

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

2004/0127(COD) - 13/10/2010 - Follow-up document

This Commission report to the European Parliament and the Council concerns the application of Title III (Internal Borders) of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

Background: Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing Schengen Borders Code (hereinafter ‘the SBC’ or ‘the Code’) entered into force on 13 October 2006. The SBC consolidated and further developed the Schengen acquis, in particular the relevant provisions of the Schengen Convention and the Common Manual. The Code includes criteria to determine whether the exercise of police powers in internal border zones has an effect equivalent to border checks. Under the Code, the abolition of internal border controls also obliges Member States to remove obstacles to traffic at road crossing-points at internal borders. In exceptional circumstances involving a serious threat to the public policy or internal security of a Member State, border control at internal borders may be reintroduced for a limited period of time, in accordance with the procedure laid down by the Code.

According to Article 38 of the SBC, the Commission shall submit to the European Parliament and to the Council by 13 October 2009 a report on the application of Title III. The Commission addressed a questionnaire to Member States in order to obtain information on the application of Title III. This report has been prepared on the basis of the answers provided by 23 Member States. Two Member States (HU and MT) did not provide the requested information. This report also reflects information submitted to the Commission by citizens and Members of the European Parliament, pointing out **alleged border checks at internal borders**.

Main conclusions: the Commission regrets that the deadline for the submission of this report could not be met due to the late submission of information by several Member States. In addition to this, it identified three specific issues of concern in the application of Title III:

1. **unnecessary checks:** the setting up of an area without internal borders where the free movement of persons is ensured represents one of the most substantial and tangible accomplishments of the Union. Any restrictions, such as police checks in the vicinity of internal borders, are perceived by citizens as hampering their right to free movement. Persons cannot be checked solely because they are crossing an internal border, neither at the border nor in the border areas. The Commission is concerned by the difficulties reported by travellers in connection with alleged regular and systematic checks carried out in certain internal border zones. The Commission is closely monitoring the situation in the internal border zones. For this purpose, it will continue to carefully assess citizens’ complaints and address Member States in order to obtain explanations. In order to ensure the correct application of Union law, the Commission is ready to use all available means, including the launching of infringement procedures, whenever such action proves to be necessary. Accordingly, the Commission will request Member States to provide statistics on police checks carried out throughout their territories and in particular in the internal border zones. The Commission recalls that if the security situation calls for Member States to carry out regular and systematic checks, they shall envisage the temporary reintroduction of border control at internal borders in accordance with Article 23 et seq. of the SBC. In its proposal for a revised Schengen evaluation mechanism, the Commission envisages carrying out unannounced on-site visits in order

to verify the absence of checks at internal borders. The Commission also stresses that Member States whose national legislation confers specific competences on national police authorities within the internal border zones are requested to adapt it to the ruling of the Court of Justice in the Melki case as soon as possible;

2. **inappropriate obstacles to fluid traffic flow:** Member States must remove all obstacles to fluid traffic flow at road crossing-points at internal borders, and in particular any speed limits not exclusively based on road safety considerations. The Commission is of the opinion that the maintenance of large-scale infrastructure, frequently accompanied by significant speed limits, cannot be used as an argument for road-safety considerations;
3. **reintroduction of border controls:** the Commission insists on timely notification of any planned reintroduction of internal border controls and requests Member States to provide detailed information in accordance with Article 24 in order to allow the Commission, when necessary, to give its opinion, and in order to proceed to formal consultations between Member States and the Commission.