

# Procedure file

| Basic information   |   |
|---|---|
| COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation <a href="#">2021/0428(COD)</a>   | Awaiting Parliament's position in 1st reading |
| Schengen Borders Code<br>Amending Regulation 2016/399 <a href="#">2015/0006(COD)</a>  |   |
| Subject<br>7.10 Free movement and integration of third-country nationals<br>7.10.02 Schengen area, Schengen acquis<br>7.10.04 External borders crossing and controls, visas |   |
| Legislative priorities<br><a href="#">Joint Declaration 2022</a><br><a href="#">Joint Declaration 2023-24</a>   |   |

| Key players                   |   |   |            |
|-------------------------------|---|---|------------|
| European Parliament           | Committee responsible   | Rapporteur  | Appointed  |
|                               |  <a href="#">Civil Liberties, Justice and Home Affairs</a> |  <a href="#">GUILLAUME Sylvie</a><br>Shadow rapporteur<br> <a href="#">SKYTTEDAL Sara</a><br> <a href="#">AZMANI Malik</a><br> <a href="#">MARQUARDT Erik</a><br> <a href="#">VISTISEN Anders</a><br> <a href="#">WEIMERS Charlie</a><br> <a href="#">PELLETIER Anne-Sophie</a> | 31/03/2022 |
| Council of the European Union | Commission DG   | Commissioner  |            |
| European Commission           | <a href="#">Migration and Home Affairs</a>  | JOHANSSON Ylva  |            |

| Key events |                                |                               |         |
|------------|--------------------------------|-------------------------------|---------|
| 15/12/2021 | Legislative proposal published | <a href="#">COM(2021)0891</a> | Summary |
|            |                                |                               |         |

|            |  |   |         |
|------------|--|---|---------|
| 14/02/2022 | Committee referral announced in Parliament, 1st reading  |   |         |
| 20/09/2023 | Vote in committee, 1st reading   |   |         |
| 20/09/2023 | Committee decision to open interinstitutional negotiations with report adopted in committee            |   |         |
| 27/09/2023 | Committee report tabled for plenary, 1st reading   | <a href="#">A9-0280/2023</a>  | Summary |
| 02/10/2023 | Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)        |   |         |
| 05/10/2023 | Results of vote in Parliament  |  |         |
| 05/10/2023 | Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71 - vote) |   |         |
| 19/03/2024 | Approval in committee of the text agreed at 1st reading interinstitutional negotiations                | <a href="#">PE759.664</a><br>GEDA/A/(2024)001064                                    |         |

### Technical information

|                            |  |
|----------------------------|--|
| Procedure reference        | 2021/0428(COD)   |
| Procedure type             | COD - Ordinary legislative procedure (ex-codecision procedure)                                   |
| Procedure subtype          | Legislation  |
| Legislative instrument     | Regulation   |
|                            | Amending Regulation 2016/399 <a href="#">2015/0006(COD)</a>                                      |
| Legal basis                | Treaty on the Functioning of the EU TFEU 077-p2; Treaty on the Functioning of the EU TFEU 079-p2 |
| Stage reached in procedure | Awaiting Parliament's position in 1st reading  |
| Committee dossier          | LIBE/9/07998   |

### Documentation gateway

|   |                               |            |      |         |
|---|-------------------------------|------------|------|---------|
| Legislative proposal  | <a href="#">COM(2021)0891</a> | 15/12/2021 | EC   | Summary |
| Document attached to the procedure                              | SWD(2021)0462                 | 15/12/2021 | EC   |         |
| Document attached to the procedure                              | SWD(2021)0463                 | 15/12/2021 | EC   |         |
| Document attached to the procedure                              | SEC(2021)0440                 | 16/12/2021 | EC   |         |
| Economic and Social Committee: opinion, report                  | <a href="#">CES0264/2022</a>  | 18/05/2022 | ESC  |         |
| Committee of the Regions: opinion                               | <a href="#">CDR5247/2022</a>  | 12/10/2022 | CofR |         |
| Committee draft report  | <a href="#">PE737.471</a>     | 08/11/2022 | EP   |         |
| Amendments tabled in committee                                  | <a href="#">PE739.712</a>     | 09/12/2022 | EP   |         |
| Amendments tabled in committee                                  | <a href="#">PE739.713</a>     | 12/12/2022 | EP   |         |
| Committee report tabled for plenary, 1st reading/single reading | <a href="#">A9-0280/2023</a>  | 27/09/2023 | EP   | Summary |
| Coreper letter confirming interinstitutional agreement          | GEDA/A/(2024)001064           | 14/02/2024 | CSL  |         |

## Additional information

Research document

[Briefing](#)

26/04/2022

## Schengen Borders Code

**PURPOSE:** to strengthen the Schengen areas resilience to serious threats and adapt the Schengen rules to the evolving challenges.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** the area without internal border controls (the Schengen area) is an essential element of the area of freedom, security and justice and a key element for the functioning of the single market. It is one of the greatest achievements of European integration.

The COVID-19 pandemic, the migratory crisis of 2015 as well as increased terrorist threats have put the Schengen area to the test in recent years. In response to these challenges, some Member States decided to reintroduce border checks at some or all of their internal borders, at times jeopardising the proper functioning of the Single Market.

A well-functioning Schengen area requires rules to be applied in a uniform way, both at the external and internal borders. It relies on trust among the Member States, efficient controls of the external borders and alternative measures on the territory of the Member States in order to assure a high level of security within the Schengen area, in the absence of internal border controls.

In view of the emerging challenges to the Schengen area, a number of targeted changes to the current rules set out in the Schengen Borders Code are required in relation to both external and internal borders as well as in relation to the powers exercised within the Member States territories, without putting into question the division of responsibilities between the Union and the Member States.

In view of the above, there is an urgent need to address problems affecting the external and internal borders of the Schengen area related to the following:

- measures at the external borders to address threats related to the major public health threats such as pandemics and instances of instrumentalisation of migrants;
- conditions for the reintroduction of border checks at internal borders and use of other measures to their full potential to ensure a sufficiently high level of security without needing to resort to internal border controls.

**CONTENT:** the proposal for the revision of the Schengen Borders Code established by [Regulation 2016/399](#) follows close consultations with Members of the European Parliament and Home Affairs Ministers meeting in the Schengen Forum. Its main elements are as follows:

### (1) Uniform application of measures at the external borders in case of a threat to public health

The proposal aims to establish a new mechanism which should allow for a timely adoption, by the Council, of a binding instrument setting out temporary travel restrictions at the external borders in these circumstances.

Thanks to this mechanism, travel restrictions will apply uniformly in all Member States for as long as the threat to public health persists in the Union. The proposal determines in a comprehensive manner all necessary elements of an instrument to be adopted by the Council in an implementing act.

Accordingly, such an instrument should:

- specify any categories of persons exempted from travel restrictions, even in situations where they travel for non-essential reasons, and/or, on the basis of objective indicators, any geographical areas or third countries from which travel may be subject to specific measures, e.g. travel restrictions;
- define any additional conditions to be imposed on travellers to make travel safe. Residents should always be permitted to return to the Union;
- set up an emergency brake mechanism, allowing to take relevant measures in case the epidemiological situation dramatically worsens in one or more geographical areas.

### (2) Rules concerning the reintroduction of controls at internal borders

The proposal offers solutions so that any reintroduction of internal border controls remains a measure of last resort. The current Schengen Borders Code gives Member States the possibility to temporarily reintroduce border control at internal borders where there is a serious threat to public policy or internal security. The reintroduction of border control at internal borders should remain exceptional and proportional. Border controls should be lifted once the reasons no longer apply.

For unforeseen threats, Member States could unilaterally introduce controls for 30 days, extendable up to 3 months. In case border control needs to be reintroduced for foreseeable events, they can do so for renewable periods of up to 6 months. The maximum duration of border control at internal borders should not exceed 2 years. However, in exceptional situations Member States may decide that border controls need to be maintained longer.

Whenever introducing controls, Member States should justify their proportionality and necessity. In case border controls have been in place for 6 months, any further notification for the prolongation of such controls needs to be accompanied by a risk assessment in addition. If border controls have been in place for 18 months, the Commission would be required to issue an opinion on necessity and proportionality of such internal border controls.

### (3) Mitigating measures

The proposal also provides that safeguards should always be applied, to limit the negative impact of the temporary reintroduction of border checks at internal borders, should this reintroduction be inevitable, in particular to limit their impact on the functioning of cross-border regions, transport and, thus, on the Single Market.

### (4) Increased use of alternative measures to address the identified threats instead of internal border controls

The proposal clarifies the possibility for Member States to make more extensive use of checks other than border controls in border areas. It offers more possibilities for the use of alternative measures such as police or other checks within the territory, particularly to address unauthorised movements within the Schengen area, including a possibility for Member States to transfer back those not entitled to enter their territory during joint police patrols.

### (5) Possibility of a coordinated European response (Schengen safeguard mechanism)

The proposal aims to create a new mechanism allowing for a European response to problems affecting a majority of Member States simultaneously and thus putting the overall functioning of the Schengen area at risk. The Commission could offer the Council the possibility of adopting an implementing decision authorising the reintroduction by Member States of border controls when other measures are not sufficient to deal with a serious threat. Based on a proposal from the Commission, such authorisation could be prolonged for further periods of up to six months each, provided that the threat persists. Where the Commission considers that such controls are not appropriate to the threat, it could recommend the use of other measures.

### (6) Response to the instrumentalisation of migrants at external borders

The proposal aims to address the instrumentalisation of migrants, where a third country actor is using human beings to destabilise the Union or its Member States. It clarifies what measures are available at the border crossing points and in the context of border surveillance to prevent and react to illegal border crossings when Member States of first entry are confronted with such pressure from a third country.

In addition, a new proposal on exceptional asylum and return procedures introduces provisions allowing Member States to take the necessary measures to manage the arrival of persons instrumentalised by a third country in full respect of fundamental rights and humanitarian principles.

## Schengen Borders Code

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Sylvie GUILLAUME (S&D, FR) on the proposal for a regulation 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.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

#### Restrictions on travel to the European Union

The amended text called for a more coherent EU response in cases of large-scale public cross-border health emergencies, allowing temporary restrictions on entry into the Schengen area, but exempting EU citizens, long-term residents and asylum seekers.

#### Procedure for transferring persons apprehended at the internal borders

The procedure by which a Member State may transfer third country nationals with no right to stay to a Member State from where the person came directly should take place swiftly but be limited and subject to safeguards. Concerning irregular migrants apprehended at the internal borders as part of cross-border police operational cooperation to the Member States from where they come directly, Members stated that several categories should be excluded, including unaccompanied minors or members of their family arriving together, from such returns.

Moreover, the procedure should also not apply to third-country nationals who are holders of long-term residence permits or their family members, third-country nationals who enjoy the right to free movement in the Union, third-country nationals who are holders of valid long-stay visas and their family members in accordance with national law, third country nationals who are holders of a valid short stay visa or to third country nationals who are entitled to visa-free travel within the Schengen Area in so far as they have been on the territory for less than 90 days in any 180-day period.

#### Border surveillance

The main purpose of border surveillance should be to prevent unauthorised border crossings, to provide situational awareness, to counter cross-border criminality and to take measures against persons who have crossed the border irregularly. Surveillance between border crossing points should be carried out by border guards whose numbers and methods should be adapted to existing or foreseen risks and threats, including the possible risk to life of those seeking to cross the border.

#### General framework for the temporary reintroduction or prolongation of border control at internal borders

Members extended the scope of threats that may lead to the unilateral reintroduction of border controls at internal borders and circumstances under which internal border controls can be prolonged. For example, a serious threat to public policy or internal security may be considered to arise from, in particular:

- an identified and immediate threat of acts of terrorism or of serious organised crime;
- an exceptional situation in which there is an unexpected and sudden large-scale unauthorised movement of third-country nationals between Member States, putting at risk the overall functioning of the area without internal border control.

#### Procedure for the temporary reintroduction or prolongation of border control at internal borders

The amended text stipulates that border control at internal borders may be reintroduced for a period of up to three months. Where Member States reintroduce controls at internal borders because of foreseeable threats, they should be able to do so for a period of three months, renewable up to a maximum of 18 months.

## Criteria for the temporary reintroduction and prolongation of border control at internal border

To establish whether the reintroduction or prolongation of border control at internal borders is necessary and proportionate, a Member State should first assess in particular:

- whether the reintroduction of border controls at internal borders is likely to adequately remedy the serious threat to public policy or internal security;
- whether measures other than the temporary reintroduction of border control at internal borders are likely to sufficiently remedy the serious threat to public policy or internal security;
- the use of alternative measures such as proportionate police checks;
- other forms of police cooperation provided for under Union law, including on matters such as joint patrols, joint operations, joint investigation teams, cross-border hot pursuits or cross-border surveillance.

Where a Member State decides to prolong the border control at internal borders beyond a period of six months, it should carry out a risk assessment.

| Transparency   |                   |      |            |  |
|----------------|-------------------|------|------------|--|
| AZMANI Malik   | Shadow rapporteur | LIBE | 28/02/2023 | European Council of Refugees and Exiles (ECRE) |
| AZMANI Malik   | Shadow rapporteur | LIBE | 28/02/2023 | Permanent Representative of Slovenia           |
| AZMANI Malik   | Shadow rapporteur | LIBE | 06/02/2023 | Permanent Representation of Sweden             |
| AZMANI Malik   | Shadow rapporteur | LIBE | 11/01/2023 | Permanent Representation of France             |
| AZMANI Malik   | Shadow rapporteur | LIBE | 30/11/2022 | Permanent Representation of Slovenia           |
| AZMANI Malik   | Shadow rapporteur | LIBE | 18/11/2022 | Permanent representation of the Netherlands    |
| AZMANI Malik   | Shadow rapporteur | LIBE | 10/11/2022 | European Commission, Deputy DG                 |
| SKYTTEDAL Sara | Shadow rapporteur | LIBE | 13/10/2022 | European Council on Refugees and Exiles        |
| AZMANI Malik   | Shadow rapporteur | LIBE | 29/06/2022 | European Commission, Deputy DG                 |