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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**on the implementation and functioning of the local border traffic regime introduced by  
Regulation (EC) No 1931/2006 of the European Parliament and of the Council laying  
down rules on local border traffic at the external land borders of the Member States**

# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## on the implementation and functioning of the local border traffic regime introduced by Regulation (EC) No 1931/2006 of the European Parliament and of the Council laying down rules on local border traffic at the external land borders of the Member States

### 1. INTRODUCTION

On 20 December 2006, the European Parliament and the Council adopted Regulation (EC) No 1931/2006 laying down rules on local border traffic at the external land borders of the Member States (LBT Regulation)<sup>1</sup>. This Regulation allows the Member States to derogate, for persons living in a border area, from the general rules on border checks laid down in the Schengen Borders Code<sup>2</sup>, in order to prevent the creation of barriers to trade, social and cultural interchange or regional cooperation with neighbours. In implementing the local border traffic regime, the Member States may conclude bilateral agreements with neighbouring countries aimed at addressing specific needs in relation to their respective neighbours, as these needs vary because of different local, geographical, social and economic situations. These bilateral agreements should comply fully with the parameters set for local border traffic regimes by the LBT Regulation. The parameters, and in particular the definition of the local border area, were set after difficult negotiations in the Council and are considered to represent the delicate, right balance between facilitation for those living in a border area who need to cross the border frequently and the security requirements of the whole Schengen area.

Under the terms of Article 13 of the LBT Regulation, Member States must consult the Commission before concluding any bilateral agreement on local border traffic, in order to check its compatibility with the Regulation. If the Commission considers the agreement to be incompatible, it notifies the Member State concerned. The Member State must then take all appropriate steps to amend the draft agreement within a reasonable period in order to eliminate the incompatibilities established. The same principles for consultation between the Member States and the Commission apply to bilateral agreements which pre-date the entry into force of the LBT Regulation and need to be adapted to that Regulation.

It is worth underlining that once it has legislated in a particular field, the Community acquires exclusive external competence in the field covered by the legislation. Consequently, the Member States lose the power to negotiate agreements with third countries in the field covered by the relevant legislation (the ERTA doctrine). It is possible to derogate from this principle if the Community law instrument by which the external competence is acquired specifically authorises the Member States to conclude such agreements. Such authorisation operates as a re-delegation of powers which, in principle, have been lost to the Community and, as such, must be interpreted restrictively.

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<sup>1</sup> OJ L 29, 3.2.2007, p. 3

<sup>2</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code); OJ L 105, 13.4.2006, p. 1

Under Article 18 of the LBT Regulation, the Commission is obliged to report to the European Parliament and the Council on the implementation and functioning of the local border traffic regime two years after the entry into force of the Regulation. The present report fulfils this obligation.

## **2. FACILITATION MEASURES SET OUT IN THE LBT REGULATION**

The LBT Regulation sets out a number of measures to facilitate matters for local border residents compared with standard procedures and checks applicable to the crossing of external borders, defined in the Schengen Borders Code. These facilitation measures include:

- A derogation from the entry conditions of the Schengen Borders Code including from the visa requirement.

Local border area permit holders are exempted from (i) the visa obligation (if such an obligation exists) and (ii) the need to have sufficient means of subsistence, both for the duration of the intended stay and for the return. At the border crossing point, supporting documents to prove the purpose of the stay may not be required.

- 90 days of uninterrupted stay.

Holders of local border traffic permits may stay on the territory of the relevant neighbouring country without any time restrictions, except that each uninterrupted stay may not exceed 90 days. That is a derogation from the standard rule of the Schengen Borders Code that limits short stay to a maximum of 90 days in 180 days.

- Local border traffic permits may be issued free of charge.
- The permits may be issued for a period of validity of between 1 and 5 years.
- Special border crossing points could be set up for the local border traffic.
- Specific lanes could be reserved for border residents at ordinary border crossing points.
- Persons who regularly cross an external land border and who, by reason of their frequent crossing of the border, are well known to the border guards, may be subject only to random checks.
- Local border traffic permit holders are exempt from the passport stamping obligation when crossing the border.
- To benefit from the local border traffic regime, the residents of the local border area must fulfil several conditions, including:
  - the requirement of having been resident in the local border area for a minimum of 1 year;
  - possession of a valid travel document;
  - not being the subject of a Schengen Information System alert;

- producing evidence of their status as border residents and reasons for frequent border crossings;
- not being considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States.

### **3. CONSULTATIONS BASED ON ARTICLE 13 OF THE LBT REGULATION. STATE OF PLAY.**

Since May 2007 (when the first request for consultation was made), the Commission has been involved in consultations with a number of Member States. These consultations entail exchange of information and informal advice, experts' meetings between officials of the Member States and the Commission as well as formal exchange of correspondence on the compatibility of draft bilateral agreements with the LBT Regulation. The following bilateral agreements were the subject of consultations:

- Hungary – Ukraine

Hungary was the first Member State to send a draft agreement for consultation to the Commission, in May 2007. The Commission stated that the definition of the border area in the draft agreement was incompatible with the LBT Regulation (the local border area extended to over 50 kilometres). Hungary was requested to amend the draft. Hungary informed the Commission that the agreement had entered into force on 11 January 2008. After its entry into force the final version of the agreement was sent to the Commission without including the changes requested, and discussions continued with the Commission. In January 2009, Hungary informed the Commission that Hungarian missions in Ukraine have issued 34 000 local border traffic permits since the date of application of the Agreement and the local border traffic regime has been operating smoothly. Around 80% of the applicants for local border traffic permit possessed a Hungarian visa previously. According to information provided to the Commission by the Hungarian government, and based on a census of 2001, the Hungarian minority of Ukraine consists of 156 600 persons, largely concentrated in the Zakarpatska Oblasthy bordering Hungary and Romania. This results from historical reasons with the redefinition of Hungarian borders in the last century. 84% of this Hungarian minority are concentrated close to the Hungarian-Ukrainian border, living within 20 km distance from it, 95% of this population lives within a 50 km distance. The persons concerned have become acquainted with the possibilities of the local border traffic permit and they largely use it to ease everyday life. Most of them have family members living in Hungary and often need to travel to Hungary to engage in small-scale business activity or to receive higher education. Only one case of misuse of the LBT permit has been recorded.

- Poland – Ukraine

In January 2008, Poland transmitted a first draft bilateral agreement for consultation. During the consultation process, two incompatibilities came to light: the scope of the border area (50 km instead of 30 km) and the requirement to be in possession of travel medical insurance imposed on the beneficiaries of the local border traffic regime. Poland has been requested to amend the relevant parts of the agreement before it enters into force. In February 2009, Poland informed the Commission about the modifications introduced into the agreement. Concerning the scope of the border area, Poland has modified the agreement in line with the request of the Commission. However, the agreement has not been modified with regard to the

requirement to possess travel medical insurance. In March 2009, the Commission invited the Polish authorities to amend the relevant parts of the agreement. The agreement entered into force on 1 July 2009 without the requested modification.

- Lithuania – Belarus

In January 2008, a draft agreement between Lithuania and Belarus was transmitted to the Commission for consultation. The Commission found an incompatibility related to the requirement to possess travel medical insurance (similar to the PL-UA agreement). Lithuania has been requested to modify this part of the agreement.

- Lithuania – Russian Federation

In April 2009, a draft agreement between Lithuania and the Russian Federation was transmitted to the Commission for consultation. Only minor suggestions have been addressed to Lithuania in order to ensure the full compliance of the draft agreement with the LBT Regulation. After an exchange on the practical aspects of the future implementation of the draft agreement, the Commission concluded that the draft agreement will be fully compatible with the LBT Regulation if it is implemented in accordance with the additional information as provided by the Lithuanian authorities.

- Latvia – Russian Federation

In January 2008, a draft agreement between Latvia and the Russian Federation was transmitted for consultation. Consequently, Latvia has been asked to explain the process of issuing local border traffic permits by the Russian Federation in the form of visas. . In June 2009, Latvia submitted a revised draft, which introduced a specific local border permit, which took into account the concerns expressed on the visa format. However, the modified draft contains the requirement to be in possession of travel medical insurance. In addition, the border area consists of administrative units on Russian territory which go beyond the scope of the local border area. Latvia has been requested to modify these points.

- Slovakia – Ukraine

In March 2008, Slovakia transmitted the first draft bilateral agreement to the Commission for consultation. During this process the Commission considered that the draft agreement was not compatible with the LBT Regulation as the local border traffic area exceeded what is allowed under the LBT Regulation. Slovakia modified the agreement and it entered into force on 27 September 2008. Subsequently, in November 2008, the Slovak authorities provided the Commission with a map of the local border area. Although the map clearly indicates that the local border area was modified, the Commission's initial assessment is that the changes made by the Slovak authorities in the final version of the agreement may still not be sufficient to make this bilateral agreement fully compatible with the LBT Regulation as regards the scope of the border area. By June 2009, 466 local border traffic permits had been issued, while 54 applications had been refused.

- Poland – Belarus

In April 2008, the draft agreement between Poland and Belarus was also transmitted to the Commission for consultation. As this agreement was virtually identical to the one between Poland and Ukraine, the same two incompatibilities were also found: the scope of the border

area (50 km instead of 30 km) and the requirement imposed on the beneficiaries of the local border traffic regime to be in possession of travel medical insurance. In this case also, Poland has been requested to amend the relevant parts of the agreement. End of April 2009, Poland transmitted a modified draft agreement which took into account the comments made on the border area while maintaining the requirement of travel medical insurance. End of June 2009, Poland has been requested to amend the agreement accordingly.

- Bulgaria – Serbia

In July 2008, a first draft of the agreement between Bulgaria and Serbia was transmitted to the Commission. The Commission provided Bulgaria with a first set of comments on several aspects, notably: the definition of border residents and the status of EU nationals in the border area, entry conditions for border residents, the scope of the LBT permit, security features and technical requirements.

- Bulgaria – FYROM

In July 2008, a first draft of the agreement between Bulgaria and FYROM was transmitted to the Commission. The Commission has provided Bulgaria with a first set of comments concerning the same aspects as those dealt with in relation to the draft agreement between Bulgaria and Serbia.

- Romania – Ukraine

In August 2008, a first draft of the agreement between Romania and Ukraine was transmitted to the Commission. The Commission has provided Romania with a first set of comments on several aspects such as: the status of the river Danube in the local border traffic arrangements, the limitations of the border zone, possibilities to impose fees for the permits, etc. In March 2009 Romania presented a modified Agreement which the Commission considered to be compatible with the LBT Regulation.

### **Existing bilateral agreements which pre-date the entry into force of the LBT Regulation**

- Slovenia – Croatia

In December 2007, Slovenia officially transmitted the bilateral agreement on border traffic cooperation between Slovenia and Croatia which has been in force since 2001. In the process of evaluation, the Commission noted several incompatibilities, notably: limitation only to the citizens of the contracting parties, not covering other EU nationals and persons enjoying the Community right of free movement; the lack of a requirement for a minimum period of residency in the border area; no relevant security features; an inadequate validity period, unclear conditions for issuing permits, lack of a clear prohibition on the entry of persons subject to an alert in databases. It was also impossible to clearly determine the extent of the local border traffic area and its compatibility with the LBT Regulation. In March 2008, Slovenia was requested to amend this agreement in order to bring it into line with the LBT Regulation. End of November 2008, Slovenia acknowledged that indeed several provisions of its bilateral agreement need to be adapted. As far as the border area is concerned, Slovenia explained that the border area encompasses an area of approximately 10 km from the border itself. After having analysed the maps submitted by Slovenia, the Commission assessed that the local border area appears to be in compliance with the LBT Regulation.

Slovenia informed that it contacted Croatia about the need to adapt the agreement in a meeting in December 2007. However, no clear information on the timetable for the adjustments needed was given. Thus, in April 2009, Slovenia was requested to provide the Commission with a schedule for the implementation of modifications related to the issues which remain not compatible with the LBT Regulation, such as the introduction of security features in the issued permits or granting rights to obtain LBT permits by eligible nationals other than Croatians and Slovenians.

#### **4. FACILITATION MEASURES APPLIED BY THE MEMBER STATES**

The Member States have applied the facilitation measures set out in the LBT Regulation to a differing extent. In none of the consulted bilateral agreements has the full range of facilitation measures been used. Most Member States apply stricter requirements than those laid down by the LBT Regulation. The following refers to agreements that have entered into force as well as the drafts listed in the previous section.

- 90 days of uninterrupted stay

With one exception, all agreements set additional restrictions regarding the period of stay in the border area, i.e. 90 days within 180 days. In one instance, the Member State concerned also reduced the period of uninterrupted stay to 30 days. However, regardless of the circumstances it is not clear how these Member States actually verify the length of stay, considering that passports are not stamped when the border is crossed.

- Period of residence in the local border area set at 1 year

In all agreements, the minimum period of residence is longer than the one year required by the LBT Regulation. In five of the agreements the required minimum period of residence in the border area is set at three years.

- Local border traffic permits issued free of charge

Only one agreement provides that all local border traffic permits will be issued free of charge as permitted by the LBT Regulation. The charge for issuing permits in the other agreements varies between 20 and 35 Euros.

- LBT permits may be issued for a period of validity up to 5 years

With one exception, all agreements provide for a possibility to issue the permits for up to 5 years.

#### **5. DIFFICULTIES ENCOUNTERED WHEN ANALYSING THE DRAFT BILATERAL AGREEMENTS**

During consultations with the Member States, two major issues on the interpretation of the LBT Regulation have been noted:

- The definition of the local border traffic area

According to Article 3(2) of the LBT Regulation:



*'border area' means an area that extends no more than 30 kilometres from the border. The local administrative districts that are to be considered as the border area shall be specified by the States concerned in their bilateral Agreements, as referred to in Article 13. If part of any such district lies between 30 and 50 kilometres from the border line, it shall nevertheless be considered as part of the border area."*

Certain agreements (as indicated in section 3) have described the local border traffic area in such a way that effectively the local border area is set at 50 kilometres from the border (not 30 km as required by the LBT Regulation). The Member States concerned argue that there is an ambiguity, at least in the English text of the LBT Regulation, whether the word "it" refers to the district chosen or to the part of the district within the 50-kilometre line. If it means the district chosen, it could be argued that, provided that at least part of the district is in the zone between 30 and 50 kilometres, the entire zone up to 50 km may be treated as being part of the border area.

However, the Commission does not support such an interpretation. In the first place, the French version – *"toute partie d'une de ces communes située à plus de 30 mais à moins de 50 kilomètres de la ligne frontalière est néanmoins considérée comme appartenant à la zone frontalière"* – makes it clear that only the part of the district within 50 kilometres of the border may be regarded as part of the border area.

In the second place, it is apparent from Article 3(2) read as a whole that the intention of the legislator was in principle to limit the local border area to 30 kilometres. Therefore, in principle, the administrative units to be taken into account for the local border traffic regime should have a local administrative structure remaining within the 30-km zone and not a regional, sub-state structure like "départements", "provinces" or "województwa" which (by their nature) go far beyond 50 km and would thus in all cases allow coverage of the full 50-km zone along the whole border. This would be manifestly incompatible with the compromise achieved in the European Parliament and the Council, which limited the area to 30 kilometres.

The purpose of the derogation granted by the last sentence - covering parts of the local districts lying between 30 and 50 km - is to prevent a situation in which part of an administrative district is partly within and partly outside this border area.

Accordingly, local extensions to the border area are permitted where the relevant administrative district straddles the 30-kilometre line with the effect that the district is partly within the 30-kilometre zone and partly within the zone between 30 and 50 kilometres from the border.

This rule, in turn, means that a Member State wishing to conclude a bilateral agreement must choose administrative districts which are at least partially within the 30-kilometre zone and which do not extend beyond the 50-kilometre zone, thus ensuring that the entire district may be designated as border area.

Consequently, any administrative unit which starts at the border but goes beyond 50 km is automatically excluded.

A further important point to note is that in relation to certain third countries, i.e. Russian Federation and Ukraine, there is also another instrument that should be used and applied in the case of people who need to frequently cross the border and who live outside the local

border traffic area. This instrument, namely the visa facilitation agreement, allows certain categories of people to be issued free of charge with multi-entry visas valid for up to 5 years.

- A travel medical insurance requirement

Certain Member States (as indicated in section 3) have inserted a provision requiring the local border traffic permit holders to present proof of travel medical insurance when crossing the border. The Member States concerned argue that such insurance is needed to protect the public health establishments (mainly hospitals) in the border area from a potential increase in the cost of medical care provided to the third-country nationals benefiting from the local border traffic scheme.

It is possible that a financial burden may be created in the border area when nationals from the neighbouring third country need to be given emergency medical care and leave thereafter without paying (this problem does not exist for “ordinary” medical care, because such care is given only if payment is guaranteed via health insurance or other means). However, this problem could be solved in other ways e.g. via an agreement between the health authorities of the countries concerned like it is implemented between Hungary and Ukraine.

The introduction of a travel medical insurance as requirement for the issuance of a local border traffic permit raises concerns for the following reason: Article 13 of the LBT Regulation authorises Member States to conclude bilateral agreements. This authorisation may be interpreted only as permission to conclude an agreement that strictly complies with what is clearly allowed by the Regulation. Neither Article 4 nor Article 9, which aim at facilitating travel by simplifying the entry conditions and conditions for issuing the local border traffic permit and exclude in particular the need to provide proof of means of subsistence, mention the possibility of requiring travel medical insurance. Thus, to introduce such a requirement in the relevant bilateral agreement would conflict with the LBT Regulation. In addition, local border traffic permit holders are expressly exempted from the visa obligation and the Common Consular Instructions stipulate that an obligation to have travel medical insurance may not be imposed on this category of third-country nationals.

## 6. CONCLUSIONS

Based on the available information and above analysis, the Commission draws the following conclusions:

- The current text of the Regulation was the outcome of intense negotiations in and between the institutions, and was considered to strike the delicate, right balance between facilitating personal contacts in the border area and maintaining a high level of security.
- MS should be encouraged to take full advantage of other instruments available to facilitate cross-border contacts. For example, in the case of Ukraine and the Russian Federation there is a visa facilitation agreement which enables certain categories of persons, who need to travel frequently, to obtain multi-entry visas valid for up to 5 years.
- The mechanism of consultation has been put in place in order to ensure full compatibility of bilateral local border traffic agreements with the parameters set by the LBT Regulation. Consultations with the Member States have been relatively intensive. However, the results of these consultations are not always satisfactory as some Member States are neglecting

the last phase of this procedure, i.e. "correction", before signing the bilateral agreements, as regards provisions incompatible with the LBT Regulation.

- Only three bilateral local border traffic agreements have entered into force since the adoption of the LBT Regulation, between Hungary/Ukraine (since 11 January 2008), Slovakia/Ukraine (since 27 September 2008) and between Poland/Ukraine (since 1 July 2009). It is therefore difficult to draw practical conclusions based on such limited evidence, in particular as regards the total number of people benefiting from the regime, or to know whether the relevant facilitation measures or conditions have proved problematic. There were however no reports from the Member States that there was a wide misuse by owners of LBT permits or that the agreements raised some security risks for the Schengen area.
- In principle, the Commission considers that this report comes too early to reconsider Regulation No 1931/2006 as regards the parameters set for the bilateral agreements.
  - Concerning travel medical insurance; it is possible that a financial burden may be created in the border area when nationals from the neighbouring third country need to be given emergency medical care and leave thereafter without paying (this problem does not exist for “ordinary” medical care, because such care is given only if payment is guaranteed via health insurance or other means). However, this problem could be solved in other ways (e.g. via an agreement between the health authorities of the countries concerned). Further experiences in implementing the agreements based on the current LBT Regulation will help in assessing the potential size of the problem.
  - With regard to the border area, at this stage, the Commission would be prepared to consider allowing some flexibility on delimitation of the border area in a bilateral agreement if the definition provided by the LBT Regulation were to lead in individual cases to situations which are against the spirit of the Regulation, which provides for an exceptional extension of the border area in order not to split a community artificially. Moreover, when monitoring the application of the LBT Regulation, the Commission will pay particular attention to the parameters for the delimitation of the local border area. The Commission would therefore welcome a discussion with the Member States on whether the Regulation is considered sufficiently flexible to accommodate particular situations arising in relation to specific border regions, and is ready to reflect on the need for proposing amendments to the Regulation in the light of that discussion.
  - More comprehensive information will gradually become available as more and more agreements are implemented in practice. The Commission is ready to submit a new report on the implementation and functioning of the local border traffic regime to the European Parliament and the Council in the second half of 2010.