

Schengen Borders Code

2021/0428(COD) - 20/06/2024 - Final act

PURPOSE: to strengthen the functioning of the Schengen area.

LEGISLATIVE ACT: Regulation (EU) 2024/1717 of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders.

CONTENT: this Regulation **updates** the Schengen Borders Code, the body of EU legislation dealing with the management of internal and external borders and the rules applicable to border controls on persons crossing the EU's external borders. This reform contributes to making the Schengen area more resilient in the face of current and future crises at its external borders.

The main elements of the amended Schengen Borders Code are as follows:

Fighting the instrumentalisation of migration flows

Where a large number of migrants attempt to cross their external borders in an unauthorised manner, en masse and using force, Member States will take the necessary measures to preserve security, law and order. They may, in particular in a situation of instrumentalisation of migrants, **temporarily close, or limit the opening hours of, specific border crossing points**, where the circumstances so require.

Border surveillance

The main purpose of border surveillance will be to **prevent or detect unauthorised border crossings**, to contribute to raising situational awareness, to counter cross-border criminality and to take measures against persons who have crossed the border illegally. It will also involve the carrying out of risk analyses. A person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned will be apprehended and made subject to procedures respecting Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals.

Measures at external borders in the event of a health crisis

The Council, on the basis of a proposal by the Commission, may adopt an implementing Regulation providing for temporary restrictions on travel to the Member States to be applied at the external borders. Temporary restrictions on travel may include temporary restrictions on entry to the Member States and temporary health-related restrictions that are necessary for the protection of public health in the area without internal border control. Those temporary health-related restrictions may include testing, quarantine and self-isolation.

Temporary restrictions on travel to the Union will be **proportionate and non-discriminatory**. The following categories of persons will be exempted from the restrictions on entry: persons enjoying the right of free movement under Union law; third-country nationals who are long-term residents including beneficiaries of international protection.

Restrictions on entry to the Member States for persons undertaking essential travel will be imposed only exceptionally, for a strictly limited period of time, until sufficient information about the large-scale public health emergencies is available.

Where the Commission establishes that there is a **large-scale public health emergency** that affects several Member States, putting at risk the overall functioning of the area without internal border control, it may make a proposal to the Council to adopt an implementing decision authorising the reintroduction of border control by Member States, including any appropriate mitigating measures to be established at national and Union level, where the available measures are not sufficient to address the large-scale public health emergency.

Procedure for transferring persons apprehended in internal border areas

A new procedure will allow a Member State to transfer third-country nationals apprehended in the border area and staying illegally in its territory to the Member State from which they arrived directly. The apprehension should take place in the context of a bilateral cooperation framework. Third-country nationals apprehended in border areas and transferred as part of the procedure must have a right of appeal.

Reintroduction of internal border controls

The regulation clarifies and strengthens the framework for the reintroduction and prolongation of internal border controls. Member states may reintroduce controls as **an exception when there is a serious threat to public policy or internal security**. They will need to assess the necessity and proportionality of this reintroduction and assess whether the objectives pursued cannot be attained by other measures, including **alternative measures**.

According to the new rules, if threats to public policy or security are **unforeseeable**, controls can be introduced immediately with the Commission, other Member States and the European Parliament being notified at the same time. Such controls are limited for a period of up to one month and can only be prolonged for a maximum duration of three months.

In the event of **foreseeable threats**, controls at internal borders - notified to the European Parliament, the Council, the Commission and the other Member States at least four weeks before they are reintroduced - may remain in place for a maximum period of six months. They may be extended for renewable periods of up to **six months**, for a maximum of **two years**. In major exceptional situations linked to a persistent threat, controls at internal borders may be extended beyond two years, for a maximum of six additional months, renewable once, for a total period not exceeding **one year**.

Within four weeks of the lifting of controls at internal borders, Member States which have carried out checks at internal borders must submit a report to the European Parliament, the Council and the Commission on the reintroduction and, where appropriate, the extension of checks at internal borders.

ENTRY INTO FORCE: 10.7.2024.