



Plenary sitting

A9-0280/2023

27.9.2023

*****I**
REPORT

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 (COM(2021)0891 – C9-0473/2021 – 2021/0428(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sylvie Guillaume

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT 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 (COM(2021)0891 – C9-0473/2021 – 2021/0428(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0891),
 - having regard to Article 294(2) and Article 77(2), point (b) and (e) and Article 79(2), point (c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0473/2021),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 18 May 2022¹,
 - having regard to the opinion of the Committee of the Regions of 12 October 2022²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0280/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Citation 1

¹ Not yet published in the Official Journal.

² Not yet published in the Official Journal.

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b) and (e) **and Article 79(2)(c)** thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b) and (e) thereof,

Amendment 2

Proposal for a regulation

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The creation of an area in which the free movement of persons across internal borders is ensured is one of the main achievements of the Union. The normal functioning and strengthening of such an area, which is based on trust and solidarity, should be a common objective of the Union and the Member States which have agreed to take part in it. The absence of internal borders and the sharing of external borders create a common responsibility for Member States to ensure an area of freedom, security, and justice. In this respect, the temporary reintroduction of internal border control should be exceptional and used only as a last resort, where appropriate subject to consultation and cooperation between the Member States concerned and under the control of the Commission.

Amendment 3

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 (“Schengen Borders

Amendment

(2) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 (“Schengen Borders

Code”)⁴² lays down rules governing *the movement of persons to and from the area without controls at internal borders (the “Schengen Area”) as well as between the Member States that participate in the Schengen Area.*

⁴² Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1.

Amendment 4

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) In recent years, *the Schengen area has been subject to unprecedented* challenges, which by their nature were not confined to the territory of any single Member State. *Such challenges underscored the fact that* the preservation of public order and security in the Schengen area is a shared responsibility requiring joined and coordinated action between Member States *and at Union level. They also highlighted gaps in* the existing rules governing the functioning of the Schengen area both at external and internal borders *and the need to create a stronger* and more robust framework *allowing for a more* effective response to challenges *faced by the Schengen area.*

Code”)⁴² *provides for the absence of border control of persons crossing the internal borders of the Member States of the Union and* lays down rules governing *border control* of persons *crossing the external* borders *of the Member States of the Union. .*

⁴² Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1.

Amendment

(3) In recent years, *several Member States have resorted to internal border control to address* challenges, which by their nature were not confined to the territory of any single Member State. *In an area of freedom, security and justice,* the preservation of public order and security in the Schengen area is a shared responsibility requiring joined and coordinated action *at Union level and* between Member States, *on the basis that that area of freedom, security and justice remains one that is free of internal border controls. The challenges faced by Member States, and the fact that Member States quickly resorted to internal border control to address those challenges,* highlighted *difficulties with* the existing rules governing the functioning of the Schengen area *and the enforcement of those rules,* both at external and internal *borders. It also underscored* the need *for a clearer* and more robust framework *in order to strengthen mutual trust and solidarity and to ensure the absence of any controls on*

persons, irrespective of their nationality, when crossing internal borders while enabling Member States to provide an effective response to challenges they face.

Amendment 5

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) Border control at external borders is in the interest not only of the Member State at whose external borders it is carried out but of **all** Member States which have abolished internal border control **and the Union as a whole**. Member States are required to ensure high standards in management of their external borders, including through enhanced cooperation between border guards, police, customs and other relevant authorities. The Union provides active support through the provision of financing support by the Agencies, **the European Border and Coast Guard in particular** and management of the Schengen Evaluation Mechanism. The rules applicable to external borders need to be **reinforced** in order to better respond to new challenges that have recently emerged at the external borders.

Amendment

(4) Border control at external borders, **in full compliance with the fundamental rights**, is in the interest not only of the Member State at whose external borders it is carried out but of **the Union as a whole and of all its** Member States, **in particular those** which have abolished internal border control. Member States are required to ensure high standards in management of their external borders, including through enhanced cooperation between border guards, police, customs and other relevant authorities. The Union provides active support through the provision of financing support by the Agencies, and management of the Schengen Evaluation Mechanism. The rules applicable to external borders need to be **amended and harmonised** in order to better respond to new challenges that have recently emerged at the external borders.

Amendment 6

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) **The COVID-19 pandemic has reinforced the need for the Union to be better prepared to respond to crisis situations at the external borders related to situations of diseases with an epidemic**

Amendment

(5) The COVID-19 pandemic has shown that threats to public health can require uniform rules concerning travel restrictions for travel into the European Union by third country nationals. The

potential that are a threat to public health. The COVID-19 pandemic has shown that threats to public health can require uniform rules concerning travel restrictions for travel into the European Union by third country nationals. The adoption of inconsistent and divergent measures at the external borders to address such threats negatively affects the functioning of the entire Schengen area, reduces predictability for third-country travellers and people-to-people contacts with third countries. To prepare the Schengen area for future challenges of a comparable ***scale related to threats to public health, it is necessary to establish a new mechanism which*** should allow for a timely adoption and lifting of coordinated measures at Union level. The new procedure at the external border should be applied ***in a situation of an infectious disease with epidemic potential as identified by the European Centre for Disease Prevention and Control or the Commission. This mechanism should complement the procedures proposed to be established in the Proposal for a Regulation of the European Parliament and of the Council on serious cross-border threats to health⁴³, notably in case of the recognition of a public health emergency, and the revised mandate of the European Centre for Disease Control.⁴⁴***

⁴³ COM(2020)727.

⁴⁴ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 851/2004 establishing a European Centre for disease prevention and control, COM(2020)726.

adoption of inconsistent and divergent measures at the external borders to address such threats negatively affects the functioning of the entire Schengen area, reduces predictability for third-country travellers and people-to-people contacts with third countries. To prepare the Schengen area for future challenges of a ***scale comparable to the Covid-19 pandemic***, a new mechanism should ***be established which would*** allow for a timely adoption and lifting of coordinated measures at Union level. The new procedure at the external border should be applied ***to a large-scale public health emergency with a serious cross-border threat to health, recognised by the Commission at Union level in accordance with Regulation (EU) 2022/2371⁴³.***

⁴³ ***Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU (OJ L 314, 6.12.2022, p. 26).***

Amendment 7

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) *The mechanism should provide for the adoption by the Council, upon a proposal by the Commission, of a regulation setting out* restrictions on travel, including restrictions on entry and any other necessary measures for travel into the European Union, and the conditions for lifting *them. In view of the politically sensitive nature of such measures which concern the right to enter the territory of Member States, implementing powers should be conferred on the Council to adopt such a regulation, acting on a proposal from the Commission.*

Amendment

(6) *When there is a large-scale public health emergency with a serious cross-border threat to health, the Commission should be able to adopt delegated acts providing for temporary* restrictions on travel *to the Member States*, including restrictions on entry and any other necessary measures for travel into the European Union, and the conditions for lifting *those restrictions and other* measures. *It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts the Commission should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.*

Amendment 8

Proposal for a regulation Recital 7

Text proposed by the Commission

(7) Importantly, in line with the applicable obligations under Union and international law, Union citizens and third-country nationals who, under agreements between the Union and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens, as well as their respective family members should always be permitted to enter the Union. Residents in the Union should also always be permitted to return to the Union. *The act should contain all*

Amendment

(7) Importantly, in line with the applicable obligations under Union and international law, Union citizens and third-country nationals who, under agreements between the Union and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens, as well as their respective family members should always be permitted to enter the Union. *Similarly, in accordance with Union law and international law, beneficiaries of international protection*

necessary elements to ensure that restrictions on travel are effective, targeted, non-discriminatory and proportionate to the evolving epidemiological situation. It should specify, where relevant, any categories of travellers whose travel should be exempted from restrictions on entry. In addition, or alternatively, the act should specify any geographical areas or third countries from which travel may be subject to specific measures, based on an objective methodology and criteria applicable thereto that should ***include, in particular,*** the epidemiological situation. The act could specify the conditions under which travel may be permitted such as testing, quarantine, self-isolation or any other appropriate measures, such as the need to fill in a passenger locator form or other contact tracing tool and having regard, in particular, to any Union systems developed to facilitate travel under safe conditions, such as digital certification systems. Where ***appropriate, the instrument could also set up a mechanism allowing to take additional measures in case the epidemiological situation dramatically worsens in one or more geographical areas.***

and those persons seeking asylum shall not be prohibited from entering the Union. Residents in the Union should also always be permitted to return to the Union. ***That delegated act*** should contain all necessary elements to ensure that restrictions on travel are effective, targeted, non-discriminatory and proportionate to the evolving epidemiological situation. It should specify, where relevant, any categories of travellers whose travel should be exempted from restrictions on entry. In addition, or alternatively, the act should specify any geographical areas or third countries from which travel may be subject to specific measures, based on an objective methodology and criteria applicable thereto that should ***derive from*** the epidemiological situation. The act could specify the conditions under which travel may be permitted such as testing, quarantine, self-isolation or any other appropriate measures, such as the need to fill in a passenger locator form or other contact tracing tool and having regard, in particular, to any Union systems developed to facilitate travel under safe conditions, such as digital certification systems. ***In duly justified cases, where grounds of urgency so require, the Commission should adopt an immediately applicable delegated act under the urgency procedure provided for under this Regulation.***

Amendment 9

Proposal for a regulation Recital 8

Text proposed by the Commission

(8) It is also necessary to reinforce the rules and safeguards in Union law in order to allow Member States to act swiftly to counter instances of instrumentalisation of migrants. Such instrumentalisation should be understood

Amendment

deleted

as referring to a situation where a third country instigates irregular migratory flows to the Union by actively encouraging or facilitating the arrival of third country nationals to the external borders of the Member States, where such actions indicate an intention to destabilise the Union as a whole or a Member State and where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security.

Amendment 10

Proposal for a regulation Recital 9

Text proposed by the Commission

Amendment

(9) Instrumentalisation of migrants can refer to situations where irregular travel of third country nationals has been actively encouraged or facilitated by a third country onto its own territory to reach the external border of the Member States but can equally refer to the active encouragement or facilitation of irregular travel of third country nationals already present in that third country. Instrumentalisation of migrants may also entail the imposition of coercive measures, intended to prevent the third country nationals from leaving the border areas of the instrumentalising third country, in a direction other than through a Member State.

deleted

Amendment 11

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

(10) The Union should mobilise all tools from its toolbox of diplomatic, financial and operational measures to support the Member States confronted with instrumentalisation. Diplomatic efforts by the Union or the Member State concerned, should be given priority as the means of addressing the phenomenon of instrumentalisation. This may be supplemented, where appropriate, by the imposition of restrictive measures by the Union.

deleted

Amendment 12

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) At the same time, in addition to these measures, it is equally necessary to further reinforce the current rules in relation to external border controls and border surveillance. To further assist the Member State facing an instrumentalisation of migrants, Regulation (EU) XXX/XXX complements the rules on border control by providing for specific measures in the area of asylum and return, while respecting the fundamental rights the individuals concerned and in particular by ensuring the respect of the right to asylum and providing the necessary assistance by the UN agencies and other relevant organisations.

deleted

Amendment 13

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) In particular, in a situation of instrumentalisation, it should, where necessary, be possible for the Member State concerned, to limit border traffic to the minimum by closing some border crossing points, while guaranteeing genuine and effective access to international protection procedures. Any such decision should take into account whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants. Furthermore, any such limitations should take full account of the rights of Union citizens, third country nationals who are beneficiaries of the right of free movement pursuant an international agreement and third-country nationals who are long-term residents under national or Union law or are holders of long-term visas, as well as their respective family members. Such limitations should also be applied in a manner that ensures respect for obligations related to access to international protection, in particular the principle of non-refoulement.

deleted

Amendment 14

Proposal for a regulation

Recital 13

Text proposed by the Commission

Amendment

(13) The European Border and Coast Guard Agency assists Member States with implementing the operational aspects of external border management, including information exchange, the provision of equipment, capacity building and training to national border guards, targeted information and risk analysis, **as well as** the deployment of the Standing Corps. The

(13) The European Border and Coast Guard Agency assists Member States with implementing the operational aspects of external border management, including information exchange, the provision of equipment, capacity building and training to national border guards, targeted information and risk analysis, the deployment of the Standing Corps, **as well**

Agency's new mandate offers considerable opportunities **to support** border control activities, including **screening and** return operations and a launch of rapid border intervention and/or return intervention at the request and on the territory of the host Member State concerned.

as assistance in search and rescue operations for persons in distress at sea launched and carried out in accordance with Regulation (EU) No 656/2014^{1a}. The Agency's new mandate offers considerable opportunities **for Member States to be assisted in their** border control activities, including **with regard to** return operations and a launch of rapid border intervention and/or return intervention at the request and on the territory of the host Member State concerned. **These activities are to be conducted in compliance with fundamental rights obligations.**

^{1a} Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 189, 27.6.2014, p. 93).

Amendment 15

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) By virtue of Article 41(1) of Regulation (EU) 2019/1896, the Executive Director of the European Border and Coast Guard Agency is required to recommend to a Member State that it request the Agency to initiate, carry out or adjust the Agency's support, **in order to address identified threats and challenges at the external borders, where the conditions laid down in that provision are met. In particular, the need for Agency support may become apparent in situations where the European Border and Coast Guard Agency has carried out a dedicated**

Amendment

(14) By virtue of Article 41(1) of Regulation (EU) 2019/1896, **on the basis of the results of a vulnerability assessment or where a critical impact level is attributed to one or more external border sections of a Member State**, the Executive Director of the European Border and Coast Guard Agency is required to recommend to a Member State that it request the Agency to initiate, carry out or adjust the Agency's support. This competence of the Executive Director is without prejudice to the general support that the Agency may **provide** to the

vulnerability assessment in connection with the instrumentalisation of migrants. On the basis of the results of such a vulnerability assessment or where a critical impact level is attributed to one or more external border sections and taking into account the relevant elements in the Member State's contingency plans, the Agency's risk analysis and the analysis layer of the European situational picture, the Executive Director should recommend to the Member State concerned to request that the Agency initiate, carry out or adjust the Agency's support in accordance with Article 41(1) of Regulation (EU) 2019/1896. This competence of the Executive Director is without prejudice to the general support that the Agency may **be providing** to the Member States.

Member States.

Amendment 16

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) *Moreover, in the event of instrumentalisation of migrants, the Member State concerned should reinforce border control, including, as appropriate, through additional measures preventing illegal crossings and the deployment of additional resources and technical means to prevent unauthorised crossing of the border. Such technical means could include modern technologies including drones and motion sensors, as well as mobile units. The use of such technical means, in particular, any technologies capable of collecting personal data, needs to be based on and exercised in accordance with clearly defined provisions of national law.*

Amendment

(15) *Where a Member State considers it necessary to reinforce border control, and where it considers using modern technologies including drones and motion sensors, as well as mobile units, it is important that the use of any such technologies capable of collecting personal data respects EU primary law, especially the Charter of Fundamental Rights, and Union data protection law, and that it is based on and exercised in accordance with clearly defined provisions of national law.*

Amendment 17

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) The Commission should be empowered to specify, in delegated acts adopted under this Regulation, appropriate standards for border surveillance, concerning in particular the new technologies that Member States may use, while taking into account the type of borders (land, sea or air), the impact levels attributed to each external border section in accordance with Article 34 of Regulation (EU) 2019/1896 and other relevant factors, **as a specific response to situations of instrumentalisation of migrants.**

Amendment

(16) ***In accordance with EU rules on the use of artificial intelligence and Union data protection law,*** the Commission should be empowered to specify, in delegated acts adopted under this Regulation, appropriate standards for border surveillance, concerning in particular the new technologies that Member States may use, while taking into account the type of borders (land, sea or air), the impact levels attributed to each external border section in accordance with Article 34 of Regulation (EU) 2019/1896 and other relevant factors. ***During such surveillance, third-country nationals should not be subject to intrusive biometric technologies.***

Amendment 18

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) In an area without internal border controls, persons should be able to move freely, and in security between Member States. In this regard, it should be clarified that the prohibition of controls at internal borders does not affect the competence of Member States to carry out checks on their territory, **including at their internal borders**, for purposes other than border control. It should, in particular, be clarified that national competent authorities, including health or law enforcement authorities, remain, in principle, **free to carry out checks in the** exercise of public powers provided for under national law.

Amendment

(17) In an area without internal border controls, persons, **irrespective of their nationality**, should be able to move freely, and in security between Member States. In this regard, it should be clarified that the prohibition of controls at internal borders does not affect the competence of Member States to carry out checks on their territory for purposes other than border control. It should, in particular, be clarified that national competent authorities, including health or law enforcement authorities, remain, in **principle entitled to** exercise public powers provided for under national law **provided that the effect of those powers is not equivalent to internal border control and does not lead to any form of**

discrimination.

Amendment 19

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) While the prohibition of internal border controls also extends to checks having equivalent effects, checks by **competent authorities should** not be considered equivalent to the exercise of border checks where they do not have border control as an objective, where they are based on general information and experience **of the competent authorities** regarding possible threats to public security or public policy, **including** where they aim to combat **irregular stay or residence and cross-border crimes linked to** irregular migration, where they are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders, and where they are conducted at transport hubs, such as ports, train or bus stations and airports or directly on board of passenger transport services, and where they are based on risk analysis.

Amendment

(18) While the prohibition of internal border controls also extends to checks having equivalent effects, checks by **police or other public powers might** not be considered equivalent to the exercise of border checks where they do not have border control as an objective, where they are based on general **law enforcement** information and experience regarding possible threats to public security or public policy, where they aim **in particular** to combat cross-border **crime, reduce irregular migration or contain the spread of an infectious disease with epidemic potential as identified by the European Centre for Disease Control**, where they are devised and executed in a manner clearly distinct from systematic checks on persons at the external **or internal** borders, and where they are conducted at transport hubs, such as ports, train or bus stations and airports or directly on board of passenger transport services, and where they are based on risk analysis. **At the same time, where competent authorities exercise police powers in a border area, they are entitled to do so only subject to strict detailed rules and limitations laid down by Member States in order not to jeopardise the attainment of the objective of the abolition of internal border controls.**

Amendment 20

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) ***While irregular migratory flows*** should not, per se, be considered to be a threat to public policy or internal security, ***they may require additional measures to ensure the functioning of the Schengen area.***

Amendment 21

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) ***The combatting of illegal residence or stay and of*** cross-border crime linked to irregular migration such as human trafficking, migrant smuggling and document fraud ***and*** other forms of cross-border crime could ***in particular encompass*** measures ***allowing the verification of*** the identity, nationality and residence status of persons provided that such verifications are ***non-systematic and*** carried out on the basis of risk analysis.

Amendment 22

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) The use of modern technologies to monitor traffic flows, notably on motorways and other important roads determined by the Member States, can be instrumental in addressing threats to public policy or internal security. The prohibition of internal border controls should not be understood as preventing the lawful

Amendment

(19) ***Migration and the crossing of external border by a large number of third-country nationals*** should not, per se, be considered to be a threat to public policy or internal security.

Amendment

(20) ***To counteract irregular migration and*** cross-border crime linked to irregular migration, such as human trafficking, migrant smuggling and document fraud, ***and to combat*** other forms of cross-border crime, ***Member States*** could ***be required to take*** measures ***to verify*** the identity, nationality and residence status of persons provided that such verifications are, ***not systematically carried out at the border or in border regions, do not breach the principle of non-discrimination, and are*** carried out on the basis of risk analysis.

Amendment

(21) The use of modern technologies to monitor traffic flows, notably on motorways and other important roads determined by the Member States, can be instrumental in addressing threats to public policy or internal security. The prohibition of internal border controls should not be understood as preventing the lawful

exercise of police or other public powers to carry out checks *in the internal border areas*. ***This includes checks*** that entail the use of monitoring and surveillance technologies which are generally used in the territory or that are based on a risk assessment for the purpose of protecting internal security. ***The use of such technologies for checks should therefore not be considered as equivalent to border controls.***

exercise of police or other public powers to carry out checks that entail the use of monitoring and surveillance technologies which are generally used in the territory or that are based on a risk assessment for the purpose of protecting internal security.

Amendment 23

Proposal for a regulation Recital 22

Text proposed by the Commission

Amendment

(22) In order to allow for such technologies to be effective, it should be possible to apply proportionate speed limits at road crossings.

deleted

Amendment 24

Proposal for a regulation Recital 23

Text proposed by the Commission

Amendment

(23) The prohibition of border controls at internal borders should not limit the carrying out of checks provided for in other instruments of Union law. The rules provided for in this Regulation, should not therefore, affect the applicable rules regarding the carrying out of checks on passenger data against relevant databases in advance of arrival.

deleted

Amendment 25

Proposal for a regulation Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) Before resorting to the reintroduction of border control at internal borders, Member States should give precedence to alternative measures. Member States should assess whether the situation could be adequately addressed by way of increased cross-border cooperation, both from an operational point of view and from that of information exchange between police services and other competent authorities of the Member State.

Amendment 26

Proposal for a regulation Recital 24 b (new)

Text proposed by the Commission

Amendment

(24b) In the absence of internal border controls, targeted joint patrols in intra-EU border areas are a valuable tool to counter migrant smuggling and trafficking in human beings, to prevent irregular stays and cross-border crime linked to irregular migration. It is possible that such checks prove more effective than internal border controls, in particular as they are more flexible and can be adapted more easily to evolving risks. When opting for cross-border police cooperation, it is important that they are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders and in a non-discriminatory manner.

Amendment 27

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) ***Measures need to be taken to address unauthorised movements of illegally staying third country nationals in an area without internal border controls.*** In order to strengthen the functioning of the Schengen area, Member States ***should be able to take additional measures to counter irregular movements*** between Member States, and combat ***illegal*** stays. ***Where national law enforcement authorities of a Member State apprehend illegally staying third country nationals at the internal borders as part of cross-border police operational cooperation it should be possible for those authorities to refuse such persons the right to enter or remain in their territory and to transfer them to the Member State from which they entered. The Member State from where the person came directly should in turn be required to receive the apprehended third country nationals.***

Amendment 28

Proposal for a regulation Recital 25 a (new)

Text proposed by the Commission

Amendment

(25) In order to strengthen the functioning of the Schengen area, ***and to assist*** Member States ***in countering*** irregular ***migration, including*** between Member States, and combat ***irregular*** stays, ***within the last ten years, the Union legislature has adopted numerous flanking measures, including the establishment of an Entry-Exit System, the establishment of a European Travel Information and Authorisation System, the establishment of a European Criminal Records database in respect of*** third country nationals, ***the reform of the Schengen Information System, the reform of the Visa Information System, two substantial overhauls of the mandate of the European Border and Coast Guard Agency, and the establishment of an interoperability framework to allow EU databases in the Area of Freedom, Security and Justice to communicate with one another.***

(25a) ***Where, in the context of joint police patrols as part of cross-border police operational cooperation, national law enforcement authorities of a Member State apprehend third country nationals, who have no right to stay, in the vicinity of internal borders, and where that Member State has not reintroduced internal border control, , it should then be possible for those authorities to transfer those third country nationals to the Member State from which they entered, where the law enforcement authorities of that latter Member State are participating***

in the joint police patrols. The Member State from where the person came directly should in turn be required to receive the apprehended third country nationals.

Amendment 29

Proposal for a regulation Recital 25 b (new)

Text proposed by the Commission

Amendment

(25b) To prevent racial profiling, the information on the basis of which joint police patrols are carried out in the vicinity of the internal borders should not be based on information collected through automated processing of data available in different data sources or in different data formats in order to forecast or predict trends related to migration and border crossings.

Amendment 30

Proposal for a regulation Recital 26

Text proposed by the Commission

Amendment

(26) The procedure by which a Member State may transfer ***apprehended illegally staying*** third country nationals to a Member State from where the person came directly should take place swiftly but be subject to safeguards and carried out in full respect of fundamental rights ***and*** the principle of non-discrimination enshrined in Article 21 of the Charter, ***to prevent racial profiling. It should be possible*** for the ***authorities to carry out a verification of relevant information immediately available to the authorities concerning the movements of the persons concerned. Such information may include objective elements that would allow the authorities***

(26) 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 and carried out in full respect of fundamental rights, ***in particular*** the principle of non-discrimination enshrined in Article 21 of the Charter. ***Since Union-level rules governing persons seeking international protection and beneficiaries of international protection are laid down in the asylum acquis, including the procedures*** for the ***transfer of such persons between*** Member States, ***it should***

to conclude that the person had recently travelled from another Member States, such as the possession of documents, including receipts or invoices, evidencing recent travel from another Member State. Third country nationals subject to the transfer procedure should be provided with a reasoned decision in writing. While the decision should be immediately enforceable, the third country national should be afforded an effective remedy to appeal against or seek review of the transfer decision. This remedy should not have suspensive effect.

be clear that this procedure does not apply, in any circumstances, to persons seeking international protection or beneficiaries of international protection. In line with Articles 9 and 24 of the Charter, such a procedure should not apply to minors or members of their family arriving together from another Member State. 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.

Amendment 31

Proposal for a regulation Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) It should be possible for the authorities to carry out a verification of relevant information immediately available to the authorities concerning the movements of the persons who might be the subject of such a procedure. Such information can include objective elements that would allow the authorities to conclude that the person had recently travelled from another Member States, such as the possession of documents, including receipts or invoices, evidencing recent travel from another Member State. Third country nationals subject to the transfer procedure should be provided with a reasoned decision in writing. While

the decision should be immediately enforceable, the third country national should have an effective remedy before a court or tribunal to appeal against or seek review of the transfer decision. That remedy should not have suspensive effect.

Amendment 32

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) *The transfer procedure provided for under this Regulation should not affect the existing possibility for Member States to return irregular third country nationals in accordance with bilateral agreements or arrangements referred to in Article 6(3) of Directive 2008/115/EC (the “Return Directive”), where such persons are detected outside of the vicinity of internal borders. In order to facilitate the application of such agreements, and to complement the objective of protecting the area without internal borders, the Member States should be afforded the possibility to conclude new agreements or arrangements and update existing ones. The Commission should be notified of any such modifications or updates of new agreements or arrangements. Where a Member State has taken back a third country national under the procedure provided for in this Regulation or on the basis of a bilateral agreement or arrangement, the Member State concerned should be required to issue a return decision in accordance with the Return Directive. In order to ensure consistency between the new procedures provided for in this Regulation and existing rules on the return of third country nationals, a targeted modification of Article 6(3) of the Return Directive is therefore necessary.*

Amendment

(27) *Nothing in* this Regulation should affect the existing possibility for Member States to return irregular third country nationals in accordance with bilateral agreements or arrangements referred to in Article 6(3) of Directive 2008/115/EC (the “Return Directive”), where such persons are detected outside of the vicinity of internal borders.

Amendment 33

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) In exceptional cases, addressing threats to the Schengen area may require the adoption, **by the Member States**, of measures at the internal borders. Member States remain competent to determine the need for the temporary reintroduction **or prolongation** of border controls. Under the existing rules, the reintroduction of controls at internal borders is provided for in circumstances where a serious threat to internal security or public policy manifests itself in a single Member State for a limited period of time. In particular, terrorism and organised crime, large scale public health emergencies or large scale or high profile international events such as sporting, trade or political events can amount to a serious threat to public policy or internal security.

Amendment

(28) In exceptional cases, addressing **identified** threats to the Schengen area may, **as a last resort**, require the adoption of measures at the internal borders **by the Member States. As free movement of persons is affected by the temporary reintroduction of internal border control, any decision to reintroduce such control should be taken in accordance with commonly agreed criteria and should be duly notified to the Commission, the Parliament and the Council or be recommended by a Union institution. Within the framework and limits laid down in this Regulation**, Member States remain competent to determine the need for the temporary reintroduction of border **controls. Under** the existing rules, the reintroduction of controls at internal borders is provided for in circumstances where a serious threat to internal security or public policy manifests itself in a single Member State for a limited period of time. In particular, terrorism and organised crime, large scale public health emergencies or large scale or high profile international events such as sporting, trade or political events can amount to a serious threat to public policy or internal security.

Amendment 34

Proposal for a regulation Recital 29

Text proposed by the Commission

(29) Furthermore, a serious threat to public policy or internal security **can** also

Amendment

(29) Furthermore, **it is possible to consider that** a serious threat to public

result from **large scale** unauthorised **movements** of irregular migrants between the Member States where this creates a situation putting **a strain on** the overall **resources and capacities** of the **responsible national services**, where the other means provided for under this Regulation are **not** sufficient to address these inflows and movements. In this context, Member States should be able to rely on objective and quantified reports on unauthorised movements whenever available, in particular, when produced on a regular basis by the competent Union agencies in line with their respective mandates. ***It should be possible for a Member State to use the information provided by the agencies to demonstrate the exceptional character of the identified threat caused by unauthorised movement in the risk assessment, in order to justify the reintroduction of internal border controls on this ground.***

policy or internal security **could** also result from **an exceptional situation in which there is an unexpected and sudden large-scale** unauthorised **movement** of irregular migrants between the Member States, where this creates a situation putting **at risk of** the overall **functioning** of the **area without internal border controls**, where the other means provided for under this Regulation are **assessed not to be** sufficient to address these inflows and movements. In this context, Member States should be able to rely on objective and quantified reports on unauthorised movements whenever available, in particular, when produced on a regular basis by the competent Union agencies in line with their respective mandates.

Amendment 35

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) While action at Union level is provided for in circumstances where the nature of a threat derives from persistent serious deficiencies at the external borders, there is no Union-wide mechanism **that would apply to situations** where, within the Schengen area, a serious threat to internal security or public policy area is affecting **a majority of** Member States, putting at risk the well-functioning of the Schengen area. The gap should be filled by putting in place a new Schengen area safeguard mechanism permitting coordinated solutions to protect the interests of persons entitled to benefit from the area without controls at internal borders, by maximising the effectiveness of the measures taken while minimising

Amendment

(30) While action at Union level is provided for in circumstances where the nature of a threat derives from persistent serious deficiencies at the external borders, there is no Union-wide mechanism **to ensure Union-wide coordination** where, within the Schengen area, a serious threat to internal security or public policy area is affecting **several** Member States **at the same time**, putting at risk the well-functioning of the Schengen area. The gap should be filled by putting in place a new Schengen area safeguard mechanism permitting coordinated solutions to protect the interests of persons entitled to benefit from the area without controls at internal borders, by maximising the effectiveness

their negative side-effects.

of the measures taken while minimising their negative side-effects.

Amendment 36

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) The new Schengen area safeguard mechanism ***should allow the Council to adopt, upon a proposal by the Commission, a decision*** authorising the reintroduction or prolongation of internal border controls, where this is justified by a particular threat, identified on the basis of notifications received from individual Member States, ***or*** other available information, ***in particular a risk assessment, in case of prolongation of internal border controls beyond six months. Given the politically sensitive nature of such a decision which regulates the possibility for Member States to reintroduce or prolong internal border control in particular circumstances, implementing powers to adopt a decision should be conferred on the Council, acting on a proposal from the*** Commission.

Amendment

(31) ***Given the politically sensitive nature of a decision which regulates the possibility for Member States to reintroduce or prolong internal border control in particular circumstances, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to initiate the new Union-level Schengen area safeguard mechanism authorising the reintroduction or prolongation of internal border controls, where this is justified by a particular threat, identified on the basis of notifications received from several individual Member States, a risk assessment, and other available information, and to provide supplementary rules on mitigating measures that should be established at national and Union level. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. When preparing and drawing up delegated acts, the Commission should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.***

Amendment 37

Proposal for a regulation

Recital 32

Text proposed by the Commission

(32) In determining whether a reintroduction or prolongation of internal border controls by the Member States is justified, the **Council** should take into account whether any other measures that could ensure a high level of security within the territory, **such as reinforced checks in the internal border areas by the competent authorities**, are available. In the event that a prolongation of the controls is not considered justified, the Commission should, **instead**, recommend the use of other measures deemed more appropriate to address the identified threat.

Amendment

(32) In determining whether a reintroduction or prolongation of internal border controls by the Member States is justified, the **Commission** should take into account **that internal border control remains a measure of last resort which has a serious impact on all persons having the right to move within the area without internal border control. The Commission should assess whether the measure is appropriate, necessary and proportionate. The scope and duration of any temporary reintroduction of such measures should be restricted to the minimum needed to respond to the serious threat to public policy or internal security. The Commission should consider** whether any other measures that could ensure a high level of security within the territory are available. In the event that a prolongation of the controls is not considered justified, **internal border controls should be lifted immediately and** the Commission should recommend the use of other measures deemed more appropriate to address the identified threat.

Amendment 38

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) In order to ensure compliance with the principle of proportionality, the **decision of the Council** should be adopted for a limited period of time of up to six months that may be prolonged subject to regular review **upon a proposal from the Commission, as long as the threat is found to persist**. The initial **decision** should include an assessment of the expected impact of the measures adopted, including its adverse side-effects, with a

Amendment

(34) In order to ensure compliance with the principle of proportionality, the **delegated act** should be adopted for a limited period of time of up to six months that may be prolonged subject to regular review, **up to a maximum period of two years in exceptional cases**. The initial **delegated act** should include an assessment of the expected impact of the measures adopted, including its adverse side-effects, with a view to determining if controls at

view to determining if controls at internal borders are justified or whether less restrictive measures could be applied in their place in an effective manner. Subsequent *decisions* should take account of the evolution of the identified threat. The Member States should immediately notify the Commission and the Member States of the reintroduction of internal border controls in accordance with the *decision of the Council*.

internal borders are justified or whether less restrictive measures could be applied in their place in an effective manner. *Any* subsequent *delegated act prolonging internal border control* should take account of the evolution of the identified threat. The Member States should immediately notify the Commission, *the Parliament*, and the Member States of the reintroduction of internal border controls in accordance with the *delegated act*.

Amendment 39

Proposal for a regulation Recital 35

Text proposed by the Commission

(35) Reintroduction of internal border controls should also remain possible where serious deficiencies in the management of the external borders persist, putting at risk the overall functioning of the area without internal border control. *Periods where the border controls were introduced by Member States because the urgency of the situation required it or where the Council takes a decision to recommend the reintroduction because a threat affects a significant number of Member States, should not be included in the two years' period applicable to reintroductions based on serious deficiencies at the external borders.*

Amendment

(35) Reintroduction of internal border controls should also remain possible where serious deficiencies in the management of the external borders persist, putting at risk the overall functioning of the area without internal border control.

Amendment 40

Proposal for a regulation Recital 36

Text proposed by the Commission

(36) The reintroduction of border controls at internal borders, whether on the basis of unilateral decisions of the Member

Amendment

(36) The reintroduction of border controls at internal borders, whether on the basis of *Union level decisions or* unilateral

States *or at a Union level*, has serious implications for the functioning of the Schengen area. In order to ensure that any decision to reintroduce border controls is only taken where necessary, as a measure of last resort, the decision on temporary reintroduction or prolongation of border controls should be based on common criteria, ***putting an emphasis on necessity and proportionality***. The proportionality principle requires that the reintroduction of internal border controls be subject to safeguards that increase over time.

decisions of the Member States, has serious implications for the functioning of the Schengen area ***and the rights of individuals***. In order to ensure that any decision to reintroduce border controls is only taken where necessary, as a measure of last resort, the decision on temporary reintroduction or prolongation of border controls should be based on common criteria ***and be strictly necessary and proportionate***. The proportionality principle requires that the reintroduction of internal border controls be subject to safeguards that ***are to be respected before internal border controls are considered and that*** increase over time.

Amendment 41

Proposal for a regulation Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) Any derogation from the fundamental principle of free movement of persons should be interpreted strictly and the concept of public policy presupposes the existence of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Where Member States reintroduce internal border controls for foreseeable threats, they should be able to do so for a period of three months, renewable up to a maximum period of 18 months.

Amendment 42

Proposal for a regulation Recital 37

Text proposed by the Commission

Amendment

(37) In the first instance, Member States

(37) In the first instance, Member States

should assess the appropriateness of internal border controls having regard to the nature of the serious threat identified. In this context, the Member States should pay particular attention to and assess the likely impact of internal border controls on the movement of persons within the area without internal border controls and the functioning of the cross-border regions. This assessment should be part of the notification that Member States are required to transmit to the Commission. In case of prolongation of internal border controls for foreseeable events beyond **an initial** period of six months, the Member State should also **assess the appropriateness of alternative measures to pursue the same objectives as internal border controls, such as proportionate checks as carried out in the exercise of police or other public powers or through forms of police cooperation as provided for under Union law, and the possibility to use the transfer procedure.**

should assess the appropriateness of internal border controls having regard to the nature of the serious threat identified **as well as the appropriateness of alternative measures to pursue the same objectives as internal border controls, such as proportionate checks as carried out in the exercise of police or other public powers or through forms of police cooperation as provided for under Union law, including the possibility to use the transfer procedure.** In this context, the Member States should pay particular attention to and assess the likely impact of internal border controls on the movement of persons within the area without internal border controls and the functioning of the cross-border regions. This assessment should be part of the notification that Member States are required to transmit to the Commission, **the Parliament and the Council.** In case of prolongation of internal border controls for foreseeable events beyond **a** period of six months, the Member State should also **carry out a risk assessment. That risk assessment should also include details on the scale and anticipated evolution of the identified serious threat, information on how long that serious threat is expected to persist and which sections of the internal borders are affected, information on coordination measures with other Member States impacted or likely to be impacted by such measures and the measures that the Member State concerned has taken and intends to take to alleviate the identified serious threat, with a view to lifting internal border controls in order to reinstate the principle of free movement.**

Amendment 43

Proposal for a regulation Recital 38

Text proposed by the Commission

(38) In order to limit harmful consequences resulting from the reintroduction of internal border controls, any decision to reintroduce internal border controls should be accompanied by mitigating measures *if needed*. Such measures should include measures to assure a smooth operation of transit of goods and transport personnel and seafarers by the establishment of ‘green lanes’. In addition, and to take account of the need to ensure the movement of persons whose activities may be essential for preserving the supply chain or the provision of essential services, Member States should also apply the existing guidelines on cross-border workers⁴⁵. Against this background, the rules for the reintroduction of border controls at internal borders should take account of the guidelines and recommendations adopted throughout the COVID-19 pandemic as a solid safety net for the Single Market, for the purpose of assuring that they are applied by the Member States, *where appropriate*, as mitigating measures during reintroduced internal border controls. ***Measures should in particular be identified with a view to ensuring the uninterrupted functioning of the Single Market and*** safeguarding the interests of cross-border regions and of ‘twin cities’ including for instance authorisations or derogations for the inhabitants of cross-border regions.

⁴⁵ 2020/C 102 I/03.

Amendment

(38) In order to limit harmful consequences resulting from the reintroduction of internal border controls, any decision to reintroduce internal border controls should be accompanied by mitigating measures , ***but always with a view to lifting internal border control as soon as possible***. Such measures should include measures to assure a smooth operation of transit of goods and transport personnel and seafarers by the establishment of ‘green lanes’. In addition, and to take account of the need to ensure the movement of persons whose activities may be essential for preserving the supply chain or the provision of essential services, Member States should also apply the existing guidelines on cross-border workers⁴⁵. Against this background, the rules for the reintroduction of border controls at internal borders should take account of the guidelines and recommendations adopted throughout the COVID-19 pandemic as a solid safety net for the Single Market, for the purpose of assuring that they are applied by the Member States as mitigating measures during reintroduced internal border controls, with a view to safeguarding the interests of cross-border regions and of ‘twin cities’ including for instance authorisations or derogations for the inhabitants of cross-border regions.

⁴⁵ 2020/C 102 I/03.

Amendment 44

Proposal for a regulation
Recital 39

Text proposed by the Commission

(39) The notification to be provided by the Member States should be decisive when assessing compliance with the criteria and conditions for a temporary reintroduction of internal border controls. In order to ensure ***a comparable set of*** information, the Commission should adopt a template for the notification of reintroduction of border controls at internal borders in an implementing act. Member States should be entitled to classify ***all or*** parts of the information provided in the notification, without prejudice to the functioning of appropriate and secure police cooperation channels.

Amendment

(39) The notification to be provided by the Member States should be decisive when assessing compliance with the criteria and conditions for a temporary reintroduction of internal border controls. In order to ensure ***proper supervision and monitoring of internal border controls that have been reintroduced, and improve the quality of the*** information ***it receives***, the Commission should adopt a template for the notification of reintroduction of border controls at internal borders in an implementing act. Member States should be entitled to classify parts of the information provided in the notification, without prejudice to the functioning of appropriate and secure police cooperation channels ***and to the availability of information to the Commission, the Parliament and the Council.***

Amendment 45

Proposal for a regulation

Recital 40

Text proposed by the Commission

(40) In order to ensure that internal border controls are truly a last resort measure applied only for as long as necessary and in order to allow for assessing the necessity and proportionality of internal border controls to address foreseeable threats, Member States should prepare a risk assessment to be submitted to the Commission when internal border controls are prolonged beyond ***an initial*** six months in response to foreseeable threats. The Member States must in particular, explain, the scale and evolution of the identified serious threat, including how long the identified serious threat is expected to persist and which sections of the internal borders may be affected, as

Amendment

(40) In order to ensure that internal border controls are truly a last resort measure applied only for as long as necessary and in order to allow for assessing the necessity and proportionality of internal border controls to address foreseeable threats ***and to allow the Commission to assess that such controls are an exceptional measure***, Member States should prepare a risk assessment to be submitted to the Commission when internal border controls are prolonged beyond ***a period of*** six months in response to foreseeable threats. The Member States must in particular, explain, the scale and evolution of the identified serious threat, including how long the identified serious

well as their coordination measures with the other Member States that are impacted or likely to be impacted by such measures.

threat is expected to persist and which sections of the internal borders may be affected, ***why alternative measures will not resolve the identified threat***, as well as their coordination measures with the other Member States that are impacted or likely to be impacted by such measures.

Amendment 46

Proposal for a regulation Recital 42

Text proposed by the Commission

(42) In order to ensure ***a sufficient degree of transparency of the*** actions affecting travel without internal border controls, the Member States should ***also inform*** the European Parliament ***and*** the Council ***about the main elements concerning the planned reintroduction of border controls. In justified cases, Member States may also classify such information.*** Every year, pursuant to Article 33 of the Schengen Borders Code, the Commission should present to the European Parliament and to the Council a report on the functioning of the area without internal border control ('State of Schengen report') which should pay particular attention to the ***situation as regards the unauthorised movements of third country nationals, building on the available information from the relevant Agencies and data analysis from relevant information systems.*** It should also assess the necessity and proportionality of the reintroductions of border controls in the period covered by that Report. The State of Schengen report shall also cover the reporting obligations resulting from Article 20 of the Schengen Evaluation Mechanism⁴⁶.

Amendment

(42) In order to ensure sufficient ***level of supervision, transparency and accountability with regard to*** actions ***taken by Member States*** affecting travel without internal border controls, the Member States should ***provide the notifications of reintroduction of internal border control*** to the European Parliament, the Council ***and the Commission at the same time in accordance with this Regulation...*** Every year, pursuant to Article 33 of the Schengen Borders Code, the Commission should present to the European Parliament and to the Council a report on the functioning of the area without internal border control ('State of Schengen report') which should pay particular attention to the ***border controls that have been in place for longer than twelve months. The report should include all the decisions to reintroduce internal border control and details of the actions taken by the Commission with regard to internal border controls reintroduced.*** It should also assess the necessity and proportionality of the ***all*** reintroductions of border controls in the period covered by that Report ***building on the information available from the competent authorities of the Member States.*** The State of Schengen report shall also cover the reporting obligations resulting from Article 20 of the Schengen Evaluation

⁴⁶ Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

⁴⁶ Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

Amendment 47

Proposal for a regulation

Recital 43

Text proposed by the Commission

(43) The mechanism for the temporary reintroduction of border controls at internal borders in urgent situations or to address foreseeable threats should ***provide for a possibility, for*** the Commission, to organise consultations between Member States, including at the request of any Member State. Relevant Union Agencies ***should*** be involved in this process in order to share their expertise, where appropriate. Such consultations should look ***into*** the modalities of carrying out internal border controls and their time-line, ***possible mitigating measures as well as the possibilities of applying alternative measures instead***. Where the Commission or a Member State has issued an opinion expressing concerns regarding the reintroduction of border controls, such consultations should be mandatory.

Amendment

(43) The mechanism for the temporary reintroduction of border controls at internal borders in urgent situations or to address foreseeable threats should ***oblige*** the Commission to organise consultations between Member States, including at the request of any Member State. Relevant Union Agencies ***may*** be involved in this process in order to share their expertise, where appropriate. Such consultations should look ***at the possibility of applying alternative measures, and if necessary*** the modalities of carrying out internal border controls and their time-line. Where the Commission or a Member State has issued an opinion expressing concerns regarding the reintroduction of border controls, such consultations should be mandatory. ***Where border controls at internal borders have been prolonged beyond a period of six months, the necessity, proportionality and duration of those controls should be discussed in the Schengen Forum.***

Amendment 48

Proposal for a regulation
Recital 44

Text proposed by the Commission

(44) The Commission and Member States should retain the possibility to express any concern as regards the necessity and proportionality of a decision of a Member State to reintroduce internal border controls for reason of urgency or to address a foreseeable threat. In case controls at internal borders are reintroduced and prolonged for foreseeable threats for combined periods exceeding **eighteen** months, it should be a requirement for the Commission to issue an opinion assessing the necessity and proportionality of such internal border controls. ***Where a Member State considers that there are exceptional situations justifying the continued need for internal border controls for a period exceeding two years, the Commission should issue a follow-up opinion.*** Such an opinion is without prejudice to the enforcement measures, including infringement actions, which the Commission ***may*** take at any time against any Member State for failure to comply with its obligations under Union law. Where an opinion is issued, the Commission should launch consultations with the Member States concerned.

Amendment 49

Proposal for a regulation
Recital 44 a (new)

Text proposed by the Commission

Amendment

(44) The Commission and Member States should retain the possibility to express any concern as regards the necessity and proportionality of a decision of a Member State to reintroduce internal border controls for reason of urgency or to address a foreseeable threat. In case controls at internal borders are reintroduced and prolonged for foreseeable threats for combined periods exceeding **nine** months, it should be a requirement for the Commission to issue an opinion assessing the necessity and proportionality of such internal border controls. Such an opinion is without prejudice to the enforcement measures, including infringement actions, which the Commission, ***in its role as guardian of the Treaties, is required to*** take at any time against any Member State for failure to comply with its obligations under Union law. Where an opinion is issued, the Commission should launch consultations with the Member States concerned.

(44a) Where a Member State considers that there are exceptional situations justifying the continued need for internal border control in excess of the maximum period of 18 months based on the same foreseeable serious threat, it should be able to request the Commission to propose

to the Council an implementing decision authorising the prolongation of internal border control for a period of three months. If the Council adopts such an implementing decision, and at the end of that three-month period, the Member State in question still considers that the exceptional situation remains, it may make a maximum of two further requests to the Commission for a prolongation of a further three months.

Amendment 50

Proposal for a regulation Recital 45

Text proposed by the Commission

(45) In order to enable the post factum analysis of the decision on the temporary reintroduction of border controls at the internal borders, Member States should remain obliged to submit a report on the reintroduction of border control at internal borders to the European Parliament, the Council and the Commission once they lift the controls. Where the controls are kept in place for ***prolonged periods of time***, such a report should also be submitted after ***twelve months***, and every ***year*** thereafter if exceptionally controls are maintained and for as long as the controls are maintained. The report should outline, in particular, the initial and follow-up assessment of the necessity of internal border controls and the respect of the criteria for reintroduction of border controls at internal borders. The Commission should adopt in an implementing act a template and make it available online.

Amendment

(45) In order to enable the post factum analysis of the decision on the temporary reintroduction of border controls at the internal borders, Member States should remain obliged to submit a report on the reintroduction of border control at internal borders to the European Parliament, the Council and the Commission once they lift the controls. Where the controls are kept in place for ***a period exceeding six months***, such a report should also be submitted after ***that six-month period*** and every ***six months*** thereafter., if exceptionally controls are maintained and for as long as the controls are maintained. The report should outline, in particular, the initial and follow-up assessment of the necessity of internal border controls and the respect of the criteria for reintroduction of border controls at internal borders. The Commission should adopt in an implementing act a template and make it available online.

Amendment 51

Proposal for a regulation
Recital 46

Text proposed by the Commission

(46) When implementing this Regulation, Member States shall not discriminate against persons on grounds of sex, **racial or** ethnic origin, religion or belief, disability, age or sexual orientation.

Amendment

(46) When implementing this Regulation, Member States shall not discriminate against persons on grounds of sex, **race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth,** disability, age or sexual orientation.

Amendment 52

Proposal for a regulation
Recital 47

Text proposed by the Commission

(47) The competent authorities shall **use their powers to carry out checks within the territory and apply relevant procedures in full** respect of the rules on data protection under Union law. Regulation (EU) 2016/679 of the European Parliament and of the Council or Directive (EU) 2016/680 of the European Parliament and of the Council apply to the processing of personal data by competent national authorities for the purposes of this Regulation, in their respective field of application.

Amendment

(47) The competent authorities **referred to in this Regulation** shall **in all their activities undertaken in accordance with this Regulation fully** respect the rules on data protection under Union law. Regulation (EU) 2016/679 of the European Parliament and of the Council or Directive (EU) 2016/680 of the European Parliament and of the Council apply to the processing of personal data by competent national authorities for the purposes of this Regulation, in their respective field of application.

Amendment 53

Proposal for a regulation
Recital 56

Text proposed by the Commission

(56) Regulation (EU) No 2016/399 **and Directive 2008/115/EC** should therefore be amended accordingly,

Amendment

(56) Regulation (EU) No 2016/399 should therefore be amended accordingly,

Amendment 54

Proposal for a regulation

Article 1 – paragraph 1 – point 1 – point a

Regulation (EU) No 2016/399

Article 2 – paragraph 1 – point 12

Text proposed by the Commission

12. ‘border surveillance’ means the surveillance of borders between crossing points and of border crossing points outside fixed opening hours, ***including preventative measures to detect and prevent unauthorised border crossings or the circumvention of border checks.***

Amendment

12. ‘border surveillance’ means the surveillance of borders between crossing points and of border crossing points outside fixed opening hours ***in order to prevent unauthorised border crossings or the circumvention of border checks, and to provide situational awareness .***

Amendment 55

Proposal for a regulation

Article 1 – paragraph 1 – point 1 – point b

Regulation (EU) No 2016/399

Article 2 – paragraph 1 – point 27

Text proposed by the Commission

27. ‘***instrumentalisation of migrants***’ refers to a situation where a third country instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of third country nationals to the external borders, onto or from within its territory and then onwards to those external borders, where such actions are indicative of an intention of a third country to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security;

Amendment

deleted

Amendment 56

Proposal for a regulation

Article 1 – paragraph 1 – point 1 – point b

Regulation (EU) No 2016/399

Article 2 – paragraph 1 – point 27 a (new)

Text proposed by the Commission

Amendment

27a. ‘large scale public health emergency’ means a public health emergency where a serious cross-border threat to health necessitates coordination at Union level in order to ensure a high level of protection of public health, recognised by the Commission at Union level in accordance with Regulation (EU) 2022/2371;

Amendment 57

Proposal for a regulation

Article 1 – paragraph 1 – point 2

Regulation (EU) No 2016/399

Article 5 – paragraph 4

Text proposed by the Commission

Amendment

(2) In Article 5, a new paragraph 4 is added: **deleted**

‘4. In a situation of instrumentalisation of migrants, Member States may limit the number of border crossing points as notified pursuant to paragraph 1 or their opening hours where the circumstances so require.

Any limitations adopted pursuant to the first subparagraph shall be implemented in a manner that is proportionate and that takes full account of the rights of:

(a) the persons enjoying the right of free movement under Union law;

(b) third-country nationals who are long-term residents under Council Directive 2003/109/EC⁵⁶, persons deriving their right to reside from other instruments of Union or national law or

who hold national long-term visas, as well as their respective family members;

(c) third-country nationals seeking international protection.'

⁵⁶ *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).*

Amendment 58

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 2016/399

Article 13 – paragraph 1

Text proposed by the Commission

1. The main purpose of border surveillance shall be to ***detect and*** prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border ***illegally***.

A person who has crossed a border ***illegally*** and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC.

Amendment 59

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 2016/399

Article 13 – paragraph 2

Text proposed by the Commission

2. The border guards shall use stationary or mobile units to carry out

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Amendment

1. The main purpose of border surveillance shall 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***.

Without prejudice to Articles 3 and 4, a person who has crossed a border ***irregularly*** and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC.

Amendment

2. The border guards shall use ***all necessary resources, including*** stationary

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border surveillance.

That surveillance shall be carried out in such a way as to prevent and discourage persons from unauthorised border crossings between border crossing points and from circumventing the checks at border crossing points.

Amendment 60

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 2016/399

Article 13 – paragraph 3

Text proposed by the Commission

3. Surveillance between border crossing points shall be carried out by border guards whose numbers and methods shall be adapted to existing or foreseen risks and threats. It shall involve frequent and sudden changes to surveillance periods and other methods or techniques, so that unauthorised border crossings **are** effectively **detected or** prevented.

Amendment 61

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 2016/399

Article 13 – paragraph 4

Text proposed by the Commission

4. Surveillance shall be carried out by stationary or mobile units which perform their duties by patrolling or stationing themselves at places known or perceived to be sensitive, the aim of such surveillance

or mobile units to carry out border surveillance.

That surveillance shall be carried out in such a way as to prevent and discourage persons from unauthorised border crossings between border crossing points and from circumventing the checks at border crossing points, **while complying fully with the obligations laid down in Article 4.**

Amendment

3. Surveillance between border crossing points shall be carried out by border guards whose numbers and methods shall be adapted to existing or foreseen risks and threats, **including the possible risk to life of those seeking to cross the border.** It shall involve frequent and sudden changes to surveillance periods and other methods or techniques, so that **it is possible for** unauthorised border crossings **to be** effectively prevented.

Amendment

4. Surveillance shall be carried out by stationary or mobile units which perform their duties by patrolling or stationing themselves at places known or perceived to be sensitive, the aim of such surveillance

being to prevent unauthorised border crossings or apprehend individuals crossing the border *illegally*. Surveillance may also be carried out by technical means, including electronic means, equipment and surveillance systems.

being to prevent unauthorised border crossings or apprehend individuals crossing the border *irregularly*. Surveillance may also be carried out by technical means, including electronic means, equipment and surveillance systems, *where it is conducted in accordance with Article 5 of the future Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)*.

Amendment 62

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 2016/399

Article 13 – paragraph 5

Text proposed by the Commission

Amendment

5. In a situation of instrumentalisation of migrants, the Member State concerned shall intensify border surveillance as necessary in order to address the increased threat. In particular, the Member State shall enhance, as appropriate, the resources and technical means to prevent an unauthorised crossing of the border.

deleted

Those technical means may include modern technologies including drones and motion sensors, as well as mobile units to prevent unauthorised border crossings into the Union.

Amendment 63

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 2016/399

Article 13 – paragraph 6

Text proposed by the Commission

6. Without prejudice to the support that the European Border and Coast Guard Agency may provide to the Member States, ***in the event of a situation of instrumentalisation of migrants***, the Agency may carry out a vulnerability assessment as provided for in Articles 10(1), point (c), and Article 32 of Regulation (EU) 2019/1896 of the European Parliament and Council⁵⁷, with a view to providing the necessary support to the Member State concerned.

On the basis of the results of that assessment or any other relevant vulnerability assessment or the attribution of a critical impact level to the border section concerned within the meaning of Article 35(1)(d) of Regulation (EU) 2019/1896, the Executive Director of the European Border and Coast Guard Agency shall make recommendations, in accordance with Article 41(1) of that Regulation to any Member State concerned.

⁵⁷ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019.

Amendment 64

Proposal for a regulation
Article 1 – paragraph 1 – point 3
Regulation (EU) No 2016/399
Article 13 – paragraph 7

Text proposed by the Commission

7. The Commission shall be

Amendment

6. Without prejudice to the support that the European Border and Coast Guard Agency may provide to the Member States, ***where a Member State introduces internal border controls on the basis of Article 25(1)(c)***, the Agency may, ***upon request of that Member State, also*** carry out a vulnerability assessment as provided for in Articles 10(1), point (c), and Article 32 of Regulation (EU) 2019/1896 of the European Parliament and Council⁵⁷, with a view to providing the necessary support to the Member State concerned.

On the basis of the results of that assessment or any other relevant vulnerability assessment or the attribution of a critical impact level to the border section concerned within the meaning of Article 35(1)(d) of Regulation (EU) 2019/1896, the Executive Director of the European Border and Coast Guard Agency shall make recommendations, in accordance with Article 41(1) of that Regulation to any Member State concerned.

⁵⁷ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019.

7. ***For the purposes of paragraph 4,***

empowered to adopt delegated acts in accordance with Article 37 concerning additional measures governing surveillance, including the development of standards for border surveillance, in particular the use of surveillance and monitoring technologies at the external borders, taking into account the type of borders, the impact levels attributed to each external border section in accordance with Article 34 of the Regulation (EU) 2019/1896 and other relevant factors.

the Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning additional measures governing surveillance, including the development of standards for border surveillance, in particular the use of surveillance and monitoring technologies at the external borders, ***in line with the prohibitions, safeguards and transparency obligations laid down in the Artificial Intelligence Act***, taking into account the type of borders, the impact levels attributed to each external border section in accordance with Article 34 of the Regulation (EU) 2019/1896 and other relevant factors.

Amendment 65

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – introductory part

Regulation (EU) No 2016/399

Chapter V – title

Text proposed by the Commission

(4) Chapter V is renamed as follows:
“Specific measures relating to the external ***borders***”

Amendment

(4) Chapter V is renamed as follows:
“Specific measures relating to the external ***border control***”

Amendment 66

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – paragraph 1

Regulation (EU) No 2016/399

Article 21a – paragraph 1

Text proposed by the Commission

1. This Article shall apply to ***situations*** where ***the European Centre for Disease Prevention and Control*** or the Commission ***identify the existence in one or more third countries of an infectious disease with epidemic potential as defined by the relevant instruments*** of the ***World***

Amendment

1. This Article shall apply to ***a large scale public health emergency***, where ***a serious cross-border threat to health necessitates coordination at Union level in order to ensure a high level of human health protection, recognised by the Commission at Union level in accordance***

Health *Organization*.

with Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU.

Amendment 67

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – paragraph 1

Regulation (EU) No 2016/399

Article 21a – paragraph 2

Text proposed by the Commission

2. *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.*

Amendment

2. *In situations of a large scale public health emergency the Commission shall be empowered to adopt delegated acts in accordance with Article 37 providing for temporary restrictions on travel to the Member States.*

Amendment 68

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – paragraph 1

Regulation (EU) No 2016/399

Article 21a – paragraph 2 – subparagraph 2

Text proposed by the Commission

Such temporary restrictions on travel may include restrictions on entry to the Member States and other measures considered necessary for the protection of public health in the area without controls at internal borders, such as *for instance* testing, quarantine, and self-isolation.

Amendment

Such temporary restrictions on travel may include restrictions on entry to the Member States and other measures considered necessary for the protection of public health in the area without controls at internal borders, such as testing, quarantine, and self-isolation.

Amendment 69

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – paragraph 1

Regulation (EU) No 2016/399

Article 21a – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

ba) beneficiaries of international protection.

Amendment 70

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – paragraph 1

Regulation (EU) No 2016/399

Article 21a – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. The ***implementing regulation*** referred to in paragraph 1 shall, where appropriate:

4. The ***delegated act*** referred to in paragraph 2 shall, where appropriate:

Amendment 71

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – paragraph 1

Regulation (EU) No 2016/399

Article 21a – paragraph 5a

Text proposed by the Commission

Amendment

5a. Where, in a situation of a large scale public health emergency, imperative grounds of urgency so require, the procedure provided for in Article 37a shall apply to delegated acts adopted pursuant to this Article.

Amendment 72

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 2016/399

Article 23 – paragraph 1 – point a

Text proposed by the Commission

Amendment

a) the exercise of police or other

a) the exercise of police or other

public powers by the competent authorities of the Member States in their territory, including in their internal border areas, as conferred on them under national law, insofar as the exercise of those powers does not have an effect equivalent to border checks.

The exercise by competent authorities of their powers may not, in particular, be considered equivalent to the exercise of border checks when the measures:

public powers by the competent authorities of the Member States in their territory, including in their internal border areas, as conferred on them under national law, insofar as the exercise of those powers does not have an effect equivalent to border checks.

That exercise of police or other public powers by the competent authorities of the Member States in their territory, in particular in their border areas, shall not have a disproportionate impact on the fluid traffic flow at road crossing-points at internal borders, in particular, by leading to excessive waiting times. Within the meaning of the first subparagraph, the exercise by competent authorities of their powers may not, in particular, be considered equivalent to the exercise of border checks when the measures:

Amendment 73

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 2016/399

Article 23 – paragraph 1 – point a – point ii

Text proposed by the Commission

ii) are based on general information and experience of the competent authorities regarding possible threats to public security or public policy and aim, in particular, to:

Amendment

ii) are based on general **law enforcement** information and experience of the competent authorities regarding possible threats to public security or public policy and aim, in particular, to:

Amendment 74

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 2016/399

Article 23 – paragraph 1 – point a – point ii – indent 2

Text proposed by the Commission

— **combat irregular residence or stay, linked to** irregular migration; or

Amendment

— **reduce** irregular migration; or

Amendment 75

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 2016/399

Article 23 – paragraph 1 – point a – point ii – indent 3

Text proposed by the Commission

— contain the spread of an infectious disease with epidemic potential as **detected** by the European Centre for Disease Control;

Amendment

— contain the spread of an infectious disease with epidemic potential as **identified** by the European Centre for Disease Control;

Amendment 76

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 2016/399

Article 23 – paragraph 1 – point a – point iv

Text proposed by the Commission

iv) are carried out, where appropriate, on the basis of monitoring and surveillance technologies generally used in the territory, for the purposes of addressing threats to public security **or public policy** as set out under ii);

Amendment

iv) are carried out, where appropriate, on the basis of monitoring and surveillance technologies generally used in the territory, **in accordance with the Artificial Intelligence Act and in line with national legislation**, for the purposes of addressing threats to public security as set out under ii).

The general law enforcement information referred to in the second subparagraph, point ii), shall not include information collected through the automated processing of data available in different data sources or in different data formats in order to forecast or predict trends related to migration and border crossings;

Amendment 77

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 2016/399

Article 23 – paragraph 1 – point e

Text proposed by the Commission

Amendment

e) checks for security purposes of passenger data against relevant databases on persons traveling in the area without controls at internal borders which can be carried out by the competent authorities under the applicable law.

deleted

Amendment 78

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – title

Text proposed by the Commission

Amendment

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

Procedure for the *possible transfer of* persons apprehended *in the vicinity of* the internal borders

Amendment 79

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. This Article applies to the apprehension of *a* third-country national in the vicinity of internal borders, in circumstances where *all of* the following conditions are fulfilled:

1. *Without prejudice to Article 22,* this Article applies to the apprehension of *an irregularly-staying* third-country national in the vicinity of internal borders, in circumstances where the following conditions are fulfilled:

Amendment 80

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – paragraph 1 – point a

Text proposed by the Commission

Amendment

a) *the third country national concerned does not or no longer fulfils the entry conditions laid down in Article 6(1);*

deleted

Amendment 81

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – paragraph 1 – point b

Text proposed by the Commission

Amendment

b) *the third country national is not covered by the derogation laid down in Article 6(5) point (a);*

deleted

Amendment 82

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – paragraph 1 – point c

Text proposed by the Commission

Amendment

c) *the third country national is apprehended as part of cross-border police operational cooperation, **in particular, during joint police patrols;***

c) *the third country national is apprehended **during joint police patrols as part of cross-border police operational cooperation;***

Amendment 83

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399
Article 23a – paragraph 1 – point d

Text proposed by the Commission

d) there are clear indications that the third country national has arrived directly from another Member State, on the basis of information immediately available to the apprehending authorities, including statements from the person concerned, identity, travel or other documents **found on** that person or the results of searches carried out in relevant national and Union databases.

Amendment

d) there are clear indications that the third country national has arrived directly from another Member State, on the basis of information immediately available to the apprehending authorities, including statements from the person concerned, identity, travel or other documents **belonging to** that person or the results of searches carried out in relevant national and Union databases;

Amendment 84

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

da) the Member State intending to avail itself of the procedure has not reintroduced or prolonged internal border control in accordance with Article 25a;

Amendment 85

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The procedure laid down in paragraph 1 shall not apply to the following categories of person:

- a) unaccompanied minors;***
- b) minors and members of their family arriving together from another***

Member State;

c) third-country nationals who are holders of EU long-term residence permits and their family members in accordance with Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents;

d) third-country national family members of Union citizens enjoying the right to free movement in accordance with Directive 2004/38;

e) third-country nationals who are holders of a valid long-stay visa and their family members in accordance with national law;

f) third-country nationals who are holders of a valid short-stay visa;

g) third-country nationals who are entitled to visa-free travel within the Schengen Area for a 90-day period in any 180-day period, in so far as they have not exceeded that 90-day period;

h) applicants for international protection within the meaning of Article 4 of Regulation xxx/xxx (the Asylum Procedures Regulation)^{1a} and beneficiaries of international protection within the meaning of Article 2 of Regulation xxx/xxx (the Qualifications Regulation)^{1b}.

With regard to applicants for international protection or beneficiaries of international protection apprehended during joint police patrols as part of cross-border police operational cooperation, the relevant provisions of Regulation xx/xxx (the Asylum and Migration Management Regulation)^{1c}, in particular Article [31] thereof, shall apply.

^{1a} *Regulation of the European Parliament and of the Council .../... of ... establishing a common procedure for international protection in the Union and repealing*

Directive 2013/32/EU (OJ ...).

^{1b} Regulation of the European Parliament and of the Council .../... of ... on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ ...).

^{1c} Regulation of the European Parliament and of the Council .../... of ... on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] (OJ ...).

Amendment 86

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – paragraph 2

Text proposed by the Commission

2. The competent authorities of the Member State may, based on a finding that the third country national concerned has no right to stay on its territory, decide to immediately transfer the person to the Member State from which the person entered or sought to enter, in accordance with the procedure set out in Annex XII.

Amendment

2. The competent authorities of the Member State may, based on a finding that the third country national concerned has no right to stay on its territory, decide to immediately transfer the person to the Member State from which the person entered or sought to enter, ***provided that paragraph 1a does not apply and that police authorities from the receiving Member State are participating in the joint police patrols***, in accordance with the procedure set out in Annex XII. ***This transfer is without prejudice to Article 6(3) of Directive 2008/115/EC.***

Amendment 87

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. A third-country national, apprehended in the vicinity of the internal borders, who is refused the right to stay in a Member State in accordance with this Article shall have the right to an effective remedy before a court or tribunal. Any appeal shall be conducted in accordance with national law. Member States shall ensure that written information on contact points able to provide information on representatives competent to act on behalf of the third-country national, in accordance with national law, is given to the third-country national, in a language that they understand or are reasonably expected to understand. The lodging of such an appeal shall not have suspensive effect.

Amendment 88

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 2016/399

Article 23a – paragraph 3

Text proposed by the Commission

Amendment

3. Where a Member State applies the procedure referred to in paragraph 2, the receiving Member State shall be required to take all measures necessary to receive the third country national concerned in accordance with the procedures set out in Annex XII.

3. Where a Member State applies the procedure referred to in paragraph 2, the receiving Member State shall be required to take all measures necessary to receive the **irregularly-staying** third country national concerned in accordance with the procedures set out in Annex XII.

Amendment 89

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 2016/399
Article 23a – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In the context of unannounced visits pursuant to Article 4(3) of Council Regulation (EU) 2022/922^{1a}, the Commission shall pay particular attention to the implementation of the procedure laid down in this Article.

^{1a} Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1).

Amendment 90

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 2016/399
Article 23a – paragraph 4

Text proposed by the Commission

Amendment

4. From [one year following the entry into force of the Regulation] and annually thereafter, Member States shall submit to the Commission the data recorded in accordance with point 3 of Annex XII, regarding the application of paragraphs 1, 2 and 3.

4. From [one year following the entry into force of the Regulation] and annually thereafter, Member States shall submit to the Commission the data recorded in accordance with point 3 of Annex XII, regarding the application of paragraphs 1, 2, **2a** and 3.

Amendment 91

Proposal for a regulation
Article 1 – paragraph 1 – point 8

Regulation (EU) No 2016/399
Article 25 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) **activities relating to** terrorism or organised crime;

Amendment

(a) **an identified and immediate threat of acts of** terrorism or **of serious** organised crime;

Amendment 92

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 2016/399

Article 25 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

(c) **a** situation **characterised by large scale** unauthorised **movements** of third-country nationals between **the** Member States, putting at risk the overall functioning of the area without internal border control;

Amendment

(c) **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;

Amendment 93

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 2016/399

Article 25 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Border controls may only be introduced pursuant to Articles 25a and 28 where a Member State has established that such a measure is necessary and proportionate, taking into account the criteria referred to in Article 26(1), and, in case such controls are prolonged, also the **criteria** referred to in Article 26(2). Border controls may also be reintroduced in accordance with Article 29, taking into account the criteria referred to in Article 30.

Amendment

Border controls may only be introduced **or prolonged** pursuant to Articles 25a and 28 where a Member State has established that such a measure is necessary and proportionate, taking into account the criteria referred to in Article 26(1), and, in case such controls are prolonged, also the **risk assessment** referred to in Article 26(2). Border controls may also be reintroduced in accordance with Article 29, taking into account the criteria referred to in Article 30.

Amendment 94

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 2016/399

Article 25 – paragraph 3

Text proposed by the Commission

Amendment

3. Where the same threat continues to persist, border controls at internal borders may be prolonged in accordance with Articles 25a, 28 or 29.

deleted

The same threat shall be considered to exist where the justification advanced by the Member State for prolonging border controls is based on the determination of the continuation of the same threat that had justified the initial reintroduction of the border controls.

Amendment 95

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 2016/399

Article 25a – title

Text proposed by the Commission

Amendment

Procedure for *cases requiring action due to unforeseeable or foreseeable events*

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

Amendment 96

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 2016/399

Article 25a – paragraph 2

Text proposed by the Commission

Amendment

2. The Member State shall, at the

2. The Member State shall, at the

same time as reintroducing border control under paragraph 1, notify the Commission and the other Member States of the reintroduction of border controls, in accordance with Article 27(1).

same time as reintroducing border control under paragraph 1, notify *the European Parliament, the Council*, the Commission and the other Member States of the reintroduction of border controls, in accordance with Article 27(1).

Amendment 97

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 2016/399

Article 25a – paragraph 4

Text proposed by the Commission

4. Where a serious threat to public policy or internal security is foreseeable in a Member State, the Member State shall notify the Commission and the other Member States **and the Commission** in accordance with Article 27(1), at the latest four weeks before the planned reintroduction of border controls, or within a shorter period where the circumstances giving rise to the need to reintroduce border controls at internal borders become known less than four weeks before the planned reintroduction.

Amendment

4. Where a serious threat to public policy or internal security is foreseeable in a Member State, the Member State **may, as a last resort, reintroduce internal border control at internal borders in accordance with this Article. That Member State** shall notify **the European Parliament, the Council**, the Commission and the other Member States in accordance with Article 27(1), at the latest four weeks before the planned reintroduction of border controls, or within a shorter period where the circumstances giving rise to the need to reintroduce border controls at internal borders become known less than four weeks before the planned reintroduction.

Amendment 98

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 2016/399

Article 25a – paragraph 5

Text proposed by the Commission

5. For the purposes of paragraph 4, and without prejudice to Article 27a(4), border control at internal borders may be reintroduced for a period of up to **six**

Amendment

5. For the purposes of paragraph 4, and without prejudice to Article 27a(4), border control at internal borders may be reintroduced for a period of up to **three**

months. Where the serious threat to public policy or internal security persists beyond that period, the Member State may prolong the border control at internal borders for renewable periods of up to **six** months.

Any prolongation shall be notified to the Commission and the other Member States in accordance with Article 27 and within the time limits referred to in paragraph 4. Subject to Article 27a(5), the maximum duration of border control at internal borders shall not exceed **two years**.

months. Where the serious threat to public policy or internal security persists beyond that period, the Member State may prolong the border control at internal borders for renewable periods of up to **three** months.

Any prolongation shall be notified to **the European Parliament, the Council**, the Commission and the other Member States in accordance with Article 27 and within the time limits referred to in paragraph 4. Subject to Article 27a(5), the maximum duration of border control at internal borders shall not exceed **18 months**.

Amendment 99

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 2016/399

Article 25a – paragraph 6

Text proposed by the Commission

6. The period referred to in paragraph 5 shall not include periods referred to in paragraph 3.

Amendment

deleted

Amendment 100

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 1 – introductory part

Text proposed by the Commission

1. To establish whether the reintroduction of border control at internal borders is necessary and proportionate in accordance with Article 25, a Member State shall in particular **consider**:

Amendment

1. To establish whether the reintroduction **or prolongation** of border control at internal borders is necessary and proportionate in accordance with Article 25, a Member State shall **first assess** in particular:

Amendment 101

Proposal for a regulation
Article 1 – paragraph 1 – point 10
Regulation (EU) No 2016/399
Article 26 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) whether the reintroduction of border controls at internal borders is likely to adequately remedy the serious threat to public policy or internal security;

Amendment 102

Proposal for a regulation
Article 1 – paragraph 1 – point 10
Regulation (EU) No 2016/399
Article 26 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab) 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;

Amendment 103

Proposal for a regulation
Article 1 – paragraph 1 – point 10
Regulation (EU) No 2016/399
Article 26 – paragraph 1 – point a c (new)

Text proposed by the Commission

Amendment

(ac) the use of alternative measures such as proportionate police checks carried out in accordance with Article 23;

Amendment 104

Proposal for a regulation
Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399
Article 26 – paragraph 1 – point a d (new)

Text proposed by the Commission

Amendment

(ad) the use of the procedure laid down in Article 23a;

Amendment 105

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 1 – point a e (new)

Text proposed by the Commission

Amendment

(ae) 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;

Amendment 106

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 1 – point a f (new)

Text proposed by the Commission

Amendment

(af) the proportionality of the temporary reintroduction of border control in relation to the serious threat to public policy and internal security by taking into account the impact of such a measure on all of the following:

(i) the free movement of persons within the area without internal border control;

(ii) the functioning of the cross-border regions, taking into account the strong social and economic ties between them;

and

(iii) the principle of non-discrimination.

Amendment 107

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the likely impact of such a measure on:

deleted

— movement of persons within the area without internal border control and

— the functioning of the cross-border regions, taking into account the strong social and economic ties between them.

Amendment 108

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Where a Member *States* decides to prolong the border control at internal borders pursuant to Article 25a(5), it shall *also assess in detail whether the objectives pursued by such prolongation could be attained by:*

2. Where a Member *State* decides to prolong the border control at internal borders pursuant to Article 25a(5) *beyond a period of six months*, it shall *carry out a risk assessment which shall include a reassessment of the criteria laid down in the first paragraph of this Article.*

Amendment 109

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 2 – point a

Text proposed by the Commission

Amendment

a) *the use of alternative measures such as proportionate checks carried out in the context of the lawful exercise of powers as referred to in Article 23 point (a);* *deleted*

Amendment 110

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 2 – point b

Text proposed by the Commission

Amendment

b) *the use of the procedure as referred to in Article 23a;* *deleted*

Amendment 111

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 2 – point c

Text proposed by the Commission

Amendment

c) *forms of police cooperation as 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.* *deleted*

Amendment 112

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 2 a (new)

2a. In addition to the elements laid down in Article 26(1), the risk assessment shall include the following:

(a) the scale and anticipated evolution of the identified serious threat;

(b) information on how long the identified serious threat is expected to persist and which sections of the internal borders are affected or risk being affected;

(c) information regarding coordination measures with other Member States impacted or likely to be impacted by such measures;

(d) the measures the Member State concerned has taken and intends to take to alleviate the threat, with a view to lifting internal border controls in order to reinstate the principle of free movement.

Amendment 113

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26 – paragraph 3

Text proposed by the Commission

3. Where border controls at internal borders have been reintroduced or prolonged, the Member States concerned shall, where necessary, ensure that they are accompanied by appropriate measures that mitigate the impacts resulting from the reintroduction of border controls on persons and the transport of goods, giving particular consideration to the cross-border regions.

Amendment

3. Where border controls at internal borders have been reintroduced or prolonged, the Member States concerned shall, where necessary, ensure that they are accompanied by appropriate measures that mitigate the impacts resulting from the reintroduction of border controls on persons and the transport of goods, giving particular consideration to the ***specific vulnerabilities of*** cross-border regions.

Where border controls at internal borders have been prolonged beyond a period of six months, the necessity, proportionality

and duration of those controls shall be discussed in the Schengen Forum convened for that purpose.

Amendment 114

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 2016/399

Article 27 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

(e) the *considerations* as to the necessity and proportionality referred to in Article 26(1) and, in the case of a prolongation, in Article 26(2);

Amendment

(e) the *assessment* as to the necessity and proportionality referred to in Article 26(1) and, in the case of a prolongation *beyond a period of six months, the risk assessment as referred to* in Article 26(2);

Amendment 115

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 2016/399

Article 27 – paragraph 1 – subparagraph 1 – point f

Text proposed by the Commission

(f) where appropriate, the measures to be taken by *the* other Member States.

Amendment

(f) where appropriate, the measures to be taken by other Member States.

Amendment 116

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 2016/399

Article 27 – paragraph 2

Text proposed by the Commission

2. Where border controls have been in place for six months in accordance with Article 25a(4), any subsequent notification for the prolongation of such controls shall include a risk assessment. *The risk*

Amendment

2. Where border controls have been in place for six months in accordance with Article 25a(4), any subsequent notification for the prolongation of such controls shall include a risk assessment *in accordance*

assessment shall present the scale and anticipated evolution of the identified serious threat, in particular how long the identified serious threat is expected to persist and which sections of the internal borders may be affected, as well as information regarding coordination measures with the other Member States impacted or likely to be impacted by such measures.

with Article 26(2).

Amendment 117

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 2016/399

Article 27 – paragraph 3

Text proposed by the Commission

3. Where the reintroduction of border controls or its prolongation refers to **large scale unauthorised movements** referred to in Article 25(1) point **(b)**, the risk assessment shall also provide information on the **scale and trends of such** unauthorised movements, including any information obtained from the relevant EU agencies in line with their respective mandates and data analysis from relevant information systems.

Amendment

3. Where the reintroduction of border controls or its prolongation refers to **an exceptional situation as** referred to in Article 25(1) point **(c)**, the risk assessment shall also provide information on the **sudden and unexpected large-scale** unauthorised movements, including any information obtained from the relevant EU agencies in line with their respective mandates and data analysis from relevant information systems.

Amendment 118

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 2016/399

Article 27 – paragraph 5

Text proposed by the Commission

5. Member States submitting a notification under paragraphs 1 or 2 may, where necessary and in accordance with national law, decide to classify **all or** parts of the notified information.

Amendment

5. Member States submitting a notification under paragraphs 1 or 2 may, where necessary and in accordance with national law, decide to classify parts of the notified information.

Such classification shall not preclude access to information, through appropriate and secure police cooperation channels, by the other Member States affected by the temporary reintroduction of border controls at internal borders.

Such classification shall not preclude access to information, through appropriate and secure police cooperation channels, by the other Member States affected by the temporary reintroduction of border controls at internal borders ***or information being made available to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament according to this paragraph shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.***

Amendment 119

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) No 2016/399

Article 27a – paragraph 1 – subparagraph 1

Text proposed by the Commission

Following receipt of notifications, submitted under Article 27(1), the Commission may establish a consultation process, where appropriate, including joint meetings between the Member State that is planning to reintroduce or prolong border control at internal borders, and the other Member States, especially those directly affected by such measures and the relevant Union agencies.

Amendment

Following receipt of notifications, submitted under Article 27(1), the Commission may establish a consultation process, where appropriate, including joint meetings between the Member State that is planning to reintroduce or prolong border control at internal borders, and the other Member States, especially those directly affected by such measures and the relevant Union agencies. ***Such a consultation process shall be mandatory if requested by one or more Member States.***

Amendment 120

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) No 2016/399

Article 27a – paragraph 1 – subparagraph 2

Text proposed by the Commission

The consultation shall concern in particular the identified threat to public policy or internal security, the **relevance** of the intended reintroduction of border controls taking into account the appropriateness of alternative measures, as well as the ways of ensuring implementation of the mutual cooperation between the Member States in relation to the reintroduced border controls.

Amendment

The consultation shall concern in particular the identified threat to public policy or internal security, the **proportionality and necessity** of the intended reintroduction of border controls, **including by** taking into account the appropriateness of alternative measures, **the impact of such border controls where they have already been reintroduced**, as well as the ways of ensuring implementation of the mutual cooperation between the Member States in relation to the reintroduced border controls.

Amendment 121

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) No 2016/399

Article 27a – paragraph 1 – subparagraph 3

Text proposed by the Commission

The Member State planning to reintroduce or prolong border control at internal borders shall take utmost account of the results of such consultation when carrying out border control at the internal border.

Amendment

The Member State planning to reintroduce or prolong border control at internal borders shall take utmost account of the results of such consultation when **deciding whether to reintroduce or prolong internal border control and when** carrying out border control at the internal border.

Amendment 122

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) No 2016/399

Article 27a – paragraph 3

Text proposed by the Commission

3. Following receipt of notifications submitted in relation to a prolongation of border control at the internal border under Article 25a(4) which leads to the

Amendment

3. Following receipt of notifications submitted in relation to a prolongation of border control at the internal border under Article 25a(4) which leads to the

continuation of border controls at internal borders for *eighteen* months *in total*, the Commission shall issue an opinion on necessity and proportionality of such internal border controls.

continuation of border controls at internal borders for *a period beyond nine* months, the Commission shall issue an opinion on necessity and proportionality of such internal border controls.

The opinion of the Commission shall include at least:

(a) an assessment of whether the reintroduction or prolongation of internal border control complies with the principles of necessity and proportionality;

(b) an assessment whether alternative measures to remedy the serious threat identified were sufficiently explored;

Where the reintroduction of internal border control is assessed and is considered to have complied with the principles of necessity and proportionality, the opinion shall also include:

(a) recommendations on improving cooperation between Member States in order to limit the impact of internal border controls;

(b) recommendations on mitigating measures to be taken by the Member State concerned prior to the lifting of internal border controls;

(c) recommendations regarding the means, actions, conditions and timeline with a view to lifting internal border controls.

Amendment 123

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) No 2016/399

Article 27a – paragraph 4

Text proposed by the Commission

4. Where an opinion referred to in

Amendment

4. Where an opinion referred to in

paragraphs 2 or 3 is issued, the Commission *may* establish a consultation process in order to discuss the opinion with the Member States. ***Where the Commission or a Member State issues an opinion expressing concerns on the necessity or proportionality of reintroduced internal border controls the Commission shall launch such a process.***

paragraphs 2 or 3 is issued, the Commission ***shall*** establish a consultation process, ***in accordance with paragraph 1***, in order to discuss the opinion with the Member States.

Amendment 124

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) No 2016/399

Article 27a – paragraph 5

Text proposed by the Commission

5. Where a Member State considers that there are exceptional situations justifying the continued need for internal border ***controls*** in excess of the maximum period referred to in Article 25(5), ***it shall notify*** the Commission ***in accordance with Article 27(2)***. ***The new notification from*** the Member State shall substantiate the ***continued*** threat to public policy or internal security, taking into account the opinion of the Commission given pursuant to paragraph 3. The Commission shall ***issue a follow up opinion***.

Amendment

5. Where a Member State considers that there are exceptional situations justifying the continued need for internal border ***control*** in excess of the maximum period referred to in Article 25(5), ***based on the same foreseeable serious threat to public policy or internal security that justified the introduction of internal border control pursuant to paragraph 4, it may request*** the Commission ***to propose to the Council an implementing decision authorising the prolongation of border control by the Member State concerned beyond that maximum period in respect of that ongoing serious threat to public policy or internal security.***

In that request, the Member State shall substantiate the ***continue*** threat to public policy or internal security, taking into account the opinion of the Commission given pursuant to paragraph 3 ***of Article 27a***.

The Commission shall make such a proposal to the Council only where it considers that the prolongation of internal border control in the specific Member State is justified as a measure of last resort to protect the common interests

within the area without internal border controls, and where all other measures, in particular those referred to in Article 23 and Article 23a, are ineffective in mitigating the serious threat identified. In evaluating the request of a Member State, the Commission shall determine whether the criteria laid down in Article 26 are met.

When adopting an implementing decision as referred to in the first subparagraph, the Council shall consider whether the prolongation of internal border control in the specific Member State is justified as a measure of last resort to protect the common interests within the area without internal border control, and whether all other measures, in particular those referred to in Article 23 and Article 23a, were ineffective in mitigating the serious threat identified.

The Council implementing decision shall permit the prolongation of internal border control for a maximum period of three months. That implementing decision may be renewed no more than two times for maximum periods of three months, up to a maximum total duration of nine months, where at the end of the relevant three-month period, the Member State concerned considers that the serious threat to public policy or internal security for the same foreseeable threat persists, and that internal border controls should be further prolonged.

Where a Member State considers that such a renewal is necessary, it may make a request to the Commission to propose a prolongation of up to a maximum of three months to the Council. The Commission and, where necessary, the Council shall assess such a request for renewal based on the criteria set out in the second and third subparagraphs above and having assessed the compatibility with the Treaties of such a prolongation.

When prolonging internal border controls

under the Council implementing decision referred to in this paragraph, the Member State concerned shall notify the other Member States, the European Parliament and the Commission in accordance with Article 27(1).

Amendment 125

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) No 2016/399

Article 28 – paragraph 1

Text proposed by the Commission

1. Where the Commission, establishes **that the same** serious threat to internal security or public policy affects a majority of Member States, **putting** at risk the overall functioning of the area without internal border, it **may, make a proposal to the Council** to adopt **an implementing decision** authorising the reintroduction of border controls by Member States where the available measures referred to in Articles 23 and 23a are not sufficient to address **the** threat.

Amendment

1. Where the Commission **receives multiple notifications in accordance with Article 27(1), and** establishes, **on its own initiative or at the request of more than one Member State, that a particularly** serious threat to internal security or public policy affects a majority of Member States **at the same time, in such a way as to put at immediate** risk the overall functioning of the area without internal border, it **shall be empowered, after having assessed the fulfilment of the criteria laid down in Article 26, to adopt delegated acts in accordance with Article 37** authorising the reintroduction of border controls by Member States where the available measures referred to in Articles 23 and 23a are not sufficient to address **that serious** threat.

Amendment 126

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) No 2016/399

Article 28 – paragraph 2

Text proposed by the Commission

2. The **decision** shall cover a period of

Amendment

2. The **delegated act** shall cover a

up to six months and may be renewed, ***upon proposal from the Commission***, for further periods of up to six months ***as long as the threat persists***, taking into account the review referred to in paragraph 5.

period of up to six months and may be renewed ***no more than three times*** for further periods of up to six months, taking into account the review referred to in paragraph 5. ***The maximum duration of the internal border controls on the basis of the particularly serious threat identified shall not exceed two years.***

Amendment 127

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) No 2016/399

Article 28 – paragraph 3

Text proposed by the Commission

3. Where Member States reintroduce or prolong border controls because of the threat referred to in paragraph 1, those controls shall, as of the entry into force of the ***Council decision***, be based on that decision.

Amendment

3. Where Member States reintroduce or prolong border controls because of the threat referred to in paragraph 1, those controls shall, as of the entry into force of the ***delegated act***, be based on that decision.

Amendment 128

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) No 2016/399

Article 28 – paragraph 4

Text proposed by the Commission

4. The ***decision of the Council*** referred to in paragraph 1 shall also refer to any appropriate mitigating measures that shall be established at national and Union level in order to minimise the ***impacts*** caused by the reintroduction of border controls.

Amendment

4. The ***delegated act*** referred to in paragraph 1 shall also refer to any appropriate mitigating measures that shall be established at national and Union level in order to minimise the ***impact*** caused by the reintroduction of border controls.

Amendment 129

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) No 2016/399

Article 28 – paragraph 5

Text proposed by the Commission

5. The Commission shall review the evolution of the identified threat as well as the impact of the measures adopted in accordance with the **Council decision** referred to in paragraph 1, with a view to **assess** whether the measures remain justified.

Amendment

5. The Commission shall **on a regular basis** review the evolution of the identified threat as well as the impact of the measures adopted in accordance with the **delegated act** referred to in paragraph 1, with a view to **assessing** whether the measures remain justified **and to proposing the lifting of internal border controls as soon as possible**.

Amendment 130

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) No 2016/399

Article 28 – paragraph 6

Text proposed by the Commission

6. Member States shall immediately notify the Commission and the other Member States in the Council of a reintroduction of border controls in accordance with the **decision** referred to in paragraph 1.

Amendment

6. Member States shall immediately notify **the European Parliament**, the Commission and the other Member States in the Council of a reintroduction of border controls in accordance with the **delegated act** referred to in paragraph 1.

Amendment 131

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 2 – introductory part

Text proposed by the Commission

2. Where a Member State notifies the Commission and the other Member States of the reintroduction of border controls in accordance with Article 27(1), it shall at

Amendment

2. Where a Member State notifies the Commission and the other Member States of the reintroduction of border controls in accordance with Article 27(1), it shall at

the same time **inform** the European Parliament and the Council **of the following**:

the same time **provide the notification to** the European Parliament and the Council.

Amendment 132

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 2 – point a

Text proposed by the Commission

Amendment

a) the details of the internal borders where border control is to be reintroduced; **deleted**

Amendment 133

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 2 – point b

Text proposed by the Commission

Amendment

b) the reasons for the proposed reintroduction; **deleted**

Amendment 134

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 2 – point c

Text proposed by the Commission

Amendment

c) the names of the authorised crossing-points; **deleted**

Amendment 135

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 2 – point d

Text proposed by the Commission

Amendment

d) the date and duration of the planned reintroduction; **deleted**

Amendment 136

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 2 – point e

Text proposed by the Commission

Amendment

e) where appropriate, the measures to be taken by the other Member State. **deleted**

Amendment 137

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The provision of information may be subject to classification of information by Member States pursuant to Article 27(4).

3The provision of information may be subject to classification of information by Member States pursuant to Article 27(5).

Amendment 138

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Member States shall not be required to **deleted**

provide all the information referred to in the paragraph 2 in cases justified on public security grounds.

Amendment 139

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

The classification of information shall not preclude information from being made available by the Commission to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament under this Article shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.

deleted

Amendment 140

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 2016/399

Article 33 – paragraph 2

Text proposed by the Commission

Amendment

2. Without prejudice to the first paragraph 1, where border controls are prolonged as referred to in Article 25a(5), the Member State concerned shall submit a report at the expiry of *twelve* months and every *twelve* months thereafter if border control is exceptionally maintained.

2. Without prejudice to the first paragraph 1, where border controls are prolonged as referred to in Article 25a(5), the Member State concerned shall submit a report at the expiry of *six* months and every *six* months thereafter if border control is exceptionally maintained.

Amendment 141

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 2016/399

Article 33 – paragraph 3

Text proposed by the Commission

3. The report shall outline, in particular, the initial and follow-up assessment of the necessity of border controls **and the respect** of the criteria referred to in Articles 26, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting impact on the movement of persons in particular in the cross-border regions, the effectiveness of the reintroduction of border control at internal borders, including an ex-post assessment of the proportionality of the reintroduction of border control.

Amendment

3. The report shall outline, in particular, the initial and follow-up assessment of the necessity **and proportionality** of border controls, **the fulfilment** of the criteria referred to in Articles 26, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting impact on the **free** movement of persons in particular in the cross-border regions, the effectiveness of the reintroduction of border control at internal borders, including an ex-post assessment of the **necessity and** proportionality of the reintroduction of border control.

Amendment 142

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 2016/399

Article 33 – paragraph 6

Text proposed by the Commission

6. The Commission shall present to the European Parliament and to the Council, at least annually, a report on the functioning of the area without internal border control entitled ('State of Schengen report'). The report shall include a list of all decisions to reintroduce border control at internal borders taken during the relevant year. **It shall also include information on the trends within the Schengen area as regards the unauthorised movements of third country nationals, taking into account available information from the relevant Union agencies, data analysis from relevant information systems and** an assessment of

Amendment

6. The Commission shall present to the European Parliament and to the Council, at least annually, a report on the functioning of the area without internal border control entitled ('State of Schengen report'). The report shall include a list of all decisions to reintroduce border control at internal borders taken during the relevant year **as well as the actions taken by the Commission with regard to internal border controls reintroduced. The report shall pay particular attention to the border controls that have been in place for longer than twelve months, and shall** include an assessment of the necessity and proportionality of the reintroductions of

the necessity and proportionality of the reintroductions of border controls in the period covered by that report.

border controls in the period covered by that report. ***The report shall be accompanied by the report to be provided pursuant to Article 25 of Regulation (EU) 2022/922 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013.***

Amendment 143

Proposal for a regulation

Article 1 – paragraph 1 – point 15 a (new)

Regulation (EU) No 2016/399

Article 37

Present text

Article 37

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 13(5) and Article 36 shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of powers referred to in Article 13(5) and Article 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

(15a) Article 37 is replaced by the following:

"Article 37

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 13(5), ***Article 21a(2), 28(1)*** and Article 36 shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of powers referred to in Article 13(5), ***Article 21a(2), 28(1)*** and Article 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

3a. Before adopting a delegated act, the Commission shall consult experts

designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 13(5) and Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 13(5), **Article 21a(2), 28(1)** and Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."

(02016R0399)

Amendment 144

Proposal for a regulation

Article 1 – paragraph 1 – point 15 b (new)

Regulation (EU) No 2016/399

Article 37a (new)

Text proposed by the Commission

Amendment

(15b) The following Article 37a is inserted :

Article 37a

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply for as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons

for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 37(5). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

Amendment 145

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – title

Text proposed by the Commission

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

Amendment

Procedure for **the possible transfer of** persons apprehended **in the vicinity of** internal borders

Amendment 146

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 2

Text proposed by the Commission

2. The decision shall be issued by means of a standard form, as set out in Part B, completed by the competent **national** authority.

Amendment

2. The decision shall be issued by means of a standard form, as set out in Part B, completed by the competent **law enforcement** authority.

Amendment 147

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. The national authorities issuing a **refusal** decision shall record the following data:

3. The national authorities issuing a decision **transferring a person** shall record the following data:

Amendment 148

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 3 – point c

Text proposed by the Commission

Amendment

c) **where available, copies of any documents or data relating to the identity or nationality of the third country national concerned, in combination with the relevant national and Union databases.**

deleted

Amendment 149

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII– part A – paragraph 3 – point d

Text proposed by the Commission

Amendment

d) the grounds for **refusal**,

d) the grounds for **transfer**,

Amendment 150

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 3 – point e

Text proposed by the Commission

Amendment

e) the date of **refusal**,

e) the date of **transfer**,

Amendment 151

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. The national authorities issuing a **refusal** decision shall collect the following data:

4. The national authorities issuing a **transfer** decision shall collect the following data:

Amendment 152

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 4 – point a

Text proposed by the Commission

Amendment

a) **the number of persons refused entry;**

deleted

Amendment 153

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 4 – point b

Text proposed by the Commission

Amendment

b) the number of persons refused stay;

b) the number of persons refused stay **and sent back;**

Amendment 154

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 4 – point c

Text proposed by the Commission

Amendment

- c) *the number of persons sent back;* *deleted*

Amendment 155

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 4 – point f

Text proposed by the Commission

Amendment

- f) the grounds for refusal of *entry and* stay;
f) the grounds for refusal of stay;

Amendment 156

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 5

Text proposed by the Commission

Amendment

5. Persons refused *entry or* the right to stay shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national in a language that they understand or are reasonably supposed to understand. Lodging such an appeal shall not have suspensive effect.

5. Persons refused the right to stay shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national in a language that they understand or are reasonably supposed to understand. Lodging such an appeal shall not have suspensive effect.

Amendment 157

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Text proposed by the Commission

6. The **authorities empowered** under national law shall ensure that the third-country national subject to a **refusal** decision is transferred to the competent authorities of the neighbouring Member State immediately and within **24** hours at the latest. The authorities empowered under national law in the neighbouring Member State shall cooperate with the authorities of the Member State to that end.

Amendment

6. The **competent law enforcement authority** under national law shall ensure that the third-country national subject to a **transfer** decision is transferred to the competent authorities of the neighbouring Member State immediately and within **12** hours at the latest. The authorities empowered under national law in the neighbouring Member State, **having taken part in a joint police patrol**, shall cooperate with the authorities of the Member State to that end.

Amendment 158

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) No 2016/399

Annex XII – part A – paragraph 7

Text proposed by the Commission

7. ***If a third-country national who has been subject to a decision referred to in paragraph 1 is brought to the border by a carrier, the authority responsible locally may:***

(a) order the carrier to take charge of the third-country national and transport him or her without delay to the Member State from which he or she was brought;

(b) pending onward transportation, take appropriate measures, in compliance with national law and having regard to local circumstances, to prevent third-country nationals who have been refused entry from entering illegally.

Amendment

deleted

Amendment 159

Proposal for a regulation
Article 1 – paragraph 1 – point 19
Regulation (EU) No 2016/399
Annex XII – part B

Text proposed by the Commission

Standard form for transferring persons
apprehended **at** the internal borders

Name of State

Logo of State (Name of Office)

(¹)

TRANSFER PROCEDURE **AT**
INTERNAL **BORDERS**

On _____ at
(time) _____ at the location
(indicate type of the internal border nearby
or other relevant information related to the
apprehension by a joint
patrol) _____

We, the undersigned,

_____ have before us:

Personal data (subject to availability)

Surname _____
First
name _____

Date of
birth _____
Place of birth _____

Sex _____

Nationality _____

Resident in _____

Type of identity document _____

number _____

Issued in _____

Amendment

Standard form for transferring persons
apprehended **in the vicinity of** the internal
borders

Name of State

Logo of State (Name of Office)

(¹)

TRANSFER PROCEDURE **IN THE**
VICINITY OF INTERNAL BORDERS

On _____ at
(time) _____ at the location
(indicate type of the internal border nearby
or other relevant information related to the
apprehension by a joint
patrol) _____

We, the undersigned,

_____ have before us:

Personal data (subject to availability)

Surname _____
First
name _____

Date of
birth _____
Place of birth _____

Sex _____

Nationality _____

Resident in _____

Type of identity document _____

number _____

Issued in _____

on

Visa number, if any

_____ type
_____ issued by

Valid from _____
until _____

For a period of _____ days:

Coming from _____ by
means of _____ (indicate
means of transport used, e.g. flight
number), he/she is hereby informed that
he/she has no right to stay in the country
and will be transferred to

_____ pursuant to
(*indicate references to the national law in
force*), for the following reasons:

- (A) has no valid **travel** document(s)
- (B) has a false/counterfeit/forged travel document
- (C) has no valid visa or residence permit
- (D) has a false/counterfeit/forged visa or residence permit
- (E) ***has no appropriate documentation justifying the purpose and conditions of stay***

The following document(s) could not be provided:

- (F) has already stayed for 90 days in the preceding 180-day period on the territory of the Member States of the European Union
- (G) does not have sufficient means of subsistence in relation to the period and form of stay, or the means to return to the ***county of origin or transit***

on

Visa number, if any

_____ type
_____ issued by

Valid from _____
until _____

For a period of _____ days:

Coming from _____ by
means of _____ (indicate
means of transport used, e.g. flight
number), he/she is hereby informed that
he/she has no right to stay in the country
and will be transferred to

_____ pursuant to
(*indicate references to the national law in
force*), for the following reasons:

- (A) has no valid **identity** document(s)
- (B) has a false/counterfeit/forged travel document
- (C) has no valid visa or residence permit
- (D) has a false/counterfeit/forged visa or residence permit
-

(F) has already stayed for 90 days in the preceding 180-day period on the territory of the Member States of the European Union

(G) does not have sufficient means of subsistence in relation to the period and form of stay, or the means to return to the ***neighbouring Member State***

(GA) is not an applicant for international protection

- (H) is a person for whom an alert has been issued for the purposes of refusing entry
- in the SIS
- in the national register
- (I) is considered to be a threat to public policy, internal security, public health or the international relations of one or more of the Member States of the European Union (*each State must indicate the references to national law relating to such transfer*)

Comments

- The person concerned declined to sign the form.

Person Concerned

Officer responsible for checks

The person concerned may appeal against the decision that he/she has no right to stay as provided for in national law. The person concerned receives a copy of this document (*each State must indicate the references to the national law and procedure relating to the right of appeal*).

(GB) is not a minor

- (H) is a person for whom an alert has been issued for the purposes of refusing entry
- in the SIS
- in the national register
- (I) is considered to be a threat to public policy, internal security, public health or the international relations of one or more of the Member States of the European Union (*each State must indicate the references to national law relating to such transfer*)

Comments

- The person concerned declined to sign the form.

Person Concerned

Officer responsible for checks

The person concerned may appeal against the decision that he/she has no right to stay as provided for in national law. The person concerned receives a copy of this document (*each State must indicate the references to the national law and procedure relating to the right of appeal as well as contact points able to provide information on representatives competent to act on behalf of the third-country national*).

Amendment 160

Proposal for a regulation

Article 2

Directive 2008/115/EC

Article 6 – paragraph 3

Text proposed by the Commission

Article 2

Amendment to Directive 2008/115/EC

1. Article 6(3) of Directive 2008/115/EC is replaced by the following:

‘3. Member States may refrain from

Amendment

deleted

issuing a return decision to a third-country national staying illegally on their territory if the third-country national concerned is taken back by another Member State in accordance with the procedure provided for in Article 23a of the Regulation (EU) 2016/399 of the European Parliament and of the Council or under bilateral agreements or arrangements.*

The Member State which has taken back the third-country national concerned in accordance with the first subparagraph shall issue a return decision in accordance with paragraph 1. In such cases, the derogation laid down in the first subparagraph shall not apply.

Member States shall without delay notify any existing, amended or new bilateral agreements or arrangements to the Commission.”

** Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 077 23.3.2016, p. 1).’*

Amendment 161

Proposal for a regulation Article 3

Text proposed by the Commission

Article 3

*Transposition of amendment to Directive
2008/115/EC*

1. Member States shall adopt and publish, by [6 months from entry into force of this Regulation] at the latest, the laws, regulations and administrative provisions necessary to comply with Article 2. They shall forthwith communicate to the Commission the text

Amendment

deleted

of those provisions.

They shall apply those provisions from [6 months from entry into force].

When Member States adopt those provisions, they shall contain a reference to Article 2 of this Regulation or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Amendment 162

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

However, Article 1, point 6, shall apply from [the date at which the amendments provided for in Article 2 apply in the Member States].

deleted

EXPLANATORY STATEMENT

The Schengen area is one of the Union's greatest achievements, a tangible and cherished achievement at the very heart of the EU project, allowing unrestricted travel for more than 400 million people and unique across the world, which has been in place for over 25 years.

Unfortunately, this area of free movement, without internal border controls, has been at risk for several years. There are many reasons given for the increasing, and increasingly permanent, use of internal border controls within the Schengen area affecting primarily persons: the threat of terrorism, the public health risk linked to pandemics, even the movement of persons across borders itself. The thread connecting such reasons is that they have served as a pretext for Member States to turn inwards.

The European Commission has proposed an amended version of the Schengen Borders Code with the aim of strengthening the Schengen area and returning to a fully-functioning area without internal border controls. Unfortunately, the approach chosen by the Commission has been to accept those very reasons given for increasing border controls and limiting freedom of movement. Creating new grounds for justifying the introduction of internal border controls or permitting more checks that will look like, and feel like, border control does not seem to match with the aim of the EU Treaties to offer EU citizens an area of freedom, security and justice without internal frontiers. The Rapporteur has decided to focus on primary EU law when proposing amendments to this proposal, seeking to defend the very principles of the Schengen area as they are set out in the Treaties and the Charter of Fundamental Rights, in particular in Article 3 TEU, in Article 67(2) TFEU, and in Article 77(2)(e) TFEU.

As regards the provisions related to instrumentalisation, the Rapporteur prefers to remove them from the text since, on the one hand, they serve a geopolitical goal with limited relevance for the rules governing the good functioning of the Schengen area, and, on the other hand, the Commission has made a separate, specific proposal for a Regulation on this subject, which should address all elements linked to that concept.

Regarding the amendments to the Return directive, the Rapporteur prefers also to suggest that they do not belong in the Schengen Borders Code, based on the principle that they are not consistent with a legal basis that requires the absence of any controls on persons, whatever their nationality, when crossing internal borders. It cannot be the role of the Schengen Borders Code to resolve problems that have arisen in the stalled reform of the EU's asylum and migration policy. Such provisions are clearly contrary to the spirit of the Schengen Area without internal border control. Moreover, the standstill clause in the Return Directive was intended to ensure that the EU moves to a more harmonised approach. The Rapporteur does not want to move backwards in that respect, by encouraging more bilateral agreements within the Schengen Area that serve only to bi-pass EU rules.

More positively, on the Commission's suggestions with regard to handling pandemic situations and public health emergencies, the Rapporteur broadly supports the European Commission's approach, but given the importance of the decisions that will be taken - at EU level - in this area, it is important that European Parliament is involved in that process.

Additionally, regarding one of the key elements of this revision, related to the time limits for reintroducing internal border controls, the Rapporteur has been guided by the ruling of the

Grand Chamber of the Court of Justice of the European Union in Joined Cases *NW v Landespolizeidirektion Steiermark (C-368/20)*, *Bezirkshauptmannschaft Leibnitz (C-369/20)*.

The draft report contains strict time limits on the reintroduction of internal border controls for Member States, and clear provisions indicating how long they can be maintained.

In its proposal, the Commission decided to introduce new provisions governing a serious threat to public policy or internal security which would put at risk the overall functioning of the area without internal border controls, allowing for a Council Decision covering the reintroduction of internal border control in several or more Member States at the same time. The Rapporteur can accept such a mechanism, but believes it should be tightly regulated. The reintroduction of border controls at EU-level should be possible for periods of 6 months, renewable up to a maximum of 2 years.

To conclude, the last ten years have shown that it is politically much easier for national politicians to take a decision to reintroduce border controls, than it is for them later to take a decision to lift those internal border controls. The European legislator should not provide more tools with which national politicians can justify internal border controls. We must get back to Schengen not back to pre-Schengen.

MINORITY POSITION

Pursuant to Rule 55(4) of the Rules of Procedure

Charlie Weimers, Anders Vistisen, Patryk Jaki, Jean-Paul Garraud, Jorge Buxadé Villalba, Jaak Madison, Beata Kempa, Patricia Alexina Fransisca Maria Chagnon, Rob Rooker, Annika Bruna, Thierry Mariani, Nicolaus Fest

This proposal to revise the Schengen Border Code reflects the belief that abolishing internal border controls trumps internal security challenges. Even when the Schengen area faces threats such as mass migration or hybrid warfare utilizing weaponization of illegal migrants, secondary movements, or activities relating to terrorism or organized crime.

The report rejects attempts to amend the Schengen Border Code to take these threats into account. It rejects proposed tools to combat instrumentalization, restricts the applicability of alternative measures to border controls such as the transferring back of persons apprehended in border areas who have illegally entered, and reintroduces obstacles to hinder more extensive use of border monitoring and surveillance technologies.

The report undermines the sovereign right of Member States to control who enters their territory. Reintroduction and/or prolongation of internal border controls will require more burdensome justifications while the possibility to extend internal border controls in the face of continued threats to internal security or public policy are limited.

The functioning of the Schengen agreement is contingent upon mutual trust between Member States. Free movement can only be restored when the external border is secured and a zero tolerance policy towards all forms of illegal entry is implemented.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders
References	COM(2021)0891 – C9-0473/2021 – 2021/0428(COD)
Date submitted to Parliament	15.12.2021
Committee responsible Date announced in plenary	LIBE 14.2.2022
Rapporteurs Date appointed	Sylvie Guillaume 31.3.2022
Discussed in committee	17.11.2022
Date adopted	20.9.2023
Result of final vote	+: 39 –: 13 0: 12
Members present for the final vote	Abir Al-Sahlani, Konstantinos Arvanitis, Malik Azmani, Pietro Bartolo, Theresa Bielowski, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Karolin Braunsberger-Reinhold, Patrick Breyer, Saskia Bricmont, Annika Bruna, Jorge Buxadé Villalba, Damien Carême, Patricia Chagnon, Clare Daly, Laura Ferrara, Nicolaus Fest, Sylvie Guillaume, Evin Incir, Sophia in 't Veld, Patryk Jaki, Marina Kaljurand, Assita Kanko, Fabienne Keller, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Erik Marquardt, Nuno Melo, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Pina Picierno, Emil Radev, Paulo Rangel, Karlo Ressler, Diana Riba i Giner, Isabel Santos, Birgit Sippel, Sara Skytvedal, Vincenzo Sofo, Tineke Strik, Tomas Tobé, Yana Toom, Tom Vandendriessche, Anders Vistisen, Elena Yoncheva, Javier Zarzalejos
Substitutes present for the final vote	Delara Burkhardt, Loucas Fourlas, Anne-Sophie Pelletier, Bergur Løkke Rasmussen, Petar Vitanov, Charlie Weimers
Substitutes under Rule 209(7) present for the final vote	Pascal Arimont, Dacian Cioloş, Jarosław Duda, Thierry Mariani, Karen Melchior, Antonio Maria Rinaldi, Helmut Scholz
Date tabled	27.9.2023

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

39	+
NI	Laura Ferrara
PPE	Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Paulo Rangel
Renew	Abir Al-Sahlani, Malik Azmani, Dacian Cioloş, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Karen Melchior, Maite Pagazaurtundúa, Bergur Løkke Rasmussen, Yana Toom
S&D	Pietro Bartolo, Theresa Bielowski, Delara Burkhardt, Sylvie Guillaume, Evin Incir, Marina Kaljurand, Łukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Pina Picierno, Isabel Santos, Birgit Sippel, Petar Vitanov, Elena Yoncheva
The Left	Konstantinos Arvanitis, Anne-Sophie Pelletier, Helmut Scholz
Verts/ALE	Patrick Breyer, Saskia Bricmont, Damien Carême, Alice Kuhnke, Erik Marquardt, Diana Riba i Giner, Tineke Strik

13	-
ECR	Jorge Buxadé Villalba, Patryk Jaki, Assita Kanko, Vincenzo Sofo, Charlie Weimers
ID	Annika Bruna, Patricia Chagnon, Nicolaus Fest, Thierry Mariani, Antonio Maria Rinaldi, Tom Vandendriessche, Anders Vistisen
PPE	Nadine Morano

12	0
PPE	Pascal Arimont, Karolin Braunsberger-Reinhold, Jarosław Duda, Loucas Fourlas, Jeroen Lenaers, Nuno Melo, Emil Radev, Karlo Ressler, Sara Skytvedal, Tomas Tobé, Javier Zarzalejos
The Left	Clare Daly

Key to symbols:

+ : in favour

- : against

0 : abstention