



# EUROPEISKA GEMENSKAPERNAS KOMMISSION

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Förslag till

## **RÅDETS DIREKTIV**

om avskaffande av kontroll av personer  
vid de inre gränserna

(framlagt av kommissionen)



## Introduction

In its work programme for 1995 the Commission announced its intention of presenting three additional proposals with a view to attaining the objective set out in Article 7a of the EC Treaty in the field of the free movement of persons.

On 12 July 1995, the Commission has adopted the three proposals *en bloc*; they round off the body of legislation aimed at ending controls on persons at the Union's internal borders. Together with the other measures already adopted or still being discussed, their adoption by the Council will enable that objective to be attained without restriction.

This step constitutes a clear and unconditional obligation on the part of the Union stemming from Article 7a. In putting forward the proposals the Commission is also paying due regard to the legitimate expectations of the European Parliament and citizens of the Union.

Seven Member States (B, D, E, F, L, NL and P) have committed themselves to implementing the Schengen Agreement irreversibly with effect from 26 March 1995. Despite a few "teething troubles" which have led one Member State to apply a safeguard clause, the mechanism is working satisfactorily overall. The Member States have found that Schengen has not operated at the expense of security; indeed most of them reckon that the level of security inside the frontier-free area has increased as a result of the flanking measures taken. Schengen thus shows that an area can be created in which people are both free and safe.

The three proposals in question, of which this is one, are as follows:

1. A proposal for a Directive on the practical application of the principle of the elimination of controls on persons: it is based on Article 100 of the EC Treaty, requiring the unanimous approval of the Council. The Directive would provide final confirmation that controls at internal borders have indeed been eliminated.

It would take effect only when the flanking measures were themselves in force. These flanking measures are considered essential to maintaining a high level of security within the area without internal borders and the Commission would like them to be implemented as soon as possible. They include the Dublin Convention determining the State responsible for examining applications for asylum lodged in one of the Member States, the draft External Frontiers Convention, the proposal for a Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, the Council Regulation laying down a uniform format for visas and the draft Convention on a European Information System.

2. A proposal for a Directive adapting the secondary legislation on the free movement of citizens of the Union (and their families). This proposal is based on Articles 49, 54(2) and 63(2) of the EC Treaty; it would amend the existing secondary legislation to take account of the ending of controls at internal borders required by the Directive referred to at 1. The practical effectiveness of the proposal is therefore dependent on that Directive's entry into force.
3. A proposal for a Directive giving nationals of non-member countries who are lawfully in the territory of one Member State the right to travel for a brief stay in the territory of any other Member State, an entitlement known as the "right to travel". This proposal is based on Article 100 of the EC Treaty. It is the last of the measures accompanying the ending of controls on persons for which a proposal has still to be put forward at Union level. It would also be a considerable step forward in the treatment of non-Union nationals who are lawfully resident in a Member State and who wish to travel in the Community, and of non-Community members of the families of Union nationals.

The proposal would not affect the first entry into the Community of a non-Union national or the decision of a Member State to authorize him to remain in its territory for a long stay. Nor would it affect *a fortiori* Member States' decisions regarding access to the labour market or to self-employed activity.

Like other flanking measures (e.g. the Dublin Convention, for which the ratification process will shortly be completed), this "right to travel" Directive could be applied before controls on persons at internal borders were abolished.

## EXPLANATORY MEMORANDUM

### A. General

1. In its communication of 8 May 1992 to the Council and Parliament on the abolition of border controls,<sup>(1)</sup> the Commission set out its interpretation of Article 7a (formerly Article 8a) of the EC Treaty.

The legal interpretation given in the communication (see Annex) can be summarized as follows:<sup>(2)</sup>

- " In defining the internal market as "an area without internal frontiers", the Single European Act was intended to give a new dimension to the operation of the different freedoms of movement provided for in the Treaty. The Community internal market must operate under the same conditions as a national market: just as there are no border controls between regions in a single Member State, goods, services, capital and individuals must therefore be free to move, unimpeded by any border controls, between Member States;
- This "area without internal frontiers" cannot be realized in practice unless all goods, services, capital and individuals moving within that area are covered; in the particular case of individuals, any interpretation of Article 8a that confined its effects to Community nationals only would deprive that Article of any practical effectiveness;
- The measures to achieve this objective are clearly set out in a timetable which runs until 31 December 1992 [...];
- Article 8a imposes on the Community, and therefore also on the Member States, an obligation to produce results; that obligation can be met only if all controls at internal frontiers are abolished.
- Article 8a therefore establishes a clear and simple objective that allows no margin of discretion. But the abolition of border controls does not deprive the competent authorities of their power to act throughout their territory and up to the frontier of that territory. However, as the crossing of the frontier may no longer give rise to controls, such intervention must form part of internal monitoring arrangements covering the whole of the territory. Powers to impose controls or penalties which were exercised only on the occasion of, or in connection with, the crossing of an internal frontier would, therefore, be contrary to Article 8a."

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<sup>(1)</sup> SEC(92) 877 final.

<sup>(2)</sup> See page 3 of the communication.

2. There can be no escaping the fact that, alone among the different freedoms of movement referred to in Article 7a, the free movement of persons has not so far been achieved.

This is because the accompanying measures essential to the elimination of controls either have been adopted but have not yet been put into effect (such as the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities) or are still under discussion (e.g. the Regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, and the Convention on controls on persons crossing the external frontiers of the Member States).

3. Implementation of the essential accompanying measures will, in conjunction with Article 7a of the EC Treaty, enable controls on persons crossing internal frontiers to be eliminated.

Nevertheless, if only for the sake of clarity and legal certainty, it is necessary, among other things, to:

- spell out the scope of the ban on controls and formalities at internal frontiers;
- confirm that controls are to be eliminated for all individuals crossing internal frontiers, regardless of their nationality;
- define what is meant by "internal frontiers", particularly in the case of airports and seaports;
- determine the territorial scope of the obligation to eliminate controls at internal frontiers.

These questions, which are harmonized and coordinated by this proposal, form an integral part of the concept of the internal market as far as the free movement of persons is concerned, and their approximation has a direct impact on the functioning of the Community market. Nevertheless, Article 100a cannot be relied on here since it does not apply to the free movement of persons. The proposal is therefore based on Article 100 of the EC Treaty. Such an approach is consistent with the legal basis (Article 100a) adopted for Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing.<sup>(3)</sup>

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<sup>(3)</sup> OJ No L 374, 31.12.1991, p. 4.

4. As the elimination of controls on persons crossing internal frontiers goes hand-in-hand with the implementation of the essential accompanying measures, Member States should be required to transpose the Directive by 31 December 1996 at the latest. Such a deadline should allow the Union and the Member States enough time to adopt and implement the last accompanying measures still pending.

However, the Commission undertakes here and now to present a proposal amending that date if it were to become clear after the adoption of this Directive that the accompanying measures could not be put into effect by 31 December 1996.

5. It follows from the above that, for the sake of clarity and legal certainty, it is necessary to harmonize and coordinate Member States' national laws on the crossing of internal frontiers as far as the questions listed in point 3 are concerned. Article 100 of the EC Treaty is the appropriate legal basis for such approximation of national laws (see point 3), which means that the proposal has to take the form of a directive.
- 5 bis. As far as the territorial scope of the directive is concerned, one must bear in mind that the principle of the elimination of controls and formalities on persons crossing internal frontiers should be applicable in the territories covered by the freedom of movement, as enshrined in Article 8A (new) of the Treaty.

However, the following elements must be taken into consideration:

- the elimination of controls on persons is linked to the implementation of essential accompanying measures;
- the territorial scope of some of the accompanying measures is not defined, as yet, especially as far as the specific situation of some parts of the territory of certain Member States is concerned.

It is therefore necessary to ensure the coherence of the territorial scope of the measures implementing the objectives set out in article 7A.

## **B. Comments on the articles**

### **Article 1: Elimination of controls and formalities for persons crossing internal frontiers**

6. Article 1(1) confirms the commitment which the Member States entered into when they inserted Article 7a (formerly Article 8a) into the EC Treaty: they must ensure that the crossing of an internal frontier in the internal market is treated in the same way as the crossing of a boundary between provinces, counties, regions .... It follows that:
  - the crossing of an internal frontier may not in itself give rise to controls or formalities;
  - all persons, whatever their nationality, should normally be able to cross internal frontiers unimpeded;
  - internal frontiers may be crossed anywhere and not merely at approved crossing points.
7. Nevertheless, eliminating controls at internal frontiers does not mean that internal frontiers (and the neighbouring territory) are to become "no-go" areas where no controls can be applied. Only frontier controls and formalities are banned (see Article 3(4)): Article 1(2) thus provides that the obligation to eliminate frontier controls and formalities does not deprive the competent authorities of the law-enforcement powers which the legislation of each Member State has conferred on them over the whole of its territory. These powers must be exercised without discrimination between domestic and cross-border traffic: powers to impose controls or penalties which were exercised only on the occasion of, or in connection with, the crossing of an internal frontier would be contrary to Article 7a. For example, a check on identity papers or travel documents (in a Member State where such checks fell within the remit of the police) performed a few miles inland of the internal frontier, at a point on a motorway where there were no entrance or exit roads between it and the frontier, would thus be discriminatory and would have to be regarded as a frontier control in disguise.
8. In the same connection, it should be stressed that the elimination of controls on persons crossing internal frontiers does not mean that any obligation imposed by Member States' national laws to carry identity papers or travel documents while on the public highway has to be done away with. Article 1(2) therefore provides that the elimination of controls and formalities for persons crossing internal frontiers does not affect any obligations to possess, carry and produce such documents which are laid down in a Member State's national rules.

### **Article 2: Temporary reinstatement of controls**

9. The elimination of controls and formalities for persons crossing internal frontiers should not undermine security in the frontier-free area. A battery of essential accompanying measures has thus been drawn up prior to the elimination of these controls in order to maintain a high standard of security.

This battery of measures should suffice to combat general risks such as illegal immigration.



10. Exceptional risks can nevertheless arise to which these instruments do not provide an adequate response and which can require controls to be reinstated on persons crossing internal frontiers. Article 2 lays down the conditions in which a Member State can reintroduce such controls.

Article 2(1) provides that a Member State may reinstate frontier controls where there is a serious threat to public policy or public security. The existence of a general risk (e.g. that of illegal immigration) is not sufficient to justify reliance on the safeguard clause: the other accompanying measures normally provide an appropriate response to such risks. The Member State in question must be faced with a sufficiently serious specific threat to its public policy or public security.

11. This also explains why internal-frontier controls may be reinstated only temporarily: applying the principle of proportionality, Article 2(3) provides that the period in which a Member State may apply such controls must be limited to what is strictly necessary in order to counter the threat.

The first sentence of Article 2(1) stipulates that, in the event of a serious threat, controls may be reinstated initially for not more than thirty days. In accordance with the second sentence of Article 2(1), it is sufficient in such cases for the Member State concerned to inform the Commission and the other Member States, providing them with all the appropriate details. Since the Member State concerned would be facing a serious threat, immediate action would be needed in most cases and there would appear to be less justification for prior consultation.

12. Clearly, a serious threat could last longer than thirty days; Article 2(2) stipulates that, in such cases, controls that have been reinstated at internal frontiers may be maintained for a further period of thirty days, but only after prior consultation of the Commission and the other Member States: the derogation from the principle of the elimination of internal-frontier controls then takes on greater importance, requiring a more thorough check on its justification. This means that, in accordance with Article 2(1), the Member State concerned must communicate the appropriate information before each consultation.

The period of thirty days is renewable, on one or more occasions, but the other Member States and the Commission must be consulted before each renewal.

Where it reinstates frontier controls, a Member State must inform and, should it maintain those controls for longer than thirty days, consult the other Member States and the Commission. The last sentence of Article 2(2) ensures that this information and consultation procedure does not endanger the Member State's security.

13. In accordance with the principle of proportionality, Article 2(3) stipulates that not only the duration of the period in which controls are reinstated, but also the nature of the controls themselves must be limited to what is strictly necessary in order to counter the threat.

14. It should be stressed here that Article 2 allows only controls, and not formalities, to be reinstated: it is hardly imaginable that a serious threat to public policy or public security could be countered simply through the introduction of frontier formalities without controls.

### **Article 3: Definitions**

15. Article 3 first defines the concept of internal frontiers.

In the case of land frontiers, the definition is self-evident: internal frontiers are the Member States' common land frontiers.

The first indent of Article 3(1) makes it clear that the concept of common land frontiers also embraces the rail or road terminals for links by bridge or tunnel between Member States, despite the fact that such terminals are not always close to the frontier but may be located some distance inland.

16. The second indent of Article 3(1) provides that airports are internal frontiers for intra-Community flights; the definition of intra-Community flights is that given in Article 2(3) of Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing.<sup>(4)</sup>
17. The third indent of Article 3(1) provides that seaports are internal frontiers for intra-Community sea crossings. The definition of intra-Community sea crossings has been taken from Article 2(5) of Council Regulation (EEC) No 3925/91.
18. The definitions of internal frontiers given here are consistent with the draft Convention on controls on persons crossing external frontiers, Article 1(1)(h) of which defines external frontiers inter alia as "airports and seaports, except where they are considered to be internal frontiers for purposes of instruments enacted under the Treaty establishing the European Community".
19. Article 3(4) defines the concept of frontier controls or formalities.

It has already been stated that the crossing of an internal frontier may not in itself give rise to controls or formalities.

A frontier control is accordingly first defined as "any control applied, in connection with or on the occasion of the crossing of an internal frontier, by the public authorities of a Member State".

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<sup>(4)</sup> OJ No L 374, 31.12.1991, p. 4.

Unless they rely on Article 2, Member States may not apply controls such as those referred to in Articles 5 to 7 of the draft Convention on controls on persons crossing external frontiers. The public authorities are not entitled, for example, to require persons crossing an internal frontier to produce their travel documents or to question them on the purpose of their journey, their means of subsistence, etc.

20. Persons crossing internal frontiers are currently subject to controls applied not only by public authorities but also by other parties, in particular carriers.

Carriers are checking their passengers' travel documents in order to avoid the penalties laid down by national rules introduced by ten Member States concerning the liability of carriers providing transport for persons not in possession of the travel documents required for entering those Member States' territory.

Such controls are not imposed explicitly by the national rules in question but are a logical consequence of those rules.

The national rules in question do not distinguish between travellers according to the starting-point of their journey and therefore apply to intra-Community as well as to international transport; they do not, however, for obvious reasons, apply to domestic travel.

It runs counter to the logic of the internal market for internal-frontier controls to be maintained by carriers at a time when they have to be eliminated by public authorities: the controls applied by carriers are prompted by rules adopted under the public (criminal or administrative) law of the Member State concerned and which must therefore be regarded as measures having equivalent effect to quantitative restrictions. Controls applied "by proxy" cannot be tolerated.

Member States must therefore repeal any measures that require persons such as carriers to apply controls in connection with the crossing of an internal frontier.

In the context of the elimination of controls on persons in pursuance of Article 7a of the Treaty, the question of penalties for carriers has so far been addressed only from an external standpoint, i.e. for transport from non-member countries to the Community. Such a system of penalties was regarded as a necessary accompanying measure. The Convention on the crossing of external frontiers thus requires Member States to introduce penalties for carriers who convey, by air or by sea, non-Community nationals not in possession of the requisite travel documents from a non-member country to their territory.

As far as internal frontiers are concerned, the problem of asylum-seekers is settled by the Dublin Convention determining the State responsible for examining applications for asylum.

Lastly, to avoid any misunderstanding, it should be stressed that:

- the objections expressed here against rules on carrier liability are levelled only at their application to intra-Community travellers and not at their application to travellers coming from non-member countries;
  - these objections concern only frontier controls applied under the rules on carrier liability and not the other identity checks that could be performed by carriers, e.g. on the use of travel tickets issued to a named individual, also in domestic transport. Neither does this Directive preclude checks performed on persons boarding means of transport by Member States or by carriers with a view to ensuring the safety of persons and goods during transport.
21. Since the crossing of an internal frontier in the internal market must be treated in the same way as the crossing of a boundary between provinces, counties, regions or the like in a national market, not only controls but also formalities applied on the occasion of the crossing of an internal frontier must be eliminated.

Article 3(4) defines a frontier formality as any formality imposed on a person in connection with the crossing of an internal frontier and to be fulfilled on the occasion of such crossing. An example of such a formality would be the obligation on persons taking intra-Community flights or making intra-Community sea crossings to complete boarding or landing cards. Such formalities, which are not required in domestic travel, must be eliminated. A system of reporting arrivals, albeit not incompatible per se with the principle of the internal market, would also be prohibited if the relevant declarations had to be presented at the internal frontier.

#### **Article 4: Report on application of the Directive**

22. In view of the importance of this Directive, Article 4 provides that, two years after its implementation and every three years thereafter, the Commission is to report on its application to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

#### **Article 5: Transposal deadline**

23. Since the elimination of controls on persons crossing internal frontiers goes hand-in-hand with implementation of the essential accompanying measures, this Directive cannot be applied until the last of those measures has been put into effect.

However, since it would be unacceptable as a matter of principle to allow an indefinite period for transposal and in order to ensure that the discussions still in progress on a limited number of accompanying measures are completed as quickly as possible, a precise date needs to be stipulated for transposal of the Directive.

Given the state of progress in current discussions and the time needed for implementing the essential accompanying measures, that date should be fixed at 31 December 1996.

## **Annex**

**Abstract from the Communication of 8 May 1992  
to the Council and Parliament on the  
abolition of border controls (SEC(92)877 final)**

## **COMMISSION POSITION ON THE INTERPRETATION OF ARTICLE 8a OF THE EEC TREATY**

1. In its communication of 18 December 1991 (COM(91) 549), the Commission highlighted the many different checks and formalities at internal frontiers and hence the wide range of measures to be adopted. It stressed that all these checks and formalities must be abolished if Article 8a is to be fully effective since the continued existence of just one of them would undermine the political dimension of the objective laid down in that Article.

It is therefore necessary to clarify now the implications of Article 8a, by defining its scope and object.

### **A. The frontier-free area**

2. The first task is to clarify the meaning of the concept of "internal market", which is the objective being pursued.

In the case-law established by the Court of Justice prior to the Single European Act, the common market was defined in very broad terms as involving "the elimination of all obstacles to intra-Community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market" (judgment in Case 15/81 Schul [1982] ECR 1409, ground 33). The Court thus equated the internal market with a national market.

The concept of an "internal market" is, in principle, the logical extension of a common market - the operation of the Community-wide market under conditions equivalent to those of a national market.

This approach is confirmed by the definition of the internal market in the second paragraph of Article 8a: "[it] shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty".

By referring to the four freedoms, Article 8a clearly defines the internal market as an extension of the common market. However, the first part of the definition introduced a new element and set a new objective for the Treaty - an area without internal frontiers; under the Single European Act, all obstacles to the operation of the common market arising from the existence of internal frontiers must be eliminated by 31 December 1992 at the latest.

In its White Paper on completing the internal market, the Commission drew a distinction between physical, technical and fiscal frontiers. This document will concentrate on physical frontiers.

3. If the Community is to become a genuine internal market and if this market is to operate under the same conditions as a national market, physical frontiers must be abolished. This means the abolition of all controls, formalities, procedures, checks, examinations, inspections, etc. (hereinafter called "controls") at internal frontiers, just as there are no border controls between regions in national markets.

This is a clear and straightforward objective. It imposes an obligation to produce results and leaves no margin of discretion. All internal border controls in the Community must be abolished, including those established under Community legislation and those carried out by Member States, whatever their form and whatever their justification.

Naturally, as in a national market, the abolition of controls at internal frontiers will not deprive the authorities of the right to exercise their powers over the whole of their territory. The existence of controls in an area close to an internal frontier may even be considered compatible with the internal market provided that they are carried out according to the same rules - in particular as regards their frequency, intensity and the penalties imposed - as those applied to controls carried out over the whole territory.

At all events, the crossing of an internal frontier will no longer in itself give rise to a control.

B. A frontier-free market for all goods

4. There can be no doubt that Article 8a covers all goods, irrespective of their origin or nature. The Community is based on a customs union (Article 9 et seq.) in which goods originating in third countries are treated in the same way as products originating in Member States once they have been released for free circulation in the Community.
5. This does not mean that there will be complete freedom of movement for all goods. As happens in a national market, the Community or, where appropriate, Member States may prohibit or restrict the placing of certain products on the internal market within the limits laid down in Article 36 EEC but the exercise of these powers may not involve controls at internal frontiers.

C. A frontier-free area for all persons

6. The phrase "free movement of ... persons" in Article 8a refers to all persons, whether or not they are economically active and irrespective of their nationality. The internal market could not operate under conditions equivalent to those in a national market if the movement of individuals within this market were hindered by controls at internal frontiers.

Of course, the free movement of persons in the common market must not be confused with the rights which flow directly from Articles 48 to 66, and in particular the taking-up of economic activities as self-employed or employed persons and hence the right of residence, and which, subject to the second paragraph of Article 59, apply only to nationals of Member States.

Article 8a is found in Part One of the EEC Treaty, entitled "Principles", as is Article 3(c), a general provision which applies not only to the persons referred to in Articles 48 to 66 but also to nationals of Member States who are not economically active and to nationals of non-member countries.

The Council accepted this approach as regards nationals of Member States who are not economically active by its recent adoption of Directive 90/364/EEC, which grants such persons the right of residence: the Directive's recitals contain specific references to Articles 3(c) and 8a. There is no objective legal reason to differentiate between nationals of Member States and nationals of non-member countries. The Court's judgment in Demirel (Case 12/86 [1987] ECR 3719) confirms that the Community has the power to adopt legal acts concerning workers from non-member countries.

7. The final words of Article 8a - "in accordance with the provisions of this Treaty" - do not lead to any other conclusion. This phrase merely acts as a complement to the verb "ensure", laying down the conditions under which the objective of Article 8a should be achieved. In other words, it makes it clear that Article 8a does not in itself confer new powers on the Community: the desired objective should be pursued in accordance with the rules of the Treaty and through the powers conferred by other articles of it, including some which are specifically mentioned in the first paragraph of Article 8a.

Nor can this interpretation be contradicted by referring to the General Declaration on Articles 13 to 19 of the Single European Act, which states that "Nothing in these provisions [relating to the internal market] shall affect the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques".

A declaration can never deprive an article of the Treaty of its practical effectiveness. In any case, the Declaration in question does not give rise to a different interpretation from Article 8a. It refers to the distribution of powers between the Community and the Member States, and that cannot affect the definition of the objective to be achieved. The abolition of controls on goods and persons at internal frontiers will certainly have some implications for the matters referred to in the Declaration. But the sole purpose of the Declaration is to leave open the question of which powers must be exercised in order to achieve the objective laid down in Article 8a.

Finally, although it has not yet been ratified, the text of the Treaty on European Union does not give rise to any other interpretation. Although Member States will now regard certain areas, such as immigration policy, as being of common interest - without prejudice to the Community's powers - and although the Council can adopt common positions and joint measures and can draw up agreements, this does not alter the conclusion that the objective set by Article 8a is a frontier-free area for all persons.



8. Moreover, even the argument that Article 8a applies only to the persons referred to in Articles 48 to 66 would lead to the same conclusion.

The complete abolition of physical frontiers for individuals exercising their right to freedom of movement necessarily implies the complete abolition of controls on all individuals who cross internal borders, irrespective of their nationality. Any other interpretation of the objective of abolishing physical frontiers would render Article 8a ineffective. If, after 31 December 1992, Member States are still able to check whether a person wishing to cross a border is a national of a Member State and whether he or she constitutes a danger to public order, public security or public health, nothing will have changed and Article 8a will be a dead letter.

D. Free movement of services and capital

9. It goes almost without saying that the frontier-free area must also cover services and capital. Although Community legislation still requires or allows some controls on the observance of Community or national law in respect of the provision of certain services (e.g. transport) or the holding of capital, this does not alter the fact that these controls may not be carried out at internal frontiers. Not only would such controls inevitably constitute barriers to the free movement of persons and goods, they would also run counter to the objective of Article 8a, the second paragraph of which makes specific reference to these freedoms.

E. Conclusion

10. The Single European Act introduced into the Treaty the concept of an internal market and thereby set the Community a new objective - an area without internal frontiers. Article 8a states clearly that this objective must be achieved by the end of 1992.

The completion of the internal market requires the abolition of all physical frontiers between Member States so as to ensure the free movement of goods, persons, services and capital under the terms of Article 8a. This objective will not be achieved if some goods or persons are still subject to controls when they cross internal frontiers. If, for whatever reason, some controls do remain after 1 January 1993, the Community and the Member States will have failed to fulfil their obligation to produce the results laid down in the Single European Act.

Förslag till  
RÅDETS DIREKTIV  
om avskaffande av kontroll av personer  
vid de inre gränserna

**EUROPEISKA UNIONENS RÅD HAR ANTAGIT DETTA DIREKTIV**

med beaktande av Fördraget om upprättandet av Europeiska gemenskapen, särskilt artikel 100 i detta,

med beaktande av kommissionens förslag,

med beaktande av Europaparlamentets yttrande,

med beaktande av Ekonomiska och sociala kommitténs yttrande,

med beaktande av Regionkommitténs yttrande, och

med beaktande av följande:

Artikel 7a i fördraget föreskriver upprättandet av en inre marknad som skall omfatta ett område utan inre gränser där fri rörlighet för varor, personer, tjänster, och kapital säkerställs i enlighet med bestämmelserna i fördraget.

Upprättandet av den inre marknaden medför att alla kontroller och formaliteter vad gäller personer vid de inre gränserna måste avskaffas. I detta sammanhang har flygplatser och hamnar en särskild ställning eftersom de brukas för trafik såväl med andra medlemsstater som med tredje land. Tillämpningen av principen om fri rörlighet måste dock leda till att kontroller och formaliteter avskaffas för personer som reser med flyg inom gemenskapen liksom för personer som reser till sjöss inom gemenskapen.

Gemenskapen och medlemsstaterna har beslutat att vidta de åtgärder som de bedömer som väsentliga för att avlägsna de skäl som låg till grund för användningen av kontroller och gränsformaliteter i kraft av nationell lagstiftning.

De lämpliga kompletteringsåtgärderna har genomförts på ett tillfredsställande sätt.

För att fullgöra den klara och ovillkorliga skyldigheten enligt artikel 7a, är det lämpligt under nuvarande omständigheter att för rättssäkerhetens skull bekräfta att kontrollerna och formaliteterna vid gemenskapens inre gränser måste avskaffas.

Det är lämpligt att innefatta både de kontroller som utförs eller de formaliteter som åläggs av offentliga myndigheter och de kontroller som utförs eller de formaliteter som åläggs av andra personer enligt nationell lagstiftning.

Villkoren bör fastställas för när en medlemsstat tillfälligt kan återinföra kontrollen vid de inre gränserna i händelse av allvarligt hot mot allmän ordning eller säkerhet.

## HÄRIGENOM FÖRESKRIVS FÖLJANDE.

### Artikel 1

1. En person, oavsett nationalitet, skall ha rätt att korsa medlemsstaternas gränser inom gemenskapen på vilket ställe som helst, utan att denna rätt underställs kontroll eller gränsformaliteter.
2. Avskaffandet av kontroller och formaliteter för personer vid de inre gränserna skall inte påverka vare sig utövandet av polisbefogenheter av behöriga myndigheter i kraft av varje enskild medlemsstats lagstiftning inom hela dess territorium eller kravet på att inneha och bära de handlingar som dess lagstiftning föreskriver.

### Artikel 2

1. En medlemsstat skall under en tidsperiod på högst 30 dagar kunna återinföra kontroller vid sina gränser inom gemenskapen i händelse av allvarligt hot mot allmän ordning eller säkerhet. Medlemsstaten skall omedelbart anmäla detta till kommissionen och de andra medlemsstaterna och förse dem med alla relevanta upplysningar.
2. Om ett allvarligt hot mot allmän ordning eller säkerhet föreligger utöver en period på 30 dagar, skall medlemsstaten kunna behålla kontrollerna vid sina gränser inom gemenskapen under förnybara perioder på högst 30 dagar. Varje beslut om förnyad period skall fattas efter samråd med de andra medlemsstaterna och med kommissionen.

På begäran av den berörda medlemsstaten skall kommissionen och de andra medlemsstaterna respektera den konfidentiella naturen hos de upplysningar som lämnats för att motivera bibehållandet av kontrollerna.

3. De kontroller som åsyftas i punkterna 1 och 2 i denna artikel och varaktigheten för den period som de utövas skall inte överstiga vad som är absolut nödvändigt för att svara mot det allvarliga hotet.

### Artikel 3

I detta direktiv avses med följande termer

1. *medlemsstats gräns inom gemenskapen:*
  - medlemsstaternas gemensamma landgränser, inräknat järnvägs- och vägterminaler för förbindelser via bro eller tunnel mellan medlemsstater,
  - deras flygplatser för flygförbindelser inom gemenskapen,
  - deras hamnar för resor till sjöss inom gemenskapen.

2. *flygresor inom gemenskapen:*

en förflyttning med luftfartyg mellan två flygplatser inom gemenskapen, utan mellanlandning mellan de två flygplatserna, och som varken tagit början eller slut på en flygplats utanför gemenskapen.

3. *överresor till sjöss inom gemenskapen:*

en förflyttning mellan två hamnar inom gemenskapen, utan landstigning mellan de två hamnarna, med ett fartyg som regelbundet trafikerar två eller flera bestämda hamnar inom gemenskapen.

4. *kontroll eller gränsformalitet:*

- varje kontroll som utförs, på grund av eller i anslutning till övergång av en inre gräns, av myndigheterna i en medlemsstat, eller av andra personer enligt nationell lagstiftning i en medlemsstat,
- varje formalitet som åläggs en person på grund av övergång av en inre gräns och som är obligatorisk vid varje sådan övergång.

Artikel 4

Senast två år efter genomförandet av detta direktiv, och i fortsättningen vart tredje år, skall kommissionen utarbeta en rapport om tillämpningen av direktivet och överlämna denna rapport till Europaparlamentet, rådet, Ekonomiska och sociala kommittén samt Regionkommittén.

Artikel 5

Medlemsstaterna skall sätta i kraft de lagar och andra författningar som är nödvändiga för att följa detta direktiv senast den 31 december 1996. De skall genast underrätta kommissionen om detta och skall också till kommissionen överlämna en tabell som visar överensstämmelsen mellan var och en av bestämmelserna i detta direktiv och motsvarande bestämmelser i nationell lagstiftning, som antingen tillkommit före detta direktiv eller antagits för att genomföra det.

När en medlemsstat antar dessa bestämmelser skall de innehålla en hänvisning till detta direktiv eller åtföljas av en sådan hänvisning när de offentliggörs. Närmare föreskrifter om hur hänvisningen skall göras skall varje medlemsstat själv utfärda.

#### Artikel 6

Detta direktiv träder i kraft den tjugonde dagen efter det att den har offentliggjorts i *Europeiska gemenskapernas officiella tidning*.

#### Artikel 7

Detta direktiv riktar sig till medlemsstaterna.

Utfärdat i Bryssel den

På rådets vägnar

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