

**REGULATION (EC) No 296/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 March 2008**

amending Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as regards the implementing powers conferred on the Commission

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(1) and (2)(a) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

- (1) Regulation (EC) No 562/2006 of the European Parliament and of the Council ⁽²⁾ provides that certain measures should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾.
- (2) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced the regulatory procedure with scrutiny for the adoption of measures of general scope and designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia*, by deleting some of those elements or by supplementing the instrument with new non-essential elements.
- (3) In accordance with the statement by the European Parliament, the Council and the Commission ⁽⁴⁾ concerning Decision 2006/512/EC, for the regulatory procedure with scrutiny to be applicable to instruments adopted in accordance with the procedure referred to in Article 251 of the Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.
- (4) The Commission should be empowered to adopt certain practical measures governing border surveillance and to amend certain annexes. Since those measures are of general scope and are designed to amend non-essential elements of Regulation (EC) No 562/2006, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

- (5) Regulation (EC) No 562/2006 provides for a period of suspension as regards the implementing powers conferred on the Commission. In their statement concerning Decision 2006/512/EC, the European Parliament, the Council and the Commission stated that Decision 2006/512/EC provides a horizontal and satisfactory solution to the European Parliament's wish to scrutinise the implementation of instruments adopted under the co-decision procedure and that, accordingly, implementing powers should be conferred on the Commission without time-limit. The European Parliament and the Council also declared that they would make sure that the proposals aimed at repealing the provisions in the instruments that provide for a time-limit on the delegation of implementing powers to the Commission are adopted as rapidly as possible. Following the introduction of the regulatory procedure with scrutiny, the provision that provides for that period of suspension in Regulation (EC) No 562/2006 should be deleted.

- (6) Regulation (EC) No 562/2006 should therefore be amended accordingly.

- (7) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law.

- (8) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽⁵⁾, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC ⁽⁶⁾ on certain arrangements for the application of that Agreement.

⁽¹⁾ Opinion of the European Parliament of 14 November 2007 (not yet published in the Official Journal) and Council Decision of 3 March 2008.

⁽²⁾ OJ L 105, 13.4.2006, p. 1.

⁽³⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽⁴⁾ OJ C 255, 21.10.2006, p. 1.

⁽⁵⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁶⁾ OJ L 176, 10.7.1999, p. 31.

- (9) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC ⁽¹⁾ and 2004/860/EC ⁽²⁾.
- (10) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽³⁾. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (11) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

HAVE ADOPTED THIS REGULATION:

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 11 March 2008.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
J. LENARČIČ

⁽¹⁾ Council Decision 2004/849/EC of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 368, 15.12.2004, p. 26).

⁽²⁾ Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 370, 17.12.2004, p. 78).

⁽³⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁴⁾ OJ L 64, 7.3.2002, p. 20.

Article 1

Amendments

Regulation (EC) No 562/2006 is hereby amended as follows:

- (1) Article 12(5) shall be replaced by the following:

'5. Additional measures governing surveillance may be adopted. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 33(2).';

- (2) Article 32 shall be replaced by the following:

'Article 32

Amendments to the Annexes

Annexes III, IV and VIII shall be amended in accordance with the regulatory procedure with scrutiny referred to in Article 33(2).';

- (3) Article 33(2) shall be replaced by the following:

'2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.;

- (4) Article 33(4) shall be deleted.

Article 2

Entry into force

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