

AMENDMENT FORM

Suggestion for amendment of Article : III-161

Suggestion for Part III

By Mr : Farnleitner

Status : - Member

Article III-161 (ex Article 10)

1. The Union shall develop a policy with a view to:
 - (a) ~~ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;~~ **the principle of free movement within the area allowing the crossing of internal borders at any given spot without any controls**
 - (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
 - (c) the gradual introduction of a integrated management system for external borders.
2. For this purpose, a European law or framework law shall establish measures concerning:
 - (a) the common policy on visas and other short-stay residence permits;
 - (b) the controls to which persons crossing external borders are subject;
 - (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
 - (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
 - (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders **and the conditions and arrangements allowing for the temporary re-establishment of those controls by a Member State when public order or national security so requires**
3. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Explanation (if any) :

“Principle” is understood as being the rule, but also allowing exceptions according to the existing Schengen Acquis. Therefore, the possibility of controls of people at the internal border is limited to specific and limited circumstances, where, after consultations with other Member States, considered necessary due to danger to public safety and security.

I would also like to refer to the explanation given in CONV 614/03 that “The content of Article 62 TEC has, however, been shortened so as to take account of the provisions that have already entered into force since its adoption.” With regard to the measures based on the current Article 62 TEC which have already entered into force, I still think that provision needs to be made for a legal basis that allows, in the future, for the amendment or the abolition of these legal acts. Otherwise these acts would remain in force indefinitely or could not be adjusted to future requirements. Thus, all areas presently mentioned in Article 62 TEC should be covered by Article III-161 (ex Article 10). This may, in its present form, be doubtful with regard to the areas mentioned in Article 62 para. 2 (a) and para. 2 (b) (i), particularly since the proposed wording deviates from formulations currently used in Article 62 TEC.

My acceptance of the present content and wording of Article III-161 (ex Article 10). is therefore subject to a careful review of the contents thereof with a view to avoiding loopholes and legal uncertainties of the kind referred to above.

For the same reasons there should also be a closer examination of the existing Schengen Acquis with a view to continuing the work on the basis of the established Acquis while avoiding any possible loopholes.