



**COUNCIL OF
THE EUROPEAN UNION**

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COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 August 2010
to:	Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union

Subject:	Commission Recommendation of 16.8.2010 amending the Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons (C (2006) 5186 final)
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Delegations will find attached Commission document C(2010) 5559 final.

Encl.: C(2010) 5559 final



EUROPEAN COMMISSION

Brussels, 16.8.2010
C(2010) 5559 final

COMMISSION RECOMMENDATION

of 16.8.2010

amending the Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons (C (2006) 5186 final)

COMMISSION RECOMMENDATION

of 16.8.2010

amending the Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons (C (2006) 5186 final)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Commission Recommendation of 6 November 2006 (C (2006) 5186 final) established a "Practical Handbook for Border Guards (Schengen Handbook)" containing common guidelines, best practice and recommendations on border controls.
- (2) The Commission committed itself to ensuring regular updates of the Practical Handbook for Border Guards.
- (3) The Practical Handbook should be adjusted to the latest developments including, in particular, the adoption of following legal acts:
 - Council Decision 2008/903/EC of 27 November 2008 on the full application of the provisions of the Schengen *acquis* in the Swiss Confederation¹;
 - Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)²;
 - Commission Decision of 19 March 2010 (C(2010)1620 final) establishing the Handbook for the processing of visa applications and the modifications of issued visas;
 - Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa³.
- (4) The Commission recommends to take into consideration the Communication from the Commission to the European Parliament and to the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the

¹ OJ L 327, 5.12.2008, p.15.

² OJ L 243, 15.9.2009, p.1.

³ OJ L 85, 31.3.2010, p.1

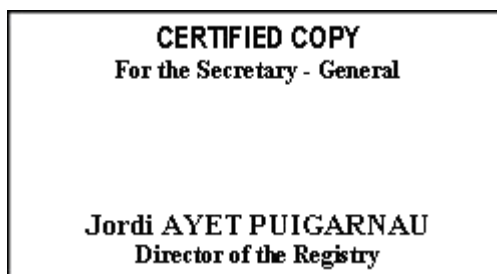
Union and their family members to move and reside freely within the territory of the Member States (COM (2009)313 final)⁴,

HEREBY RECOMMENDS:

1. The Annex to the Recommendation of 6 November 2006 (C(2006)5186 final) is amended as set out in the Annex to this Recommendation.
2. Member States should transmit the amendments to the Practical Handbook for Border Guards, laid down in this Recommendation, to their national authorities competent for carrying out border controls on persons.

Done at Brussels, 16.8.2010

For the Commission
Cecilia Malmström
Member of the Commission



⁴

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

ANNEX

(1) In the table of contents points 7 and 8 are replaced by the following:

"7. Visas applied for at the border, including to seafarers in transit, and refusal of such visas

8. Annulment and revocation of Schengen uniform visas".

(2) In Part One point 1 is replaced by the following:

"1. SCHENGEN STATES (States fully implementing the Schengen *acquis* and having abolished border control at their internal borders)³:

1. Austria	10. Hungary	19. Poland
2. Belgium	11. Iceland	20. Portugal
3. Czech Republic	12. Italy	21. Slovakia
4. Denmark	13. Latvia	22. Slovenia
5. Estonia	14. Lithuania	23. Spain
6. Finland	15. Luxembourg	24. Sweden
7. France	16. Malta	25. Switzerland
8. Germany	17. Netherlands	
9. Greece	18. Norway	

N.B. A Protocol between the EU/EC, Switzerland and **Liechtenstein** on the accession of Liechtenstein to the Schengen *acquis* was signed on 28 February 2008.

³ Bulgaria, Cyprus and Romania are not yet full Schengen States, but apply the common rules on external border control.

(3) In Part One point 23 is replaced by the following:

"23. '**Visa**' means an authorisation issued by a Member State with a view to:

- a) transit through or an intended stay in the territory of the Member States of a duration of no more than three months in any six-months period from the date of first entry in the territory of the Member States;
- b) transit through the international transit areas of airports of Member States".

(4) In Part One new points 24, 25 and 26 are added:

"24. '**Visa with limited territorial validity**' means a visa valid for the territory of one or more Member States but not all Member States.

25. '**Airport transit visa**' means a visa valid for transit through the international transit areas of one or more airports of the Member States.

26. '**Long-stay visa**' means a national visa issued by one of the Member States for stays exceeding three months in accordance with its national law or Union law."

(5) In Part Two, Section I, is amended as follows:

(a) In point 1.1, indent b) is replaced by the following:

"b) the possession of a valid visa, when this is required, except where a third-country national holds a residence permit issued by a Schengen State which is deemed to be equivalent to a visa or a valid long-stay visa. This equivalence does not apply to temporary permits issued pending examination of a first application for a residence permit or an application for asylum;"

(b) In point 1.1, the box indicating the legal basis is replaced by two following boxes:

"* *Legal basis:*

- Schengen Borders Code (Article 5)
- Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the

Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa

- Council Regulation (EC) No 539/2001, as amended by:
- Council Regulation (EC) No 2414/2001
- Council Regulation (EC) No 453/2003
- Council Regulation (EC) No 851/2005
- Council Regulation (EC) No 1932/2006

** Link:*

- List of third countries whose nationals must be in possession of visas when crossing the external borders and of those whose nationals are exempt from that requirement
- Information on national derogations from the visa requirements
- Common list of third countries whose nationals are required to be in possession of an airport transit visa when passing through the international transit area of airports situated on the territory of the Member States
- List of third countries whose nationals are required to be in possession of an airport transit visa, when passing through the international transit area of airports situated on the territory of one Member State
- List of residence permits entitling their holders to transit through the airports of Member States without being required to hold an airport transit visa

(c) The box after point 1.5 is replaced by the following box:

*** Link:*

- Documents issued to stateless persons and refugees by the Schengen States
- Information on national derogations from the visa requirements

(d) The first indent of point 1.6 is replaced by the following:

- "the verification that the third-country national is in possession of a document or documents valid for crossing the border and which has not

expired, and that it is accompanied, where applicable, by the requisite visa, residence permit or long-stay visa;"

(e) The fourth indent of point 1.7 is replaced by the following:

- "the verification that the person is in possession of a valid visa, if required, except when he/she is holding a valid residence permit issued by the Schengen States or a valid long-stay visa or other documents authorising a stay or a re-entry into their territory;"

(f) The second indent of point 3.1.1 is replaced by the following:

- "members of the family of EU, EEA and CH citizens who are nationals of a third country: passport. They may also be required to have an entry visa, if they are nationals of a third country subject to the visa obligation, unless they are in possession of a valid residence permit, issued by a Schengen State or, when accompanying or joining the EU or EEA citizen who has exercised the right to move and reside freely by virtue of Directive 2004/38/EC, a valid residence permit or card⁴, issued by a Member State.

For further information on the specific rules relating to family members of EU, EEA and CH citizens, see PART III of the Handbook for the processing of visa application and the modification of issued visas, hereinafter referred to as the "Visa Code Handbook."

⁴ Only residence cards issued under Article 10 and Article 20 of Directive 2004/38/EC (i.e. those issued to family members of an EU citizen who moved to a Member State other than that of his/her nationality) exempt third country family members from the visa requirement.

(g) The box after point 3.5.7 is replaced by the following box:

"* *Legal basis:*

- Schengen Borders Code (Annex VII)

- Vienna Convention on Diplomatic Relations of 18 April 1961

Link:

– Information on national derogations from the visa requirements."

- (h) In point 3.8, the footnote number ⁴ becomes the footnote number ⁵.
- (i) In point 4.11, the box indicating the legal basis is replaced by the following box:

** Legal basis:*

- Schengen Borders Code (Article 10 and Annex IV)
- Directive 2004/38/EC (Article 5) read in conjunction with Commission Communication COM (2009)313 final
- Schengen Convention (Article 21)

- (j) In point 6.1, indent c) is replaced by the following:
- "c) they have no valid visa, when this is required, residence permit or a long-stay visa issued by a Schengen State;"
- (k) In point 6.2, indent c) is replaced by the following:
- "c) if the person holds a residence permit, a long-stay visa or a re-entry visa issued by a Schengen State, or where required, a residence permit or a long-stay visa and a re-entry visa, in order to allow the person to transit and reach the territory of such a State. Transit can, however, be refused in case there is an alert concerning this person in national data bases of a Schengen State whose external borders the person is seeking to cross and the alert is accompanied by instructions to refuse entry or transit."

- (l) The box after point 6.2 indicating the legal basis is replaced by the following box:

** Legal basis:*

- Schengen Borders Code (Article 5)
- Visa Code (Article 32, 35 and Annex VI)

- (m) The box after point 6.3.2 indicating the legal basis is replaced by the following box:

** Legal basis:*

- Directive 2004/38/EC (Article 5 and 27 to 33) read in conjunction with Commission Communication COM (2009)313 final
- Judgement of the ECJ of 25 July 2002, Case C 459/99, MRAX vs. Belgium
- Judgement of the ECJ of 17 February 2005, Case C 215/03, Salah Oulane vs. Minister voor Vreemdelingenzaken en Integratie

(n) Point 6.5 is replaced by the following:

"6.5 Where the officer responsible for checks finds that the holder of a visa has been the subject of an alert in the SIS for the purpose of being refused entry, he/she must revoke the visa by applying a stamp stating 'REVOKED'. For further details, see point 8, Section I."

(o) Point 6.6 is replaced by the following:

"6.6 The visa must not be annulled or revoked solely because the third-country national was not able to produce the supporting document(s) requested to justify the purpose of the journey. In this latter case, a further enquiry must be made by the border guard in order to assess whether the person obtained the visa in a fraudulent way and represents a risk in terms of illegal immigration. If necessary, contacts with the competent authorities of the Schengen State having issued the visa will be taken. Only if it is ascertained that the visa was obtained in a fraudulent way, such visa must be annulled by the border guard. For further details, see point 8, Section I."

(p) Point 6.7 is replaced by the following:

"6.7 All persons to whom entry has been refused or a visa holder whose visa has been annulled or revoked shall have the right to appeal in accordance with national law. A written indication on procedures for appeal and on contact points able to provide information on representatives competent to act on behalf of the third-country national must be given to the third-country national concerned."

When a visa has been annulled or revoked, as appropriate, the border guard must fill in the standard form for notifying and motivating annulment or revocation of a visa substantiating the reason(s) for the annulment, and submit it to the third-country national concerned⁶.

⁶ This procedural requirement will become applicable as of 5 April 2011.

- (q) The box after point 6.12 indicating the legal basis is replaced by the following box:

** Legal basis:*

- Directive 2004/38/EC (Article 5 and 27 to 33) read in conjunction with Commission Communication COM (2009)313 final
- Schengen Borders Code (Article 13 and Annex V)
- Schengen Convention (Article 26)
- Directive 2001/51/EC
- Visa Code (Article 34 and Annex VI)

- (r) The title of point 7, points 7, 7.1 and 7.2 are replaced by the following:

"7. Visas applied for at the border, including to seafarers in transit, and refusal of such visas

7.1 Types of visas:

- 'Visa' means an authorisation issued by a Member State with a view to:

a) transit through or an intended stay in the territory of the Member States of duration of no more than three months in any six-months period from the date of first entry in the territory of the Member States;

b) transit through the international transit areas of airports of Member States.

- 'Visa with limited territorial validity' means a visa valid for the territory of one or more Member States but not all Member States.

- 'Airport transit visa' means a visa valid for transit through the international transit areas of one or more airports of the Member States.

- 'Long-stay visa' means a national visa issued by one of the Member States for stays exceeding three months in accordance with its national law or Union law.

For further information on the different types of visas, see point 9 of Part II of the Visa Code Handbook.

For further information on specific rules for issuing visas at the border to members of the family of EU/EEA citizens and CH citizens, see PART III of the Visa Code Handbook.

For further information on the issuance of visas at the border, see the respective provisions of part IV of the Visa Code Handbook.

** Legal basis:*

- Council Regulation 539/2001;
- Visa Code (Article 2)

**Links:*

- Filling in the visa sticker
- Examples of filled in visa stickers

- (s) The title of point 8 and point 8 is replaced by the following:

"8. Annulment and revocation of Schengen uniform visas

See the respective provisions of points 2 and 3 of Part V of the Visa Code Handbook.

** Legal basis:*

- Visa Code (Article 34 and Annex VI)

- (t) Point 9.4 and the box indicating the legal basis are deleted.

- (6) In Part IV, the first bullet point and the list is amended as follows:

- (a) The first bullet point is replaced by the following:

"Union law";

(b) The following indents are deleted:

- "- Decision of the Executive Committee of 14 December 1993 on the common principles of cancelling, rescinding or shortening the length of validity of the uniform visa (SCH/COM-ex(93)24) (OJ L 239, 22.9.2000, p.154);
- Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit (OJ L 64, 7.3.2003, p. 1);
- Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts (OJ C 326, 22.12.2005, p.1)";

(b) The following indents are added:

- "- Council Decision No 2008/903/EC of 27 November 2008 on the full application of the provisions of the Schengen *acquis* in the Swiss Confederation (OJ L 327, 5.12.2008, p. 15);
- Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1);
- Commission Decision of 19 March 2010 (C(2010)1620 final) establishing the Handbook for the processing of visa applications and the modifications of issued visas;
- Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa (OJ L 85, 31.3.2010, p. 1)".