

Union Code on the rules governing the movement of persons across borders (Schengen Borders Code). Codification

2015/0006(COD) - 09/03/2016 - Final act

PURPOSE: to codify Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

LEGISLATIVE ACT: Regulation (EU) 2016/399 of the European Parliament and of the Council on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

BACGROUND: the Schengen agreement was signed on 14 June 1985 on the initiative of Belgium, Germany, France, Luxembourg and the Netherlands. It sought to gradually establish an **area without internal borders** for all nationals of the signatory countries, other Member States and third countries. The Schengen Implementing Convention (1990) entered into force in 1995.

The measures relating to the Agreement and the Convention form the ‘Schengen acquis’, incorporated into the European Union’s (EU) institutional and legal framework since 1999.

CONTENT: the Regulation **codifies and replaces** [Regulation \(EC\) No 562/2006](#) of the European Parliament and of the Council on a Union code on a regime for the crossing of frontiers by persons.

The codification is carried out for the sake of clarity of law, given that the regulation has been amended several times and substantially. It consists of bringing together in a new single text a legislative act and all its modifications while preserving totally the substance of these.

Purpose: the ‘Schengen Borders Code’ lays down rules governing the checking of persons crossing the external borders of the Member States of the European Union.

Internal borders: within the Schengen area, internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out. However, the national police authorities or the customs authorities may still carry out sporadic checks.

The Schengen States have to remove all the obstacles that prevent the flow of traffic at road crossing points at internal borders. To this end, they shall establish separate lanes at these crossing points, indicated by uniform indications, in particular at international airports and, where possible, at sea and land crossing points.

External borders: when crossing external borders, nationals of non-EU countries are subjected to a thorough check and a stamp is systematically affixed to their travel document, both at entry and exit.

On entry and exit, third-country nationals shall be subject to thorough checks in particular a verification of the conditions governing entry laid down in the [Visa Information System](#) (VIS) and, where applicable, of documents authorising residence and the pursuit of a professional activity.

For a stay not exceeding 90 days over a period of 180 days, a non-EU national must:

- be in possession of a valid travel document;
- be in possession of a visa if necessary;
- justify the purpose of the intended stay and have sufficient means of subsistence;
- not persons for whom an alert has been issued in the [Schengen Information System](#) (SIS) for the purposes of refusing entry;
- not be considered a threat to public order, internal security, public health or the international relations of EU countries.

The entry into the territory of the Member States of a third-country national may be refused only by means of a substantiated decision stating the precise reasons for the refusal and which may be challenged by means of an appeal.

Schengen evaluation mechanism: in accordance with [Regulation \(EU\) No 1053/2013](#), Member States and the Commission shall jointly conduct regular, objective and impartial evaluations in order to verify the correct application of this Regulation (for instance, in the form of announced and unannounced on-site visits).

Where **serious deficiencies** in the carrying out of external border control are identified, implementing powers should be conferred on the Commission to recommend that the evaluated Member State take specific measures, such as deploying European border guard teams, submitting strategic plans to the [European Agency for the Management of Operational Cooperation at the External Borders](#) (now the [European Border and Coast Guard Agency](#)) or, as a last resort and taking into account the seriousness of the situation, closing a specific border crossing-point.

Temporary reintroduction of border control at internal borders: Member States of the Schengen area may, on an exceptional basis and as a last resort, temporarily reintroduce internal border controls:

- where there is a **serious threat to public policy or internal security** in a Member State, that Member State may exceptionally reintroduce border control at all or specific parts of its internal borders for a maximum period of six months. It shall notify its intention to the Commission and the other Member States in advance of the planned reintroduction. In cases requiring **immediate action**, controls may be reintroduced for a maximum period of two months.
- **if the overall functioning of the Schengen area is jeopardised** and if the Schengen evaluation mechanism shows that there is a serious and persistent failure of a State in the control of external borders, border control at internal borders may be reintroduced for a period not exceeding two years. In such a case, the Council may, as a last resort, recommend that one or more Member States decide to reintroduce border controls in order to preserve the functioning of Schengen.

The European Parliament and the Council shall be kept regularly informed of any reason justifying the reintroduction of controls at internal borders.

Respect for fundamental rights: when applying this Regulation, Member States shall act in full compliance with relevant Union law, including the **Charter of Fundamental Rights** of the EU, the Convention Relating to the Status of Refugees, obligations related to access to international protection, in particular the principle of *non-refoulement*, the practice of not forcing refugees or asylum seekers to return to a country in which they are liable to be subjected to persecution.

Border checks should be carried out in such a way as to fully respect **human dignity** and in a non-discriminatory manner.

Territorial provisions: the Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom and Ireland do not take part. These Member States are therefore not involved in the adoption of the Regulation and are not bound by it or subject to its application.

DELEGATED ACTS: the Commission may adopt delegated acts with regard to the adoption of additional measures governing surveillance as well as amendments to the annexes to the Regulation. The power to adopt such acts is conferred on the Commission for an indeterminate period of time. The European Parliament or the Council shall have the right to object to a delegated act within a period of two months (extendable for two months) from the date of notification of the act.

ENTRY INTO FORCE: 12.4.2016.