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

2004/0127(COD) - 15/03/2006 - Final act

PURPOSE: to establish a Community Code on the management of the EU's external and internal borders.

LEGISLATIVE ACT: Regulation 562/2006/EC of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

CONTENT: the Council, together with the European Parliament, adopted this Act in order to bring a number of disparate inter-governmental and Community instruments governing the management of border crossings, into a single Community legal order. In agreeing on a new Community Code a number of legislative acts have been repealed to be replaced with this one Regulation, including, *inter alia*, Annex 7 to the Common Consular Instructions; Council Decision 2004/581/EC on determining the main indications to be used on signs at external border crossing points; Council Decision 2004/574/EC amending the Common Manual; and Council Regulation 2133/2004/EC on requirements to stamp the travel documents of third country nationals crossing the external borders of the Member States.

Article 62 (1) of the TEU provides for the absence of any controls on persons crossing the internal borders of the EU Member States and as such forms a core element in the Community's objective to establish an area without internal borders in which the free movement of persons is guaranteed. This objective is flanked by other necessary measures needed for the free movement of persons such as a common policy on the crossing of external borders. In creating a "common corpus" of legislation on external and internal border management the Community is setting itself strict standards for the entry and exit of third country nationals in a bid to strengthen its internal security. Harmonised border control helps to combat illegal immigration and the trafficking of human beings. It also helps the policies of the Member States in so far as public health and international relations are concerned.

Provisions have been established firstly concerning border management within the EU and secondly the management of external border crossings.. Special derogations have been introduced for certain categories of persons such as seamen, pilots of aircraft, diplomats etc.

Provisions for External Borders

The Regulation will apply to any person crossing the internal or external borders of the Member States - notwithstanding EU citizens enjoying the right of free movement and refugees and persons requesting international protection. Exact conditions on the entry of third-country nationals (possession of valid visas, provision of supporting documents etc) are listed as are certain derogations from these requirements.

Border guards are expected to perform their duties in full respect of human dignity. Following Parliamentary amendments the Regulation also specifically states that border guards, while carrying out border checks, must not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The Regulation distinguishes between checks made on EU citizens who enjoy the right of free movement and third country nationals to whom different conditions apply. Border checks may be relaxed in

exceptional and unforeseen circumstances such as a high density of traffic. Any such relaxation must be temporary in nature. Member States are required to provide separate lanes at air border crossing points in order to carry out checks on persons, with this provision being optional at land and sea crossings.

On the matter of stamping the Regulation states unequivocally that the travel documents of third country nationals shall be systematically stamped on entry and exit. This provision does not apply to Head of States and dignitaries; pilots' licences of the certificates of aircraft crew members; seamen when their ship puts in and in the area of the port of call; crew passengers of cruise ships and to nationals of Andorra, Monaco and San Marino. They are, however, subject to special checks set out in Annex VII of the Regulation. In cases of a "temporary relaxation" border guards must continue stamping the travel documents of third country nationals upon their entry and upon their exit.

Border surveillance is given prominent consideration. The Regulation states that the main purpose of border surveillance will be to prevent unauthorised border crossing in a bid to curb cross-border criminality. To fulfil this objective border guards may use stationary or mobile units to carry out border surveillance. Part of this surveillance will involve frequent and sudden changes to surveillance periods in a bit to outwit unauthorised entries.

On the question of refusing entry, entry may be refused if a third-country national does not fulfil all of the conditions set out in this Regulation. There is a right of appeal although border guards are instructed to refuse entry to any one during the appeal process. Provisions have been put in place for enhanced co-operation between the Member States and for Joint Control.

Provisions for Internal Borders

The Regulation specifies that internal borders may be crossed at any point without a border check on persons, irrespective of their nationality. Member States must remove all obstacles that hinder a fluid flow of traffic at road crossing points. However, where there is a serious threat to public policy or internal security, a Member State may exceptionally introduce border controls at its internal borders. This is for a limited period only. Any extension thereof must be notified to the Commission and Member States will be expected to follow certain procedures for extending their internal controls.

Final Provisions

In the Final Provisions, the Regulation states that the Member States must provide the Commission with: a list of residence permits; a list of their border crossing points; the reference amounts required for the crossing of their external borders fixed annually by the national authorities; a list of national services responsible for border control; and a specimen of model cards issued by Foreign Ministries. The Commission will submit to the European Parliament and the Council a Report on the application of this Regulation by 13 October 2009.

This Regulation will not apply to: the United Kingdom, Ireland and Denmark. It will apply to Norway, Iceland and Switzerland who, accordingly, may participate on the work of the Committee established by this Regulation.

ENTRY INTO FORCE: The Regulation will enter into force on 13 October 2006. Article 34 on the list of notifications, however, will enter into force on 14 April 2006.