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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	20 January 2015
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2015) 8 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification)

Delegations will find attached document COM(2015) 8 final.

Delegations are invited to send their comments on the codification proposal by 18 February 2015 to the following addresses:

SECRETARIAT.Codification@consilium.europa.eu **AND** sj-codification@ec.europa.eu

Delegation's attention is drawn to the Practical Guide on Codification (doc. 14722/14 + COR1 of 24 October 2014).

Encl.: COM(2015) 8 final

EUROPEAN
COMMISSION

Brussels, 20.1.2015
COM(2015) 8 final

2015/0006 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

   This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

   For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided[1] to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this[2], stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

   Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

   Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)[3]. The new Regulation will supersede the various acts incorporated in it[4]; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Regulation (EC) No 562/2006 and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex X to the codified Regulation.

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1 COM(87) 868 PV.
2 See Annex 3 to Part A of the Conclusions.
3 Entered in the legislative programme for 2014.
4 See Annex IX to this proposal.

↓ 562/2006 (adapted)

2015/0006 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⌦ on ⌫ a ⌦ Union ⌫ Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ⌦ on the Functioning of the European Union ⌫ , and in particular Article ⌦ 77(2)(b) and (e) ⌫ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[5],

Acting in accordance with the ordinary legislative procedure,

Whereas:

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(1) Regulation (EC) No 562/2006 of the European Parliament and of the Council[6] has been substantially amended several times[7]. In the interests of clarity and rationality, that Regulation should be codified.

↓ 562/2006 recital 1 (adapted)

(2) The adoption of measures under Article ⌦ 77(2)(b) and (e) ⌫ of the Treaty ⌦ on the Functioning of the European Union (TFEU) ⌫ with a view to ensuring the absence of any controls on persons crossing internal borders forms part of the Union's objective of establishing an area without internal ⌦ frontiers ⌫ in which the free movement of persons is ensured, as set out in Article ⌦ 26(2) ⌫ of the ⌦ TFEU ⌫ .

5 OJ C […], […], p. […].

6 Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

7 See Annex IX.

↓ 562/2006 recital 2 (adapted)

(3) In accordance with Article ⌦ 67(2) ⌫ of the ⌦ TFEU ⌫ , the creation of an area in which persons may move freely is to be flanked by other measures. The common policy on the crossing of external borders, as provided for by Article ⌦ 77(1)(b) ⌫ of the ⌦ TFEU ⌫ , is such a measure.

↓ 562/2006 recital 3 (adapted)

(4) Common measures on the crossing of internal borders by persons and border control at external borders should reflect the Schengen *acquis* incorporated in the European Union framework, and in particular the relevant provisions of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders[8] and the Common Manual[9].

↓ 562/2006 recital 5 (adapted)

(5) Common rules on the movement of persons across borders neither call into question nor affect the rights of free movement enjoyed by Union citizens and members of their families and by third-country nationals and members of their families who, under agreements between the ⌦ Union ⌫ and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens.

↓ 562/2006 recital 6

(6) Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.

↓ 562/2006 recital 7

(7) Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.

↓ 562/2006 recital 8 (adapted), 81/2009 recital 1 (adapted)

(8) Border control comprises not only checks on persons at border crossing points and surveillance between ⌦ those ⌫ border crossing points, but also an analysis of the risks for internal security and of the threats that may affect the security of external

[8] OJ L 239, 22.9.2000, p. 19.
[9] OJ C 313, 16.12.2002, p. 97.

borders. It is therefore necessary to ⌦ set out ⌫ the conditions, criteria and detailed rules governing checks at border crossing points and surveillance at the border, including checks in the Schengen Information System ⌦ (SIS) ⌫ .

↓ 610/2013 recital 9 (adapted)

(9) ⌦ It is necessary to provide for ⌫ rules dealing with the calculation of the authorised length of short-term stays in the Union. Clear, simple and harmonised rules in all legal acts dealing with this issue would benefit both travellers as well as border and visa authorities.

↓ 81/2009 recital 4 (adapted)

(10) Since only a verification of fingerprints can confirm with certainty that a person wishing to enter the Schengen area is the person to whom the visa has been issued, provision should be made for the use at external borders ⌦ of the Visa Information System (VIS) provided for under Regulation (EC) No 767/2008 of the European Parliament and of the Council[10] ⌫ .

↓ 81/2009 recital 5 (adapted)

(11) In order to verify whether the entry conditions for third-country nationals laid down in ⌦ this ⌫ Regulation are fulfilled and to manage their tasks successfully, border guards should use all necessary information available, including data which may be consulted in the VIS.

↓ 81/2009 recital 6

(12) In order to prevent circumvention of border crossing points where the VIS may be used and to guarantee its full effectiveness, there is a particular need to use the VIS in a harmonised way when entry checks are carried out at the external borders.

↓ 81/2009 recital 7

(13) Since in cases of repeated visa applications it is appropriate for biometric data to be reused and copied from the first visa application in the VIS, use of the VIS for entry checks at the external borders should be compulsory.

↓ 81/2009 recital 8

(14) The use of the VIS should entail a systematic search in the VIS using the number of the visa sticker in combination with a verification of fingerprints. However, given the potential impact of such searches on waiting times at border crossing points, it should be possible, for a transitional period by way of derogation and in strictly defined circumstances, to consult the VIS without a systematic verification of fingerprints. Member States should ensure that this derogation is used only where the conditions

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[10] Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

therefor are fully met and that the duration and frequency of application of this derogation is kept to a strict minimum at the individual border crossing points.

↓ 562/2006 recital 9 (adapted)

(15) ⌦ It ⌫ should be ⌦ possible to have ⌫ checks at external borders ⌦ relaxed ⌫ in the event of exceptional and unforeseeable circumstances in order to avoid excessive waiting time at border crossing points. The systematic stamping of the documents of third-country nationals remains an obligation in the event of border checks being relaxed. Stamping makes it possible to establish, with certainty, the date on which, and where, the border was crossed, without establishing in all cases that all required travel document control measures have been carried out.

↓ 562/2006 recital 10 (adapted)

(16) In order to reduce the waiting times of persons enjoying the ⌦ Union ⌫ right of free movement, separate lanes, indicated by uniform signs in all Member States, should, where circumstances allow, be provided at border crossing points. Separate lanes should be provided in international airports. Where it is deemed appropriate and if local circumstances so allow, Member States should consider installing separate lanes at sea and land border crossing points.

↓ 562/2006 recital 11

(17) Member States should ensure that control procedures at external borders do not constitute a major barrier to trade and social and cultural interchange. To that end, they should deploy appropriate numbers of staff and resources.

↓ 562/2006 recital 12

(18) Member States should designate the national service or services responsible for border-control tasks in accordance with their national law. Where more than one service is responsible in the same Member State, there should be close and constant cooperation between them.

↓ 562/2006 recital 13 (adapted)

(19) Operational cooperation and assistance between Member States in relation to border control should be managed and coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States ⌦ ('Frontex'), ⌫ established by Council Regulation (EC) No 2007/2004[11].

↓ 562/2006 recital 14

(20) This Regulation is without prejudice to checks carried out under general police powers and security checks on persons identical to those carried out for domestic flights, to

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[11] Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

the possibilities for Member States to carry out exceptional checks on baggage in accordance with Council Regulation (EEC) No 3925/91[12], and to national law on carrying travel or identity documents or to the requirement that persons notify the authorities of their presence on the territory of the Member State in question.

↓ 562/2006 recital 16

(21) In an area where persons may move freely, the reintroduction of border control at internal borders should remain an exception. Border control should not be carried out or formalities imposed solely because such a border is crossed.

↓ 1051/2013 recital 1 (adapted)

(22) The creation of an area in which the free movement of persons across internal borders is ensured is one of the main achievements of the Union. In an area without internal border control, it is necessary to have a common response to situations seriously affecting the public policy or internal security of that area, of parts thereof, or of one or more Member States, by allowing for the temporary reintroduction of internal border control in exceptional circumstances, but without jeopardising the principle of the free movement of persons. Given the impact that such measures of last resort may have on all persons having the right to move within the area without internal border control, the conditions and procedures for reintroducing such measures should be ⌦ provided for ⌫, in order to ensure that they are exceptional and that the principle of proportionality is respected. The scope and duration of any temporary reintroduction of such measures should be restricted to the bare minimum needed to respond to a serious threat to public policy or internal security.

↓ 1051/2013 recital 2 (adapted)

(23) As free movement of persons is affected by the temporary reintroduction of internal border control, any decision to reintroduce such control should be taken in accordance with commonly agreed criteria and should be duly notified to the Commission or be recommended by a Union institution. In any case, the reintroduction of internal border control should remain an exception and should only be effected as a measure of last resort, for a strictly limited scope and period of time, based on specific objective criteria and on an assessment of its necessity which should be monitored at Union level. Where a serious threat to public policy or internal security requires immediate action, a Member State should be able to reintroduce border control at its internal borders for a period not exceeding ten days. Any prolongation of that period needs to be monitored at Union level.

↓ 1051/2013 recital 3

(24) The necessity and proportionality of reintroducing internal border control should be balanced against the threat to public policy or internal security triggering the need for such reintroduction, as should alternative measures which could be taken at national or

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[12] Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing (OJ L 374, 31.12.1991, p. 4).

Union level, or both, and the impact of such control on the free movement of persons within the area without internal border control.

↓ 1051/2013 recital 4

(25) The reintroduction of internal border control might exceptionally be necessary in the case of a serious threat to public policy or to internal security at the level of the area without internal border control or at national level, in particular following terrorist incidents or threats, or because of threats posed by organised crime.

↓ 1051/2013 recital 5

(26) Migration and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security.

↓ 1051/2013 recital 6

(27) In accordance with the case-law of the Court of Justice of the European Union, a derogation from the fundamental principle of free movement of persons must be interpreted strictly and the concept of public policy presupposes the existence of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

↓ 1051/2013 recital 7

(28) Based on the experience gathered with respect to the functioning of the area without internal border control and in order to help ensure the consistent implementation of the Schengen *acquis*, the Commission may draw up guidelines on the reintroduction of internal border control in cases which require such a measure on a temporary basis and in cases where immediate action is needed. Those guidelines should provide clear indicators to facilitate the assessment of the circumstances that could constitute serious threats to public policy or internal security.

↓ 1051/2013 recital 8 (adapted)

(29) Where serious deficiencies in the carrying out of external border control are identified in an evaluation report drawn up pursuant to Council Regulation (EU) No 1053/2013[13] and with a view to ensuring compliance with the recommendations adopted pursuant to that Regulation, implementing powers should be conferred on the Commission to recommend that the evaluated Member State take specific measures, such as deploying European border guard teams, submitting strategic plans or, as a last resort and taking into account the seriousness of the situation, closing a specific border crossing-point. Those powers should be exercised in accordance with Regulation (EU) No 182/2011

[13] Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).

of the European Parliament and of the Council[14]. In the ⌦ light ⌫ of Article 2(2)(b)(iii) of that Regulation, the examination procedure is applicable.

↓ 1051/2013 recital 9

(30) The temporary reintroduction of border control at certain internal borders under a specific Union-level procedure could also be justified in the case of exceptional circumstances and as a measure of last resort where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control identified in the context of a rigorous evaluation process in accordance with Articles 14 and 15 of Regulation (EU) No 1053/2013, where those circumstances would constitute a serious threat to public policy or internal security in that area or in parts thereof. Such a specific procedure for the temporary reintroduction of border control at certain internal borders could also be triggered, under the same conditions, as a result of the serious negligence by the evaluated Member State of its obligations. In view of the politically sensitive nature of such measures which touch on national executive and enforcement powers regarding internal border control, implementing powers to adopt recommendations under that specific Union-level procedure should be conferred on the Council, acting on a proposal from the Commission.

↓ 1051/2013 recital 10 (adapted)

(31) Before any recommendation on the temporary reintroduction of border control at certain internal borders is adopted, the possibility of resorting to measures aiming to address the underlying situation, including assistance by Union bodies, offices or agencies, such asFrontex' or the European Police Office ('Europol'), established by Council Decision 2009/371/JHA[15], and technical or financial support measures at national level, Union level, or both, should be fully explored in a timely manner. Where a serious deficiency is detected, the Commission may provide financial support measures to help the Member State concerned. Moreover, any Commission and Council recommendation should be based on substantiated information.

↓ 1051/2013 recital 11

(32) The Commission should have the possibility to adopt immediately applicable implementing acts where, in duly justified cases relating to the need to prolong border control at internal borders, imperative grounds of urgency so require.

↓ 1051/2013 recital 12 (adapted)

(33) The evaluation reports and the recommendations referred to in Articles 14 and 15 of Regulation (EU) No 1053/2013 should form the basis for the triggering of the specific measures in the case of serious deficiencies relating to external border control and of the specific procedure in case of exceptional circumstances putting the overall

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[14] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

[15] Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

functioning of the area without internal border control at risk provided for in this Regulation. The Member States and the Commission ⌦ should ⌫ jointly conduct regular, objective and impartial evaluations in order to verify the correct application of this Regulation and the Commission coordinates the evaluations in close cooperation with the Member States. The evaluation mechanism ⌦ should ⌫ consist of the following elements: multiannual and annual evaluation programmes, announced and unannounced on-site visits carried out by a small team of Commission representatives and of experts designated by Member States, reports on the outcome of the evaluations adopted by the Commission and recommendations for remedial action adopted by the Council on a proposal from the Commission, appropriate follow-up, monitoring and reporting.

↓ 610/2013 recital 11 (adapted)

(34) The power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of the adoption of additional measures governing surveillance as well as amendments to the Annexes to ⌦ this ⌫ Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

↓ 562/2006 recital 20

(35) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the Member States' obligations as regards international protection and *non-refoulement*.

↓ 562/2006 recital 21 (adapted)

(36) By way of derogation from Article ⌦ 355 ⌫ of the ⌦ TFEU ⌫ , the only territories of France and the Netherlands to which this Regulation applies are those in Europe. It does not affect the specific arrangements applied in Ceuta and Melilla, as defined in the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985[16].

↓ 562/2006 recital 22 (adapted)

(37) In accordance with Articles 1 and 2 of Protocol ⌦ No 22 ⌫ on the Position of Denmark annexed to the Treaty on European Union ⌦ (TEU) ⌫ and to the ⌦ TFEU ⌫, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark should, in accordance with Article 4 of ⌦ that ⌫ Protocol, decide within a period of six months after the ⌦ Council has decided on ⌫ this Regulation whether it will implement it in its national law.

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[16] OJ L 239, 22.9.2000, p. 69.

↓ 562/2006 recital 23 (adapted)

(38) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*[17] which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC[18].

↓ 562/2006 recital 25 (adapted)

(39) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation ⌦ on ⌫ the ⌦ Swiss Confederation's ⌫ association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[19].

↓ 1051/2013 recital 19

(40) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[20] which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[21].

17 OJ L 176, 10.7.1999, p. 36.

18 Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

19 Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

20 OJ L 160, 18.6.2011, p. 21.

21 Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

↓ 562/2006 recital 27

(41) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[22]. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

↓ 562/2006 recital 28

(42) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[23]. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application,

↓ 562/2006 recital 29 (adapted)

(43) ⌦ As regards Bulgaria, Croatia, Cyprus and Romania ⌫, the first ⌦ paragraph ⌫ of Article 1, Article 6(5)(a), Title III and the provisions of Title II and the annexes thereto referring to theSIS ⌦ and to the VIS ⌫ constitute provisions building on the Schengen acquis or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession, ⌦ of Article 4(2) of the 2005 Act of Accession and of Article 4(2) of the 2011 Act of Accession, respectively, ⌫

↓ 562/2006 (adapted)

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter and principles

This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the European Union.

It ⌦ lays down ⌫ rules governing border control of persons crossing the external borders of the Member States of the European Union.

[22] Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

[23] Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. ‘internal borders’ means:

   (a) the common land borders, including river and lake borders, of the Member States;

   (b) the airports of the Member States for internal flights;

↓ 610/2013 Art. 1.1(a)

   (c) sea, river and lake ports of the Member States for regular internal ferry connections;

↓ 562/2006

2. ‘external borders’ means the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders;

3. ‘internal flight’ means any flight exclusively to or from the territories of the Member States and not landing in the territory of a third country;

↓ 610/2013 Art. 1.1(b)

4. ‘regular internal ferry connection’ means any ferry connection between the same two or more ports situated on the territory of the Member States, not calling at any ports situated outside the territory of the Member States and consisting of the transport of passengers and vehicles according to a published timetable;

↓ 610/2013 Art. 1.1(c)

5. ‘persons enjoying the right of free movement under Union law’ means:

↓ 562/2006 (adapted)
→1 610/2013 Art. 1.1(c)
→2 610/2013 Art. 1.1(d)

   (a) Union citizens within the meaning of →1 Article 20(1) ← of the ⌦ TFEU ⌫ , and third-country nationals who are members of the family of a Union citizen

exercising his or her right to free movement to whom Directive 2004/38/EC of the European Parliament and of the Council[24] applies;

(b) third-country nationals and their family members, whatever their nationality, who, under agreements between the →1 Union ← and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens;

6. 'third-country national' means any person who is not a Union citizen within the meaning of →2 Article 20(1) ← of the ⊠ TFEU ⊠ and who is not covered by point 5 of this Article;

7. 'persons for whom an alert has been issued for the purposes of refusing entry' means any third-country national for whom an alert has been issued in the Schengen Information System (SIS) in accordance with and for the purposes laid down in Articles 24 and 26 of Regulation (EC) No 1987/2006 of the European Parliament and of the Council[25];

8. 'border crossing point' means any crossing-point authorised by the competent authorities for the crossing of external borders;

↓ 610/2013 Art. 1.1(e)

9. 'shared border crossing point' means any border crossing point situated either on the territory of a Member State or on the territory of a third country, at which Member State border guards and third-country border guards carry out exit and entry checks one after another in accordance with their national law and pursuant to a bilateral agreement;

↓ 562/2006

10. 'border control' means the activity carried out at a border, in accordance with and for the purposes of this Regulation, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;

11. 'border checks' means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States or authorised to leave it;

12. 'border surveillance' means the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks;

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[24] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

[25] Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

13. ‘second line check’ means a further check which may be carried out in a special location away from the location at which all persons are checked (first line);

14. ‘border guard’ means any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out, in accordance with this Regulation and national law, border control tasks;

15. ‘carrier’ means any natural or legal person whose profession it is to provide transport of persons;

↓ 610/2013 Art. 1.1(f)

16. ‘residence permit’ means:

(a) all residence permits issued by the Member States according to the uniform format laid down by Council Regulation (EC) No 1030/2002[26] and residence cards issued in accordance with Directive 2004/38/EC;

(b) all other documents issued by a Member State to third-country nationals authorising a stay on its territory that have been the subject of a notification and subsequent publication in accordance with Article 39, with the exception of:

(i) temporary permits issued pending examination of a first application for a residence permit as referred to in point (a) or an application for asylum; and

(ii) visas issued by the Member States in the uniform format laid down by Council Regulation (EC) No 1683/95[27];

↓ 562/2006

17. ‘cruise ship’ means a ship which follows a given itinerary in accordance with a predetermined programme, which includes a programme of tourist activities in the various ports, and which normally neither takes passengers on nor allows passengers to disembark during the voyage;

18. ‘pleasure boating’ means the use of pleasure boats for sporting or tourism purposes;

19. ‘coastal fisheries’ means fishing carried out with the aid of vessels which return every day or within 36 hours to a port situated in the territory of a Member State without calling at a port situated in a third country;

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[26] Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

[27] Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).

↓ 610/2013 Art. 1.1(g) (adapted)

20. ‘offshore worker’ means a person working on an offshore installation located in the territorial waters or in an area of exclusive maritime economic exploitation of the Member States, as defined ⌦ under the ⌫ international law ⌦ of the sea ⌫ , and who returns regularly by sea or air to the territory of the Member States;

↓ 562/2006

21. ‘threat to public health’ means any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States.

Article 3

Scope

This Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:

↓ 610/2013 Art. 1.2

(a) the rights of persons enjoying the right of free movement under Union law;

↓ 562/2006

(b) the rights of refugees and persons requesting international protection, in particular as regards *non-refoulement*.

↓ 610/2013 Art. 1.3

Article 4

Fundamental Rights

When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union (‘the Charter of Fundamental Rights’), relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 (‘the Geneva Convention’), obligations related to access to international protection, in particular the principle of *non-refoulement*, and fundamental rights. In accordance with the general principles of Union law, decisions under this Regulation shall be taken on an individual basis.

↓ 562/2006

TITLE II

EXTERNAL BORDERS

CHAPTER I

Crossing of external borders and conditions for entry

Article 5

Crossing of external borders

1. External borders may be crossed only at border crossing points and during the fixed opening hours. The opening hours shall be clearly indicated at border crossing points which are not open 24 hours a day.

Member States shall notify the list of their border crossing points to the Commission in accordance with Article 39 .

↓ 610/2013 Art. 1.4

2. By way of derogation from paragraph 1, exceptions to the obligation to cross external borders only at border crossing points and during fixed opening hours may be allowed:

(a) for individuals or groups of persons, where there is a requirement of a special nature for the occasional crossing of external borders outside border crossing points or outside fixed opening hours, provided that they are in possession of the permits required by national law and that there is no conflict with the interests of public policy and the internal security of the Member States. Member States may make specific arrangements in bilateral agreements. General exceptions provided for by national law and bilateral agreements shall be notified to the Commission pursuant to Article 39 ;

(b) for individuals or groups of persons in the event of an unforeseen emergency situation;

(c) in accordance with the specific rules set out in Articles 19 and 20 in conjunction with Annexes VI and VII.

↓ 562/2006 (adapted)

3. Without prejudice to the exceptions provided for in paragraph 2 or to their international protection obligations, Member States shall introduce penalties, in accordance with their

national law, for the unauthorised crossing of external borders at places other than border crossing points or at times other than the fixed opening hours. ⌦ Those ⌫ penalties shall be effective, proportionate and dissuasive.

Article 6

Entry conditions for third-country nationals

↓ 610/2013 Art. 1.5(a)

1. For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document entitling the holder to cross the border satisfying the following criteria:

(i) its validity shall extend at least three months after the intended date of departure from the territory of the Member States. In a justified case of emergency, this obligation may be waived;

(ii) it shall have been issued within the previous 10 years;

↓ 265/2010 Art. 2.1

(b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001[28], except where they hold a valid residence permit or a valid long-stay visa;

↓ 562/2006

(c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;

(e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.

[28] Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

↓ 610/2013 Art. 1.5(b)

2. For the purposes of implementing paragraph 1, the date of entry shall be considered as the first day of stay on the territory of the Member States and the date of exit shall be considered as the last day of stay on the territory of the Member States. Periods of stay authorised under a residence permit or a long-stay visa shall not be taken into account in the calculation of the duration of stay on the territory of the Member States.

↓ 562/2006

3. A non-exhaustive list of supporting documents which the border guard may request from the third-country national in order to verify the fulfilment of the conditions set out in paragraph 1 (c) is included in Annex I.

4. Means of subsistence shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed.

Reference amounts set by the Member States shall be notified to the Commission in accordance with Article 39 .

The assessment of sufficient means of subsistence may be based on the cash, travellers' cheques and credit cards in the third-country national's possession. Declarations of sponsorship, where such declarations are provided for by national law and letters of guarantee from hosts, as defined by national law, where the third-country national is staying with a host, may also constitute evidence of sufficient means of subsistence.

5. By way of derogation from paragraph 1:

↓ 610/2013 Art. 1.5(c)

(a) third-country nationals who do not fulfil all the conditions laid down in paragraph 1 but who hold a residence permit or a long-stay visa shall be authorised to enter the territory of the other Member States for transit purposes so that they may reach the territory of the Member State which issued the residence permit or the long-stay visa, unless their names are on the national list of alerts of the Member State whose external borders they are seeking to cross and the alert is accompanied by instructions to refuse entry or transit;

(b) third-country nationals who fulfil the conditions laid down in paragraph 1, except for that laid down in point (b), and who present themselves at the border may be authorised to enter the territory of the Member States, if a visa is issued at the border in accordance with Articles 35 and 36 of Regulation (EC) No 810/2009 of the European Parliament and of the Council[29].

Member States shall compile statistics on visas issued at the border in accordance with Article 46 of Regulation (EC) No 810/2009 and Annex XII thereto.

[29] Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

↓ 562/2006

If it is not possible to affix a visa in the document, it shall, exceptionally, be affixed on a separate sheet inserted in the document. In such a case, the uniform format for forms for affixing the visa, laid down by Council Regulation (EC) No 333/2002[30], shall be used;

(c) third-country nationals who do not fulfil one or more of the conditions laid down in paragraph 1 may be authorised by a Member State to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations. Where the third-country national concerned is the subject of an alert as referred to in paragraph 1(d), the Member State authorising him or her to enter its territory shall inform the other Member States accordingly.

CHAPTER II

Control of external borders and refusal of entry

Article 7

Conduct of border checks

↓ 610/2013 Art. 1.6

1. Border guards shall, in the performance of their duties, fully respect human dignity, in particular in cases involving vulnerable persons.

↓ 562/2006

Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.

2. While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 8

Border checks on persons

1. Cross-border movement at external borders shall be subject to checks by border guards. Checks shall be carried out in accordance with this chapter.

[30] Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (OJ L 53, 23.2.2002, p. 4).

The checks may also cover the means of transport and objects in the possession of the persons crossing the border. The law of the Member State concerned shall apply to any searches which are carried out.

2. All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border and of the presence of signs of falsification or counterfeiting.

↓ 610/2013 Art. 1.7(a)

The minimum check referred to in the first subparagraph shall be the rule for persons enjoying the right of free movement under Union law.

However, on a non-systematic basis, when carrying out minimum checks on persons enjoying the right of free movement under Union law, border guards may consult national and European databases in order to ensure that such persons do not represent a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to the public health.

The consequences of such consultations shall not jeopardise the right of entry of persons enjoying the right of free movement under Union law into the territory of the Member State concerned as laid down in Directive 2004/38/EC.

↓ 562/2006 (adapted)

3. On entry and exit, third-country nationals shall be subject to thorough checks ⌦ as follows: ⌫

(a) thorough checks on entry shall comprise verification of the conditions governing entry laid down in Article 6(1) and, where applicable, of documents authorising residence and the pursuit of a professional activity. This shall include a detailed examination covering the following aspects:

(i) verification that the third-country national is in possession of a document which is valid for crossing the border and which has not expired, and that the document is accompanied, where applicable, by the requisite visa or residence permit;

(ii) thorough scrutiny of the travel document for signs of falsification or counterfeiting;

(iii) examination of the entry and exit stamps on the travel document of the third-country national concerned, in order to verify, by comparing the dates of entry and exit, that the person has not already exceeded the maximum duration of authorised stay in the territory of the Member States;

(iv) verification regarding the point of departure and the destination of the third-country national concerned and the purpose of the intended stay, checking, if necessary, the corresponding supporting documents;

(v) verification that the third-country national concerned has sufficient means of subsistence for the duration and purpose of the intended stay, for his or her return to the country of origin or transit to a third country into which he or she is certain to be admitted, or that he or she is in a position to acquire such means lawfully;

(vi) verification that the third-country national concerned, his or her means of transport and the objects he or she is transporting are not likely to jeopardise the public policy, internal security, public health or international relations of any of the Member States. Such verification shall include direct consultation of the data and alerts on persons and, where necessary, objects included in the SIS and in national data files and the action to be performed, if any, as a result of an alert;

↓ 81/2009 Art. 1.1 (adapted)

(b) if the third country national holds a visa referred to in Article 6(1)(b), the thorough checks on entry shall also comprise verification of the identity of the holder of the visa and of the authenticity of the visa, by consulting the Visa Information System (VIS) in accordance with Article 18 of Regulation (EC) No 767/2008;

(c) by way of derogation ⌦ from points (a) and (b), the VIS may be consulted using the number of the visa sticker in all cases and, on a random basis, the number of the visa sticker in combination with the verification of fingerprints ⌫ where:

(i) traffic of such intensity arises that the waiting time at the border crossing point becomes excessive;

(ii) all resources have already been exhausted as regards staff, facilities and organisation; and

(iii) on the basis of an assessment there is no risk related to internal security and illegal immigration.

However, in all cases where there is doubt as to the identity of the holder of the visa and/or the authenticity of the visa, the VIS shall be consulted systematically using the number of the visa sticker in combination with the verification of fingerprints.

This derogation may be applied only at the border crossing point concerned for as long as the conditions ⌦ referred to in points (i), (ii) and (iii) ⌫ are met;

(d) the decision to consult the VIS in accordance with point (c) shall be taken by the border guard in command at the border crossing point or at a higher level.

The Member State concerned shall immediately notify the other Member States and the Commission of any such decision;

(e) each Member State shall transmit once a year a report on the application of point (c) to the European Parliament and the Commission, which shall include the number of third-country nationals who were checked in the VIS using the number of the visa sticker only and the length of the waiting time referred to in point (c)(i);

(f) points (c) and (d) shall apply for a maximum period of three years, beginning three years after the VIS has started operations. The Commission shall, before the end of the second year of application of points (c) and (d), transmit to the European Parliament and to the Council an evaluation of their implementation. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose appropriate amendments to this Regulation;

↓ 562/2006
→1 81/2009 Art. 1.2

(g) thorough checks on exit shall comprise:

(i) verification that the third-country national is in possession of a document valid for crossing the border;

(ii) verification of the travel document for signs of falsification or counterfeiting;

(iii) whenever possible, verification that the third-country national is not considered to be a threat to public policy, internal security or the international relations of any of the Member States;

(h) in addition to the checks referred to in point (g) thorough checks on exit may also comprise:

(i) verification that the person is in possession of a valid visa, if required pursuant to Regulation (EC) No 539/2001, except where he or she holds a valid residence permit; →1 such verification may comprise consultation of the VIS in accordance with Article 18 of Regulation (EC) No 767/2008; ←

(ii) verification that the person did not exceed the maximum duration of authorised stay in the territory of the Member States;

(iii) consultation of alerts on persons and objects included in the SIS and reports in national data files;

↓ 81/2009 Art. 1.3

(i) for the purpose of identification of any person who may not fulfil, or who may no longer fulfil, the conditions for entry, stay or residence on the territory of the Member States, the VIS may be consulted in accordance with Article 20 of Regulation (EC) No 767/2008.

↓ 562/2006
→1 610/2013 Art. 1.7(b)

4. Where facilities exist and if requested by the third-country national, such thorough checks shall be carried out in a private area.

5. →1 Without prejudice to the second subparagraph, third-country nationals subject to a thorough second line check shall be given written information in a language which they understand or may reasonably be presumed to understand, or in another effective way, on the purpose of, and the procedure for, such a check. ←

This information shall be available in all the official languages of the Union and in the language(s) of the country or countries bordering the Member State concerned and shall indicate that the third-country national may request the name or service identification number of the border guards carrying out the thorough second line check, the name of the border crossing point and the date on which the border was crossed.

↓ 610/2013 Art. 1.7(c)

6. Checks on a person enjoying the right of free movement under Union law shall be carried out in accordance with Directive 2004/38/EC.

↓ 562/2006

7. Detailed rules governing the information to be registered are laid down in Annex II.

↓ 610/2013 Art. 1.7(d) (adapted)

8. Where Article 5(2)(a) or (b) ⌦ applies ⌫, Member States may also provide derogations from the rules set out in this Article.

↓ 562/2006 (adapted)

Article 9

Relaxation of border checks

1. Border checks at external borders may be relaxed as a result of exceptional and unforeseen circumstances. Such exceptional and unforeseen circumstances shall be deemed to be those where unforeseeable events lead to traffic of such intensity that the waiting time at the border crossing point becomes excessive, and all resources have been exhausted as regards staff, facilities and organisation.

2. Where border checks are relaxed in accordance with paragraph 1, border checks on entry movements shall in principle take priority over border checks on exit movements.

The decision to relax checks shall be taken by the border guard in command at the border crossing point.

Such relaxation of checks shall be temporary, adapted to the circumstances justifying it and introduced gradually.

3. Even in the event that checks are relaxed, the border guard shall stamp the travel documents of third-country nationals both on entry and exit, in accordance with Article 11 .

4. Each Member State shall transmit once a year a report on the application of this Article to the European Parliament and the Commission.

Article 10

Separate lanes and information on signs

1. Member States shall provide separate lanes, in particular at air border crossing points in order to carry out checks on persons, in accordance with Article 8 . Such lanes shall be differentiated by means of the signs bearing the indications set out in Annex III.

Member States may provide separate lanes at their sea and land border crossing points and at borders between Member States ⌦ which do ⌫ not apply Article 22 at their common borders. The signs bearing the indications set out in Annex III shall be used if Member States provide separate lanes at those borders.

Member States shall ensure that such lanes are clearly signposted, including where the rules relating to the use of the different lanes are waived as provided for in paragraph 4, in order to ensure optimal flow levels of persons crossing the border.

↓ 610/2013 Art. 1.8(a)

2. Persons enjoying the right of free movement under Union law are entitled to use the lanes indicated by the sign in part A (‘EU, EEA, CH’) of Annex III. They may also use the lanes indicated by the sign in part B1 (‘visa not required’) and part B2 (‘all passports’) of Annex III.

Third-country nationals who are not obliged to possess a visa when crossing the external borders of the Member States in accordance with Regulation (EC) No 539/2001 and third-country nationals who hold a valid residence permit or long-stay visa may use the lanes indicated by the sign in part B1 (‘visa not required’) of Annex III to this Regulation. They may also use the lanes indicated by the sign in part B2 (‘all passports’) of Annex III to this Regulation.

All other persons shall use the lanes indicated by the sign in part B2 (‘all passports’) of Annex III.

The indications on the signs referred to in the first, second and third subparagraphs may be displayed in such language or languages as each Member State considers appropriate.

The provision of separate lanes indicated by the sign in part B1 (‘visa not required’) of Annex III is not obligatory. Member States shall decide whether to do so and at which border crossing points in accordance with practical needs.

↓ 562/2006

3. At sea and land border crossing points, Member States may separate vehicle traffic into different lanes for light and heavy vehicles and buses by using signs as shown in Part C of Annex III.

Member States may vary the indications on those signs where appropriate in the light of local circumstances.

4. In the event of a temporary imbalance in traffic flows at a particular border crossing point, the rules relating to the use of the different lanes may be waived by the competent authorities for the time necessary to eliminate such imbalance.

Article 11

↓ 610/2013 Art. 1.9(a)

Stamping of the travel documents

↓ 562/2006

1. The travel documents of third-country nationals shall be systematically stamped on entry and exit. In particular an entry or exit stamp shall be affixed to:

(a) the documents, bearing a valid visa, enabling third-country nationals to cross the border;

(b) the documents enabling third-country nationals to whom a visa is issued at the border by a Member State to cross the border;

(c) the documents enabling third-country nationals not subject to a visa requirement to cross the border.

↓ 610/2013 Art. 1.9(b)

2. The travel documents of nationals of third countries who are members of the family of a Union citizen to whom Directive 2004/38/EC applies, but who do not present the residence card provided for in that Directive, shall be stamped on entry and exit.

The travel documents of nationals of third countries who are members of the family of nationals of third countries enjoying the right of free movement under Union law, but who do not present the residence card provided for in Directive 2004/38/EC, shall be stamped on entry and exit.

↓ 562/2006

3. No entry or exit stamp shall be affixed:

(a) to the travel documents of Heads of State and dignitaries whose arrival has been officially announced in advance through diplomatic channels;

(b) to pilots' licences or the certificates of aircraft crew members;

(c) to the travel documents of seamen who are present within the territory of a Member State only when their ship puts in and in the area of the port of call;

(d) to the travel documents of crew and passengers of cruise ships who are not subject to border checks in accordance with point 3.2.3 of Annex VI;

(e) to documents enabling nationals of Andorra, Monaco and San Marino to cross the border;

↓ 610/2013 Art. 1.9(c)

(f) to the travel documents of crews of passengers and goods trains on international connections;

(g) to the travel documents of nationals of third countries who present a residence card provided for in Directive 2004/38/EC.

Exceptionally, at the request of a third-country national, insertion of an entry or exit stamp may be dispensed with if insertion might cause serious difficulties for that person. In that case, entry or exit shall be recorded on a separate sheet indicating that person's name and passport number. That sheet shall be given to the third-country national. The competent authorities of the Member States may keep statistics of such exceptional cases and may provide those statistics to the Commission.

↓ 562/2006 (adapted)

4. The practical arrangements for stamping are set out in Annex IV.

5. Whenever possible, third-country nationals shall be informed of the border guard's obligation to stamp their travel document on entry and exit, even where checks are relaxed in accordance with Article 9 .

Article 12

Presumption as regards fulfilment of conditions of duration of stay

1. If the travel document of a third-country national does not bear an entry stamp, the competent national authorities may presume that the holder does not fulfil, or no longer fulfils, the conditions of duration of stay applicable within the Member State concerned.

2. The presumption referred to in paragraph 1 may be rebutted where the third-country national provides, by any means, credible evidence, such as transport tickets or proof of his or her presence outside the territory of the Member States, that he or she has respected the conditions relating to the duration of a short stay.

In such a case:

(a) where the third-country national is found on the territory of a Member State applying the Schengen *acquis* in full, the competent authorities shall indicate, in accordance with national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of one of the Member States applying the Schengen *acquis* in full;

(b) where the third-country national is found on the territory of a Member State in respect of which the decision contemplated in Article 3(2) of the 2003 Act of Accession ⌦ , in Article 4(2) of the 2005 Act of Accession and in Article 4(2) of the 2011 Act of Accession ⌫ has not been taken, the competent authorities shall indicate, in accordance with national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of such a Member State.

In addition to the indications referred to in points (a) and (b), a form as shown in Annex VIII may be given to the third-country national.

Member States shall inform each other and the Commission and the Council General Secretariat of their national practices with regard to the indications referred to in this Article.

↓ 610/2013 Art. 1.10(a)

3. Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be returned in accordance with Directive 2008/115/EC of the European Parliament and of the Council[31] and with national law respecting that Directive.

↓ 610/2013 Art. 1.10(b)

4. The relevant provisions of paragraphs 1 and 2 shall apply *mutatis mutandis* in the absence of an exit stamp.

[31] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

↓ 562/2006

Article 13

Border surveillance

↓ 610/2013 Art. 1.11(a)

1. The main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally. A person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC.

↓ 562/2006

2. The border guards shall use stationary or mobile units to carry out border surveillance.

That surveillance shall be carried out in such a way as to prevent and discourage persons from circumventing the checks at border crossing points.

3. Surveillance between border crossing points shall be carried out by border guards whose numbers and methods shall be adapted to existing or foreseen risks and threats. It shall involve frequent and sudden changes to surveillance periods, so that unauthorised border crossings are always at risk of being detected.

4. Surveillance shall be carried out by stationary or mobile units which perform their duties by patrolling or stationing themselves at places known or perceived to be sensitive, the aim of such surveillance being to apprehend individuals crossing the border illegally. Surveillance may also be carried out by technical means, including electronic means.

↓ 610/2013 Art. 1.11(b)

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning additional measures governing surveillance.

↓ 562/2006

Article 14

Refusal of entry

1. A third-country national who does not fulfil all the entry conditions laid down in Article 6(1) and does not belong to the categories of persons referred to in Article 6(5) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.

2. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.

The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.

3. Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national.

Lodging such an appeal shall not have suspensive effect on a decision to refuse entry.

Without prejudice to any compensation granted in accordance with national law, the third-country national concerned shall, where the appeal concludes that the decision to refuse entry was ill-founded, be entitled to correction of the cancelled entry stamp, and any other cancellations or additions which have been made, by the Member State which refused entry.

4. The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned.

↓ 610/2013 Art. 1.12

5. Member States shall collect statistics on the number of persons refused entry, the grounds for refusal, the nationality of the persons who were refused entry and the type of border (land, air or sea) at which they were refused entry and submit them yearly to the Commission (Eurostat) in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council[32].

↓ 562/2006

6. Detailed rules governing refusal of entry are given in Part A of Annex V.

[32] Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

CHAPTER III

Staff and resources for border control and cooperation between Member States

Article 15

Staff and resources for border control

Member States shall deploy appropriate staff and resources in sufficient numbers to carry out border control at the external borders, in accordance with Articles 7 to 14 , in such a way as to ensure an efficient, high and uniform level of control at their external borders.

Article 16

Implementation of control

1. The border control provided for by Articles 7 to 14 shall be carried out by border guards in accordance with the provisions of this Regulation and with national law.

When carrying out that border control, the powers to instigate criminal proceedings conferred on border guards by national law and falling outside the scope of this Regulation shall remain unaffected.

↓ 610/2013 Art. 1.13 (adapted)

Member States shall ensure that the border guards are specialised and properly trained professionals, taking into account common core curricula for border guards established and developed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States ⌦ ('the Agency') ⌫ established by Regulation (EC) No 2007/2004. Training curricula shall include specialised training for detecting and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of trafficking. Member States, with the support of the Agency, shall encourage border guards to learn the languages necessary for the carrying-out of their tasks.

↓ 562/2006 (adapted)

2. Member States shall notify to the Commission the list of national services responsible for border control under their national law in accordance with Article 39 .

3. To control borders effectively, each Member State shall ensure close and constant cooperation between its national services responsible for border control.

Article 17

Cooperation between Member States

1. The Member States shall assist each other and shall maintain close and constant cooperation with a view to the effective implementation of border control, in accordance with Articles 7 to 16 . They shall exchange all relevant information.

2. Operational cooperation between Member States in the field of management of external borders shall be coordinated by the Agency.

3. Without prejudice to the competences of the Agency, Member States may continue operational cooperation with other Member States and/or third countries at external borders, including the exchange of liaison officers, where such cooperation complements the action of the Agency.

Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.

Member States shall report to the Agency on the operational cooperation referred to in the first subparagraph.

4. Member States shall provide for training on the rules for border control and on fundamental rights. In that regard, account shall be taken of the common training standards as established and further developed by the Agency.

Article 18

Joint control

1. Member States which do not apply Article 22 ⌦ at ⌫ their common land borders may, up to the date of application of that Article, jointly control those common borders, in which case a person may be stopped only once for the purpose of carrying out entry and exit checks, without prejudice to the individual responsibility of Member States arising from Articles 7 to 14 .

To that end, Member States may conclude bilateral arrangements between themselves.

2. Member States shall inform the Commission of any arrangements concluded in accordance with paragraph 1.

CHAPTER IV

Specific rules for border checks

Article 19

Specific rules for the various types of border and the various means of transport used for crossing the external borders

The specific rules set out in Annex VI shall apply to the checks carried out at the various types of border and on the various means of transport used for crossing border crossing points.

↓ 610/2013 Art. 1.14

Those specific rules may contain derogations from Articles 5 and 6 and Articles 8 to 14 .

↓ 562/2006

Article 20

Specific rules for checks on certain categories of persons

1. The specific rules set out in Annex VII shall apply to checks on the following categories of persons:

(a) Heads of State and the members of their delegation(s);

(b) pilots of aircraft and other crew members;

(c) seamen;

(d) holders of diplomatic, official or service passports and members of international organisations;

(e) cross-border workers;

(f) minors;

↓ 610/2013 Art. 1.15(a)

(g) rescue services, police and fire brigades and border guards;

(h) offshore workers.

↓ 610/2013 Art. 1.15(b)

Those specific rules may contain derogations from Articles 5 and 6 and Articles 8 to 14 .

↓ 562/2006

2. Member States shall notify to the Commission the model cards issued by their Ministries of Foreign Affairs to accredited members of diplomatic missions and consular representations and members of their families in accordance with Article 39 .

↓ Annex V.9 (in other languages box can be deleted) (adapted)

↓ 1051/2013 Art. 1.1

CHAPTER V

Specific measures in the case of serious deficiencies relating to external border control

Article 21

Measures at external borders and support by the Agency

1. Where serious deficiencies in the carrying out of external border control are identified in an evaluation report drawn up pursuant to Article 14 of Regulation (EU) No 1053/2013, and with a view to ensuring compliance with the recommendations referred to in Article 15 of that Regulation, the Commission may recommend, by means of an implementing act, that the evaluated Member State take certain specific measures, which may include one or both of the following:

(a) initiating the deployment of European border guard teams in accordance with Regulation (EC) No 2007/2004;

(b) submitting its strategic plans, based on a risk assessment, including information on the deployment of personnel and equipment, to the Agency for its opinion thereon.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).

2. The Commission shall inform the committee established pursuant to Article 38(1) on a regular basis of the progress in the implementation of the measures referred to in paragraph 1 of this Article and on its impact on the deficiencies identified.

It shall also inform the European Parliament and the Council.

3. Where an evaluation report as referred to in paragraph 1 has concluded that the evaluated Member State is seriously neglecting its obligations and must therefore report on the implementation of the relevant action plan within three months in accordance with Article 16(4) of Regulation (EU) No 1053/2013, and where, following that three-month period, the Commission finds that the situation persists, it may trigger the application of the procedure provided for in Article 29 of this Regulation where all the conditions for doing so are fulfilled.

↓ 562/2006 (adapted)

TITLE III

INTERNAL BORDERS

CHAPTER I

⌦ Absence ⌫ of border control at internal borders

Article 22

Crossing internal borders

Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out.

Article 23

Checks within the territory

The ⌦ absence ⌫ of border control at internal borders shall not affect:

(a) the exercise of police powers by the competent authorities of the Member States under national law, insofar as the exercise of those powers does not have an effect equivalent to border checks; that shall also apply in border areas. Within the meaning of the first sentence, the exercise of police powers may not, in particular, be considered equivalent to the exercise of border checks when the police measures:

(i) do not have border control as an objective;

(ii) are based on general police information and experience regarding possible threats to public security and aim, in particular, to combat cross-border crime;

(iii) are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders;

(iv) are carried out on the basis of spot-checks;

(b) security checks on persons carried out at ports and airports by the competent authorities under the law of each Member State, by port or airport officials or carriers, provided that such checks are also carried out on persons travelling within a Member State;

(c) the possibility for a Member State to provide by law for an obligation to hold or carry papers and documents;

↓ 610/2013 Art. 1.16 (adapted)

(d) the possibility for a Member State to provide by law for an obligation on third-country nationals to report their presence on its territory pursuant to the provisions of Article 22 of ⌦ the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ⌫ ('the Schengen Convention').

↓ 562/2006

Article 24

Removal of obstacles to traffic at road crossing-points at internal borders

Member States shall remove all obstacles to fluid traffic flow at road crossing-points at internal borders, in particular any speed limits not exclusively based on road-safety considerations.

At the same time, Member States shall be prepared to provide for facilities for checks in the event that internal border controls are reintroduced.

CHAPTER II

Temporary reintroduction of border control at internal borders

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↓ 1051/2013 Art. 1.2 (adapted)

Article 25

General framework for the temporary reintroduction of border control at internal borders

1. Where, in the area without internal border control, there is a serious threat to public policy or internal security in a Member State, that Member State may exceptionally reintroduce border control at all or specific parts of its internal borders for a limited period of up to 30 days or for the foreseeable duration of the serious threat if its duration exceeds 30 days. The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat.

2. Border control at internal borders shall only be reintroduced as a last resort, and in accordance with Articles 27, 28 and 29. The criteria referred to, respectively, in Articles 26 and 30 shall be taken into account in each case where a decision on the reintroduction of border control at internal borders is considered pursuant, respectively, to Article 27, 28 or 29.

3. If the serious threat to public policy or internal security in the Member State concerned persists beyond the period provided for in paragraph 1 of this Article, that Member State may prolong border control at its internal borders, taking account of the criteria referred to in Article 26 and in accordance with Article 27, on the same grounds as those referred to in paragraph 1 of this Article and, taking into account any new elements, for renewable periods of up to 30 days.

4. The total period during which border control is reintroduced at internal borders, including any prolongation provided for under paragraph 3 of this Article, shall not exceed six months. Where there are exceptional circumstances as referred to in Article 29, that total period may be extended to a maximum length of two years, in accordance with paragraph 1 of that Article.

Article 26

Criteria for the temporary reintroduction of border control at internal borders

Where a Member State decides, as a last resort, on the temporary reintroduction of border control at one or more of its internal borders or at parts thereof, or decides to prolong such reintroduction, in accordance with Article 25 or Article 28(1), it shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security, and shall assess the proportionality of the measure in relation to that threat. In making such an assessment, the Member State shall, in particular, take the following into account:

(a) the likely impact of any threats to its public policy or internal security, including following terrorist incidents or threats and including those posed by organised crime;

(b) the likely impact of such a measure on free movement of persons within the area without internal border control.

Article 27

Procedure for the temporary reintroduction of border control at internal borders under Article 23(1) 25

1. Where a Member State plans to reintroduce border control at internal borders under Article 25, it shall notify the other Member States and the Commission at the latest four weeks before the planned reintroduction, or within a shorter period where the circumstances giving rise to the need to reintroduce border control at internal borders become known less than four weeks before the planned reintroduction. To that end, the Member State shall supply the following information:

(a) the reasons for the proposed reintroduction, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security;

(b) the scope of the proposed reintroduction, specifying at which part or parts of the internal borders border control is to be reintroduced;

(c) the names of the authorised crossing-points;

(d) the date and duration of the planned reintroduction;

(e) where appropriate, the measures to be taken by the other Member States.

A notification under the first subparagraph may also be submitted jointly by two or more Member States.

If necessary, the Commission may request additional information from the Member State(s) concerned.

2. The information referred to in paragraph 1 shall be submitted to the European Parliament and to the Council at the same time as it is notified to the other Member States and to the Commission pursuant to that paragraph.

3. Member States making a notification under paragraph 1 may, where necessary and in accordance with national law, decide to classify parts of the information.

Such classification shall not preclude information from being made available by the Commission to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament under this Article shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.

4. Following notification by a Member State under paragraph 1 and with a view to consultation provided for in paragraph 5, the Commission or any other Member State may, without prejudice to Article 72 of the ⌦ TFEU ⌫ , issue an opinion.

If, based on the information contained in the notification or on any additional information it has received, the Commission has concerns as regards the necessity or proportionality of the planned reintroduction of border control at internal borders, or if it considers that a consultation on some aspect of the notification would be appropriate, it shall issue an opinion to that effect.

5. The information referred to in paragraph 1 and any Commission or Member State opinion under paragraph 4 shall be the subject of consultation, including, where appropriate, joint meetings between the Member State planning to reintroduce border control at internal borders, the other Member States, especially those directly affected by such measures, and the Commission, with a view to organising, where appropriate, mutual cooperation between the Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border control and the threat to public policy or internal security.

6. The consultation referred to in paragraph 5 shall take place at least ten days before the date planned for the reintroduction of border control.

Article 28

Specific procedure for cases requiring immediate action

1. Where a serious threat to public policy or internal security in a Member State requires immediate action to be taken, the Member State concerned may, on an exceptional basis, immediately reintroduce border control at internal borders, for a limited period of up to ten days.

2. Where a Member State reintroduces border control at internal borders, it shall at the same time notify the other Member States and the Commission accordingly, and shall supply the information referred to in Article 27(1), including the reasons that justify the use of the procedure set out in this Article. The Commission may consult the other Member States immediately upon receipt of the notification.

3. If the serious threat to public policy or internal security persists beyond the period provided for in paragraph 1, the Member State may decide to prolong the border control at internal borders for renewable periods of up to 20 days. In doing so, the Member State concerned shall take into account the criteria referred to in Article 26 , including an updated assessment of the necessity and the proportionality of the measure, and shall take into account any new elements.

In the event of such a prolongation, the provisions of Article 27(4) and (5) shall apply *mutatis mutandis*, and the consultation shall take place without delay after the decision to prolong has been notified to the Commission and to the Member States.

4. Without prejudice to Article 25(4), the total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 ⌦ of this Article ⌫ and any prolongations under paragraph 3 ⌦ of this Article ⌫ , shall not exceed two months.

5. The Commission shall inform the European Parliament without delay of notifications made under this Article.

Article 29

Specific procedure where exceptional circumstances put the overall functioning of the area without internal border control at risk

1. In exceptional circumstances where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control as referred to in Article 21 , and insofar as those circumstances constitute a serious threat to public policy or internal security within the area without internal border control or within parts thereof, border control at internal borders may be reintroduced in accordance with paragraph 2 of this Article for a period of up to six months. That period may be prolonged, no more than three times, for a further period of up to six months if the exceptional circumstances persist.

2. The Council may, as a last resort and as a measure to protect the common interests within the area without internal border control, where all other measures, in particular those referred to in Article 21(1), are ineffective in mitigating the serious threat identified, recommend that

one or more Member States decide to reintroduce border control at all or at specific parts of their internal borders. The Council's recommendation shall be based on a proposal from the Commission. The Member States may request the Commission to submit such a proposal to the Council for a recommendation.

In its recommendation, the Council shall at least indicate the information referred to in Article 27(1)(a) to (e).

The Council may recommend a prolongation in accordance with the conditions and procedure set out in this Article.

Before a Member State reintroduces border control at all or at specific parts of its internal borders under this paragraph, it shall notify the other Member States, the European Parliament and the Commission accordingly.

3. In the event that the recommendation referred to in paragraph 2 is not implemented by a Member State, that Member State shall without delay inform the Commission in writing of its reasons.

In such a case, the Commission shall present a report to the European Parliament and to the Council assessing the reasons provided by the Member State concerned and the consequences for protecting the common interests of the area without internal border control.

4. On duly justified grounds of urgency relating to situations where the circumstances giving rise to the need to prolong border control at internal borders in accordance with paragraph 2 become known less than 10 days before the end of the preceding reintroduction period, the Commission may adopt any necessary recommendations by means of immediately applicable implementing acts in accordance with the procedure referred to in Article 38(3). Within 14 days of the adoption of such recommendations, the Commission shall submit to the Council a proposal for a recommendation in accordance with paragraph 2 ⌦ of this Article ⌫.

5. This Article shall be without prejudice to measures that may be adopted by the Member States in the event of a serious threat to public policy or internal security under Articles 25, 27 and 28.

Article 30

Criteria for the temporary reintroduction of border control at internal borders where exceptional circumstances put the overall functioning of the area without internal border control at risk

1. Where, as a last resort, the Council recommends in accordance with Article 29(2) the temporary reintroduction of border control at one or more internal borders or at parts thereof, it shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security within the area without internal border control, and shall assess the proportionality of the measure in relation to that threat. That assessment shall be based on the detailed information submitted by the Member State(s) concerned and by the Commission and any other relevant information, including any information obtained pursuant to paragraph 2 of this Article. In making such an assessment, the following considerations shall in particular be taken into account:

(a) the availability of technical or financial support measures which could be or have been resorted to at national or Union level, or both, including assistance by Union bodies, offices or agencies, such as the Agency, the European Asylum Support Office, established by Regulation (EU) No 439/2010 of the European Parliament and of the Council[33] or the European Police Office ('Europol'), established by Decision 2009/371/JHA, and the extent to which such measures are likely to adequately remedy the threat to public policy or internal security within the area without internal border control;

(b) the current and likely future impact of any serious deficiencies relating to external border control identified in the context of the evaluations carried out pursuant to Regulation (EU) No 1053/2013 and the extent to which such serious deficiencies constitute a serious threat to public policy or internal security within the area without internal border control;

(c) the likely impact of the reintroduction of border control on the free movement of persons within the area without internal border control.

2. Before adopting a proposal for a Council recommendation, in accordance with Article 29(2), the Commission may:

(a) request Member States, the Agency, Europol or other Union bodies, offices or agencies to provide it with further information;

(b) carry out on-site visits, with the support of experts from Member States and of the Agency, Europol or any other relevant Union body, office or agency, in order to obtain or verify information relevant for that recommendation.

[33] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, p. 11).

Article 31

Informing the European Parliament and the Council

The Commission and the Member State(s) concerned shall inform the European Parliament and the Council as soon as possible of any reasons which might trigger the application of Articles 21 and 25 to 30.

↓ 562/2006

Article 32

Provisions to be applied where border control is reintroduced at internal borders

Where border control at internal borders is reintroduced, the relevant provisions of Title II shall apply *mutatis mutandis*.

↓ 1051/2013 Art. 1.3

Article 33

Report on the reintroduction of border control at internal borders

Within four weeks of the lifting of border control at internal borders, the Member State which has carried out border control at internal borders shall present a report to the European Parliament, the Council and the Commission on the reintroduction of border control at internal borders, outlining, in particular, the initial assessment and the respect of the criteria referred to in Articles 26, 28 and 30, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting impact on the free movement of persons, the effectiveness of the reintroduction of border control at internal borders, including an ex-post assessment of the proportionality of the reintroduction of border control.

The Commission may issue an opinion on that ex-post assessment of the temporary reintroduction of border control at one or more internal borders or at parts thereof.

The Commission shall present to the European Parliament and to the Council, at least annually, a report on the functioning of the area without internal border control. The report shall include a list of all decisions to reintroduce border control at internal borders taken during the relevant year.

Article 34

Informing the public

The Commission and the Member State concerned shall inform the public in a coordinated manner on a decision to reintroduce border control at internal borders and indicate in particular the start and end date of such a measure, unless there are overriding security reasons for not doing so.

↓ 562/2006

Article 35

Confidentiality

At the request of the Member State concerned, the other Member States, the European Parliament and the Commission shall respect the confidentiality of information supplied in connection with the reintroduction and prolongation of border control and the report drawn up under Article 33.

TITLE IV

FINAL PROVISIONS

↓ 610/2013 Art. 1.17

Article 36

Amendments to the Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning amendments to Annexes III, IV and VIII.

↓ 610/2013 Art. 1.18 (adapted)

Article 37

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 13(5) and Article 36 shall be conferred on the Commission for an indeterminate period of time.

3. The delegation of powers referred to in Article 13(5) and Article 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 13(5) and Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

↓ 1051/2013 Art. 1.4

Article 38

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

↓ 562/2006

Article 39

Notifications

1. Member States shall notify the Commission of:

↓ 610/2013 Art. 1.19(a)

(a) the list of residence permits, distinguishing between those covered by Article 2(16)(a) and those covered by Article 2(16)(b) and accompanied by a specimen for permits covered by Article 2(16)(b). Residence cards issued in accordance with Directive 2004/38/EC shall be specifically highlighted as such and specimens shall be provided for those residence cards which have not been issued in accordance with the uniform format laid down by Regulation (EC) No 1030/2002;

↓ 562/2006

(b) the list of their border crossing points;

(c) the reference amounts required for the crossing of their external borders fixed annually by the national authorities;

(d) the list of national services responsible for border control;

(e) the specimen of model cards issued by Foreign Ministries;

↓ 610/2013 Art. 1.19(b)

(f) the exceptions to the rules regarding the crossing of the external borders referred to in Article 5(2)(a);

(g) the statistics referred to in Article 11(3).

↓ 562/2006 (adapted)

2. The Commission shall make the information notified in conformity with paragraph 1 available to the Member States and the public through publication in the *Official Journal of the European Union*, C Series, and by any other appropriate means.

Article 40

Local border traffic

This Regulation shall be without prejudice to ⌦ Union ⌫ rules on local border traffic and to existing bilateral agreements on local border traffic.

Article 41

Ceuta and Melilla

The provisions of this Regulation shall not affect the special rules applying to the cities of Ceuta and Melilla, as defined in the Declaration by the Kingdom of Spain on the cities of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985[34].

Article 42

Notification of information by the Member States

↓ 610/2013 Art. 1.20

The Member States shall notify the Commission of national provisions relating to Article 23(c) and (d), the penalties as referred to in Article 5(3) and the bilateral agreements authorised by this Regulation. Subsequent changes to those provisions shall be notified within five working days.

↓ 562/2006

The information notified by the Member States shall be published in the *Official Journal of the European Union*, C Series.

[34] OJ L 239, 22.9.2000, p. 73.

↓ 1051/2013 Art. 1.5 (adapted)

Article 43

Evaluation mechanism

1. In accordance with the ⌦ Treaties ⌫ and without prejudice to their provisions on infringement procedures, the implementation by each Member State of this Regulation shall be evaluated through an evaluation mechanism.

2. The rules on the evaluation mechanism are specified in Regulation (EU) No 1053/2013. In accordance with that evaluation mechanism, the Member States and the Commission are, jointly, to conduct regular, objective and impartial evaluations in order to verify the correct application of this Regulation and the Commission is to coordinate the evaluations in close cooperation with the Member States. Under that mechanism, every Member State is evaluated at least every five years by a small team consisting of Commission representatives and of experts designated by the Member States.

Evaluations may consist of announced or unannounced on-site visits at external or internal borders.

In accordance with that evaluation mechanism, the Commission is responsible for adopting the multiannual and annual evaluation programmes and the evaluation reports.

3. In the case of possible deficiencies recommendations for remedial action may be addressed to the Member States concerned.

Where serious deficiencies in the carrying out of external border control are identified in an evaluation report adopted by the Commission in accordance with Article 14 of Regulation (EU) No 1053/2013, Articles 21 and 29 of this Regulation shall apply.

4. The European Parliament and the Council shall be informed at all stages of the evaluation and be transmitted all the relevant documents, in accordance with the rules on classified documents.

5. The European Parliament shall be immediately and fully informed of any proposal to amend or to replace the rules laid down in Regulation (EU) No 1053/2013.

↓ 562/2006 (adapted)

Article 44

Repeal

↓

Regulation (EC) No 562/2006 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex X.

↓ 562/2006 (adapted)

Article 45

Entry into force

This Regulation shall enter into force on ⌦ the twentieth day following that of its publication in the *Official Journal of the European Union* ⌫.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the ⌦ Treaties ⌫.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*