Basic information

2004/0127(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) Repealed by 2015/0006(COD) Amended by 2006/0279(COD) Amended by 2008/0041(COD) Amended by 2009/0028(COD) Amended by 2011/0051(COD) Amended by 2011/0242(COD) **Subject** 7.10.02 Schengen area, Schengen acquis 7.10.04 External borders crossing and controls, visas 7.30 Police, judicial and customs cooperation in general	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	CASHMAN Michael (PSE)	13/09/2004

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	The committee decided not to give an opinion.	13/09/2004
DEVE Development	BATTILOCCHIO Alessandro (NI)	02/12/2004

Committee for opinion on the legal basis	Rapporteur for opinion	Appointed
JURI Legal Affairs	MEDINA ORTEGA Manuel (PSE)	20/09/2004

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2709	2006-02-21

European Commission

Commission DG	Commissioner
Justice and Consumers	

Key events

Date	Event	Reference	Summary
26/05/2004	Legislative proposal published	COM(2004)0391	Summary
15/09/2004	Committee referral announced in Parliament, 1st reading		
13/06/2005	Vote in committee, 1st reading		Summary
15/06/2005	Committee report tabled for plenary, 1st reading	A6-0188/2005	
22/06/2005	Debate in Parliament		
23/06/2005	Decision by Parliament, 1st reading	T6-0247/2005	Summary
23/06/2005	Results of vote in Parliament		
21/02/2006	Act adopted by Council after Parliament's 1st reading		Summary
15/03/2006	Final act signed		
15/03/2006	End of procedure in Parliament		
13/04/2006	Final act published in Official Journal		

Technical information

Procedure reference	2004/0127(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by 2015/0006(COD) Amended by 2006/0279(COD) Amended by 2008/0041(COD) Amended by 2009/0028(COD) Amended by 2011/0051(COD) Amended by 2011/0242(COD)
Legal basis	EC Treaty (after Amsterdam) EC 062-p1/2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/22094

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	JURI	PE357.706	21/04/2005	
Committee opinion	DEVE	PE350.272	25/05/2005	

Amendments tabled in committee		PE357.978	08/06/2005	
Committee report tabled for plenary, 1st reading/single reading		A6-0188/2005	15/06/2005	
Text adopted by Parliament, 1st reading/single reading		T6-0247/2005 OJ C 133 08.06.2006, p. 0028-0057 E	23/06/2005	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	03643/2/2005	15/03/2006	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2004)0391	26/05/2004	Summary
Commission response to text adopted in plenary	SP(2005)2882	13/07/2005	
Follow-up document	COM(2009)0489	21/09/2009	Summary
Follow-up document	COM(2009)0658	27/11/2009	
Follow-up document	COM(2010)0554	13/10/2010	Summary
For information	C(2015)7100	23/10/2015	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Regulation 2006/0562
OJ L 105 13.04.2006, p. 0001-0032 Summary

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.

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

2004/0127(COD) - 23/06/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution based on the report by Michael **CASHMAN** (PES, UK) and made some amendments to the proposal. (Please see the summary of 13/06/2005.)

Prior to the vote in plenary, Members had successfully negotiated with the Council for a better balance between stricter controls and the rights of individuals. Since the Council, Commission and Parliament's political groups are now in agreement, the legislation has been adopted at first reading. today.

- Safeguarding individual rights: Parliament succeeded in introducing an article on the "conduct of checks," recalling the obligation to respect the human dignity and not to discriminate on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

- Parliament also managed to strengthen the rights of individuals on a number of other points. Member States will have to give "precise" and "justified" reasons to refuse the entry of a third country national, using a written standard form.

- Parliament added detail on clauses relating to the verification of the means of subsistence.

- All persons refused entry will have the right to appeal.

- Each country will have to collect statistics on the number of persons refused entry and the grounds for refusal, and transmit this information to the Commission once a year.

- Member States are required to provide more information to third country nationals on what documents they must provide.

- On a non-systematic basis,border guards may consult national and European databases to ensure that a person does not represent a real danger to internal security.

- Third-country nationals will be subject to thorough checks to verify their entry and exit stamps (which now become mandatory), their points of departure and destination and whether they have sufficient means of subsistence during their stay.

- The rapporteur's proposal to give the EU Court of Justice the power to rule on all parts of the border code was not accepted by the Council and was dropped from the text before the vote took place.

This is the first time that the Parliament exercises co-decision powers over this field. Following a decision by the European Council at Hague summit in November 2004, the Parliament has had the power of co-decision over border controls, visa and illegal immigration policy since January 2005.

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.

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

2004/0127(COD) - 21/02/2006

The Council adopted a Regulation establishing rules on border control of persons crossing the EU external borders and providing for the absence of border control of persons crossing internal borders between the Member States. However, it should be noted that the Hungarian delegation voted against, the Slovenian delegation abstained.

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

2004/0127(COD) - 26/05/2004 - Legislative proposal

PURPOSE : to clarify, restructure, consolidate and develop existing legislation on border controls on persons

PROPOSED ACT : Council Regulation.

CONTENT : this proposed Regulation aims to establish a Community Code governing the movement of persons across borders. It is a component of the measures to be taken in the short term, as announced in the Commission's May 2002 Communication "Towards integrated management of the external borders of the Member States of the European Union".

The main aim is to give a more "Community" character and form to the rules that have been developed within the Schengen intergovernmental framework and integrated into the Treaty since May 1999.

The Code set out in the proposal contains two sections: one on "external borders" and the other on "internal borders".

The first section includes all the rules on the control of persons at the external borders, including the following: the conditions for crossing the external borders and entry to Member States; the principles governing control of external borders, including surveillance between authorised border crossing-points and the conditions for refusal of entry; and cooperation between Member States, including the implementation of border checks. The Code lays down special detailed rules for border checks for different kinds of borders (land, air and maritime) and specific procedures for certain categories of persons (seamen, pilots of aircraft, diplomats, etc.).

The section on "internal borders" adopts the provisions of the Schengen Convention, adapting them to the Community institutional framework concerning the abolition of border checks on persons at internal borders and the various procedures for temporarily re-introducing checks on persons at those borders in the event of a serious threat to the public policy, public health or national security of a Member State. As part of those, a new procedure has been introduced, embodying power to re-introduce checks jointly and immediately at all or some internal borders because of an exceptionally serious cross-border threat, particularly a cross-border terrorist threat.

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.