



Adapting Schengen to evolving challenges: Questions and Answers

Strasbourg, 14 December 2021

Why is the revision of the Schengen Borders Code needed?

The recent [Strategy on the future of Schengen](#) acknowledged that improvements are needed to ensure that the Schengen area can tackle current and evolving challenges such as a public health threat or instrumentalisation of people. The proposed revision of the Schengen Borders Code offers solutions so that any reintroduction of internal border controls remains a measure of last resort.

The revision also incorporates lessons from the COVID-19 pandemic by proposing improved EU coordination for situations of serious threats to public health affecting one or more Member States. It proposes a legal basis for restrictions on non-essential travel to the European Union in epidemic situations, as well as increased EU coordination for crises, including those of serious threats to public health affecting several Member States at the same time.

What are the current rules concerning the reintroduction of controls at internal borders?

The current Schengen Borders Code gives Member States the possibility to temporarily reintroduce border control at internal borders where there is a serious threat to public policy or internal security. The reintroduction of border control at internal borders should remain exceptional and proportional. Border controls should be lifted once the reasons no longer apply.

Currently, the Schengen Borders Code includes 2 procedures:

- **Article 28:** Member States can reintroduce internal border controls in cases requiring immediate action (unforeseen circumstances), for a limited period of up to 10 days, with a possibility of renewal of up to 20 days, for the maximum period of 2 months in total. Member States will continue to be able to unilaterally reintroduce internal border controls in case of a threat to public policy or internal security.
- **Article 25:** the Member States may reintroduce border controls in foreseeable circumstances, and for an initial period of 30 days, renewable up to a maximum of six months.

What changes are proposed to the rules on reintroduction of internal border checks?

Proposed changes include notably:

- **Unforeseen events:** For unforeseen threats, Member States can unilaterally introduce controls for 30 days, extendable up to 3 months.
- **Foreseeable events:** In case border control needs to be reintroduced for foreseeable events, they can do so for renewable periods of up to 6 months. The maximum duration of border control at internal borders should not exceed 2 years. However, in exceptional situations Member States may decide that border controls need to be maintained longer.
- **More detailed notifications:** Whenever introducing controls, Member States should justify their proportionality and necessity, taking into account the impact on the right to free movement and on cross-border regions.
- **More safeguards:** In case border controls have been in place for 6 months, any further notification for the prolongation of such controls needs to be accompanied by a risk assessment in addition. If border controls have been in place for 18 months, the Commission would be required to issue an opinion on necessity and proportionality of such internal border controls.
- **Mitigating measures:** An obligation for Member States to define appropriate mitigating measures to minimise the impact of reintroduction of border controls.
- **Possibility for a coordinated European response:** The Commission may propose to the Council to adopt an implementing decision authorising the reintroduction of border controls by Member States where other measures are not sufficient to address a serious threat. Where the Commission does not find such controls proportionate to the threat, it can recommend the use

of alternative measures.

What lessons does the proposal draw from the pandemic?

The COVID-19 pandemic placed a major strain on the Schengen area, with as many as 17 Member States unilaterally reintroducing internal border controls, at times jeopardising the proper functioning of the internal market, disrupting the movement of people within the EU and negatively impacting those living and working in border regions and the supply chains.

Several innovations are proposed based on lessons learned from the pandemic. These include:

- obligatory mitigating measures during reintroduced border controls, based on the experience of the 'green lanes';
- a new coordinated procedure to introduce restrictions on travel to the EU, if required;
- a new procedure to introduce internal border checks in a coordinated way in case of a threat affecting several Member States at the same time.

How would the coordinated procedure to introduce travel restrictions work?

Building on the experience of the pandemic, the proposal would establish a new mechanism to allow for a timely adoption, by the Council, of a binding instrument setting out temporary travel restrictions at the external borders if required for public health reasons. Thanks to this mechanism, travel restrictions will apply uniformly in all Member States for as long as the threat to public health persists in the Union. When the European Centre for Disease Prevention and Control detects the existence of an infectious disease with epidemic potential outside the EU, the Commission may propose to the Council to adopt an implementing regulation providing for temporary travel restrictions. Such a legal instrument should specify any categories of persons exempted from travel restrictions, even in situations where they travel for non-essential reasons, and/or, on the basis of objective indicators, any geographical areas or third countries from which travel may be subject to specific measures. It would also define any additional conditions to be imposed on travellers to make travel safe. In line with obligations under Union and international law, Union citizens and other people who enjoy rights of free movement within the EU, and their respective family members, should always be permitted to enter the Union. Residents should also always be permitted to return to the Union. Moreover, the instrument should define a minimum list of categories of travelers that are considered necessary in connection with essential functions or needs and should therefore not be covered by the travel restriction. The instrument could also set up an 'emergency brake' mechanism, allowing the Union to take relevant measures in case the epidemiological situation dramatically worsens in one or more geographical areas.

How will the new rules ensure that the reintroduction of controls at internal borders remains a measure of last resort? Will the new rules limit the possibility of reintroducing internal border controls?

The proposal seeks to draw lessons from the reasons why and ways in which several Member States have reintroduced internal border controls in response to events in recent years. In order to address these challenges, the proposal includes:

- on the one hand, more safeguards accompanying the reintroduction of border controls (such as a compulsory risk assessment) and tools to help the Commission assess their necessity and proportionality (such as regular reporting obligations for the Member States);
- and on the other hand, more possibilities for the use of alternative measures such as police or other checks within the territory, particularly to address unauthorised movements within the Schengen area, including a possibility for Member States to transfer back those not entitled to enter their territory during joint police patrols.

What is the new Schengen safeguard mechanism?

The proposed Schengen safeguard mechanism aims to address situations where there is a serious threat to public policy or internal security that puts at risk the overall functioning of the area without internal border controls as it affects a majority of Member States at the same time. This mechanism empowers the Council, based on a proposal from the Commission, to adopt an implementing decision authorising the reintroduction of controls by Member States in a coordinated way, which would replace any national measures in place. This decision will also define national and European measures to mitigate the impact of border controls. The decision would cover a maximum period of 6 months, which may be renewed, upon proposal from the Commission, for further periods of up to 6 months as long as the threat persists. The Commission will regularly review the evolution of the identified threat as well as the impact of the measures adopted, to assess whether the measures remain justified.

What constitutes a situation of instrumentalisation of irregular migration? What would be the possible EU response?

Instrumentalisation of migrants is when a third country instigates irregular migratory flows into the EU by actively encouraging or facilitating the movement of people from outside the EU to the external borders. The clear intention of the third country is 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.

Under the proposal, the Member State facing a situation of instrumentalisation of people has the possibility to immediately restrict border crossing points and increase border surveillance and can also request specific asylum measures. To trigger this mechanism, the Member State affected should send a request to the Commission requesting support and solidarity measures from other Member States. The Commission may follow up with a proposal for the Council to authorise the application of the derogations set out in this proposal. The triggering of the mechanism should take into account whether the European Council has concluded that the Union is facing a situation of instrumentalisation of people in one or more of its Member States.

The measures include support from other Member States, through capacity building; support for return through cooperation with third countries; and outreach to third countries whose nationals are being instrumentalised.

They also include procedural and other derogations for the Member State facing a situation of instrumentalisation, in order to help with effective border and migration management in such an exceptional situation. These include:

- Extending the deadline for registration of applications for international protection and the extension of the duration of the border procedure;
- Introducing an emergency migration and asylum management procedure, which allows Member States to apply the asylum border procedure to decide on all applications, except for medical cases. The maximum duration of the emergency asylum management procedure is 16 weeks;
- Providing a possibility to set different material reception conditions for applicants while ensuring access to health care and the full respect of human dignity;
- Introducing a possibility to derogate from the application of the proposal for a Return Directive recast in relation to people whose application for international protection was rejected on the basis of the emergency asylum management procedure.

Would these measures affect fundamental rights?

The proposed measures safeguard fundamental rights by ensuring that all arrivals at the EU's external border in the Member State faced with instrumentalisation have a genuine and effective access to the asylum procedure.

The principles and guarantees provided by EU asylum law as proposed under the New Pact on Migration Asylum (Asylum Procedures Regulation, amended Reception Conditions Directive and amended Return Directive) remain applicable to applicants subject to the procedures under the proposal. In line with those rules, asylum seekers will have access to legal assistance, the right to an effective remedy, in the form of an appeal or a review, in fact and in law, before a court or tribunal, and detention cannot be applied systematically but only as a measure of last resort. The proposal guarantees the right to an effective remedy ensuring that Courts have power to rule whether or not the applicant may remain on the territory of the Member State pending a decision on an appeal and with the right guarantees applicable to enable an applicant to make such requests to the Courts. The guarantees for persons with special procedural needs under the amended Asylum Procedure Regulation also continue to apply.

How is the proposal to address situations of instrumentalisation in the field of migration and asylum different from the measures proposed on 1 December under article 78.3 of the Treaty on the Functioning of the European Union?

Today's proposal builds on the Commission proposal for temporary measures to manage the situation at the external border with Belarus. This proposal creates a permanent tool that could be activated rapidly in case of need. In addition to providing an effective response, it also aims to be a preventive measure by demonstrating the EU's readiness to act rapidly.

For More Information

Legal documents:

[Proposal for a Regulation amending the rules governing the movement of persons across borders](#)
[Proposal for a Regulation addressing situations of instrumentalisation in the field of migration and asylum](#)

[Press release](#)

[Factsheet](#)

QANDA/21/6822

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