

# Schengen Borders Code

2021/0428(COD) - 24/04/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 311 votes to 267, with 53 abstentions, a legislative resolution 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 European Parliament's position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

## *Instrumentalisation of migrants*

The amended text stated that Member States may, where a large number of migrants attempt to cross their external borders in an unauthorised manner, en masse and using force, 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.

Furthermore, humanitarian assistance should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.

## *Border surveillance*

The main purpose of border surveillance should 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 should also involve the carrying out of risk analyses.

## *Temporary restrictions on travel to the Union*

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 in the event of **large-scale public health emergencies**. 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 should be **proportionate and non-discriminatory** and should not have a negative impact on the functioning of the area without internal border control.

Restrictions on entry to the Member States for persons undertaking essential travel should be imposed **only exceptionally**, for a strictly limited period of time, until sufficient information about the large-scale public health emergencies, is available and until the Council, on a proposal by the Commission, identifies and adopts alternative health-related restrictions that are necessary to protect public health and that are to be applied to those persons.

## *Procedure for transferring persons apprehended in internal border areas*

Where the national law enforcement authorities of a Member State apprehend third-country nationals who do not have the right to stay in that Member State, in border areas, during checks involving the competent authorities in the framework of bilateral cooperation, which may include, in particular, joint police patrols,

these authorities will have the possibility to transfer the third-country nationals to the Member State from which they entered the transferring Member State, provided that the third-country nationals do not have the right to stay in the transferring Member State.

The transfer procedure should not apply to **asylum seekers** or beneficiaries of **international protection**. When transferring a third-country national presumed to be a **minor**, the transferring Member State should inform the receiving Member State of this presumption and both Member States will have to ensure that all measures are taken in the best interests of the child and in accordance with their respective national law.

Third-country nationals apprehended in border areas and transferred as part of the procedure must have a **right of appeal**.

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

Where, in the area without internal border control, 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.

A serious threat to public policy or internal security may, in particular, be considered to arise from: (i) **terrorist incidents or threats**, and threats posed by serious organised crime; (ii) an exceptional situation characterised by sudden large-scale unauthorised movements of third-country nationals between the Member States, putting a substantial strain on the overall resources and capacities of well-prepared competent authorities and which is likely to put at risk the overall functioning of the area without internal border control.

In all cases, border control at internal borders should be reintroduced only as a measure of **last resort**. The scope and duration of the temporary reintroduction of border control should not exceed what is strictly necessary to respond to the serious threat identified. Border control may only be reintroduced or prolonged where a Member State has established that such a measure is necessary and proportionate.

Where a Member State considers that there is a major exceptional situation with regard to a persisting serious threat justifying the continued need for border control at internal borders in excess of the maximum period of six months, it should **notify** the European Parliament, the Council and the Commission and the other Member States of its intention to prolong internal border control for an additional period of up to 6 months.

That notification should include a risk assessment. Within 3 months after the notification, the Commission should issue a new opinion on the necessity and proportionality of the prolongation of border control at internal borders.

Where, in the event of a major exceptional situation, the continuing need to maintain border control at internal borders is confirmed but the additional period of six months is not sufficient to ensure the availability of other effective measures to deal with the continuing threat, a Member State may decide to extend border control at internal borders for a second and final additional period of no more than six months.

In exceptional circumstances and under certain conditions Member States should be able to prolong border control at internal borders for two further periods of six months.