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Proposal for a

**COUNCIL REGULATION**

**on the establishment of a regime of local border traffic at the external land borders of the Member States**

Proposal for a

**COUNCIL REGULATION**

**on the establishment of a regime of local border traffic at the temporary external land borders between Member States**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. INTRODUCTION

Article 62(2) of the EC Treaty gives the Community a general competence on "measures on the crossing of the external borders of the Member States". Such measures are part of those which, on the basis of Article 61(a) of the EC Treaty, shall be adopted within a period of five years after the entry into force of the Treaty of Amsterdam.

However, measures in relation to external border controls shall take account of the provisions of the Schengen acquis integrated into the European Union.

In particular, Article 3, paragraph 1 of the Schengen Implementing Convention specifies that, while external borders may in principle only be crossed at border crossing points and during the fixed opening hours, more detailed provisions, exceptions to this principle and special arrangements shall be adopted by the 'Schengen Executive Committee' (replaced by the Council of the European Union, since the entry into force of the Amsterdam Treaty) on, amongst others, "local border traffic" (also called 'small', 'minor' or 'excursion' traffic).

As such measures were not adopted, the development of the acquis on local border traffic and the need to set common minimum rules has been identified, in the Commission Communication *Towards integrated management of the external borders of the Member States of the European Union* (COM(2002)233, 7.5.2002), as one of the issues that need to be addressed in order to complete and clarify the Community legal framework on external borders. The *Plan for the management of the external borders of the Member States of the European Union*, as approved by the JHA Council on 13 June 2002 and subsequently endorsed by the Seville European Council of 21 and 22 June, included the adoption of measures on local border traffic as one of the actions to be undertaken in the short term.

The need to clarify the rules on local border traffic is also amongst the recommendations for the further development of the Schengen acquis made by the Schengen-Evaluation working party, which have been approved by the Justice and Home Affairs Council on 28 February 2002.

Furthermore, this issue assumes a particular importance in the perspective of the forthcoming enlargement, since cross-border movements between the future Member States, as well as between the future Member States, on the one side, and their neighbours, on the other side, are very important in number. As pointed out in the Commission Communication on "Wider Europe" (COM(2003)104 final, 11.3.2003), both the EU and its - present and future - neighbours have a common interest in ensuring that the new external border is not a barrier to trade, social and cultural interchange or regional co-operation.

Efficient rules for local border traffic will thus help promoting the development of border regions and facilitating the crossing of the border by *bona fide* border residents, while at the same time taking into account the need to prevent illegal immigration, as well as potential threats to security posed by criminal activities.

Consequently, the Commission decided to launch the discussion on the establishment of Community rules on local border traffic, by presenting a working paper on the issue (*Developing the acquis on local border traffic*, SEC(2002)947, of 9.9.2002).

Taking into account the reactions and the contributions of both current and future Member States to the working paper, the Commission decided to put forward two proposals laying down rules on criteria and conditions for establishing a regime of local border traffic, and introducing a specific visa for that purpose.

## 2. WHY TWO PROPOSALS?

One of the reasons to develop rules on local border traffic is, as explained above, the lack of a clear and coherent legislative framework regulating the issue. Currently, there is not even a definition of what 'local border traffic' is. The only existing 'acquis' is represented by bilateral agreements on local border traffic that some Member States have concluded with neighbouring third countries<sup>1</sup>. These agreements are indeed quite diverse in many respects, for instance as regards the geographical scope, the categories of people targeted, as well as the types of documents requested for the crossing of the border.

There is however, a further reason, i.e. the need to take into account - and to regulate - the new situations arising as a consequence of the accession of new Member States to the EU.

First of all, it should be stressed that, unlike the present situation, most of the third countries neighbouring the new EU Member States are countries whose nationals must be in possession of a visa when entering the EU<sup>2</sup>. This is obviously an element that has to be taken into account when envisaging a local border traffic regime at such borders and covering this category of persons.

Secondly, as a consequence of the two-step implementation procedure of the Schengen acquis (see below, point 6), the new Member States will have to apply the full Schengen external border controls regime at all their borders upon accession. This implies that border controls will also remain in place, for some time after accession, between the new Member States and current Schengen States, as well as between the new Member States themselves (so-called "temporary external borders"). This is the reason why the Commission considers it appropriate - until the full implementation of the Schengen acquis by the new Member States, when internal border controls will actually be lifted - to apply the facilitated border crossing regime envisaged for border residents also to such "temporary external borders".

Consequently, two instruments are hereby proposed:

- a Regulation laying down general rules on the criteria and conditions applicable for establishing a regime of local border traffic at the external land borders of the Member States, and introducing a specific visa for that purpose (point 2.1);

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<sup>1</sup> Some of these are now acceding countries (e.g., Poland, Slovenia and the Czech Republic).

<sup>2</sup> See Regulation (EC) No 539/2001 as modified by Regulation (EC) No 2414/2001 and by Regulation (EC) No 453/2003.

- a second Regulation applying the rules laid down in the above instrument to the "temporary external land borders" between Member States (point 2.2).

## **2.1. A Regulation fixing general principles on local border traffic with neighbouring third countries**

The purpose of the proposed first Regulation is to lay down rules on the criteria and conditions for establishing a regime of local border traffic at the external land border of the Member States.

First of all, a definition of 'local border traffic' is given, i.e. the regular crossing of the external land border of a Member State by persons lawfully resident in the border area of a neighbouring third country, in order to stay in the border area of that Member State for a limited period (seven consecutive days maximum and, in any case, for no longer than three months within any half-year period).

As far as border residents not requiring a visa are concerned, the facilitation envisaged mainly concerns the travel documents to cross the border (an identity card or a specific border crossing permit is sufficient).

The visa obligation is not waived for border residents requiring a visa. However, a specific visa ("L", from "Local"), is introduced. Such visa would be issued to *bona fide* border residents, on grounds of local border traffic, who fulfil the necessary conditions, as specified in the Regulation.

Such special visa will have the following characteristics:

- its territorial validity will be limited to the border area of the issuing Member State. The maximum duration of the stay in that area will be of 7 consecutive days and will not, in any case, exceed three months within any half-year period;
- it will entitle the holder to multiple crossings of the border of the issuing Member State. The minimum validity of such visa would be of one year and the maximum validity five years;
- it will have the same security features as the normal short-term visa<sup>3</sup>;
- the visa fees could be reduced or waived.

The procedures and criteria to be followed for the issuing of such visas would be conforming to the provisions of the Common Consular Instructions (CCI)<sup>4</sup>, while bearing in mind the two-step Schengen implementation mechanism. This means that, until their full implementation of the Schengen acquis (and thus of the CCI), the new Member States will apply their national legislation which, obviously, will have to conform to the principles defined in this Regulation.

In both cases, border residents will not need to prove the possession of sufficient means of subsistence but may be asked to prove their actual residence in the border

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<sup>3</sup> See Regulation (EC) No 1683/95 as modified by Regulation (EC) No 334/2002.

<sup>4</sup> OJ C 313, 16.12.2002, p.1.

area, as well as the reasons for frequently crossing the border on grounds of local border traffic.

Finally, common conditions applicable to both categories of border residents refer to the possibility of allowing the crossing of the border at specific border crossing points or lanes and/or outside authorised border crossing points and hours.

The possibility of envisaging a local border traffic regime with neighbouring third countries entails the need to ensure that an - at least - equivalent treatment is granted by such third countries to EU citizens and third-country nationals lawfully resident in the border area of a Member State, who wish to cross the border of a neighbouring third country and stay in its border area for the purpose of local border traffic.

While this Regulation sets a Community regime on local border traffic, thus conferring on the Community external competence on this matter, it has been considered appropriate - taking into account the specific nature of a local border traffic regime, whose establishment largely depends on local geographical, social, economic and other considerations - to delegate to Member States the actual implementation of such regime via bilateral agreements.

This Regulation therefore authorises Member States to negotiate bilaterally with their neighbours, if appropriate, the specific arrangements applicable to local border traffic at their common land border, provided that such arrangements comply with and do not affect the provisions established by this Regulation (see Article 17).

## **2.2. The application of a local border traffic regime at the "temporary external land borders" between Member States**

As explained above (point 2), the two-step Schengen implementation procedure implies that "temporary external borders" will remain in place after accession between the new Member States and current Schengen States, as well as between the new Member States themselves. At such borders, on the basis of Article 3 of the Act of Accession, the full Schengen external borders regime will have to apply.

For this reason, it seemed appropriate to present a Regulation which extends the applicability of the envisaged rules on criteria and conditions for establishing a local border traffic regime to the "temporary external land borders".

The application of such rules has been extended, as a matter of principle, only to third country nationals (both those who require a visa and those who do not) lawfully resident in the border area of a Member State. This is because citizens of the Union already enjoy, under Community law, specific rights related to free movement which, generally speaking, go beyond what is foreseen in the present proposals (for instance, as regards time-limits for stay, or entry conditions). It is therefore pointed out that Community rules on local border traffic do not affect such rights, nor they affect the rights of those third-country nationals who enjoy rights of free movement equivalent to those of citizens of the Union.

However, where the facilitation granted under a local border traffic regime to third country nationals living in the border area goes beyond the rights already enjoyed by citizens of the Union, it is provided that such facilitation shall be automatically extended to them. This is particularly the case in relation to the possibility of

crossing the border at specific border crossing points or outside authorised border crossing points and fixed hours.

### **3. CHOICE OF THE LEGAL BASIS**

The legal basis proposed for the Regulation laying down rules on the criteria and conditions for establishing a regime of local border traffic is Article 62(2) of the EC Treaty, as this instrument covers "measures on the crossing of the external borders of the Member States", which include both "standards and procedures to be followed by Member States in carrying out checks on persons at such borders" (Article 62(2)(a)) and "rules on visas for intended stays of no more than three months" (Article 62(2)(b)).

Article 62(2) is also the appropriate legal basis for the Regulation extending the application of rules on local border traffic at the "temporary external land borders" between Member States, since the full Schengen external borders regime will apply at such borders upon accession of the new Member States (see points 2 and 6.2).

Given that the two proposals are both based on Title IV of the EC Treaty, "Visas, asylum, and other policies related to the free movement of persons", they shall be presented and adopted in compliance with the protocols annexed to the Amsterdam Treaty on the position of the United Kingdom, Ireland and Denmark. The consequences in relations to the different protocols are examined below, under point 5.

### **4. SUBSIDIARITY AND PROPORTIONALITY**

Article 62(2) of the EC Treaty gives competence to the Community to adopt measures on the crossing of the external borders of the Member States. Such measures shall be adopted within a period of five years following the entry into force of the Amsterdam Treaty. Community rules on external borders shall be considered as one of the "flanking measures" to be adopted in conjunction with "measures aimed at ensuring the free movement of persons", in order to contribute to the achievement of the general objective of progressively establishing "an area of freedom, security and justice" (Article 61).

The current Community provisions on the crossing of the external borders of the Member States are part of the Schengen acquis integrated into the European Union. Such acquis needs, however, to be developed and completed. The Commission Communication 'Towards integrated management of the external borders of the Member States of the European Union'<sup>5</sup> has included the adoption of rules on local border traffic amongst the measures to be adopted in the short term. This has been endorsed by the Council and integrated into the 'Plan for the management of the external borders of the Member States of the European Union' of 13 June 2002.

It is therefore clear that the development of the existing acquis on external borders can only be achieved by adopting Community measures building upon it. However, by its own nature, a regime of local border traffic can only be put in practice on the

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<sup>5</sup> COM(2002)233 final, 7.5.2002.

initiative of the concerned Member States, which are therefore authorised to conclude bilateral agreements with neighbouring third countries, if they consider it appropriate, in order to establish a local border traffic regime, while obviously respecting and complying with the conditions and criteria set by Community law.

Article 5 of the EC Treaty provides that "the action by the Community shall not go beyond what is necessary in order to achieve the objectives of this Treaty".

The form taken by Community action shall allow the proposal to attain its objective and to be implemented as efficiently as possible.

In this spirit, the legal instruments chosen to establish general rules on local border traffic are two Regulations addressed to the Member States, which set the principles to be respected by Member States when establishing a local border traffic regime with neighbouring countries. As the proposed initiatives are developing the Schengen acquis, the form of a Regulation has been chosen in order to assure a harmonised application in all Member States applying the Schengen acquis.

## **5. CONSEQUENCES IN RELATION TO THE VARIOUS PROTOCOLS ANNEXED TO THE TREATIES**

The legal basis for the proposals concerning measures on the crossing of the external borders of Member States falls within Title IV of the EC Treaty and thus implies the variable situation as laid down by the protocols on the position of the United Kingdom, Ireland and Denmark. The present proposals are building upon the Schengen acquis. Therefore the following consequences in relation to the various protocols have to be considered:

### **United Kingdom and Ireland**

According to Article 4 and 5 of the Protocol integrating the Schengen acquis into the framework of the European Union, "Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of the acquis".

These proposals constitute a development of provisions of the Schengen acquis, in which the United Kingdom and Ireland do not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland, and 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. The United Kingdom and Ireland are therefore not taking part in their adoption and are not bound by them or subject to their application.

### **Denmark**

By the Protocol annexed to the Amsterdam Treaty on the position of Denmark, Denmark does not take part in the adoption by the Council of measures pursuant to Title IV of the EC Treaty, with the exception of "measures determining the third countries whose nationals must be in possession of visas when crossing the external borders, or measures relating to a uniform format for visas" (former Article 100c of the EC Treaty).

As these proposals constitute a development of the Schengen acquis and following Article 5 of the Protocol, "Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, whether it will implement this decision in its national law".

### **Norway and Iceland**

In accordance with Article 6 first indent of the Schengen Protocol, an agreement has been signed on 18 May 1999 between the Council, Norway and Iceland in order to associate those two countries with the implementation, application and development of the Schengen acquis<sup>6</sup>.

Article 1 of this agreement stipulates that Norway and Iceland are associated with the activities of the EC and the EU in the areas covered by the provisions referred to in Annexes A (provisions of the Schengen acquis) and B (provisions of acts of the European Community, which have replaced corresponding provisions of, or adopted pursuant to, the Schengen Convention) of the agreement as well as by those which will follow from them.

According to Article 2 of the agreement, the provisions of all acts or measures taken by the European Union amending or building upon the integrated Schengen acquis (Annex A, B) shall be implemented and applied by Norway and Iceland.

The present proposals build upon the Schengen acquis as defined in Annex A of the agreement.

As a consequence they have to be discussed in the "Mixed Committee" as provided for in Article 4 of the Agreement to give the possibility to Norway and Iceland "to explain the problems they encounter in respect of" the measure and "to express themselves on any questions concerning the development of provisions of concern to them or the implementation thereof".

## **6. CONSEQUENCES IN RELATION TO THE TWO-PHASE IMPLEMENTATION PROCEDURE OF ACTS BUILDING UPON THE SCHENGEN ACQUIS**

### **6.1**

Article 3 of the Act of Accession contains an article describing that the provisions of the Schengen acquis, the acts building upon it or otherwise related to it, listed in the annex referred to in that article, shall be binding on and applicable in the new Member States as from accession. The provisions and acts not referred to in that annex shall, while binding on the new Member States as from accession, be applicable in the new Member States following a special Council decision to that effect, made in accordance with that article.

This is the so-called 'Schengen two-phase implementation procedure', whereby some provisions of the Schengen acquis shall be binding and applicable upon accession to the EU, while others - namely those intrinsically linked to the lifting of internal

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<sup>6</sup> OJ L 176, 10.07.99, p. 35

border controls - shall be binding upon accession but applicable in the new Member States only following the Council decision referred to above.

With regard to the Schengen provisions on external borders (Articles 3-8 of the Schengen Convention and the related implementing decisions, including the Common Manual), they are listed in that annex and are thus binding and applicable in the new Member States as from accession<sup>7</sup>. As pointed out above, such provisions do also apply at the so-called "temporary external borders", i.e. the common border between the new Member States and current Schengen States, as well as between the new Member States.

The Schengen provisions on visas (Articles 9-18 of the Schengen Convention and the related implementing decisions, including the Common Consular Instructions) are not listed in that annex and therefore, while being binding upon accession, will be applicable in the new Member States only following the Council decision referred to above. However, Regulation (EC) No 539/2001 listing the countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement - as modified by Regulations (EC) No 2414/2001 and No 453/2003 - and Regulation (EC) No 1683/1995 laying down a uniform format for visas (visa sticker) - as modified by Regulation (EC) No 334/2002 - are listed in that Annex and are thus both binding and applicable in the new Member States as from accession.

The present proposals establishing rules on local border traffic and introducing a new type of visa for this purpose, will be binding and applicable as from accession upon the new Member States. However, it remains understood that the new Member States will be bound to fully apply the provisions of the present Regulations referring to the Schengen provisions on visa issuing procedures and conditions (and namely, to the Common Consular Instructions) only following the entry into force of the Council decision authorising them to apply the Schengen acquis in full.

## 6.2

Another consequence of the 'Schengen two-phase implementation procedure' is that border controls between current and new Member States, as well as border controls at the common borders between the new Member States (so-called "temporary external borders"), will be maintained until the entry into force of the above-mentioned Council decision related to the lifting of such border controls.

This is why a second Regulation is proposed in order to extend the application of the envisaged rules on criteria and conditions for establishing a local border traffic regime to the "temporary external land borders" between Member States (see also above, point 2.1).

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<sup>7</sup> With the exception of Article 5(1)(d), related to the consultation of the Schengen Information System.

## 7. COMMENTARY ON THE ARTICLES

### 7.1. Council Regulation (EC) No ... on the establishment of a regime of local border traffic at the external land borders of the Member States

#### Article 1

This Article specifies the purpose of the Regulation, which is to establish a local border traffic regime at the external land borders of the Member States, and to authorise them to conclude or maintain bilateral agreements with neighbouring third countries for that purpose.

The Regulation also introduces a specific visa (Article 9), to be issued to *bona fide* border residents requiring a visa on grounds of local border traffic.

#### Article 2

Paragraph 1 of this Article specifies that the proposed Regulation does not affect the rights to free movement of certain categories of persons who already have the right to enter and to stay on the basis of other provisions of Community law, namely:

- EU citizens, as defined in Article 17(1) of the EC Treaty;
- third-country nationals who are family members of citizens of the Union who have exercised their right to free movement within the EU. The family tie is defined by Article 10 of Regulation n°1612/68;
- third-country nationals covered by agreements concluded by the Community and its Member States with third countries (e.g., the agreement on the European Economic Area).

Paragraph 2 further specifies that the Regulation does not aim at regulating and thus does not affect provisions regulating long-term stays and questions related to customs duties and taxation. These questions remain therefore regulated by the applicable Community or national law.

#### Article 3

This Article defines the terms used in the proposal.

- (a) This definition clarifies that the scope of this Regulation only covers land borders between a Member State and a third country.
- (b) This definition has been inspired by Community instruments referring to the border area in relation to customs duties, although the maximum extension of the border area is here established taking into account existing bilateral practice. The aim is not to fix a specific extension of the border area, valid for all land borders, but to set at least the maximum extension of it for the purpose of local border traffic.
- (c) There is as yet no definition of 'local border traffic'. This definition is therefore derived from existing practice (i.e., bilateral agreements). Two elements seem essential to define 'local border traffic': the residence in the border area and the

regular crossing of the border in order to stay, for a limited period, in the border area of the neighbouring country.

- (d) The concept of third-country nationals is defined by default, excluding citizens of the Union within the meaning of Article 17(1) of the EC Treaty.
- (e) This definition is inspired by Article 2 of Regulation (EC) No 539/2001. However, the notion of visa is here limited to short-term visas (and not also transit visas) allowing entry and stay only to the territory of the issuing Member State.
- (f)(g) Two conditions are established in order to be considered as 'border resident': the actual residence in the border area, as defined above under (b), and a minimum residence period of one year in that area. A distinction is made between border residents who require a visa and those who do not, as the conditions applicable to these two categories of persons are different. Recognised refugees and stateless persons are also included, falling in one of the two categories specified above according to the distinction made by Article 3 of Council Regulation (EC) No 539/2001.
- (h) This definition has been taken from Article 2(g) of the Commission proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (COM(2001)386).

#### Article 4

This standard clause provides for compliance with the principle of non-discrimination in the application of this Regulation. It is in conformity with Article 21 of the Charter of Fundamental Rights of the European Union.

#### Article 5

The conditions listed in this Article for the entry of border residents not requiring a visa are essentially those provided by Article 5(1) of the Schengen Implementing Convention (SIC). The differences concern the following elements:

- the documents valid for crossing the border (see below the commentary on Article 6);
- the need to prove, if necessary, the residence in the border area and the reasons for the frequent crossing of the border on grounds of local border traffic (but not the conditions of the intended stay nor the possession of means of subsistence).

As regards Article 5(c) - which corresponds to Article 5(1)(d) of the SIC - it remains understood that, to the extent that it refers to consultation of the Schengen Information System (SIS), the new Member States will only apply it as from their full implementation of the Schengen acquis, following the Council decision authorising them to apply that acquis in full.

## Article 6

Documents valid to cross the external land border of a Member State by a third country national are, generally speaking, a passport or an equivalent international travel document (e.g., the travel document issued to recognised refugees).

In the framework of local border traffic, it is proposed to facilitate border crossing to *bona fide* border residents not requiring a visa by allowing them to cross the external land borders also on the basis:

- of an identity card, provided that the residence in the border area is specified or can otherwise be proved;
- of a specific border crossing permit, issued by the State of residence.

## Article 7

The maximum duration of stay in the border area of a Member State for the purpose of local border traffic is fixed at seven consecutive days. This figure is inspired by the current practice (bilateral agreements). Obviously, the maximum duration of the stay in the border area cannot exceed the general time-limit for a short stay, that is three months within any half-year period.

An extension of the above time-limits can be granted only in exceptional cases, such as for humanitarian reasons, illness, accidents etc.

## Article 8

There are some differences in the entry conditions to be fulfilled by third-country nationals requiring a visa in comparison with the conditions envisaged for third-country nationals not requiring a visa, namely:

- the crossing of the external land border of a Member State cannot be allowed on the basis of an identity card or a border crossing permit. The only valid documents are those where a visa can be affixed (i.e., a passport and other equivalent international travel documents);
- a visa is required, although with the specific characteristics defined in Articles 9-13 of the Regulation.

## Article 9

A special visa to be issued to *bona fide* border residents, for the purpose of local border traffic, is established (paragraph 1).

Paragraph 2 specifies that the territorial validity of such visa shall be limited to the border area of the issuing Member State.

Paragraph 3 further provides that the special visa issued for the purpose of local border traffic entitles the holder to multiple crossings of the border of the issuing Member State. The maximum duration of the stay in the border area on the basis of such visa would be seven consecutive days and would not, in any case, exceed three months within any half-year period.

## Article 10

The format of the visa issued for the purpose of local border traffic is the same format used for other types of short-term visas, in accordance with the rules and specifications determined by Regulation (EC) No 1683/95 of 29 May 1995 establishing a uniform format for visas (as amended by Regulation (EC) No 334/2002 of 18 February 2002).

The visa issued for the purpose of local border traffic will have the distinctive letter "L" (from "Local") under the heading "type of visa", in order to avoid any confusion with other types of short-term visas, as well as with long-term visas.

## Article 11

Paragraph 1 specifies that the "L" visa may be issued to border residents fulfilling the conditions defined in Article 8, (a), (c)-(e) of the proposal.

Paragraph 2 adds that the "L" visa, due to its nature and specific characteristics, cannot be issued at the border, not even in exceptional cases.

## Article 12

Since the "L" visa is, by its own nature, a multiple-entry visa issued to *bona fide* frequent travellers, it seemed appropriate to foresee a minimum period of validity of one year and a maximum validity of up to five years.

## Article 13

The fees corresponding to the administrative costs of processing an application for the issuing of the "L" visa shall be, in principle, the same as those charged for other types of multiple-entry visas having the same time validity.

However, in derogation from the above paragraph, Member States remain free to reduce or waive the costs of processing the "L" visa.

## Article 14

Paragraph 1 of this Article confirms that, where no specific rules are set in this Regulation with regard to the conditions and procedures for issuing the "L" visa, the provisions of the Common Consular Instructions shall apply.

However, paragraph 2 further specifies that those Member States which, as a consequence of the two-step Schengen implementation mechanism, do not apply the Common Consular Instructions, shall temporarily - until the Council authorises them to fully apply the Schengen acquis, including the Common Consular Instructions - apply their national provisions as regards visa issuing conditions and procedures. It is clear that such national provisions shall comply with the rules set in the present Regulation.

## Article 15

This Article clarifies that transfrontier workers, due to the nature of their activity, are not bound by the time limits concerning the stay in the border area for the purpose of

local border traffic, and namely by the "three months within any six months" period. Their stay is however limited by the time constraints contained in the definition itself of 'transfrontier worker' (see above the commentary on Article 3(h)).

#### Article 16

This Article introduces a derogation from the obligation of affixing an entry and exit stamp in the travel documents of border residents crossing the external land border of a Member State for the purpose of local border traffic. The stamping of travel documents would be, in practice, not feasible considering that the nature itself of local border traffic entails a very frequent crossing of the border. Moreover, as regards border residents not requiring a visa, identity cards and border permits are not suitable documents for affixing a stamp.

The derogation from stamping does not obviously rule out the possibility for Member States to check otherwise (e.g., through electronic registers) the respect of time limits.

The necessary adaptations to the Common Manual deriving from the introduction of this derogation will be dealt with in the framework of the recast of the Manual itself.

#### Article 17

Paragraph 1 of this Article authorises Member States to maintain or conclude agreements with neighbouring third countries on local border traffic, provided that such agreements are compatible with the rules set out in the present Regulation. At the same time, Member States shall eliminate any incompatibility between existing agreements and the rules set in this Regulation.

Paragraph 2 establishes the obligation for Member States to consult the Commission when envisaging to conclude or amend agreements on local border traffic. In case the agreement is considered not be compatible with the present Regulation, Member States are required to amend it as to eliminate the incompatibilities established.

Finally, paragraph 3 requests Member States to transmit to the Commission such agreements, as well as their modification or denunciation.

#### Article 18

This Article, providing for the possibility of facilitating the crossing of the border to border residents for the purpose of local border traffic, reflects - to a great extent - existing practices. Three kinds of facilitation are proposed:

- (a) to set up specific border crossing points (for instance, in case of a village situated across the border or very close to it);
- (b) to reserve specific lanes to border residents;
- (c) to authorise border residents to cross the border outside authorised border crossing points and hours. This possibility is already envisaged both in Article 3(1) of the Schengen Implementing Convention and in point 1.3, Part I of the Common Manual.

## Article 19

The establishment of a local border traffic regime with a neighbouring third country aims at facilitating the crossing of the external land border of a Member State for *bona fide* third country nationals resident in the border area of that neighbouring country. This Article requests Member States to ensure that, at least, an equivalent treatment is reserved to both citizens of the Union and third country nationals, lawfully resident in their border areas, wishing to cross the border and stay in the border area of the neighbouring third country.

## Article 20

This Article amends the Common Consular Instructions in order to introduce the new type of visa ("L"), and specify its characteristics.

The further technical amendments to the Common Consular Instructions which will be necessary to allow for the actual issuance of the "L" visa will be dealt with in a separate instrument in due time.

## Article 21

Article 136, paragraph 3 of the Schengen Implementing Convention is deleted, as it has been replaced by the provisions of Article 17 of this Regulation.

## Article 22

Standard provision.

## **7.2. Council Regulation (EC) No ... on the establishment of a regime of local border traffic at the temporary external land borders between Member States**

### Article 1

This Article specifies that the aim of this Regulation is to apply the rules on the establishment of a regime of local border traffic, as laid down in Regulation (EC) No ..., to the "temporary external land borders" between Member States, as defined in Article 2.

Such an extension is envisaged taking into account the fact that the border control regime to be applied at such "temporary external land borders" is the same as the regime applied at the external land border between a Member State and a third country.

### Article 2

This Article defines the notion of "temporary external land border", that is a land border between two Member States which have not yet abolished border controls at their common border. This situation is the consequence of the two-step Schengen implementation mechanism, whereby the new Member States will only apply some parts of the Schengen acquis upon accession (see above, points 2 and 6). The "temporary external land border" will therefore be, upon accession of the new Member States, the border between:

- a Member State fully implementing the Schengen acquis and a neighbouring Member State not yet implementing such acquis in full (for instance, the border between Germany and Poland);
- two neighbouring Member States not fully implementing the Schengen acquis (for instance, the border between Slovakia and Hungary)

It is clear that, once the Council authorises Member States not fully implementing the Schengen acquis to apply such acquis in full, and their "temporary external borders" will thus become internal borders, this Regulation will no longer apply at those borders.

### Article 3

Paragraph 1 of this Article extends the application of all the rules on the criteria and conditions for establishing a regime of local border traffic at the external land border of the Member States, as established by Chapter II of Regulation (EC) No ..., to the crossing of the temporary external land border of a Member State by *third country nationals* residing in the border area of a neighbouring Member State.

Paragraph 2 specifies that the rights of free movement of citizens of the Union and members of their families, as well as those of third-country nationals and their family members who under agreements between the Community and its Member States, on the one hand, and these countries, on the other hand, enjoy rights of free movement equivalent to those of citizens of the Union, are not affected by the provisions of this Regulation.

### Article 4

This standard clause provides for compliance with the principle of non-discrimination in the application of this Regulation. It is in conformity with Article 21 of the Charter of Fundamental Rights of the European Union.

### Article 5

Paragraph 1 of this Article authorises Member States to maintain or conclude between themselves agreements on local border traffic, provided that they are compatible with the present Regulation. It is obvious that, once border controls will be lifted at the "temporary external borders", these agreements will lose their objective.

Paragraph 2 specifies that such agreements may contain provisions facilitating border crossing, such as the setting up of specific border crossing points, the reservation of specific lanes to border residents, or the authorisation to cross the border outside border crossing points and fixed hours. If a Member State decides to grant these types of facilitation, they shall apply both to citizens of the Union and to third country nationals.

Finally, paragraph 3 requests Member States to send a copy of these agreements to the Commission, as well as any amendment or denunciation.

### Articles 6

Standard provision.

Proposal for a

**COUNCIL REGULATION**

**on the establishment of a regime of local border traffic at the external land borders of the Member States**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2) thereof,

Having regard to the proposal from the Commission<sup>8</sup>,

Having regard to the opinion of the European Parliament<sup>9</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>10</sup>,

Having regard to the opinion of the Committee of the Regions<sup>11</sup>,

Whereas:

- (1) The need to develop rules on local border traffic in order to consolidate the Community legal framework on external borders has been highlighted in the Commission Communication 'Towards an integrated management of the external borders of the Member States of the European Union'<sup>12</sup>, and confirmed by the Council on 13 June 2002, with the approval of the 'Plan for the management of the external borders of the Member States of the European Union', subsequently endorsed by the European Council held in Seville on 21 and 22 June 2002.
- (2) It is in the interest of the enlarged European Union to ensure that the borders with its neighbours are not a barrier to trade, social and cultural interchange or regional co-operation. An efficient system for local border traffic should consequently be developed.
- (3) The Community should lay down the rules on criteria and conditions to be complied with when facilitating the crossing of the external land borders of the Member States to border residents for the purpose of local border traffic. Such rules should ensure a balance between, on the one hand, the facilitation of border crossing to *bona fide* border residents having legitimate reasons to frequently cross the external border of

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<sup>8</sup> OJ C , , p. .

<sup>9</sup> OJ C , , p. .

<sup>10</sup> OJ C , , p. .

<sup>11</sup> OJ C , , p. .

<sup>12</sup> COM (2002)233 final, 7.5.2002.

the Member States and, on the other hand, the need to prevent illegal immigration as well as potential threats to security posed by criminal activities.

- (4) In order to address the situation of those border residents who require a visa pursuant to 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<sup>13</sup>, a specific short-stay visa, to be issued on grounds of local border traffic, should be established.
- (5) For the application of the regime of local border traffic, Member States should be allowed to maintain or conclude bilaterally, if necessary, agreements with neighbouring third countries provided that they comply with the rules set in this Regulation.
- (6) Since the objectives of the proposed action, namely the definition of rules on the criteria and conditions for establishing a local border traffic regime at the external land borders of the Member States, directly affect the Community acquis on external borders and visas and cannot thus be achieved sufficiently by the Member States acting alone, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that same Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (7) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, 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* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law.
- (8) 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 association of those two States with the implementation, application and development of the Schengen *acquis*<sup>14</sup>, which fall within the area referred to in Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement<sup>15</sup>.
- (9) 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 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*<sup>16</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

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<sup>13</sup> OJ L 81, 21.3.2001, p.1. Regulation as last amended by Regulation (EC) No 453/2003 (OJ L 69, 13.3.2003, p.10).

<sup>14</sup> OJ L 176, 10.7.1999, p.36.

<sup>15</sup> OJ L 176, 10.7.1999, p.31.

<sup>16</sup> OJ L 131, 1.6.2000, p.43.

- (10) 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 of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*<sup>17</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (11) This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the Act of Accession,

HAS ADOPTED THIS REGULATION:

## **Chapter I**

### **General provisions**

#### *Article 1* *Subject matter*

This Regulation establishes a regime of local border traffic at the external land borders of the Member States and authorises Member States to conclude or maintain bilateral agreements with neighbouring third countries for the purposes of implementing that regime.

#### *Article 2* *Scope*

1. This Regulation does not affect the rights:
  - (a) relating to free movement enjoyed by citizens of the Union or third-country nationals who are members of the family of a citizen of the Union;
  - (b) conferred on third-country nationals and their family members, whatever their nationality, who under agreements between the Community and its Member States, on the one hand, and these countries, on the other hand, enjoy rights of free movement equivalent to those of citizens of the Union.
2. This Regulation does not affect the provisions of Community and national law applicable to third-country nationals relating to:
  - (a) long-term stays;
  - (b) access to and exercise of economic activity;
  - (c) customs duties and taxation.

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<sup>17</sup> OJ L 64, 7.3.2002, p.20.

*Article 3*  
*Definitions*

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

- (a) "External land border" means the common land border between a Member State and a neighbouring third country;
- (b) "Border area" means an area which, as the crow flies, does not extend more than 50 kilometres from the frontier. Within this area, the local administrative districts which are to be considered as part of the border area can be further specified by the concerned States;
- (c) "Local border traffic" means the regular crossing of the external land border of a Member State by persons lawfully resident in the border area of a neighbouring third country in order to stay in the border area of that Member State for a period which cannot exceed the time limits set in this Regulation;
- (d) "Third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the EC Treaty;
- (e) "Visa" means an authorisation issued by a Member State or a decision taken by such State which is required with a view to entry for an intended stay in that Member State of no more than three months in total;
- (f) "Border residents not requiring a visa" means:
  - (i) nationals of third countries listed in Annex II to Regulation (EC) No 539/2001, who are lawfully resident in the border area of a third country neighbouring a Member State since at least one year;
  - (ii) recognised refugees and stateless persons exempted from the visa obligation on the basis of Article 3, second indent of Regulation (EC) No 539/2001, who are lawfully resident in the border area of a third country neighbouring a Member State since at least one year;
- (g) "Border residents requiring a visa" means:
  - (i) nationals of third countries listed in Annex I to Regulation (EC) No 539/2001, who are lawfully resident in the border area of a third country neighbouring a Member State since at least one year;
  - (ii) recognised refugees and stateless persons holding travel documents issued by one of the third countries listed in Annex I to Regulation (EC) No 539/2001, who are lawfully resident in the border area of a third country neighbouring a Member State;
- (h) "Transfrontier workers" means third-country nationals resident in the border area of a neighbouring third country who are employed in the border area of an adjacent Member State and who return to the border area of the neighbouring country each day or at least once a week.

*Article 4*  
*Non discrimination clause*

Member States shall apply the provisions of this Regulation without discrimination on grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

**Chapter II**  
**Local border traffic regime**

**SECTION 1**  
**BORDER RESIDENTS NOT REQUIRING A VISA**

*Article 5*  
*Entry conditions*

Border residents not requiring a visa may cross the external land border of a neighbouring Member State for the purpose of local border traffic, provided they:

- (a) possess a valid document or documents, authorising them to cross the border, as defined in Article 6;
- (b) produce, if necessary, documents proving their status of border residents and the existence of legitimate reasons to frequently cross the border on grounds of local border traffic, such as family links, social, cultural or economic motives;
- (c) are not persons for whom an alert has been issued for the purposes of refusing entry;
- (d) are not considered to be a threat to public policy, national security or the international relations of any of the Member States.

*Article 6*  
*Documents*

Documents authorising border residents not requiring a visa to cross the external land border of a neighbouring Member State for the purpose of local border traffic may be:

- (a) an identity card specifying the residence in the border area. In case this latter condition is not fulfilled, border residents may be requested to carry a residence certificate jointly with the travel document;
- (b) a specific border crossing permit, issued by the State of residence.

*Article 7*  
*Stay in the border area*

For the purposes of this Regulation, border residents not requiring a visa may stay in the border area of a neighbouring Member State for up to seven consecutive days. The total duration of their successive visits in that Member State shall not exceed three months within any half-year period.

An extension of the time-limits may be envisaged in exceptional circumstances.

**SECTION 2**  
**BORDER RESIDENTS REQUIRING A VISA**

*Article 8*  
*Entry conditions*

Border residents requiring a visa may cross the external land border of a neighbouring Member State for the purpose of local border traffic, provided they:

- a) are in possession of a valid document authorising them to cross the external borders as defined pursuant to Article 17(3)(a) of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June 1990<sup>18</sup>;
- b) are in possession of a valid visa, as defined in Article 9;
- c) produce, if necessary, documents proving their status of border residents and the existence of legitimate reasons to frequently cross the border on grounds of local border traffic, such as family links, social, cultural or economic motives;
- d) are not persons for whom an alert has been issued for the purposes of refusing entry;
- e) are not considered to be a threat to public policy, national security or the international relations of any of the Member States.

*Article 9*  
*Visas for border residents*

For the purposes of this Regulation, a specific visa to be issued to border residents is established.

The territorial validity of the visa shall be limited to the border area of the issuing Member State.

The visa shall entitle the holder to multiple crossings of the external land border of the issuing Member State and to a stay within the border area of that Member State for up to seven

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<sup>18</sup> OJ L 239, 22.9.2000, p.19.

consecutive days. The total duration of the successive visits in that Member State shall not exceed three months within any half- year period.

*Article 10*  
*Format of the visa*

The visa referred to in Article 9 shall be issued by Member States in the form of a uniform format (sticker) conforming to the rules and to the specifications of Council Regulation No 1683/95<sup>19</sup>. The standard model issued for this purpose shall contain the distinctive letter "L" under heading 11 ("type of visa").

*Article 11*  
*Issuing conditions*

1. The visa referred to in Article 9 may be issued to border residents who fulfil the conditions set out in Article 8 (a), (c), (d) and (e).
2. The visa referred to in Article 9 shall not be issued at the border.

*Article 12*  
*Validity*

The visa referred to in Article 9 shall be valid for minimum one year and for a maximum period of up to five years.

*Article 13*  
*Administrative costs*

1. The fees corresponding to the administrative costs of processing the application for the visa referred to in Article 9 shall be equivalent to the fees charged for short-term multiple entry-visas having an equivalent validity.
2. By way of derogation from paragraph 1, Member States may decide to reduce or waive the fees corresponding to the administrative costs of processing the application for the visa referred to in Article 9.

*Article 14*  
*Relation with the Common Consular Instructions*

1. Save where this Regulation provides otherwise and without prejudice to Article 20, the conditions and procedures for the issuing of the visa referred to in Article 9 shall be regulated by the Common Consular Instructions<sup>20</sup>.
2. Those Member States which do not apply the Schengen acquis in full shall, until the date on which the Council authorises them to fully apply that acquis, apply their

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<sup>19</sup> OJ L 164, 14.7.1995, p.1.

<sup>20</sup> OJ C 313, 16.12.2002, p.1.

relevant national provisions for issuing visas, provided that they are compatible with this Regulation.

### **SECTION 3 COMMON PROVISIONS**

#### *Article 15 Transfrontier workers*

The time-limits established in Article 7 and in Article 9 shall not apply to transfrontier workers.

#### *Article 16 Entry and exit stamps*

Entry and exit stamps shall not be affixed on the travel documents of border residents crossing the external land border of a Member State for the purpose of local border traffic.

## **Chapter III Implementation of the regime**

#### *Article 17 Agreements between Member States and third countries*

1. For the purposes of implementing a regime of local border traffic, Member States are authorised to conclude agreements with third countries in conformity with the rules set out in this Regulation.

Member States may also maintain existing agreements with third countries on local border traffic. To the extent that such agreements are not compatible with this Regulation, the Member States concerned shall amend the agreements in such a way as to eliminate the incompatibilities established.

2. Member States envisaging to conclude or amend agreements on local border traffic with neighbouring third countries shall consult the Commission before doing so as to the compatibility of the agreement with this Regulation.

If the Commission considers the agreement to be incompatible with this Regulation, it shall notify the Member State concerned and shall require it to amend the agreement in such a way as to eliminate the incompatibilities established.

3. Member States shall transmit to the Commission a copy of the agreements referred to in paragraph 1, as well as any denunciation of, or amendments to, these agreements.

*Article 18*  
*Facilitation for border crossing*

For the purposes of this Regulation, Member States may:

- a) set up specific border crossing points open only to border residents;
- b) reserve specific lanes to border residents at ordinary border crossing points;
- c) authorise border residents to cross their border at places other than authorised border crossing points and outside the fixed hours.

*Article 19*  
*Reciprocity*

In their agreements with third countries, Member States shall ensure that the third country grants comparable treatment for citizens of the Union, as well as for third country nationals, lawfully resident in the border area of a Member State and wishing to travel to the border area of a neighbouring third country.

## **Chapter IV** **Final provisions**

*Article 20*  
*Amendment of the Common Consular Instructions*

The Common Consular Instructions shall be amended as follows:

- (a) In part I, point 2, the following point 2.3a is added:

"2.3a Visas for the purpose of local border traffic

In the case of third-country nationals who frequently need to cross the border of a neighbouring Member State for the purpose of local border traffic, as defined in [Regulation (EC) No...*this Regulation*]\*, a visa whose territorial validity is limited to the border area of the issuing Member State may be issued. Such visa shall entitle the holder to multiple crossings of the border of the issuing Member State, provided that the total length of the successive stays in the border area of that Member State does not exceed three months in any half year.

In conformity with Regulation (EC) No..., such visa shall have a minimum validity of one year and may be issued free of charge.

Visas issued for the purpose of local border traffic may not be issued at the border.

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\* OJ L..."

(b) The text of this Regulation is added as Annex 18.

*Article 21*

*Amendment of the Convention implementing the Schengen agreement*

Article 136(3) of the Convention implementing the Schengen Agreement is deleted.

*Article 22*

*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 all Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

*For the Council*

*The President*

Proposal for a

**COUNCIL REGULATION**

**on the establishment of a regime of local border traffic at the temporary external land borders between Member States**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2) thereof,

Having regard to the proposal from the Commission<sup>21</sup>,

Having regard to the opinion of the European Parliament<sup>22</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>23</sup>,

Having regard to the opinion of the Committee of the Regions<sup>24</sup>,

Whereas:

- (1) In view of the accession of new Member States, the Community should take into account the specific situation deriving from the two-step implementation of the Schengen acquis by the new Member States, and namely the temporary maintenance of border controls at the common borders between new Member States not fully implementing the Schengen acquis<sup>25</sup>, as well as between the latter and Member States fully implementing the Schengen acquis.
- (2) Since the new Member States, on the basis of Article 3 of the Act of Accession, will have to apply the provisions of the Community acquis on external borders in full at all their borders, it should be possible for Member States which have not abolished border controls between themselves to apply the regime of local border traffic established by Council Regulation (EC) No...of...on the establishment of a regime of local border traffic at the external land borders of the Member States<sup>26</sup>.
- (3) The rights to free movement enjoyed by citizens of the Union and members of their families, as well as by third-country nationals and their family members who under agreements between the Community and its Member States, on the one hand, and these countries, on the other hand, enjoy rights of free movement equivalent to those

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<sup>21</sup> OJ C , , p. .

<sup>22</sup> OJ C , , p. .

<sup>23</sup> OJ C , , p. .

<sup>24</sup> OJ C , , p. .

<sup>25</sup> OJ L 239, 22.9.2000.

<sup>26</sup> See page...of this Official Journal.

of citizens of the Union, should not be affected by the establishment of rules on local border traffic at Community level. At the same time, where such rules provide for the possibility of more favourable treatment to be granted to third country nationals on grounds of local border traffic, such treatment should automatically be extended to citizens of the Union.

- (4) Member States should not be prevented from negotiating local border traffic arrangements between themselves, if necessary, provided that they comply with the rules set out in this Regulation.
- (5) Since the objectives of the proposed action, namely the application of the regime of local border traffic at the external land borders of the Member States to the temporary external land borders between Member States, directly affect the Community acquis on external borders and visas and cannot thus be achieved sufficiently by the Member States acting alone, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that same Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (6) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, 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* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law.
- (7) 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 association of those two States with the implementation, application and development of the Schengen *acquis*<sup>27</sup>, which fall within the area referred to in Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement<sup>28</sup>.
- (8) 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 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*<sup>29</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (9) 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 of 28 February 2002 concerning Ireland's request to take part in some of the provisions of

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<sup>27</sup> OJ L 176, 10.7.1999, p.36.

<sup>28</sup> OJ L 176, 10.7.1999, p.31.

<sup>29</sup> OJ L 131, 1.6.2000, p.43.

the Schengen *acquis*<sup>30</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

- (10) This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the Act of Accession,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Subject matter*

This Regulation provides for the application of the regime of local border traffic established by Regulation (EC)No ... to the temporary external land borders between Member States.

*Article 2*  
*Definitions*

For the purposes of this Regulation:

"Temporary external land border" means the common land border between:

- (a) a Member State fully implementing the *acquis* defined in Annex A to Council Decision (EC) No 435/1999<sup>31</sup> ("the Schengen *acquis*") and a Member State bound to apply such *acquis* in full, in conformity with Article 3 of the Act of Accession, but for which the Council decision authorising it to fully apply that *acquis* has not entered into force;
- (b) two Member States bound to apply the Schengen *acquis* in full, in conformity with Article 3 of the Act of Accession, but for which the Council decision authorising them to fully apply that *acquis* has not entered into force.

*Article 3*  
*Application of the regime*

1. Member States may apply the regime of local border traffic established by Chapter II of Regulation (EC) No ... to third country nationals lawfully resident in the border area of a neighbouring Member State, under the conditions laid down in this Regulation.
2. This Regulation does not affect the rights:
  - (a) relating to free movement enjoyed by citizens of the Union or third country nationals who are members of the family of a citizen of the Union;
  - (b) conferred on third-country nationals and their family members, whatever their nationality, who under agreements between the Community and its Member

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<sup>30</sup> OJ L 64, 7.3.2002, p.20.

<sup>31</sup> OJ L 176, 10.7.1999, p.1.

States, on the one hand, and these countries, on the other hand, enjoy rights of free movement equivalent to those of citizens of the Union.

*Article 4*  
*Non discrimination clause*

Member States shall apply the provisions of this Regulation without discrimination on grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

*Article 5*  
*Agreements between Member States*

1. In order to implement the regime of local border traffic at their temporary external land borders Member States are authorised to conclude agreements between themselves in conformity with this Regulation.

Member States may maintain existing agreements between themselves. To the extent that such agreements are not compatible with this Regulation, the Member States concerned shall amend the agreements in such a way as to eliminate the incompatibilities established.

2. The agreements referred to in paragraph 1 may contain provisions for the facilitation of border crossing, whereby Member States:
  - (a) set up specific border crossing points open only to border residents;
  - (b) reserve specific lanes to border residents at ordinary border crossing points;
  - (c) authorise border residents to cross their border at places other than authorised border crossing points and outside the fixed hours.

Such provisions shall apply both to third country nationals, as well as to citizens of the Union, who are lawfully resident in the border area of the Member States concerned.

3. Member States shall transmit to the Commission a copy of the agreements referred to in paragraph 1, as well as any denunciation of, or amendments to, these agreements.

*Article 6*  
*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 all Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

*For the Council*  
*The President*