

Schengen Borders Code

2021/0428(COD) - 27/09/2023 - Committee report tabled for plenary, 1st reading/single reading

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.