Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

2004/0127(COD) - 21/09/2009 - Follow-up document

This report is on the operation of the provisions on **stamping of the travel documents of third-country nationals** in accordance with Articles 10 and 11 of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

Legal reminder: on 13 October 2006, Regulation (EC) No 562/2006 of the European Parliament and of the Council entered into force. The Schengen Borders Code (SBC) confirmed the obligation on systematic stamping of the travel documents of third-country nationals on entry and exit, introduced by Council Regulation (EC) No 2133/2004. The Code also provides for a list of documents in which an entry or exit stamp shall be affixed, as well as documents which shall be exempt from stamping. Moreover, a possibility has been introduced for the competent national authorities to presume that a third-country national holding a travel document without bearing an entry stamp does not fulfil the conditions of duration of stay within the Member State concerned. The thirdcountry national has a possibility to rebut this presumption. If he/she does not rebut, the person may be expelled from the territory of the Member States concerned.

On 6 November 2006, the Commission adopted its recommendation establishing a common "Practical Handbook for Border Guards" (PHBG) with specific guidelines for the stamping of travel documents (Part two, section I, point 4), and particularly the exemptions from stamping, situations where there is no more available space for stamping in the travel document, stamping of travel documents of third-country nationals subject to the visa obligation, etc.

Under the terms of Article 10, paragraph 6 of the SBC, the Commission shall report to the European Parliament and the Council by the end of 2008 on the operation of the provisions on stamping travel documents. This report has been prepared on the basis of the answers provided by twenty-five Schengen Member States. Several reminders were necessary in order to receive the requested information. Two Member States (Malta and Portugal) did not provide the requested information.

Main conclusions: based on the information provided, the Commission draws the following conclusions:

- it is necessary to strictly respect the rules for systematic, chronological and correct stamping as established by the SBC and the PHBG (the respect of these rules facilitates the correct performance of border checks and contributes to the reduction of waiting times at the external borders of the EU);
- it is important to respect the common rules related to the stamping of travel documents of third-country nationals bearing a visa sticker, which are settled in Annex IV, point 3 of the SBC;
- travel documents of third-country nationals who are in possession of a valid residence permit of a Schengen Member State are exempted from the stamping obligation on entry and exit;
- the stamping of travel documents is not applicable during a temporary reintroduction of border control at internal borders pursuant to Article 23 and following of the SBC.

The Commission also acknowledges the difficulties encountered by third-country nationals crossing the border frequently, such as **lorry drivers or trans-frontiers commuters**. However, difficulties of empty pages for stamping could be overcome only with an automated system of registering entry and exit which

would render stamping superfluous. The Commission does not see a need to exempt lorry drivers from stamping in particular in the light of concerns expressed by Member States on the **risk of illegal immigration and employment**.

New exemptions: the Commission also considers that there is no need to consider additional exemptions from stamping, except for **train crews** in relation with their professional activity comparable to pilots or seamen, as these trains follow a fixed schedule. It will initiate measures to foresee an exemption from stamping for this category of persons.

It is also worth noting that, according to the replies, an important number of Member States do not collect statistical data related to the number of third-country nationals found on their territory or when exiting the Schengen area without bearing an entry stamp, and to those third-country nationals who were able (or not) to rebut the presumption of the illegal stay. The Commission invites Member States to collect this information and to make this data available in order to be able to better analyse the functioning of the provisions on stamping.

Lastly, the report notes that a number of Member States have not yet fulfilled their obligation under Article 11, last indent, to inform each other and the Commission and the Council General Secretariat of their national practices with regard to the presumption of illegal stay and its rebuttal referred to in Article 11. The Commission invites those Member States to do so until 21 October 2009.