Basic information

2021/0428(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Schengen Borders Code Amending Regulation 2016/399 2015/0006(COD) **Subject** 7.10 Free movement and integration of third-country nationals 7.10.02 Schengen area, Schengen acquis 7.10.04 External borders crossing and controls, visas **Legislative priorities** Joint Declaration 2022 Joint Declaration 2023-24	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	GUILLAUME Sylvie (S&D)	31/03/2022
	Shadow rapporteur SKYTTEDAL Sara (EPP) AZMANI Malik (Renew) MARQUARDT Erik (Greens/EFA) WEIMERS Charlie (ECR) VISTISEN Anders (ID) PELLETIER Anne-Sophie (The Left)	

Council of the European Union

European Commission

Commission DG	Commissioner
Migration and Home Affairs	JOHANSSON Ylva

Key events

Date	Event	Reference	Summary
		COM(2021)0891	Summary

15/12/2021	Legislative proposal published		
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	A9-0280/2023	Summary
02/10/2023	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
05/10/2023	Results of vote in Parliament		
05/10/2023	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72 - vote)		
19/03/2024	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	GEDA/A/(2024)001064 PE759.664	
24/04/2024	Decision by Parliament, 1st reading	T9-0323/2024	Summary
24/04/2024	Results of vote in Parliament		
24/05/2024	Act adopted by Council after Parliament's 1st reading		
13/06/2024	Final act signed		
20/06/2024	Final act published in Official Journal		

Technical information

Procedure reference	2021/0428(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation 2016/399 2015/0006(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 079-p2 Treaty on the Functioning of the European Union TFEU 077-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/9/07998

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE737.471	08/11/2022	
Amendments tabled in committee		PE739.712	09/12/2022	
Amendments tabled in committee		PE739.713	12/12/2022	
Committee report tabled for plenary, 1st reading/single reading		A9-0280/2023	27/09/2023	Summary

Text agreed during interinstitutional negotiations		PE759.664	14/02/2024	
Text adopted by Parliament, 1st reading/single reading		T9-0323/2024	24/04/2024	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2024)001064	14/02/2024	
Draft final act	00040/2024/LEX	13/06/2024	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2021)0891	15/12/2021	Summary
Document attached to the procedure	SWD(2021)0462	15/12/2021	
Document attached to the procedure	SWD(2021)0463	15/12/2021	
Document attached to the procedure	SEC(2021)0440	16/12/2021	
Commission response to text adopted in plenary	SP(2024)394	08/08/2024	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0264/2022	18/05/2022	
CofR	Committee of the Regions: opinion	CDR1129/2022	12/10/2022	
CofR	Committee of the Regions: opinion	CDR5247/2022	12/10/2022	

Additional information

Source	Document	Date
European Parliament	Briefing	26/04/2022
European Commission	EUR-Lex	

Meetings with interest representatives published in line with the Rules of Procedure

Rapporteurs, Shadow Rapporteurs and Committee Chairs

Transparency

Name	Role	Committee	Date	Interest representatives
AZMANI Malik	Shadow rapporteur	LIBE	28/02/2023	Permanent Representative of Slovenia

AZMANI Malik	Shadow rapporteur	LIBE	28/02/2023	European Council of Refugees and Exiles (ECRE)
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

Final act	
Regulation 2024/1717 OJ OJ L 20.06.2024	Summary

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.

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.

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.

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.