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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 1931/2006 as regards the inclusion of the Kaliningrad
area and certain Polish administrative districts in the eligible border area**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

It is in the interest of the enlarged European Union to ensure that the borders with its neighbours are no barriers to trade, social and cultural interchange or regional cooperation with neighbouring countries. Therefore, the Council and the European Parliament adopted in 2006 a Regulation laying down rules on local border traffic at the external land borders of the Member States¹ ("Local Border Traffic Regulation") which allows derogating, for persons living in a border area, from the general rules on border checks set out in the Schengen Borders Code. 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 February 2011, the Commission concluded in its second report² that the local border traffic regime makes life significantly easier for people living near the external land borders, while at the same time there is little evidence that the regime is being abused.

The Commission also stated that given the specific position of Kaliningrad -the Kaliningrad region of the Russian Federation with a population of almost one million inhabitants became the only enclave within the EU as a consequence of the 2004 EU enlargement- an amendment of the Local Border Traffic Regulation may be justified.

Indeed, the Kaliningrad enclave has an exceptional geographic position as a relatively small area which is completely surrounded by two EU Member States; the oblast in its entirety has the character of a border area. There are no other areas within Europe with a similar geographic situation constituting an enclave.

In order to avoid Kaliningrad's isolation from its immediate neighbours, there is a need to facilitate travel for its inhabitants.

Even though the EU-Russian Federation agreement on visa facilitation in force since 2007 already is a significant step forward to enhance opportunities for mobility, the local border traffic regime offers additional facilitations specifically for regular, even daily, needs for travel within the local area. For examples, applicants will not have to prove sufficient means of subsistence, the permit may be issued free of charge, or separate lanes and/or specific border crossing points could be reserved or set up for local border traffic. Also, all residents of the Kaliningrad area would enjoy these facilitations, whereas some of the facilitations in the EU-Russian Federation visa facilitation agreement apply to certain categories of persons only.

In order also to prevent an artificial division of the Kaliningrad oblast, whereby some inhabitants would enjoy facilitations for local border traffic while the majority (including the inhabitants of the city of Kaliningrad) would not, the entire Kaliningrad area should be eligible as a border area in a bilateral agreement between a Member State and the Russian Federation. It should be noted that this eligible border area could not be extended any further.

In this context, and for the Regulation to have real effect in that region, a specific border area on the Polish side should be included in the eligible border area as well, in order to facilitate

¹ Regulation No 1931/2006 of 20 December 2006, OJ L 405, 30.12.2006, p1

² COM (2011) 47 of 9 February 2011.

and enhance economic and cultural interchange between the Kaliningrad oblast on the one hand and major centres in the North of Poland on the other.

It is underlined that this exceptional extension of the border zone in the Kaliningrad area does not affect the general definition of the eligible border area (the 30/50 km zone). Also, all rules and conditions in the Local Border Traffic Regulation that guarantee the security of the entire Schengen area continue to apply. In particular, the local border traffic permits will continue to have the security features as set out in the Regulation, and local border traffic permits may only be issued to applicants who fulfil all conditions set out in the Regulation. Also, Poland is obliged to ensure that any abuse of the local border traffic regime is subject to effective, proportionate and dissuasive penalties, which shall include the possibility of cancelling and revoking local border traffic permits. In this context, the Polish authorities have already committed themselves to launch targeted information campaigns and to mark clearly the local border traffic area.

This proposal will contribute to further promoting the strategic partnership between the EU and the Russian Federation, in line with the priorities set out in the Roadmap of the Common Space on Freedom, Security and Justice regarding cross-border cooperation and shall be considered in the context of the overall EU - Russian Federation relationship.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES

On the basis of the second Commission report on the functioning of the Local Border Traffic regime, Member States discussed the opportunity of addressing the specific solution of the Kaliningrad enclave in the relevant fora.

A majority of Member States is in favour of such a solution, on condition that no new discussion would take place on the general definition of the border zone, and that this exception would constitute a specific and unique solution for the sole case of the Kaliningrad enclave.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposal is based on Article 77 (2) (b) of the Treaty on the Functioning of the European Union.

The proposal amends the Local Border Traffic Regulation, which was based on the equivalent provision of the Treaty establishing the European Community, i.e. Article 62 (2) (a) (external borders).

4. BUDGETARY IMPLICATION

The proposed amendment has no implications for the EU budget.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77 (2) (b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Union rules on local border traffic, established by Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention³, in force since 2007, have avoided creating barriers to trade, social and cultural interchange or regional cooperation with neighbouring countries, while preserving the security of the entire Schengen area.
- (2) The Kaliningrad oblast has an exceptional geographic situation: as a relatively small area completely surrounded by two Member States, it constitutes the only enclave in the EU; its shape and the distribution of its population are such that applying the standard rules on the definition of the border area would artificially divide the enclave, whereby some inhabitants would enjoy facilitations for local border traffic while the majority, including the inhabitants of the city of Kaliningrad, would not. In light of the homogeneous nature of the Kaliningrad oblast, for trade, social and cultural interchange and regional cooperation to be enhanced, a specific exception to Regulation (EC) No 1931/2006 should be introduced that would allow the entire Kaliningrad oblast to be considered as a border area.
- (3) A specific border area on the Polish side should also be recognised as eligible border area, in order for the application of Regulation (EC) No 1931/2006 in that region to have real effect through increased opportunities for trade, social and cultural interchange and regional cooperation between the Kaliningrad oblast on the one hand and major centres in the North of Poland on the other.

³ OJ L 405, 30.12.2006, p. 1.

- (4) This Regulation is without prejudice to the general definition of the border area and the full respect of the rules and conditions set out in Regulation (EC) No 1931/2006, including penalties to be imposed by Member States on border residents who abuse the local border traffic regime.
- (5) This Regulation contributes to further promoting the strategic partnership between the European Union and the Russian Federation, in line with the priorities set out in the Roadmap of the Common Space on Freedom, Security and Justice and takes into account the overall European Union – Russian Federation relationship.
- (6) Since the objective of this Regulation, namely to provide for amendment to the existing Union rules on local border traffic, cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as also set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (7) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (8) 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*⁴; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (9) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not participate, 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*⁵; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (10) 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 association of those two States with the implementation, application and development of the Schengen *acquis*⁶, which fall within the area

⁴ OJ L 131, 1.6.2000, p. 43.

⁵ OJ L 64, 7.3.2002, p. 20.

⁶ OJ L 176, 10.7.1999, p. 36.

referred to in Article 1, point A, of Council Decision 1999/437/EC on certain arrangements for the application of that Agreement⁷.

- (11) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of as provided for by the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁸ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁹.
- (12) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol concluded between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999, read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁰.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) 1931/2006 is amended as follows:

- (1) At the end of Article 3 point 2, the following is added:

"The areas listed in the annex to this Regulation shall be considered as border area."

- (2) An Annex is added as presented in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

⁷ OJ L 176, 10.7.1999, p. 31.

⁸ OJ L 53, 27.2.2008, p. 52.

⁹ OJ L 53, 27.2.2008, p. 52.

¹⁰ OJ L 160, 18.6.2011, p 19.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

‘Annex:

1. Kaliningrad Oblast
2. Polish administrative districts (powiaty) of województwo pomorskie: pucki, m. Gdynia, m. Sopot, m. Gdańsk, gdański, nowodworski, malborski
3. Polish administrative districts (powiaty) of województwo warmińsko-mazurskie: m. Elbląg, elbląski, braniewski, lidzbarski, bartoszycki, m. Olsztyn, olsztyński, kętrzyński, mrągowski, węgorzewski, giżycki, gołdapski, olecki. ’