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COMMISSION STAFF WORKING PAPER

Developing the Acquis on 'Local Border Traffic'

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1. INTRODUCTION

A clear and precise definition of 'local border traffic' (also called 'small', 'minor' or 'excursion' traffic) does not currently exist. The expression is nevertheless used in Article 3, paragraph 1 of the Schengen Implementing Convention (SIC)¹, which specifies that exceptions to the obligation of crossing the external border at authorised border crossing points and during the fixed opening hours can be envisaged in the framework of "arrangements for local border traffic" on the basis of rules to be "adopted by the [Schengen] Executive Committee"².

Such rules defining "exceptions and arrangements for local border traffic" have actually never been adopted, neither in the intergovernmental framework of the Schengen Convention, nor after the integration of the Schengen *acquis* into the legal and institutional framework of the European Union following the entry into force of the Amsterdam Treaty (on 1st May 1999).

The only existing *acquis* is represented by bilateral agreements on local border traffic that some Member States have concluded with neighbouring third countries (see below, § 2.2). However, these agreements are quite diverse in many respects, e. g.: the geographical scope, the categories of people targeted, as well as the types of documents issued/requested for the crossing of the border. Although a certain degree of differentiation can be, in some cases, justified (for instance, the determination of the 'border area' is certainly influenced by the geographical situation), any exception and derogation to Community rules on crossing the external borders should follow and comply with minimum common principles.

The development of the *acquis* on 'local border traffic' and the need to set common minimum rules has thus been identified, in the Commission Communication defining guidelines for an integrated border management³, as one of the issues that need to be addressed in order to complete and precise the legal framework ('a common *corpus* of legislation') on external borders.

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

¹ *Convention implementing the Schengen agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*, OJ L 239, 22.9.2000, p. 19.

² Since the entry into force of the Amsterdam Treaty on 1 May 1999, all functions and competencies of the Schengen Executive Committee have been taken over by the Council of the European Union.

³ *Communication from the Commission to the Council and the European Parliament - Towards integrated management of the external borders of the Member States of the European Union*, COM(2002)233 final, 7 May 2002.

Schengen-Evaluation working party, which have been approved by the Justice and Home Affairs Council on 28 February 2002.⁴

Furthermore, this issue assumes a particular importance in the perspective of enlargement, since cross-border movements between candidate countries as well as between candidate countries, on the one side, and their neighbours, on the other side, are very important in number. Efficient rules for 'local border traffic' will promote economic development of border regions and serve as an instrument to reduce gaps in economic standards. Moreover, transfrontier workers are often a needed element in the border regions of the Member States.

Secure EU external borders shall thus not mean borders closed to economic, social and cultural exchanges, particularly with third countries which are geographically the closest. It is clear, however, that any of the options suggested in this paper in order to facilitate the crossing of the borders for 'local border traffic' purposes, will take into account both the need to prevent illegal immigration as well as potential threats to security⁵ posed by criminal activities.

It should also be born in mind that, unlike the present situation, most of the States neighbouring future EU Member States are countries whose nationals must be in possession of a visa when entering the EU. This circumstance will obviously have to be taken into account when defining rules specifying the conditions and arrangements for 'local border traffic'. Consequently, a clear distinction will be made between the regime applicable with, on the one hand, third countries whose nationals are visa-exempted and, on the other hand, third countries whose nationals are visa-obligated (see below, § 3.2).

Given the direct relevance of this latter category to most of the candidate countries, the Commission intends to involve the candidate countries in the development of criteria on local border traffic. Therefore, the Commission is passing them a copy of this working document with the request to inform the Commission of any comments they may wish to make.

Although the situation of transfrontier workers is also mentioned, this paper - and any legislative initiative that will follow - does not intend to deal with aspects related to the criteria for issuing a work permit, to double taxation or social security issues, which will remain regulated on the basis of the relevant Community acquis as well as of international and national law.

On the basis of the outcome of the discussions with the Member States on the different options put forward in this working paper, and the comments made by the candidate countries, the Commission intends to present a legislative initiative laying down basic uniform rules regulating 'local border traffic', in order to fill the legislative void in this area and set common minimum standards to be complied with in all agreements concluded with third countries. This initiative will not change the

⁴ See doc. 5987/02 SCH-EVAL 5 COMIX 82 of 5 February 2002 and doc. 6578/02 SCH-EVAL 7 COMIX 140 of 22 February 2002. In the recommendation on 'minor [SIC] border traffic', it is pointed out that "particular attention [should] be paid to the legal requirements for such agreements [on local border traffic], the information to be provided to the other Member States, the geographical delimitation, the target groups of such facilitation, the eventual economic purposes etc".

⁵ For a definition of 'security' (at external borders), see Annex 1 of Communication (2002)233.

basic principles of the current EU acquis on visas and external borders and therefore will not affect the alignment with the current acquis in these areas, on which the candidate countries have taken commitments in the course of the negotiations in view of their membership of the EU.

Due to the specific situation of Kaliningrad, mainly concerning transit traffic between Kaliningrad and the mainland of the Russian Federation, the developments in this regard will be treated as a separate issue and will thus not be discussed in this working paper.

2. CURRENT SITUATION

2.1. The limited acquis on local border traffic

The current acquis on external borders has essentially been developed in the framework of Schengen, namely in Articles 3-8 SIC and in the Common Manual on external border controls (CM)⁶.

Although no instrument giving full implementation to Article 3(1) SIC has ever been adopted, some of the exceptions and special arrangements mentioned in the above article in relation to local border traffic can be found in different parts of the Common Manual.

In Part I, point 1.3 CM, it is indeed specified that, “by way of exception”, the crossing of the border “at places other than authorised border crossing points and outside fixed hours” is permitted, amongst others, to “persons in respect of whom provision is made for the appropriate permits under the bilateral agreements on local border traffic, known in Italy as ‘local border traffic’ or ‘excursion traffic’”⁷.

Point 1.3.3, Part I CM further states that exemptions from the obligation to cross the border at authorised border crossing points “in connection with local border traffic [...] are granted in accordance with the bilateral agreements concluded by the Member States with bordering third States” (see below, § 2.2). In this respect, it shall also be pointed out that Article 136(3) of the Schengen Convention exempts local border traffic agreements from the general obligation to request the prior consent of all the other Schengen States before concluding border agreements on abolition and simplification of checks with third countries “in so far as those agreements comply with the exceptions and arrangements [*that should have been*] adopted under Article 3.1”. The other Schengen States shall, in any case, be informed.

The CM also mentions cross-border workers, specifying that their statute is regulated by national legislation and that they are, in principle, submitted to the same level of controls as other normal travellers. It is nevertheless pointed out that this category of persons – as well as other *bona fide* persons crossing the borders regularly at the same border crossing point (BCP) - may be submitted to “random checks”, provided that they are well known to border guards and that they have been previously

⁶ Decision SCH/Com-ex(99)13 du 28 April 1999.

⁷ This part of the CM has been recently modified by Council decision 2002/352/EC of 25 April 2002, entered into force on 1 June 2002.

checked in the Schengen Information System (SIS) and other national databases (CM, part II, point 1.3.5.3. and point 6.7.2)⁸.

The possibility of allowing crossing with special documents is not mentioned in the CM, which only refers to practical arrangements to facilitate the crossing of the border for the purposes of local border traffic. However, it should be noted that, in the existing bilateral agreements on local border traffic, the crossing of the border is usually allowed to border residents either on the basis of a 'special border permit' (*carte frontalière*) or of an identity card (see below, § 2.2).

2.2. Member States' practice: Existing bilateral agreements with third countries

Some of the current Member States (namely Austria, France, Germany and Italy) have concluded agreements with neighbouring third countries on local border traffic, which are reproduced in Annex 3 of the Common Manual⁹. A comparative table on the content of the existing local border traffic agreements between Member States and their neighbouring countries is annexed to this paper (see Annex I). As far as candidate countries are concerned, an overview of their bilateral agreements on local border traffic is given in Annex II.

Generally, the “border area” covered by the agreement is clearly specified by listing the municipalities involved, by determining the extension of the area (10 to 25 km from the border) or by using both criteria.

It shall be noted that all the agreements concluded by current EU Member States are with visa-exempted third countries (i.e., Switzerland¹⁰, Poland, Slovakia, Slovenia¹¹ and Czech Republic). However, their personal scope varies: some cover only nationals of the contracting parties (D/PL; F/CH; I/SL; Ö/SL), some others also include visa-exempted third-country nationals residing in the border area (D/CH; D/CZ). Two of the agreements with Switzerland (Ö/CH; I/CH) refer to “third-country nationals and stateless persons” residing in the border area, without further specifying whether visa-exempted or not.¹² The situation is clearly quite different compared with the situation at the borders between candidate countries/future MS and their neighbouring countries, most of which are visa-obligated States¹³.

⁸ It is also added that, however, “[T]horough checks must be carried out on this group of persons from time to time, without warning at irregular intervals” (CM, Part II, Point 1.3.5.3, last sentence).

⁹ On the basis of Council decision 2002/352/EC, Annex 3 and Annex 2 (listing the authorised border crossing points) have been deleted and therefore, as from 1 June 2002, they are no longer part of the Common Manual.

¹⁰ As regards Switzerland, it shall be noted that, following the entry into force of *the Agreement between the European Community and its Member States, of the one part, and the Swiss Federation, of the other, on the free movement of persons* (OJ L 114/6, 30.04.2002), on 1 June 2002, Swiss nationals will enjoy the same rights as EU citizens as regards entry, residence, access to work as employed persons, establishment as self-employed persons, right to stay as well as regarding living, employment and working conditions. See also Article 7 and Article 13 of Annex I to the above-mentioned agreement concerning, respectively, 'employed frontier workers' and 'self-employed frontier workers'.

¹¹ The agreement between Italy and Slovenia (1982) was originally concluded with the (former) Republic of Yugoslavia and it was then decided to apply it, *mutatis mutandis*, to Slovenia.

¹² The agreement between Austria and Switzerland specifies that the contracting party issuing a *carte frontalière* to a 3rd country national or stateless person shall notify it to the other party within a week.

¹³ With the exception of Croatia, which is the only third country neighbouring a future EU MS currently visa-exempted by all Schengen States: see Annexes I and II of Regulation n°539/2001 as modified by Regulation n° 2414/2001, OJ L 81/1 of 21.3.2001 and OJ L 327/1 of 12.12.2001 respectively.

Concerning the documents requested for crossing the border, there is no uniformity either. In some cases, special documents are issued to people residing in the border area: for instance, the agreement between Germany and Switzerland provides for the possibility of issuing a border permit (“*carte frontalière*”) to persons (both nationals and third-country nationals) residing in the border area. This *carte frontalière*¹⁴, valid for 5 years and renewable once, gives the right to the holder to cross the border any time and to stay in the border area of the other party for a maximum of three days. Similar provisions are included in the agreement between Austria and Switzerland and between Italy and Slovenia.

There are, however, other agreements (i.e., between Germany and Poland or the Czech Republic), where border crossing and a maximum stay of 7 days on the territory of the other party is allowed on the basis of a valid travel document (*Personalausweis* or *andere Grenzübertrittsdokumente*), provided that the place of residence is indicated. It shall be noted that the agreement with the Czech Republic – which, contrary to the one with Poland, also covers visa-exempted 3rd country nationals – is the only one containing a readmission clause¹⁵.

Some of the agreements (D/CH; Ö/CH) also provide for the possibility of issuing ‘*laissez-passer*’ (mainly for excursions/tourist purposes)¹⁶ allowing the crossing of the border and the stay for a limited time (5 to 7 days). As the *laissez-passer*’s aim is to facilitate tourism, the residence in the border area is not requested. In the agreement between Germany and Switzerland, the *laissez-passer* for excursions and the *laissez-passer de transit* – contrary to the *carte frontalière* – cannot be issued to visa-obligated 3rd country nationals. The same is provided in the agreement between Austria and Switzerland where, however, it is also specified that, for humanitarian reasons, the *Ausflugsschein* can be issued to visa-obligated 3rd country nationals as a way of exception. It shall be pointed out that the *laissez-passer* for excursions always needs to be accompanied by a ‘*pièce d’identité valable*’ (or ‘*Personalausweis*’), containing also a photograph, in order to allow the holder to cross the border.

Most of these agreements also provide for practical facilitation for the crossing of the border for border residents, by either indicating ‘special authorised border crossing points’ (D/PL; D/CH; I/SL; Ö/SL) or by giving the possibility of crossing the border outside official BCPs and hours (D/CH; D/CZ; F/CH; I/CH; Ö/SL).

Finally, some of the agreements (D/CH; Ö/CH) explicitly forbid the exercise of a paid activity during the stay, while some others (I/CH; I/SL; Ö/SL) contain provisions on customs exemptions on certain goods. The only one dealing specifically with the issue of cross border workers is the 1958 agreement between France and Switzerland¹⁷, while the 1982 agreement between Italy and Slovenia contain some provisions related to agricultural workers.

¹⁴ The *carte frontalière* usually contains at least the personal details as well as the photograph of the holder. In some cases – e.g., in the agreement F/CH – also the place of destination and the authorised BCPs are specified.

¹⁵ However, the Schengen States had signed, on 29 March 1991, a readmission agreement with Poland.

¹⁶ In the agreement between Italy and Slovenia, what is called ‘*lasciapassare* (*laissez-passer*)’ is rather a ‘*carte frontalière*’, since it is issued only to border residents and is valid for 5 years.

¹⁷ See footnote 10.

3. POSSIBLE OPTIONS FOR RULES ON LOCAL BORDER TRAFFIC

In order to have a clear and coherent framework for 'local border traffic' at EU level, it seems necessary to define some basic and uniform rules, which will have to be complied with in all agreements with third countries neighbouring a EU Member State.

Such rules will not be limited to the definition of the exceptions and practical arrangements allowing the crossing of the border outside authorised border crossing points and fixed opening hours. On the basis of the common principles that can be derived from the bilateral agreements concluded by current EU Member States with their neighbours, but also taking into account new types of situations (namely, the possibility of envisaging local border traffic regimes with visa-obligated third countries), these rules will aim at defining:

- the geographical scope, i.e. the determination of the 'border area';
- the personal scope of local border traffic, i.e. the categories of persons covered;
- the requirements and the conditions to be fulfilled in order to be able to benefit from the 'local border traffic regime' (including travel documents/visas).

Although this paper obviously addresses the issue of local border traffic from the EU point of view, and therefore mainly focuses on the changes to EU legislation that may be necessary, the need to ensure reciprocity shall always be borne in mind. In some cases, this will require the negotiation of agreements with neighbouring third countries (see for instance below, § 3.2.1).

Another issue to be considered is the opportunity of linking the establishment of a 'local border traffic regime' with the conclusion of a parallel readmission agreement - where this does not already exist - with the neighbouring third country concerned. This could be an important means to ensure that the conclusion of local border traffic agreements will not lead to an increase of illegal immigration within the EU.

3.1. Geographical scope of local border traffic

One of the first issues to be defined is the determination of the area within which persons benefiting of the local border traffic regime can move and stay, at the conditions specified below (§ 3.2).

As mentioned above (§ 2.2), there is no uniformity in the delimitation of the 'border area' in the existing bilateral agreements between Member States and neighbouring third countries, since this is also determined by the geographical situation of the countries involved.

Although it does not seem useful to fix a specific extension of the 'border area', it could be envisaged to define the maximum extension of it for the purpose of 'local border traffic' and then leave to specific arrangements between Member States and the neighbouring third country or countries involved the definition of the precise list of the municipalities, districts, regions which would be covered by the local border traffic regime.

This delimitation would not affect either the definition of 'frontier zone' for customs purposes¹⁸ or existing agreements between a Member State and a third country on fiscal issues, namely those related to the question of double taxation for transfrontier workers.

3.2. Categories of people benefiting of local border traffic arrangements - Border permits

As regards the personal scope of local border traffic, only the situation of persons resident in the border areas will be addressed here: the *laissez-passer* or similar authorisations for excursions issued to tourists or other non-residents will therefore not be the object of the present paper.

Furthermore, it is clear that the situation of neighbouring countries whose nationals are submitted to the visa obligation on the basis of Regulation n° 539/2001, as modified by Regulation n° 2414/2001, is different from that of neighbouring countries whose nationals are visa-exempted and that the two cases shall be analysed and assessed separately, in order to propose the most appropriate solutions. Within this main distinction, different options amongst those proposed below could be chosen for different situations and/or borders. For instance, it will be necessary, in certain respects, to distinguish between local border traffic for work purposes (i.e., the situation of transfrontier workers) and for purposes which are not work-related.

3.2.1. Local border traffic arrangements with third countries whose nationals are exempted from the visa obligation

On the basis of the current *acquis*, the crossing of the EU external borders by visa-exempted third-country nationals is allowed on the basis of a valid travel document which is, in principle, an internationally recognised passport suitable for the affixing of an entry and exit stamp in order to record the length of the visit.¹⁹ All the other conditions listed in Article 5(1), c)-e)²⁰ of the Schengen Convention have to be fulfilled as well²¹.

However, taking into account the fact that local border traffic only entails movement within a specifically defined border area and for a limited period of time, it could be envisaged to facilitate the crossing of the border on the basis of the two following options:

¹⁸ See Article 49(2) of Council Regulation n° 918/83 of 28 March 1993 setting up a Community system of reliefs from customs duty (OJ L 271/31 of 23.9.1983) as well as Article 35(3) of the proposal for a Council Regulation setting out the cases where reliefs from import duties or export duties shall be granted (COM(94)232 final).

¹⁹ Exceptions to the obligation to affix a stamp on the travel document are provided in the Common Manual, Part II, point 2.1.5.

²⁰ Third-country nationals shall, namely: produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit (Art. 5(1)c); not be persons for whom an alert has been issued for the purposes of refusing entry (Art. 5(1)d); not be considered as a threat to public policy, national security or the international relations of Schengen States (Art. 5(1)e).

²¹ On the basis of Article 5(2) SIC, if a Schengen State decides to grant entry to its territory to a third-country national not fulfilling all the entry conditions - on humanitarian grounds, on grounds of national interest, or because of international obligations - it will have to inform all other Schengen States accordingly (and the authorisation of entry will be limited to its territory).

A) Allowing border crossing on the basis of an identity card

The possibility of crossing the border on the basis of an identity card is already foreseen in some of the bilateral agreements currently in force, provided that it contains a photograph of the holder and that the residence in the border area is specified.²²

The peculiarity of 'local border traffic' - and namely, its limitation in space and time - can thus be considered as a sufficient ground for allowing the crossing of the border on the basis of an identity card, exempting the holder from the general obligation of having the travel document stamped. In order to ensure that the holder is actually resident in the border area, it could be envisaged to: a) either require the person to carry an official certificate, issued by the authorities of the place of residence, specifying his/her residence in the border area; b) or foresee a periodic and regular exchange of the lists of border residents between the border authorities of the countries concerned.

Residents of the border areas would be exempted from fulfilling the conditions provided by Article 5(1)(c) SIC. However, Articles 5(1)(d) and 5(1)(e) SIC would remain applicable and be checked when crossing the external border²³.

The identity card would be considered as a 'valid document' authorising the holder to cross the Schengen external border within the meaning of Article 5(1)(a) SIC. However, the possibility of travelling on the basis of an identity card would be strictly limited to the 'border area', and any travelling outside that area would have to comply with normal Schengen rules (i.e., a passport would be required, as well as the fulfilment of all entry conditions specified above, including Article 5(1)(c)).

As regards the duration of the stay in the border area of the neighbouring country, a maximum stay of seven consecutive days would be in principle allowed, except in particular circumstances justifying a longer duration of the stay.

B) Creating a special border permit

Some agreements foresee the issuing of a special border permit to residents of the border area. It could therefore be envisaged to create a 'uniform border permit', whose characteristics and issuing conditions would be defined in a legislative instrument and would be the following:

- a) It would contain at least the personal details, the photograph and the indication of the place of residence of the holder;
- b) Its format would have security features comparable to those established by Regulation n°1030/2002 on the uniform format for residence permits for third-country nationals²⁴ ;

²² See, for instance, the agreement between Germany and Poland, where it is also specified that if the travel document does not indicate the residence, the person concerned shall hold an official certificate indicating the residence - primary or secondary - in a border district.

²³ In this respect, the provisions of the Common Manual (namely, Part II, point 1.3.5.3) envisaging the possibility of "random checks" for "those persons who frequently cross the border at the same crossing point" and that are known by border guards, shall be taken into account.

²⁴ OJ L 157/1 of 15.6.2002.

- c) It would be issued by the authorities of the country of residence to nationals and visa-exempted third-country nationals legally residing in its border area. An obligation to consult the national authorities of the neighbouring State prior to the issuing of the permit could also be envisaged;
- d) A minimum period of residence in the border area would be required in order to be issued such a permit;
- e) It would have to be renewed regularly.

As it would be issued by the country of residence, the compliance of the border permit issued by third countries with the principles laid down above should be ensured through an agreement to be negotiated and concluded with the neighbouring countries concerned. Such an agreement would also enable the mutual recognition of the border permit as a valid document to cross the border for local border traffic purposes.

The border permit would:

- 1) Be considered as a 'valid document' authorising the holder to cross the Schengen external border within the meaning of Article 5(1)(a) SIC;
- 2) Exempt the holder from fulfilling the conditions provided in Article 5(1)(c) SIC when crossing the external border, while being understood that Articles 5(1)(d) and 5(1)(e) SIC would remain applicable;
- 3) Be added to the list of documents on which entry and exit stamps shall not be affixed (CM, Part II, point 2.1.5);
- 4) Entitle the holder to multiple crossings of the common border, with a maximum stay of 7 consecutive days in the border region of the neighbouring State;
- 5) Entitle the holder to cross the border both outside authorised border crossing points and fixed hours, as well as through specific border crossing points, especially reserved to border residents;
- 6) Only allow the holder to travel and stay within the 'border area' of the two neighbouring States.

As regards transfrontier workers - i.e., third-country nationals resident in the frontier zone of a neighbouring country who are employed in the frontier zone of an adjacent Member State and who return each day or at least once a week to the frontier zone of the neighbouring country²⁵ - the border permit would take the form of a specific "permit-transfrontier worker". A proposal for creating such a permit is contained in

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See the definition given in Article 2(g) of the draft *Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities*, which is in turn inspired by the definition contained in Community instruments covering EC (frontier) workers (see, for instance, Article 8(1)(b) of Directive n°360/68). A definition of 'frontier worker' ("any person whose normal activities require that he should go to the other side of the frontier on his working days") is also contained in Article 49(2) of Regulation n°918/83 and Article 35(3) of the proposal for a Council Regulation COM(94)232 final (see footnote 18).

Article 13 of the draft 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 final).²⁶ In line with the general principles laid down in the mentioned draft directive, this permit would have the double function of being a work permit and allow the holder to cross the border and stay in the border area for the time needed to exercise the working activity. The permit would be issued both to employed and self-employed workers.

Although such a permit would obviously be issued by the country where the economic activity is exercised, the other main characteristics envisaged above - namely, letters a), b), d) and e) - for the normal border permit would apply as well to the "permit-transfrontier worker". Additional specific requirements, such as a minimum duration of the work contract, could be set.

Points 1), 2), 3), 5) and 6) above would also apply.

3.2.2. *Local border traffic arrangements with third countries whose nationals are submitted to the visa obligation*

Visa exemptions for local border traffic purposes or on grounds of residence in the border area are currently not foreseen in the acquis²⁷, the only possible exceptions being those explicitly mentioned in Article 4 of Regulation n°539/2001²⁸. Furthermore, all bilateral agreements on local border traffic currently in force have been concluded with visa-exempted third countries (see above, § 2.2).

However, as most of the future EU neighbouring countries will be visa-obligated States, there is a need to define common rules applying also to this type of situation. Such rules would aim at facilitating the movement of persons for local border traffic purposes while at the same time guaranteeing the respect of the basic principles of the Community acquis on visas and external borders. While the EU can lay down the rules governing border traffic entering EU territory, clearly in practice the traffic will be two-way, thus requiring the need to ensure reciprocity of treatment with the third countries concerned.

A) Creating a special permit for border residents

This option could be envisaged, in particular, for transfrontier workers, both employed and self-employed, and would follow the model proposed in Article 13 of

²⁶ The issuing of a 'special permit' to transfrontier workers is also foreseen in Article 8(1)(b) of directive n°360/68 EEC concerning the abolition of restrictions to the circulation and residence of EC workers and their families.

²⁷ A partial derogation to this principle is represented by the specific arrangements envisaged for local border traffic between Ceuta and Melilla and the Moroccan provinces of, respectively, Tetuan and Nador (see the *Final Act of the Agreement on the Accession of the Kingdom of Spain to the Schengen Convention*). However, Spain does maintain checks on sea and air connections departing from Ceuta and Melilla and having as their sole destination any other place on Spanish territory, as well as on flights and on regular ferry connections departing from the towns of Ceuta and Melilla to a destination in another Schengen State.

²⁸ Such exceptions concern, namely: holders of diplomatic passports, official-duty passports or other official passports; civilian air and sea crew; the flight crew and attendants on emergency or rescue flight and other helps (in case of accidents, disasters); the civilian crew of ships navigating in international waters; the holders of laissez-passer issued by international organisations; school pupils travelling in the context of a school excursion. See also OJ C 363/21 of 19.12.2001.

the draft directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (see above, § 3.2.1, under B). However, the extension of such a permit to other categories of border residents - with the necessary adaptations - should also be considered.

This special border permit, would have the following minimum characteristics:

- a) It would have security features at least comparable to those established by Regulation n°1030/2002 on the uniform format for residence permits for third-country nationals;
- b) It would be issued by the authorities of the country where the economic activity is exercised to persons resident in the frontier zone of a neighbouring country, who are employed in the frontier zone of the adjacent Member State and who return each day or at least once a week to the frontier zone of the neighbouring country;
- c) A minimum length of the work contract, as well as a minimum period of residence in the border area would be required in order to be issued such a permit;
- d) It would have to be renewed regularly;
- e) Other preliminary conditions, such as the fact of not representing a threat for public order and security would have to be thoroughly checked both before issuing and before renewing the permit.²⁹

The border permit would:

- 1) Be considered as equivalent to a visa³⁰, provided that it is accompanied by a valid travel document;
- 2) Have the double function of being a work permit and allow the holder to cross the border and stay in the border area for the time needed to exercise the working activity;
- 3) Exempt the holder from fulfilling the conditions provided in Article 5(1)(c) SIC when crossing the external border, while being understood that Articles 5(1)(d) and 5(1)(e) SIC would remain applicable;
- 4) Allow for a derogation to the obligation of affixing entry and exit stamps on the travel document when crossing the external borders (CM, Part II, point 2.1.5);
- 5) Entitle the holder to cross the border both outside authorised border crossing points and hours, as well as through specific border crossing points, especially reserved to border residents;

²⁹ As far as Schengen States are concerned, this would imply at least a search in the SIS and in other national databases.

³⁰ It would therefore not be a visa exemption.

- 6) Only allow the holder to travel and stay within the 'border area', respecting the time-limits specified above (under b).

B) Creating a 'special visa' for border residents

Another option, applicable to all categories of border residents, would consist in envisaging the issuing of a special short-term visa ("L")³¹, whose characteristics would be the following:

- a) It would comply with the security features laid down in Regulation n° 1683/95 as modified by Regulation n° 334/2002;
- b) It would be issued by the embassies or consular authorities to persons residing in the border area of a neighbouring third country and demonstrating to have legitimate grounds (family links, economic, cultural, linguistic reasons) for regularly crossing the border³²;
- c) In order to be issued such a visa, a minimum period of residence in the border area would also be required (e.g., 1 year);
- d) It would be valid in principle for one year, with the possibility of issuing, in some cases, visas valid for two or more years;
- e) As regards the administrative costs, they would either be harmonised (and lower than for the short-stay multiple entry visa³³) or be fixed by each Member State, which may also decide to issue this visa free of charge.

On the basis of this special "L" visas, border residents would be:

- 1) Entitled to multiple crossings of the common border;
- 2) Allowed to stay and circulate only within the 'border area' of the neighbouring country, for a duration which cannot exceed 3 months within any half-year period;
- 3) Exempted from fulfilling the conditions provided in Article 5(1)(c) SIC when crossing the external border;³⁴
- 4) Entitled to cross the border at specific border crossing points especially reserved to border residents.

An obligation to inform all other Schengen States about all the "L" visas issued would be introduced.

³¹ "L" would stand for 'Local (border traffic)'. As far as uniform visas are concerned, this would require a modification of the Schengen Convention as well as of the Common Consular Instructions.

³² The main conditions and procedures specified in the Common Consular Instructions for the issuing of Schengen short-term visas would have to be complied with, while taking into account the specific grounds for issuing such visas, i.e. entry and residence only in the border area (which, for instance, would entitle a derogation from Article 5(1)(c) SIC).

³³ As regards the costs for the Schengen visa, see the table in Annex 12 of the Common Consular Instructions (CCI).

³⁴ The conditions provided in Article 5(1)(d) and (e) SIC would have to be fulfilled and checked both prior to the issuing of the visas and at the crossing of the external border.

C) Facilitation in issuing short-term multiple entry visas:

As an alternative to the creation of a special permit and/or visa for border residents, the following measures could be considered, when issuing 'normal' short-term visas (national or Schengen³⁵) to border residents:

- Adding to the grounds for being issued a multiple-entry short-term visa, valid for at least one year (and for a maximum of 5 years), the fact of living in the border area and having family ties or economic interests (e.g., properties) on the other side of the border³⁶. The existence of such legitimate interests and reasons shall obviously be duly proved and specific criteria would be introduced (for instance, a minimum period of residence in the border area would be requested). Compliance with the other main criteria and conditions on issuing short term visas, as specified in the CCI, would have to be ensured;
- Providing for the possibility of reducing or waiving the costs of visas for border residents. As far as the Schengen uniform visa is concerned, the reducing or waiving of the costs, in principle fixed³⁷ could be envisaged by extending the scope of Rules II of Annex 12 of the Common Consular Instructions to 'specific categories of people', which would also cover residents of the border areas³⁸.

However, it shall be pointed out that this option, i.e. the issuing of 'normal' short-term visas which - as far as Schengen visas are concerned - would allow travelling throughout the territory of all Schengen States, seems to be the least appropriate to deal with the peculiarity of local border traffic.

3.3. Practical arrangements

Parallel to the measures proposed above, a series of practical arrangements could be envisaged in order to facilitate the crossing of the borders for border residents.

The upgrade and development of border crossing facilities should, as a general issue, be pursued in order to ensure an efficient and smooth border crossing of external borders to all persons, while at the same time guaranteeing the prevention of illegal immigration and the safeguard of internal security³⁹.

³⁵ It shall be born in mind that, as far as new EU Member States are concerned, they will not issue Schengen uniform visas as from accession. Until the lifting of internal border controls, they will issue national short-term visas - whose format will nevertheless have to comply with Regulation n°1683/1995, as amended by Regulation n°334/2002, laying down a uniform format for visas - and will therefore have a certain margin of manoeuvre as regards the types of visa to be issued and administrative costs.

³⁶ As regards Schengen visas, this would entail a modification of the CCI but not of the Schengen Convention.

³⁷ See Annexe 12 CCI, OJ L 239/376 of 22.9.2000.

³⁸ Rule II of Annexe 12 CCI provides that "in *individual* cases, the amount of fees to be charged may be reduced or may be waived in accordance with national law when this protects cultural interests, in the field of foreign policy, development policy or other areas of vital public interest" [emphasis added].

³⁹ For a definition of 'internal security' (in the common area of freedom of movement), see Annex 1 of Communication COM(2002)233.

As far as border residents are concerned, more particularly, the possibilities already foreseen in the acquis and implemented in the existing bilateral agreements (see above, § 2.1 and § 2.2) should be fully exploited. These include:

- a) Setting up specific border crossing points (or, within the same BCP, providing for separate checkpoints) for border residents;
- b) Granting the possibility to holders of a border permit/permit-transfrontier worker to cross the border outside authorised border crossing points and fixed hours.

It shall be thoroughly assessed whether option b) - here envisaged only for holders of the 'border permit' - could also be extended to persons being issued a "L" visa or a multiple entry short-term visa on grounds of local border traffic.

Last but not least, the increasing of consular facilities, especially in the areas close to the border, would also be an important element to facilitate the issuing of visas to border residents.

4. CONCLUSIONS

As announced in the Commission's Communication *Towards integrated management of the external borders of the Member States of the European Union*, the development of common rules on 'local border traffic' is one of the measures to be taken in the short term in order to complete the 'common corpus of legislation' on external borders.

Although some bilateral agreements regulating the issue do exist, there is the need to have a uniform, horizontal and coherent approach, as well as to envisage rules covering different kinds of situations. These would include the need to establish arrangements to cover the situation of visa-obligated third countries. This will be of immediate relevance to the future Member States who will not only need clear guidance as regards rules on local border traffic with their neighbouring countries, but also need to be closely involved in drawing up such rules.

A basically positive approach in creating efficient and secure rules for crossing of the external borders by well-known *bona fide* persons living in neighbouring border regions, is in the best interest of the EU.

Consequently, on the basis of the outcome of the discussions with the Member States on the different options put forward in this working paper, and the comments made by the candidate countries, the Commission intends to present a legislative initiative laying down basic uniform rules regulating 'small border traffic' - and amending, where necessary, the legislation in force - in order to set common principles to be respected and complied with in all agreements with third countries on the issue.

These rules will namely aim at:

- Defining the 'border area' for local border traffic purposes;
- Determining the categories of people benefiting from the local border traffic regime, as well as the specific requirements and conditions to be fulfilled;

- Envisaging the creation of a 'uniform border permit', as well as of a special visa ("L"), allowing border residents to cross the border for local border traffic purposes;
- Facilitating the issuing of visas to residents of the border area;
- While respecting the basic principles of the Community acquis on external borders, facilitating border crossing procedures for persons benefiting from the local border traffic regime.

ANNEX I

OVERVIEW OF BILATERAL AGREEMENTS ON LOCAL BORDER TRAFFIC CONCLUDED BY MEMBER STATES

(draft to be up-dated on the basis of contributions from the Member States concerned)

AGREEMENT	Scope	Definition of the border area	Special documents issued	Practical facilitation for the crossing of the border	Other issues
Germany/ Poland (19.11.1992)	- Only <u>nationals</u> of the contracting parties residing in the border areas	- The areas including the municipalities annexed to the agreement	- No (but an identity card – <i>Personalausweis</i> - or another document specifying the <u>residence</u> is needed). Max. stay allowed: 7 days.	- Special border crossing points	- Transport of goods and HGVs traffic are excluded
Germany/ Switzerland⁴⁰ (21.5.1970)	- ‘ <i>Carte frontalière</i> ’ issued to <u>all persons</u> residing in the border area (citizens of contracting parties and 3 rd country nationals) - ‘ <i>Laissez-passer</i> ’: <u>nationals</u> and <u>visa-exempted</u> 3 rd country	- The municipalities and areas listed in Art. 1 of the agreement	- ‘ <i>Carte frontalière</i> ’: issued for 5 years (+ possible 5-year extension). It allows for multiple crossings and stays for a max. of 3 consecutive days. - <i>Laissez-passer</i> ⁴¹ for excursions: valid for 7 days	- Possibility of an authorisation to cross the borders outside the official border crossing points and times. - Special border crossing points for	- The exercise of any paid activity is excluded - Also: chemins pedestres + lac de Constance et haut Rhin

⁴⁰

It covers also the territory and nationals of Liechtenstein.

	nationals. It is not necessary to be resident		maximum. Collective laissez-passer can also be issued. <i>- Laissez-passer de transit⁴¹</i>	the inhabitants of cities near the border	
Germany/ Czech Republic (3.11.1994)	- Only <u>nationals</u> of contracting parties and <u>visa-exempted 3rd country nationals</u>	- For Germany: 'Landkreise' and cities near the common border - For the Czech Republic: an area of 25 km from the common border. - Other cities can be included by common accord (on tourist or cultural grounds).	- No: a valid <i>Grenzübertritts-dokument</i> is sufficient. The max. stay is of 7 days (the agreement is aimed at facilitating tourism in the border areas)	- In <u>special cases</u> (on religious, social, cultural or sport grounds) visa-free persons may be granted an authorisation to cross the borders outside the official crossing points and hours.	- Readmission clause (in case a person did not respect the agreement or violated the national law)
France/ Switzerland (small border traffic)	- Only <u>nationals</u> of the contracting parties ("d'honorabilité reconnue") living in the border areas since at least	- An area of 10 km from the common border + list of municipalities	- <i>Carte frontalière</i> : valid max. 1 year (renewable). It is not 'automatically' issued to the persons living near the border.	- Possibility of granting an authorisation to cross the border outside the	

⁴¹ It shall be accompanied by a valid 'pièce d'identité officielle' containing a photograph.

traffic) (11.8.1946)	6 months	included		authorised posts and times	
France/ Switzerland <i>bis</i> (cross-border workers) (15.4.1958)	- Only <u>nationals</u> of the contracting parties living in the border area of one State since at least 6 months and working as <i>salariés</i> in the border area of the other State	- Same than above	- ' <u>Special work permit</u> ' allowing for the crossing of the border (valid 1 year – renewable)		- Seasonal workers are not covered by the agreement
Italy/ Switzerland (28.6.1955)	- <u>All persons</u> residing in the border area (having valid reasons/interests – e.g. family grounds, possession of houses, land – to cross the border)	- An area of about 10 km from the common border + list of municipalities specified	- <i>Pass, Grenzkarte</i> or <i>Passierschein</i> are mentioned as documents valid to cross the border and stay in the border areas (but no further specifications are given)	- Possibility of crossing the border outside authorised crossing points and times	- Provisions on exemption of customs duties on certain goods
Italy/ Slovenia ⁴² (15.5.1982)	- Only <u>nationals</u> of the contracting parties residing in the border areas	- The areas including the municipalities annexed to the agreement	- ' <u>Lasciapassare</u> ': multiple border crossings and a stay of max. 5 consecutive days (ext. to 30 days for justified reasons). Valid for 5 years (renewable) - ' <u>Lasciapassare</u> '	- Special border crossing points	- The issue of the special border crossing documents is exempted from any taxes or other burdens - Special

⁴²

The agreement was originally concluded with Yugoslavia and applies *mutatis mutandis* to Slovenia.

			<u>extraordinaire</u> ⁴³ : (urgencies and special cases): only one crossing and stay of max. 10 days. - <u>Special document for agricultural workers</u>		provisions on maritime and land transport firms - Exemptions from customs duties for certain goods
Austria/ Switzerland ⁴⁴ (11.2.1974)	- <u>Carte frontalière</u> : nationals of the contracting parties, 3 rd c. nationals and stateless persons residing in the border areas. - <u>Laissez-passer</u> (excursions): in principle only to citizens and visa-free nationals (exceptions for humanitarian reasons)	- The area including the districts specified in Art. 1 of the agreement	- <u>Carte frontalière</u> : valid 5 years (renewable for other 5 years). It allows for multiple border crossings and a stay of max. 3 consecutive days - ' <u>Ausflugsschein</u> ' ⁴⁵ : valid for a max. of 7 days. Also possibility of collective laissez-passer.		- The contracting party issuing a carte frontalière to a 3 rd country national shall notify the other party within one week. - The exercise of a paid activity is excluded from the scope of this agreement
Austria/ Slovenia (9.6.1995)	- Only <u>nationals</u> residing in the border areas	- The area including the municipalities annexed to the agreement	- ' <u>Dauergrenzschein</u> ': allows for multiple crossings and stay for a max. of 4 days - ' <u>Grenzübertrittschein</u> ': it	- Special border crossing points (annexed to the agreement)	- Special provisions on customs (exemptions on certain goods)

⁴³ It shall be accompanied by a valid '*documento di identificazione*' specifying the nationality.

⁴⁴ It covers also the territory and nationals of Liechtenstein.

⁴⁵ It shall be accompanied by a '*Lichtbildausweis*' (identity document containing a photograph).

		agreement	allows certain categories of persons (e.g., owners of properties in the border area of the other country) to cross the border (in principle) for one day	- Possible derogation from authorised border crossing posts and times	certain goods)
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ANNEX II^{*}

OVERVIEW OF BILATERAL AGREEMENTS ON LOCAL BORDER TRAFFIC CONCLUDED BY CANDIDATE COUNTRIES^{**}

(draft to be completed on the basis of additional information provided by the countries concerned)

AGREEMENT	Scope	Definition of the Border Area	Special Documents issued	Practical facilitation for the crossing of the Border	Other issues
Slovenia /Croatia (28.4.1997)	- Border crossing permits: only <u>nationals</u> of the contracting parties with permanent residence in the border areas (exceptionally also to 3 rd country nationals).	- For border crossing permits: the settlements listed in Annex A and Annex B to the agreement. - For tourist permits: tourist zones (defined by a permanent mixed committee upon proposal of border municipalities) - Provisions on delimitation of the	- <u>Border crossing permit</u> : issued for 5 years (renewable once) . Max. stay allowed: 7days. Possibility of issuing it at the border. - <u>Tourist permit</u> : issued for crossing the border within tourist zones. Shall always be accompanied by a passport or ID card. Valid for 30 days max.	- Possibility of crossing the border outside authorised BCPs and hours for holders of special passes (unless it is contrary to public interest)	- Special provisions for agriculture workers - Provisions on the exemption of customs duties on certain goods - Special provisions on maritime and land transport on the border area and on border economic cooperation

^{*} Only available in English.

^{**} Bilateral agreements with EU Member States are not included as they are covered by Annex I.

	- Tourist permits : citizens of the contracting parties and visa-exempted third country nationals.	delimitation of the maritime border area			
Bulgaria/ Yugoslavia (28.2.1972)	- Nationals of the contracting parties resident in the border area	- Area of 20 Km from the border line within both territories	- <u>Border crossing permit</u> : allows 12 border crossings per year. Max. stay allowed: 4 days. Possibility of extension (up to 10 days) in specific cases.		This agreement, although formally still in force, is <i>de facto</i> not implemented. A parallel agreement setting a visa free-regime is in force.
Romania/ Bulgaria (28.6.1971)	- Nationals of the contracting parties resident in the border area	- Area of 20 km from the border line within both territories	- <u>Border crossing permit</u> (for Romanian citizens) and <u>travel coupon</u> (for Bulgarian citizens). No need for other documents. They allow for one monthly crossing, for a max. stay 6 days. Possibility of extension in exceptional cases.	- Specific 'local border traffic' crossing points.	Romania is currently considering how to modify this agreement.
Romania/ Yugoslavia (28.6.1971)	- Nationals of the contracting parties resident in the border area	- Area of 20 km from the border line within both territories	- <u>Border crossing permit</u> . No need for other documents. 12 crossings per year allowed. Max. period of stay: 6 days. Possibility of extension in exceptional cases.	- Specific 'local border traffic' crossing points.	Ibidem.

Romania / Hungary ⁴⁶ (17.6.1969)	- Nationals of the contracting parties resident in the border area	- Area of 20 km from the border line within both territories	- <u>Border crossing permit</u> (shall be accompanied by an <u>identity document</u>). 12 crossings per year allowed. Max. period of stay: 6 days. Possibility of extension in exceptional cases.	- Specific 'local border traffic' crossing points.	Ibidem
Romania/ Ukraine (29.3.1996)	- Nationals of the contracting parties resident in the border area	- The counties and districts adjacent to the state border.	- For Romanian citizens: <u>border crossing permit</u> + an <u>identity document</u> - For Ukrainian citizens: <u>travel coupon</u> + an <u>identity document</u> . In both cases: crossing of the border twice per month, for a max. stay of 5 days. Possibility of extension in exceptional cases.	- Specific 'local border traffic' crossing points.	Ibidem.
Poland/Russia Poland/Ukraine Poland/Belarus ⁴⁷	- Nationals of the contracting parties resident in the border area.	- Localities listed in Annex 1 to the Agreement, provided that the distance between them is not greater than 50 Km (exceptions to this rule are possible).	- <u>Border passes, identity cards or other identity documents</u> . Max. stay allowed: 7 days. Normally border crossing can only take place during the day (exceptions for urgent medical aid).	- Specific BCPs set up and specified in the agreement (exceptions possible in particular cases).	Diplomatic notes concerning the termination of these agreements were sent to the diplomatic missions of these countries on 24 May 2002. The agreements will become

⁴⁶ Hungary has similar simplified border crossing agreements also with Ukraine, Croatia and Slovenia, but it has committed to **terminate all of them by the end of 2002**.

⁴⁷ Based upon the agreement stipulated with the former Union of Socialist Soviet Republics on 14 May 1985.

					invalid on 31 May 2003.
Poland/Czech Republic⁴⁸ (17.1.1995)	- Nationals of the contracting parties resident in the border area	- Area of 15 Km from the common border	- <u>Identity cards, Passports and travel vouchers</u> inserted into ID cards. Max. stay allowed: 7 days.	- Crossing possible at both normal BCPs and at specific ones (solely for local border traffic purposes).	- Possibility of joint border controls
Poland/ Slovakia (10.6.1997)	- Nationals of the contracting parties resident in the border area	- Area of 15 Km from the common border	- <u>Identity cards, passports. Max stay allowed: 7 days.</u> - Possibility of ' <u>collective names lists</u> ' for school groups and young people participating in youth camps (valid for no longer than 30 days after the date of confirmation).	- 14 specific BCPs (solely for local border traffic purposes) - Crossing possible also at normal BCPs	- Possibility of joint border controls
Poland/ Slovakia (13.7.2001)	- Nationals of the contracting parties + citizens of the EU, EEA, Israel, Japan, Canada, Lithuania, Latvia, Slovenia, US, Switzerland	- Concerns the use of tourist paths	- Valid travel document	- Only BCPs specified in the agreement - Fixed border crossing hours	- Joint border controls

⁴⁸

The existing agreement between the Czech Republic and Slovakia is currently being re-negotiated.

	and Hungary				
Slovakia/ Hungary (8.7.1963)	- Nationals of the contracting parties resident or working in the border area	- Area of 15 km from the common border.	- <u>Permanent border crossing permit</u> : valid 12 months. Max. stay allowed: 5 days. - <u>Single border crossing permit</u> : allows the holder to cross the border once and be back within 14 days from the date of issuance.	- Crossing possible only at normal BCPs.	
Slovakia/ Hungary (29.8.2001)	- Nationals of the contracting parties, EU and EEA nationals	- Concerns the possibility for tourists to visit the Šomoška Castle (close to the common border, on SK territory)	- A valid travel document is enough	- Specific BCPs. Fixed border crossing hours (allowed only between 8am and 8pm).	- Joint border controls
Latvia/Russian Federation					
Latvia/ Belarus (negotiated on 26.9.2001)					
Lithuania/ Belarus			- Valid travel document - Special border permits		- Lithuania committed to abolish the agreement by the end of 2002.

(25.3.1994)					
Lithuania/ Russian Federation (25.2.1995)					