Free movement of persons: local border traffic at external borders of the Member States and establishment of a special "L" visa, amending the Schengen Conventions and the Common Consular Instructions

2005/0006(COD) - 24/07/2009 - Follow-up document

This report concerns the implementation and functioning of the local border traffic regime introduced by Regulation (EC) No 1931/2006 of the European Parliament and of the Council laying down rules on local border traffic at the external land borders of the Member States.

Legal background: on 20 December 2006, the European Parliament and the Council adopted Regulation (EC) No 1931/2006 laying down rules on local border traffic at the external land borders of the Member States (LBT Regulation). This Regulation allows the Member States to derogate, for persons living in a border area, from the general rules on border checks laid down in the Schengen Borders Code, in order to prevent the creation of barriers to trade, social and cultural interchange or regional cooperation with neighbours. In implementing the local border traffic regime, the Member States may conclude bilateral agreements with neighbouring countries aimed at addressing specific needs in relation to their respective neighbours, as these needs vary because of different local, geographical, social and economic situations. These **bilateral agreements** should comply fully with the parameters set for local border traffic regimes by the LBT Regulation. The parameters, and in particular the definition of the local border area, were set after difficult negotiations in the Council and are considered to **represent the delicate, right balance between facilitation for those living in a border area who need to cross the border frequently and the security requirements of the whole Schengen area**.

Under Article 18 of the LBT Regulation, the Commission is obliged to report to the European Parliament and the Council on the implementation and functioning of the local border traffic regime two years after the entry into force of the Regulation. The present report fulfils this obligation.

Based on the available information, the Commission draws the following conclusions:

- the current text of the Regulation was the outcome of intense negotiations in and between the institutions, and was considered to strike the delicate, right balance between facilitating personal contacts in the border area and maintaining a high level of security;
- Member States should be encouraged to take full advantage of other instruments available to facilitate cross-border contacts. For example, in the case of Ukraine and the Russian Federation there is a visa facilitation agreement which enables certain categories of persons, who need to travel frequently, to obtain multi-entry visas valid for up to 5 years;
- the mechanism of consultation has been put in place in order to ensure full compatibility of bilateral local border traffic agreements with the parameters set by the LBT Regulation. Consultations with the Member States have been relatively intensive. However, the results of these consultations are not always satisfactory as some Member States are neglecting the last phase of this procedure, i.e. "correction", before signing the bilateral agreements, as regards provisions incompatible with the LBT Regulation;
- only three bilateral local border traffic agreements have entered into force since the adoption of the LBT Regulation, between Hungary/Ukraine (since 11 January 2008), Slovakia/Ukraine (since 27

September 2008) and between Poland/Ukraine (since 1 July 2009). It is therefore difficult to draw practical conclusions based on such limited evidence, in particular as regards the total number of people benefiting from the regime, or to know whether the relevant facilitation measures or conditions have proved problematic;

- there were however no reports from the Member States that there was a wide misuse by owners of LBT permits or that the agreements raised some security risks for the Schengen area.

In principle, the Commission considers that this report comes too early to reconsider Regulation No 1931 /2006 as regards the parameters set for the bilateral agreements:

- concerning **travel medical insurance**, it is possible that a financial burden may be created in the border area when nationals from the neighbouring third country need to be given emergency medical care and leave thereafter without paying. However, this problem could be solved in other ways (e.g. via an agreement between the health authorities of the countries concerned). Further experiences in implementing the agreements based on the current LBT Regulation will help in assessing the potential size of the problem;
- with regard to the **border area**, at this stage, the Commission would be prepared to consider allowing some **flexibility on delimitation** of the border area in a bilateral agreement if the definition provided by the LBT Regulation were to lead in individual cases to situations which are against the spirit of the Regulation, which provides for an **exceptional extension of the border area in order not to split a community artificially**. Moreover, when monitoring the application of the LBT Regulation, the Commission will pay particular attention to the parameters for the delimitation of the local border area. The Commission would therefore welcome a discussion with the Member States on whether the Regulation is considered sufficiently flexible to accommodate particular situations arising in relation to specific border regions, and is ready to reflect on the need for proposing amendments to the Regulation in the light of that discussion;
- **more comprehensive information** will gradually become available as more and more agreements are implemented in practice. The Commission is ready to submit a new report on the implementation and functioning of the local border traffic regime to the European Parliament and the Council in the second half of 2010.