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

# Second report on the implementation and functioning of the local border traffic regime set up by Regulation No 1931/2006

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## 1. INTRODUCTION

The 2006 Regulation laying down rules on local border traffic at the external land borders of the Member States[1] allows derogating, for persons living in a border area, from the general rules on border checks set out in the Schengen Borders Code. The aim is to avoid creating barriers to trade, social and cultural interchange or regional cooperation with neighbouring countries. The Regulation authorises Member States to conclude bilateral agreements with neighbouring non-EU countries, provided these agreements fully comply with the parameters set by the Regulation.

In its first report on the functioning of the local border traffic (LBT) regime[2], the Commission stated that *'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.'*

The Commission asked Member States for information on the application and effects of the local border traffic regime. This second report has been drawn up on the basis of the answers provided by eighteen Member States. Six Member States (NL, IT, CZ, EL, CY and BG) did not reply. However, Member States which do not have external land borders, or which do not intend concluding LBT agreements, made no general comments on the implementation and functioning of the LBT regime.

## 2. CONSULTATIONS BASED ON ARTICLE 13 LBT REGULATION

This section provides an update on the state of play regarding bilateral agreements since the first report in July 2009.

### 2.1. Agreements in force

Since the Regulation was adopted, four LBT agreements have entered into force: Hungary-Ukraine in January 2008, Slovakia-Ukraine in September 2008, Poland-Ukraine in July 2009 and Romania-Moldova in October 2010. Only the Romania-Moldova agreement fully complies with the LBT Regulation. The other agreements either have a border area that goes beyond what is allowed by the Regulation (HU-UA; SK-UA, albeit in a limited area), or require travel medical insurance contrary to the Regulation (PL-UA).

In addition, Slovenia and Croatia have a bilateral agreement on border traffic cooperation that dates from 2001 and that is incompatible with the Regulation in several important respects[3]. The Commission has repeatedly asked Slovenia to amend the agreement in order to bring it

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1 Regulation No 1931/2006 of 20 December 2006; OJ L 29, 3.2.2007, p.3.
2 COM (2009) 383 final of 24 July 2009.
3 For details, see first LBT report, COM (2009) 383, p. 6-7.

into line with the Regulation. However, the Commission has not been informed of any such amendment, nor has it received a timeframe for any planned amendment.

The LBT agreement between Austria and Liechtenstein will lapse, as Liechtenstein is about to join the Schengen area.

### 2.2. Agreements that will soon enter into force

- Poland-Belarus

The Commission was consulted on a draft agreement and indicated that the travel medical insurance required for border crossings was not compatible with the Regulation. No map of the Belarusian border area was provided, so it was impossible to assess whether that area complies with the Regulation. The draft agreement has not been amended. Poland and Belarus signed the agreement on 12 February 2010. The ratification procedures are ongoing in both countries. The agreement is expected to enter into force in early 2011.

- Latvia-Belarus

In August 2009, a draft agreement between Latvia and Belarus was transmitted for consultation. The Commission noted two incompatibilities with the Regulation: the requirement to possess travel medical insurance as well as the lack of an obligatory condition to prove residence in the border area and legitimate reasons for frequent border crossing. In December 2010, Latvia informed the Commission that the agreement was signed on 23 August 2010 and that Latvia had ratified in October 2010. The draft agreement has not been amended.

- Lithuania-Belarus

The Commission was consulted on a draft agreement and considered that it complied with the Regulation. Lithuania and Belarus signed the LBT agreement on 20 October 2010. Ratification procedures are ongoing. The agreement is expected to enter into force in 2011.

- Norway-Russian Federation

The Commission was consulted on a draft agreement and assessed it as complying with the Regulation. Norway and the Russian Federation signed the LBT agreement on 2 November 2010. Ratification procedures are ongoing. The agreement is expected to enter into force in 2011.

### 2.3. Other consultations

The Commission had been consulted on the draft agreements between Latvia and the Russian Federation, between Lithuania and the Russian Federation and between Romania and Ukraine. These agreements were found compatible with the Regulation, but they have not yet been signed.

In October 2008 the Commission commented on draft agreements between Bulgaria and Serbia and between Bulgaria and FYROM, but since then it has not been further consulted on these drafts.

## 3. FUNCTIONING OF THE LBT REGIME IN PRACTICE

### 3.1. Facilitation measures used by Member States in bilateral agreements

In its first report the Commission found that the LBT agreements lay down stricter conditions than those that would be allowed by the LBT Regulation. It also found that none of the

agreements in force or signed use the full range of facilitation measures. Nothing has changed since then to alter this assessment.

In particular, restrictions are foreseen regarding how long a person can stay in the EU. Where the Regulation allows a person to stay in a Member State for up to three months within a given period, certain (draft) agreements reduce the maximum stay to 15 days within a given period, or to 90 days within 180 days. Three agreements require the person to have been resident in the border area for three years; the others require only a one-year period of residence, in accordance with the Regulation. Lastly, the LBT permits are not issued free of charge, as the Regulation allows, but subject to a fee of between 20 and 35 Euros.

### 3.2. Use made of the bilateral agreements by border residents

In order to have an overview of how citizens use the local border traffic agreements, the Commission asked Member States to send it information on the numbers of permits issued in relation to the total eligible population, the number of applications refused and why, the length of the stay and the number of abuses/withdrawals.

#### *3.2.1. Number of permits issued*

| | *Number of permits* | *Period*[4] | *Total eligible population* | *Permits issued compared to eligible population* |
|---|---|---|---|---|
| *Hungary* | 58 055 | 1/2008- 5/2010 | 400 000 – 450 000 | approx. 13% |
| *Poland* | 31 652 | 7/2009– 3/2010 | 1.2 million | approx. 2.7% |
| *Slovakia* | 1 106 | 9/2008 -6/2010 | 415 000 | approx 0.3% |
| *Romania* | 20.308 | 10/2010- 12/2010 | 1,2 million | approx. 2 % |
| *Slovenia* | 15 623 valid border passes currently | | 250 000 | approx. 6.2% |

There is a high uptake by people living in areas bordering Romania, because of strong ties between Romania and Moldova, and Hungary, because most of these people belong to the Hungarian ethnic minority and have strong ties to Hungary. People living near the borders of Slovenia and Poland make less use of LBT permits, and people living near the Slovakian border use them least of all.

#### *3.2.2. Applications refused*

**Hungary** refused 838 applications from December 2007 to May 2010, solely on the basis of SIS alerts or bans on entering and staying in the country. **Poland** rejected 272 applications in the period July 2009 to March 2010, mainly on the basis of SIS alerts, but also because the person's current permit was still valid. **Slovakia** refused 169 applications in the period from September 2008 to June 2010, mainly because applicants did not give any well-founded economic reason for frequent border crossings, as required by the agreement. **Romania** refused 972 applications from October to December 2010, mainly because applicants did not

[4] Time periods differ due to different entry into force of the agreements.

give any well-founded reason for frequent border crossings or were considered to present risks related to irregular immigration.

The percentage of applications refused thus ranges from 13% (SK), to 4,7 % (RO) to 1.4% (HU) and 0.85% (PL). It can thus be considered as relatively high in Slovakia, low in Romania and very low in the other two Member States. The main reasons for refusal are SIS alerts or that applicants are unable to provide legitimate reasons for frequent border crossing.

**Slovenia** informed the Commission that it does not make formal refusals: instead, applicants withdraw their application if they are informed that they do not meet the necessary conditions.

*3.2.3. Duration of stay and number of crossings*

The LBT Regulation allows for a maximum of three months of uninterrupted stay. Since this was a subject of discussion during the negotiations in 2006, the Commission was interested in receiving information on how long LBT permit holders stayed in each country. Since the LBT Regulation also exempts permit holders from having their passports stamped, it was obviously impossible to collect this information by comparing entry and exit stamps.

In order to verify that LBT holders comply with the three-month rule, Hungary, Poland, Slovakia and Romania use their national entry-and-exit systems, which allow the length of stay to be calculated. These Member States were therefore able to provide useful information on the number of crossings and the average length of stay.

**Hungary** does not have details regarding the number of crossings, but noted that the permits are used daily or every second day in practice, with an average stay of one day. During the period July 2009 to February 2010, there were approximately 1 550 000 crossings with an LBT permit. In terms of the aggregate duration of stay within a period of six months from the first entry, permit holders almost always stay for the maximum period of three months.

**Poland** registered 883 696 LBT crossings during the period July 2009 to April 2010, with numbers tending to rise. The average number of visits to Poland per LBT permit is 20.4 and the average stay is around six hours.

**Slovakia** reported that LBT permits holders usually stay one or two days.

**Romania** did not send information on duration of stay and numbers of crossings in practice.

**Slovenia** has no exact information on the frequency of LBT crossings. Holders of LBT permits are allowed to stay for up to seven consecutive days in the designated border area, but most of them return on the same or the following day.

From the above information, it is clear that LBT holders cross the respective borders very regularly to stay for just a few hours or one or two days at a time. The LBT regime, where applied, thus fulfils its purpose of allowing interchange and cooperation across the borders and genuinely makes life easier for people living in the border areas.

*3.2.4. Cases of abuse and withdrawals of permits*

**Hungary** has fined 16 Ukrainian nationals for overstaying during the period January-April 2010, and has refused entry in 1231 cases because the persons concerned had already stayed for three months within a six-month period. Two permits were withdrawn in 2009 and four in the first five months of 2010. In addition, 18 permits were deemed invalid, since the holders had been banned from entering and staying in Hungary after the permits were issued.

**Poland** has detected 15 cases of abuse in the period July 2009 to April.2010. They involved nine persons staying outside the LBT area, five persons who stayed after expiry of the

permitted period and one case of illegal involvement in economic activities in Poland. These cases of abuse resulted in decisions ordering the persons concerned to leave Poland and revoking their LBT permits. From July 2009 to March 2010, 39 decisions were taken to withdraw LBT permits, representing 1% of the total number of permits issued during that period.

**Slovakia** detected one case of abuse during the period September 2008 to June 2010. It resulted in the person concerned being expelled. During the same period, 11 permits were withdrawn.

**Slovenia** detected 11 cases of LBT abuse in 2009, which involved smuggling, illegal immigration and stays outside the designated border area. Sanctions are based on national legislation and include temporary seizure of the permit.

**Austria** reported one detected case of abuse of an LBT permit issued by Slovakia to a Ukrainian national. In addition, Austrian officers participating in joint operations have detected several cases of abuse (overstaying) by Ukrainian nationals with LBT permits issued by Hungary. Other Member States[5] have not detected any cases of abuse.

**Slovakia** also reports that Ukrainian nationals were detected with LBT permits from several Member States, which are being used to cross certain internal borders (HU-SK, PL-SK). Slovakia took measures to penalise such conduct. The Commission takes the view that such internal crossings do not contravene the LBT regime, as long as the persons concerned stay within the respective border areas.

**Romania** has detected 27 cases of abuse between October and December 2010. 22 permits were withdrawn and five return decisions issued.

The Commission concludes from the above figures that relatively few abuses occur in the practical implementation of the LBT agreements. In particular, there is no evidence that LBT holders would systematically travel to other Member States in violation of the rules.

## 4. SPECIFIC ISSUES IN FOLLOWING UP THE PREVIOUS REPORT

### 4.1. Definition of the border zone

#### *4.1.1. General*

Poland[6] has called for a change in the way the Regulation defines the border area[7]. Poland considers that the current definition leads to the division of integrated areas and excludes political and economic centres.

Defining the eligible border area was one of the most difficult points during the discussion of the draft Local Border Traffic Regulation in 2006. While cross-border movements should indeed be facilitated, the security requirements of the entire Schengen area also had to be considered, as the LBT regime is an exemption from the general rules for external border crossings.

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5 BE, CH, DE, EE, ES, FR, LT, LV, MT, NO, PT and SE.

6 Most recently through a letter of Minister for Foreign Affairs Sikorski and Minister of Internal Affairs and Administration Miller sent to Member States and the Commission in September 2010.

7 Article 3 point 2 of the regulation reads: '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;'.

The Commission indicated that it was willing to discuss whether the definition of the border area was flexible enough. However, no such discussion arose and no Member State other than Poland requested changes to the definition of the border zone in reply to the questionnaire for this report. Indeed, one Member State is of the opinion that the definition should not be amended and that the Commission should be vigilant in checking that bilateral agreements comply with the Regulation, especially as regards the designation of the border area.

The Commission therefore concludes that the current definition of the border area (as a 30-km zone which may exceptionally extend to up to 50 km) remains a fair compromise.

*4.1.2. The Kaliningrad region*

The Kaliningrad region of the Russian Federation became an enclave within the EU as a consequence of the EU enlargement in 2004. It has a population of almost one million inhabitants, of whom about 430 000 live in the capital, Kaliningrad.

In recent months, Poland[8] (not only unilaterally but also jointly with the Russian Federation[9]) has called for amendments to the local border traffic Regulation 'tailored to the specific situation of the Kaliningrad region'.

Poland holds that strict compliance with the Regulation would divide the Kaliningrad district into three areas – one covered by a local border traffic agreement with Poland, one by an agreement with Lithuania and one without any agreement at all as it lies outside the border area. Poland thus calls for the Regulation to be amended to allow the inclusion of the entire Kaliningrad district.

The Commission reminds Member States that the EU has, over the past few years, taken a number of concrete initiatives that demonstrate its willingness to facilitate movement for Kaliningrad residents. Such initiatives include the Facilitated Transit Document (FTD) and Facilitated Rail Transit Document (FRTD)[10], which have simplified travel between Kaliningrad and mainland Russia, and the 2007 EU-Russia Visa Facilitation Agreement[11] which facilitates the issuance of short-term visas for all Russian nationals travelling to Schengen countries. The Commission has recommended renegotiating the Visa Facilitation Agreement, to improve the way it operates and to introduce further facilitations for all citizens, including residents of Kaliningrad.

However, given the specific position of Kaliningrad, the Commission considers that it may be justifiable to amend the LBT Regulation so that the entire Kaliningrad district can be treated as a border area. This would prevent an artificial division of that region whereby some inhabitants would not enjoy facilitations for local border traffic. It would also allow for enhanced regional cooperation. The Commission is thus open to discussing such an amendment with Member States and the European Parliament.

In the meantime, the Commission encourages Poland and the Russian Federation as well as Lithuania and the Russian Federation to conclude bilateral agreements under the terms of the current Regulation, which would immediately facilitate movement for residents of

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8 Letter of Minister for Foreign Affairs Sikorski and Minister of Internal Affairs and Administration Miller sent to Member States and the Commission in September 2010.

9 Declaration by Polish and Russian Ministers for Foreign Affairs, Sikorski and Lavrov 'on functioning of the rules of the Local Border Traffic regarding the Kaliningrad region of the Russian Federation and the adjacent territories of the Republic of Poland' of 6 April 2010.

10 Regulation No 693/2003 of 14 April 2003, OJ L 99, 17.4.2003, p. 8.

11 OJ L 129, 17.5.2007, p 27.

Kaliningrad. It strongly advises against concluding agreements that do not respect the terms of the Regulation.

### 4.2. Travel medical insurance

Since 2008 Poland has also been asking for an amendment that would require LBT permit holders to have travel medical insurance. Indeed, all agreements which Poland has negotiated already include such a requirement. The concern is that, in the absence of such insurance, LBT permit holders would cross the border only to use emergency medical care.

The Commission stated in its first report on the implementation of the Regulation that requiring travel medical insurance in the bilateral agreement would conflict with the LBT Regulation. Neither Article 4 nor Article 9 mentions the possibility of requiring travel medical insurance. The aim of these articles is to facilitate travel by simplifying the entry conditions and the conditions for issuing the local border traffic permit. They exclude, in particular, the need to provide proof of means of subsistence. Moreover, the Visa Code obliges visa applicants to have travel medical insurance, but local border traffic permit holders are expressly exempted from the visa obligation. Finally, Member States whose LBT agreements (in conformity with the Regulation) do not require travel medical insurance have reported no cases of LBT permit holders without medical insurance using emergency health care during a stay on their territory.

In view of the above, the Commission maintains its opinion that other solutions should be considered, such as concluding a bilateral agreement between the Member States and the third country concerned on reimbursing any medical costs incurred.

## 5. CONCLUSION

The Local Border Traffic regime has been in existence for four years, and there are still only four LBT agreements in force that were negotiated under the Regulation. However, three more agreements – between Poland and Belarus, Lithuania and Belarus and Norway and Russia – are expected to enter into force over the next few months. This shows that the countries concerned consider the regime useful for increasing cross-border trade, social and cultural interchange and regional cooperation.

From the relatively limited information available, the Commission concludes that the LBT regime is working well in practice, since it makes life significantly easier for people living near the external land borders and there is little evidence that the regime is being abused.

The Commission therefore believes that the LBT Regulation strikes the right balance between facilitations and the security concerns of the Schengen area as a whole. Consequently, the Commission is not considering amending the LBT Regulation either in order to redefine the border area or to require travel medical insurance. The Commission therefore requests Member States with agreements that do not conform to the Regulation to amend these, in line with the procedure laid down in Article 13 of the Regulation. If these agreements are not amended, the Commission will be obliged to make use of its powers under the Treaty to ensure consistent and correct implementation of EU law.

In the specific case of Kaliningrad, the Commission is in favour of amending the Local Border Regulation so that it covers the entire Kaliningrad district, subject to a favourable outcome of the discussion between Member States and the European Parliament.