

Schengen Borders Code

2021/0428(COD) - 15/12/2021 - Legislative proposal

PURPOSE: to strengthen the Schengen area's 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.