VI.4. 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 2001 L116/5

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,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The Common Manual 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 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’) which may be amended pursuant to the provisions of Regulation (EC) No. 789/2001 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 above mentioned Protocol applies,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The Council, acting by qualified majority,37 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, 1.3.2, 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.

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