Regulation (EU) No 1342/2011 of the European Parliament and of the Council of 13 December 2011 amending Regulation (EC) No 1931/2006 as regards the inclusion of the Kaliningrad oblast and certain Polish administrative districts in the eligible border area

REGULATION (EU) No 1342/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

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

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 point (b) of Article 77(2) 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[(1)],

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 Convention[(2)], in force since 2007, have avoided creating barriers to trade, to social and cultural interchange or to 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 European Union; 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 the 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 an 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.

(4) This Regulation is without prejudice to the general definition of the border area and to full respect for the rules and conditions set out in Regulation (EC) No 1931/2006, including the 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 relationship between the European Union and the Russian Federation.

(6) Since the objective of this Regulation, namely the inclusion of the Kaliningrad oblast and certain Polish administrative districts in the eligible border area, 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 set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.

(7) As regards Iceland and Norway, this Regulation constitutes a development of the 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 latters' association with the implementation, application and development of the Schengen *acquis*[(3)] which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement[(4)].

(8) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of 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*[(5)] 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/EC[(6)].

(9) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol 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*[(7)] 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 2011/350/EU[(8)].

(10) In accordance with Articles 1 and 2 of the 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 the 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 6 months after the Council has decided on this Regulation whether it will implement it in its national law.

(11) This Regulation constitutes a development of the 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*[(9)]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(12) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, 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*[(10)]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1931/2006 is hereby amended as follows:

(1) at the end of Article 3, point (2), the following sentence is added:

'The areas listed in the Annex to this Regulation shall be considered as part of the border area;';

(2) the text set out in the Annex to this Regulation is added as an Annex.

Article 2

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

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

Done at Strasbourg, 13 December 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

M. SZPUNAR