

Brussels, 9 March 2003

OPINION

of the

Committee of the Regions

of 11 February 2004

on the

Proposal for a Council Regulation on the establishment of a regime of local border traffic at the external land borders of the Member States

and the

Proposal for a Council Regulation on the establishment of a regime of local border traffic at the temporary external land borders between the Member States

COM(2003) 502 final - 2003/0193 (CNS); 2003/0194 (CNS)

THE COMMITTEE OF THE REGIONS

HAVING REGARD TO the Proposal for a Council Regulation on the establishment of a regime of local border traffic at the external land borders of the Member States and the Proposal for a Council Regulation on the establishment of a regime of local border traffic at the temporary external land borders between Member States (COM(2003) 502 final – 2003/0193 (CNS); 2003/0194 (CNS));

HAVING REGARD TO the Council's decision of 18 September 2003 to consult it on this

subject, under the first paragraph of Article 265 of the Treaty establishing the European Community;

HAVING REGARD TO its Bureau's decision of 19 June 2003 to instruct the CoR Commission for External Relations to draw up an opinion on this subject;

HAVING REGARD TO Articles 61 and 62 of the Treaty establishing the European Community¹;

HAVING REGARD TO the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, integrating the Schengen acquis into the framework of the European Union;

HAVING REGARD TO the Protocol annexed to the Treaty establishing the European Community on external relations of the Member States with regard to the crossing of external borders;

HAVING REGARD TO the 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 final of 11 July 2001);

HAVING REGARD TO the Communication from the Commission on the impact of enlargement on regions bordering candidate countries (COM(2001) 437 final of 25 July 2001);

HAVING REGARD TO the Communication from the Commission: *Towards integrated management of the external borders of the Member States of the European Union* (COM(2002) 233 final of 7 May 2002);

HAVING REGARD TO the Communication from the Commission: *Developing the acquis on local border traffic*, (SEC(2002) 947 of 9 September 2002);

HAVING REGARD TO the Communication from the Commission: *Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours* (COM(2003) 104 final of 11 March 2003);

HAVING REGARD TO the Communication from the Commission: *Paving the Way for a New Neighbourhood Instrument* (COM(2003) 393 final) of 1 July 2003);

HAVING REGARD TO the plan for the management of the external borders of the Member States, (European Council JAI) of 13 June 2002;

HAVING REGARD TO its Opinion of 13 March 2002 on the 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 final) – 2001/0154 (CNS)) and the Proposal for a Council Directive relating to the conditions in which third-country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months (COM(2001) 388 final – 2001/0155 (CNS), (CdR 386/2001 fin²);

HAVING REGARD TO its Opinion of 16 May 2002 on immigration policy: Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration (COM(2001) 672 final); Proposal for a Council Decision adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO) (COM(2001) 567 final – 2001/0230 (CNS)); Communication from the Commission to the Council and the European Parliament on an open method of coordination for the Community immigration policy (COM(2001) 387 final); and on asylum policy: Proposal for a Council Directive on minimum standards for the qualifications and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM(2001) 510 final) – 2001/0207(CNS)); Commission Working Document – The relationship between safeguarding internal security and complying with international protection obligations and instruments (COM(2001) 743 final); Communication from the Commission to the Council and the European Parliament on the common asylum policy, introducing an open coordination method (COM(2001) 710 final) (CdR 93/2002 fin³);

HAVING REGARD TO its Opinion of 13 February 2003 on the document entitled *Towards the enlarged Union - Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries* (COM(2002) 700 final and SEC(2002)1400 – 1412) and the Report from the Commission to the Council: *Explaining Europe's Enlargement* (COM(2002) 281 final), (CdR 325/2002 fin⁴);

HAVING REGARD TO its Opinion of 9 April 2003 on the Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service (COM(2002) 548 final - 2002/0242 CNS), (CdR 2/2003 fin⁵);

HAVING REGARD TO its Opinion of 13 March 2002 on *Strategies for promoting cross-border and inter-regional cooperation in an enlarged EU - a basic document setting out guidelines for the future* (CdR 181/2000 fin⁶);

HAVING REGARD TO its Opinion on the Northern Dimension – Second Action Plan 2004-2006 (COM(2003) 343 final) (CdR 102/2003 fin⁷);

having regard to Article III-166 of the Draft Treaty establishing a Constitution for Europe which was submitted by the European Convention to the president of the European Council in Rome on 18 June 2003, CONV850/03⁸;

HAVING REGARD TO the draft opinion (CdR 277/2003 rev. 1) adopted by the CoR

Commission for External Relations on 27 November 2003 (rapporteur: **Mr Karsten Neumann**, member of the *Landtag* of Mecklenburg-Western Pomerania (DE-PES));

WHEREAS:

"Cross-border reconciliation is possible, not in a Europe partitioned by walls, but only in a continent in which borders no longer divide."

(**Richard von Weizsäcker**, former president, Federal Republic of Germany)

1. The Committee of the Regions welcomes the proposals for the introduction of bilateral local border traffic agreements across Europe in the perspective of the forthcoming enlargement, given the high frequency and, in many cases, the regional importance of cross-border travel between the present and the future Member States on the one hand, and between the future Member States and our prospective neighbours on the other.
2. The Committee of the Regions underlines that this "flanking measure" for upcoming enlargement can ensure that the new and emerging borders between the new Member States and their neighbours do not pose an excessive barrier to trade, social and cultural interchange or regional cooperation, especially for border region residents.
3. The Committee of the Regions would stress that municipal, regional and local authorities in the border regions have always played – and will continue to play – a pioneering role in cross-border understanding and cooperation, since the difficulties and risks associated with division are first and foremost local problems that can be eliminated or at least mitigated through close local cooperation. The regional interests and difficulties involved may be highly complex, but can often be readily resolved at local level. However, they may also do lasting damage to relations between neighbouring countries and be an obstacle to good neighbourliness.
4. The Committee of the Regions is optimistic, given the wide-ranging and largely favourable experience of local border traffic in those European border regions already successfully operating regimes of this kind, in some cases for decades.
5. The Committee of the Regions welcomes the practical involvement of the accession countries to date in drafting the Commission proposal and stresses the need to continue consultations with them on the cross-border traffic regime.
6. In the interests of future European integration, and with particular reference to enlargement, it would be desirable to continue with a coherent, cross-border cooperation strategy. The proposed regulations could give an important boost to this process if the accession countries and the adjacent Member States make full use of the rules, where bilateral agreements along these lines are not already in place.

adopted the following opinion unanimously at its 53rd plenary session on 11 February 2004.

1. Views of the Committee of the Regions

The Committee of the Regions

1. **welcomes** the Commission's proposal – set out in two draft regulations, which for the sake of convenience are discussed together – to introduce, as part of a coherent visa strategy, facilities for border residents under the local border traffic regime. These facilities are to apply for an as yet undefined transitional period pending the full application of the Schengen *acquis* in the candidate countries joining the Union. It also welcomes the proposal that these facilities should be as flexible as possible during the transitional period so that the rules can gradually be adapted over time as progress is made in implementing the Schengen *acquis* in the Member States;
2. **is pleased to note** that the documents under discussion are part of a package of measures which, on the basis of the integration of the Schengen *acquis* into the framework of the European Union under the Amsterdam Treaty and the resultant general competence for "measures on the crossing of the external borders of the Member States" under Article 62(2) of the EC Treaty, are deemed, under Article 61, to be "flanking measures" designed to secure the free movement of persons pursuant to Article 14, to be adopted within a period of five years after the entry into force of the Treaty of Amsterdam;
3. **refers** to its Opinion on the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents" (COM(2003) 323 final – CdR 250/2003 fin) and **stresses** the key importance of a well thought-out visa policy to prevent illegal immigration and combat smuggling and the trafficking of human beings, particularly the degrading practice of trafficking in women. Such a policy must be underpinned by an effective information system and an efficient, integrated control system at the EU's external borders;
4. **agrees** with the view expressed by the Commission in its Communication *Paving the Way for a New Neighbourhood Instrument* that effective border controls are a key prerequisite for prosperity and security on both sides and for facilitating trade and border traffic while at the same time making the borders secure;
5. **reiterates** that local and regional authorities play a pre-eminent role in ensuring stability and security, particularly in border areas;
6. **agrees** with the Commission that, bearing in mind the long-standing social and cultural links across the external borders of the Union, it is important that the new external EU borders are not seen as a barrier to existing contact and cooperation at local level and **points out** that these links may, on the contrary, be turned to good account in the development of peaceful and good neighbourly relations between the EU and its new neighbours;
7. **stresses** that the regional and cross-border cooperation among municipal, local and

regional authorities is vital to tackling these complex challenges in the long term, although action also needs to be taken at national level;

8. **believes** that real progress on cross-border cooperation is always more rapidly achieved when, under schemes like Interreg IIIA, ambitious financial support – which it is vital to continue – is allied to close collaboration, going beyond the actual scope of the support, between local and regional players in the border areas;
9. **reiterates** its call that special attention continue to be paid to border regions and, given their peripheral location, that they continue to be provided with appropriate resources and instruments in line with the approach set out in the Community Action for Border Regions;
10. **is convinced** that the facilities for cross-border movements under the local border traffic regime have helped make for smooth cooperation among local players in the border regions, both administrations and organisations, and can continue to do so under the proposed regulations;
11. therefore **proposes** that the successful Euregio model also be pursued at the EU's future external borders and that agreement be reached on local border traffic arrangements both there and at the temporary external borders at least for the residents of those local communities covered by specific support measures of the EU and the Member States, in order to consolidate the added value accruing from Community-funded projects and facilitate cooperation in these areas;
12. thus **recommends** examining whether it is in fact necessary or proportionate to lay down a specific geographical area, albeit only in terms of its maximum extent, in order to achieve the objectives at hand, or whether, under the subsidiarity principle, it should not be left up to Member States to determine the geographical area bilaterally, given their knowledge of specific local conditions and the economic, social and cultural links that exist in the area, particularly as there is no danger of any additional impact on other Member States' interests;
13. **stresses** that the local border traffic regime, like all measures to dismantle the internal borders between Member States under the Schengen Implementing Convention, must be structured in line with national law, taking account of the interests of all contracting parties;
14. for that reason, **emphasises** that, even allowing for the proposed facilities, all border movements must be subject to control since the territorial restrictions and time limits on unstamped visas cannot be effectively checked without border controls;
15. **stresses** that the introduction of the specific short-term "L" visas must be subject to all the conditions that apply to the issue of short-stay visas; in contrast to short-term visas, however, "L" visas are valid only for stays in the border area;
16. **asks** that consideration be given to the way in which, in the light of the planned specific visa and the proposal in Article 16 to dispense with entry and exit stamps,

checks are to be made on compliance with the time limits under Article 9; and to the extent to which such checks are needed to achieve the aim of the regulation and can be carried out in an appropriate way;

17. **notes** that local consular cooperation, which is governed by the Common Consular Instructions, and visa policy must also help protect the EU's external borders;
18. **points out** that the regulations are acts building on the Schengen *acquis* within the meaning of Article 3(1) of the Acts of Accession and thus must be taken on board fully by all the accession countries insofar as, and for as long as, they do not become directly integrated into the system on their accession to the European Union;
19. **emphasises** that the introduction of a local border traffic regime will also to a large extent be contingent on local conditions. Despite the fact that it is a matter of national responsibility, prior and ongoing consultations with the local and regional authorities in the border regions are therefore vital to the success of the proposed measures;
20. **stresses** that, in parallel with the proposed measures, a series of practical arrangements are needed to develop border crossing points in order to make external border movements smoother and more efficient and thus, at the same time, to concentrate efforts on ensuring security at the EU's external borders;
21. **points out** that, in view of the disappearance of internal border controls, such measures *cannot* be dispensed with even at the "temporary external borders"; in fact they may, by closing a loophole in the regional, cross-border traffic network, create a favourable environment in which to utilise the economic, political, social and cultural opportunities of EU enlargement;
22. **is pleased** that these measures can also be applied at the border with the Kaliningrad Region and recommends that such a regime be launched without delay as a welcome adjunct to the transit arrangements between the accession countries, the EU and Russia in line with the compromises achieved;
23. **recommends** that initial steps be taken as quickly as possible to harmonise visa regulations for local border traffic with the corresponding customs arrangements, including, in particular, exemption from import duties;
24. **notes** that, having examined the issue, the Commission has dropped the idea set out in its Communication *Towards integrated management of the external borders of the Member States of the European Union*, i.e. the conclusion of agreements between the Community and the adjacent non-Member States; rather, the Commission leaves this to bilateral agreements to be concluded between the neighbouring countries involved, thus enabling account to be taken of the many and varied local and regional interests in the border regions, while also bearing in mind the interests of all Member States;
25. **would welcome** municipal, regional and local authority input into negotiating these bilateral agreements as a matter of course, analagous to the Committee of the Regions' involvement in the ongoing development of the European *acquis* in cross-border

cooperation.

2. **Recommendations of the Committee of the Regions**

1. **on the COUNCIL REGULATION on the establishment of a regime of local border traffic at the external land borders of the Member States (2003/0193(CNS)).**

Recommendation 1

on

Article 3(b)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
(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.	(b) "Border area": means an area which, as the crow flies, does not extend more than 50 kilometres from the frontier. Within this area, <u>the concerned States can specify which local administrative districts which are to be considered as part of the border area can be further specified by the concerned States.</u> <u>However, as a rule, at least part of any such district is to be situated no more than 50 kilometres from the frontier.</u>

Reason

Setting a maximum limit does not appear to be necessary in order to achieve the Regulation's objective and is not, therefore, proportional. As Member States are aware of local conditions on the ground and of the areas that have economic, social and cultural ties, it should be left to them, in accordance with the principle of subsidiarity, to determine the geographical area bilaterally, so long as this does not have side effects that may jeopardise the interests of other Member States. A provision in the recommended form should be sufficient to achieve the Regulation's objective. This could be particularly useful in peripheral regions, where large communities are more than 50 kilometres from the land border, but have close economic ties with the neighbouring border area and, for example, receive support as a border area from the Commission via a Euregio, as in the case of the Pomerania Euroregion, where the island of Rügen (Germany) and the agglomeration of Stettin (Poland) are about 200 kilometres apart. At the very least, the particular case of island locations should be taken into consideration when calculating distances from land borders if "50 kilometres from the frontier" refers to the nearest land border on account of Article 1.

Recommendation 2

on

Article 18(c)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
(c) authorise border residents to cross their border at places other than authorised border crossing points and outside the fixed hours.	(c) authorise border residents to cross their border at places other than authorised border crossing points and outside the fixed hours.

Reason

The proposal gives the impression that it should be possible to cross external borders without any check on the special entitlement to do so. As a rule, the introduction of such a practice at internal borders without significant crime problems can be useful. However, it bears the risk of abuse if there is no border control and checks within the country cannot ensure that the restrictions on place and duration of stay are enforced. This risk cannot even be countered by more stringent rules on the issue of visas, particularly in view of the large number of visas that are expected to be issued under the local border traffic regime. Facilitations such as those provided for under (a) and (b) will already facilitate cross-border travel in a way that is in keeping with the need to fight cross-border crime and illegal immigration.

The Commission justifies this proposal by stating that this possibility is already provided for in Article 3(1) of the Schengen Implementing Convention and in point 1.3, Part I of the Common Manual, but it fails to point out that parts of the provision were deleted by Council Decision 2002/352/EC of 9 May 2002, thus leaving this possibility open since 1 June 2002 only to persons “in respect of whom provision is made for the appropriate permits under bilateral agreements on local border traffic, known in Italy as 'local border traffic' or 'excursion traffic'” and to “seamen who go ashore in accordance with point 6.5.2.” Furthermore, given that the Executive Committee has, for good reason, never made use of this discretionary provision, there is no justification for proposing to use it now.

- 2. On the Council Regulation on the establishment of a regime of local border traffic at the temporary external land borders between Member States (2003/0194 (CNS))**

Recommendation 3

on

Article 5(2)(c)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
(c) authorise border residents to cross their border at places other than authorised border crossing points and outside the fixed hours.	(c) authorise border residents to cross their border at places other than authorised border crossing points and outside the fixed hours.

Reason

See reason for Recommendation 2

Until Phase 2 of the Schengen system is implemented, what was stated in the reason for Recommendation 2 also applies here.

Brussels, 11 February 2004.

The President
of the
Committee of the Regions

The Acting Secretary-General
of the
Committee of the Regions

Peter Straub

Gerhard Stahl

¹ OJ C 325, 24.12.2002, pp. 57-58.

² OJ C 192, 12.8.2002, p. 20.

³ OJ C 278, 14.11.2002, p. 44.

⁴ OJ C 128, 29.5.2003, p. 56.

⁵ Bulletin 6 (2003) 1.4.7

⁶ OJ C 192, 12.8.2002, p.37

⁷ OJ C 23, 27.1.2004, p. 27

⁸ OJ C 169, 18.7.2003, p.58.

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CdR 277/2003 fin FR-DE-EN/HA/JP/NT/nm

CdR 277/2003 fin FR-DE-EN/HA/JP/NT/ET/nm