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COUNCIL REGULATION (EC) No 790/2001

of 24 April 2001

reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance

(OJ L 116, 26.4.2001, p. 5)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Decision 2004/927/EC of 22 December 2004	L 396	45	31.12.2004

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COUNCIL REGULATION (EC) No 790/2001

of 24 April 2001

reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(a) and (b) and Article 67(1) thereof,

Having regard to the initiative of the Portuguese Republic [1],

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) The Common Manual [3] has been established with a view to implementing the provisions of Title II, Chapter 2 of the Convention, signed in Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders, hereinafter referred to as 'the Convention'.

(2) Certain detailed provisions and practical procedures for carrying out border checks and surveillance at the external borders of Member States participating in the closer cooperation referred to in Article 1 of the Schengen Protocol, contained in the Common Manual and the Annexes thereto, must be adopted and regularly amended and updated to meet the operational requirements of the relevant border authorities.

(3) Various provisions of Title II, Chapter 2 of the Convention, and in particular Article 8 thereof, provide for implementing decisions to be taken by the Executive Committee, established by the Schengen agreements adopted before 1 May 1999, for which the Council has now been substituted, pursuant to Article 2 of the Schengen Protocol. Pursuant to Article 1 of that Protocol, cooperation in the context of the Schengen acquis is to be conducted within the institutional and legal framework of the European Union and with respect for the relevant provisions of the Treaty on European Union and of the Treaty establishing the European Community.

(4) It is therefore appropriate to set out in a Community act the procedure by which such implementing decisions should be taken.

(5) Since the Member States have an enhanced role in respect of the development of border policy, reflecting the sensitivity of this area, in particular involving political relations with third countries, the Council reserves the right, during the transitional period of five years referred to in Article 67(1) of the Treaty establishing the European Community, to adopt, amend and update the detailed provisions and practical procedures referred to above by unanimity, pending a review by the Council of the conditions under which such implementing powers would be conferred on the Commission after the end of this transitional period.

(6) Some of those provisions and procedures require confidential treatment in order to prevent risk of abuse.

(7) It is also necessary to provide for a procedure whereby the members of the Council and the Commission are informed without delay of all amendments to those Annexes of the

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[1] OJ C 73, 6.3.2001, p. 8.

[2] Opinion delivered on 13 March 2001 (not yet published in the Official Journal).

[3] Listed under reference SCH/Com-ex (99) 13 in Annex A to Council Decision 1999/435/EC (OJ L 176, 10.7.1999, p. 1).

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Common Manual which consist, in whole or in part, of lists of factual information which must be provided by each Member State in accordance with the rules which it currently applies, and which therefore do not fall to be adopted, amended or updated by an act of the Council.

(8) Those elements of the Common Manual and the Annexes thereto which are not subject to amendment by either of the procedures provided in this Regulation and which do not correspond to any elements of the Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts (hereinafter 'Common Consular Instructions') ([1]) which may be amended pursuant to the provisions of Regulation (EC) No 789/2001 ([2]) shall be amended in accordance with the provisions of Title IV of the Treaty establishing the European Community, and in particular Article 62(2)(a) and Article 67 thereof.

(9) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this instrument, and is therefore not bound by it or subject to its application. Given the fact that this instrument is an act which aims to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, Article 5 of the abovementioned Protocol applies,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Council, ►**M1** acting by qualified majority ◄, at the initiative of one of its members or on a proposal from the Commission, shall amend, as necessary, Part I points 1.2, 1.3, 1.3.1, 1.3.3, 2.1, 3.1.2, 3.1.3, 3.1.4, 3.2.4, 4.1, 4.1.1, 4.1.2, and Part II points 1.1, 1.3, 1.4.1, 1.4.1a, 1.4.4, 1.4.5, 1.4.6, 1.4.7, 1.4.8, 2.1, 2.2.2, 2.2.3, 2.2.4, 2.3, 3.1, 3.2, 3.3.1, 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.3.6, 3.3.7, 3.3.8, 3.4, 3.5, 4.1, 4.2, 5.2, 5.3, 5.4, 5.5, 5.6, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10 and 6.11 of the Common Manual as well as Annex 9 thereto.

2. To the extent that such amendments concern confidential provisions and procedures, the information contained therein shall be made available only to authorities designated by the Member States and to persons duly authorised by each Member State or by the institutions of the European Union, or otherwise entitled to obtain access to such information.

Article 2

1. Each Member State shall communicate to the Secretary-General of the Council such amendments as it wishes to make to point 1.3.2 of Part I and to Annexes 1, 2, 3, 7, 12 and 13 of the Common Manual.

2. Amendments made pursuant to paragraph 1 shall be deemed to take effect as of the date on which the Secretary-General communicates those amendments to the members of the Council and to the Commission.

Article 3

The Secretariat General of the Council shall be responsible for the preparation of revised versions of the Common Manual and the Annexes thereto, in order to incorporate amendments made pursuant to

([1]) Listed under reference SCH/Com-ex (99) 13 in Annex A to Decision 1999/435/EC.

([2]) Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications (see p. 2 of this Official Journal).

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the provisions of Articles 1 and 2 of this Regulation and pursuant to Regulation (EC) No 789/2001, in respect of those elements of the Common Consular Instructions which correspond to certain Annexes of the Common Manual. It shall transmit these versions to the Member States as necessary.

Article 4

Amendments to Annexes 4, 5, 5a, 6, 6a, 6b, 6c, 8, 8a, 10, 11, 14a and 14b of the Common Manual shall be made in accordance with the provisions of Regulation (EC) No 789/2001.

Article 5

This Regulation shall enter into force on the day of its adoption.

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