[2] Furthermore, evaluations of a Member State take

[1] See for example answer to question No. E-1321/04 of Robert Goebbels to the Commission

[2] "These assessments are couched in courteous, diplomatic terms, and the procedure is basically a peer review of the relevant administrative bodies, so that what the outside observer sees is an exchange of compliments allowing the Member States being visited to basically look good (window dressing)." p. 5... "But where the Community level falls short of expectations is that Schengen evaluations (Scheval) are not formalised to the extent of becoming a genuine inspection...the credibility of the management of the Union's external borders now

only place every few years and cannot prevent practices which are not in conformity with the law to develop. Greece and the Nordic countries for example were so far not subject to any evaluation since they joined Schengen fully.[1] This second task should therefore be a task for the Commission with the right to inspect without prior notice. To fulfil this task the Commission should have the possibility to set up a group of independent inspectors.

In addition, the rapporteur urges the Commission to make more use of its powers under the treaty to launch infringement procedures against Member States in case of violations. So far there were only 5 cases in front of the Court.[2] This corresponds heavily to the 509 ongoing infringement procedures related to violations of EU environmental law.[3]

Thirdly, the role of Community institutions needs to be strengthened. To this end the rapporteur supports the role of the Commission in the reintroduction of internal border controls as proposed by the Commission although Member States in the discussions in Council seem to try to limit it. He also introduces amendments reinforcing the right of Parliament to be informed.

Reinforcing EU citizens' and third-country national's rights

Numerous are the complaints about discrimination when border controls are made. "Foreign-looking" persons and men are much more likely to be controlled than others.[4] Complaints are also made that persons are often not well treated when subject to a control. The rapporteur therefore introduces a new article on the "conduct of checks" recalling the obligation to respect the human dignity at all times and not to discriminate on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The rapporteur also supports the Commission's proposal as regards the checks on EU citizens. EU citizens should only be subject to an identity check.

Since in the course of their activity border guards exchange personal data the rapporteur introduces a recital recalling that the data protection directive 95/46 applies.

The rapporteur also wants to strengthen the rights of third-country nationals who are refused entry. So far the Commission's proposals only requires that the decision to refuse entry is "substantiated" and states the procedure for appeal. The latter does, however, not mean that there is a procedure for appeal in the first place. The rapporteur introduces a series of amendments which aim to develop the Commission's proposal: a second opinion of a superior officer before refusing entry, a more detailed justification for the refusal, the obligation for Member States to have a procedure for appeal, information on the procedure and the

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requires greater uniformity and rigor of control ...nor is it satisfactory that the comments made give place only to purely formal answers by the services checked and that the requests for "corrections" to the situations not in conformity with Schengen law are not mandatory for the administration evaluated, that the recommendations made are not followed up in actual implementation, and lastly that no penalties are possible for serious failures by Schengen States to meet their commitments." p. 19 Feasibility Study on the control of the European Union's maritime borders

[1] Council doc. 15275/04

[2] 321/87 and C-68/89 on border control, C-449/04 and C-512/03 on directive 2001/51 and C-503/03 on visas

[3] Fifth Annual Survey on the implementation and enforcement of EU environmental law

[4] This was also confirmed in an empirical study; See F. Bovenkerk, Er zijn grenzen (Arnhem: Gouda Quint, 1989) at pp. 13-14.

possibility that the third-country national be represented during the appeal's procedure since there is no right to remain.

The rapporteur also is of the opinion that the rule of law requires Member States to grant entry for third-country nationals once they fulfil all conditions. We cannot leave a margin of discretion (see also below) to the border guard whether to allow entry even when the third-country national fulfils all conditions. This idea is already reflected in the standard form for refusal (Annex VIII B) which has no category of reasons for refusal like "other grounds." All grounds relate to the conditions for entry.

In several cases the rapporteur proposes to provide more information to travellers. This concerns for example information to third-country nationals on what documents they have to be able to provide, that the border guard has the obligation to stamp their passport even if no controls are made (relaxation) and on the procedure of a so-called "second-line" checks.

Strengthening border control

We need effective and efficient border control. To this end the rapporteur proposes for example that objects and vehicles of third-country nationals "shall" be checked instead of "may", that checks are only relaxed in very exceptional circumstances, that the possibility to reintroduce internal border controls in case of an exceptional serious threat remains in the text (while in Council there seems to be a tendency to delete this provision) and that third-country nationals who do not require a visa to travel to the EU can be subject to a special check to evaluate the risk of illegal immigration.

The rapporteur urges Member States to have a sufficient number of border guards at the border crossing-points to allow for 100% of the persons crossing to be checked in accordance with the provisions of this regulation.

Prioritising legislation by political decision-makers over executive power

In two respects the proposal of the Commission leaves, in the view of the rapporteur, too much power in the hands of national administrations.

Firstly, the wording of the text often leaves an extremely large margin of discretion to the national services for border-control. The rapporteur has tried to define the rules in a more precise way without attempting to legislate for every possible occurrence at the border which would be an impossible task. He considers that the rules should be as precise as possible because if the margin of discretion is too large it might be used by the executive power in such a way that the end result is one which was not intended by the legislator.

Secondly, to make all annexes subject to change by comitology is unacceptable. The rapporteur agrees with the approach of the Commission to make the very long text (the English version, including the explanatory statement, has 229 pages) more readable by using annexes. This does however not mean that they should all be changed by the comitology procedure. The rapporteur proposes that whenever they contain abstract, general norms or touch upon sensitive issues they should be changed by the legislative procedure. At the same time the rapporteur proposes to introduce the right to call back delegated power as foreseen in the Constitution.

Quality of legal drafting

Finally, the rapporteur introduces a series of amendments which try to improve the quality of the legal text. He uses as a basis the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation[1] to which Parliament is a signatory. The codecision procedure establishes joint responsibility for the overall quality of the text.

[1] OJ C 73, 17.3.1999, p.1