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**Dossier interinstitutionnel:  
2021/0428(COD)**

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**LIMITE**

**JAI 568  
FRONT 184  
MIGR 133  
COVID-19 89  
SAN 234  
TRANS 252  
CODEC 588  
COMIX 220**

**NOTE**

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Origine:	la présidence
Destinataire:	Groupe Frontières - Comité Mixte (UE-Islande/Norvège et Suisse/Liechtenstein)
N° doc. préc.:	7771/22,7062/22
Objet:	Proposition de règlement du Parlement européen et du Conseil amendant le règlement (UE) 2016/399 concernant un code de l'Union relatif au régime de franchissement des frontières par les personnes - Compromis complet de la présidence

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Les délégations trouveront ci-joint le compromis révisé de la présidence portant sur les articles 2, 5, 13, 21a, 23, 23a, 24, 25, 25a, 26, 27, 27a, 28, 31, 33, 39 et 42b du code frontières Schengen, ses annexes XI et XII, ainsi que les articles 2 et 3 de la proposition amendant la directive retour.

Les amendements apportés au texte original apparaissent en **gras souligné** ou ~~barrés~~. En outre, les changements par rapport aux dernières versions (7062/22 et 7771/22) apparaissent en **grisé**.

2021/0428 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EU) No 2016/399 is amended as follows:

(1) Article 2 is **amended** ~~modified~~ as follows:

a) point 12 is replaced by the following:

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

b) the following points 27 to 30 are added:

27. ‘instrumentalisation of migrants’ **means** ~~refers to~~ a situation where **a third country or non state actor** ~~third country~~ ~~instigates~~ ~~illegal immigration~~ ~~migratory flows into the Union, by actively encourages~~ or facilitates the movement of third country nationals to the external borders, ~~onto or from within a~~ its territory and then onwards to those external borders, ~~where such actions are indicative of an intention of a third country~~ **state or non state actor** to destabilise the Union or a Member State, where the nature of such actions **with the aim of destabilising** ~~destabilise~~ the Union or a Member State, ~~where such actions~~ ~~is~~ **are** liable to put at risk essential State functions **of a Member State**, including its territorial integrity, the maintenance of law and order or the safeguard of its national security;<sup>1</sup>

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<sup>1</sup> Add at the end of recital 9: “**Situations in which non state actors are involved in organised crime, in particular smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State. Furthermore, humanitarian aid operations should not be considered as instrumentalisation.**”

28. ‘essential travel’ means travel in connection with an essential function or need ~~listed in Annex XI~~, taking into account any applicable international obligations of the Union and of the Member States ~~and listed in Annex XI~~;
29. ‘non-essential travel’ means travel for purposes other than essential travel;
30. ‘transport hubs’ means airports, sea or river ports, train or bus stations **as well as freight terminals.**

(2) In Article 5, **the following** paragraph 4 is added:

- ‘4. **Member States may, in particular** in a situation of instrumentalisation of migrants **or in other situations of emergency at the external border**, Member States may **close specific** ~~limit the number~~ of border crossing points as notified pursuant to paragraph 1, **limit their number** or their opening hours where the circumstances so require. <sup>2</sup>

Any **measures** ~~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/EC<sup>3</sup>, persons deriving their right to reside from other instruments of Union or national law or who hold national long-term **stay** visas, as well as their respective family members;
- (c) third-country nationals seeking international protection.’

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<sup>2</sup> Add after the first sentence of recital 12: **In a situation of instrumentalisation of migrants, and in particular where third-country nationals attempt to force entry en masse by using disproportionate violent means, Member States may take the necessary measures in accordance with national law to preserve security, law and order.**

<sup>3</sup> 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).

(3) Article 13 is replaced by the following:

‘Article 13

*Border surveillance*

1. The main purpose of border surveillance shall be to **prevent or detect** ~~detect and prevent~~ unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally. **In addition, border surveillance shall enable information gathering which contributes to raising situational awareness and carrying out risk assessments analyses.**

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.

2. The border guards shall use **all necessary resources, including** stationary 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 **or** ~~and~~ from circumventing the checks at border crossing points.

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 **prevented or detected** ~~detected or prevented.~~
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 **or having crossed** the border illegally. Surveillance may also be carried out by technical means, including electronic means, equipment, ~~and~~ surveillance systems **and, where appropriate, stationary and mobile infrastructure.** <sup>4</sup>

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<sup>4</sup> Complement the second sentence of recital 15 as follows: ‘Such technical means could include modern technologies including drones and motion sensors, as well as mobile units, **and, where appropriate, stationary or mobile infrastructure.**’

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~~ **border** crossings ~~of the border~~.

~~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.~~

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 Council<sup>5</sup>, 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.

7. The Commission ~~may~~ **shall be empowered to adopt delegated acts** **an implementing act in accordance with Article 37** concerning additional measures governing surveillance, including the development of **common minimum** standards for border surveillance. ~~and in particular the use of surveillance and monitoring technologies at the external borders.~~ **These common minimum standards shall take into account** 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 **such as geographical particularities. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).**

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<sup>5</sup> 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.

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

In Chapter V, ~~the~~ following Article 21a is inserted:

“Article 21a

*Restrictions on travel to the European Union*

1. This Article shall apply to situations **of a threat to public health due to** the existence in one or more third countries of an infectious disease with epidemic potential as defined by the relevant instruments of the World Health Organization where the Commission, **following the advice of** the European Centre for Disease Prevention and Control ~~or the Commission~~, **and in close cooperation with taking into account information from the competent national authorities, establishes identify that such a threat may have a negative impact on the area without controls at internal borders.**
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 **applied at the external borders.**

~~Such~~ Temporary restrictions on travel may include restrictions on entry to the Member States and ~~other~~ **proportionate measures minimum temporary health related restrictions** which are ~~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<sup>6</sup>. **Temporary restrictions on travel shall be proportionate and non-discriminatory. Persons undertaking essential travel and categories listed in paragraph 3 can be subject to these proportionate measures.**

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<sup>6</sup> **New recital 7a: “The effectiveness of restrictions on travel to the European Union is premised on applying uniform rules to third countries and third country nationals. The application of uniform rules through the implementing Regulation should ensure the protection of public health and thus preserve the functioning of the area without internal border controls. Member States could adopt stricter temporary health and other related restrictions than those laid down in the implementing Regulation provided that such restrictions do not have a disproportionately negative impact on the functioning of the area without internal border controls. Such measures may include restrictions on travel against other regions or third countries not covered by the implementing Regulation, if they are based on a national risk assessment and are proportionate. In addition, Member States may adopt restrictions on travel in the absence of a Council implementing Regulation. The implementing Regulation should take into account the specific situation of the Overseas Countries or Territories referred to in Article 355 (2) TFEU and listed in Annex II thereto.”**  
**New recital 7b: For persons in transit, temporary restrictions on travel should be applied upon arrival at the final destination.”**

**Member States may, where justified, adopt stricter temporary travel restrictions than those laid down in the implementing Regulation to be applied on their territory. Adoption of stricter restrictions shall not have a disproportionately negative impact on the functioning of the area without controls at internal borders.**

3. The following categories of persons shall be exempted from the restrictions on entry, independent of the purpose of their travel:
  - a) persons enjoying the right of free movement under Union law;
  - b) third-country nationals who are long-term residents **as defined in** ~~under~~ Directive 2003/109/EC, persons deriving their right to reside from other instruments of Union law or national law or who hold national long-term ~~term~~ **stay** visas, as well as their respective family members <sup>7</sup>.
4. The implementing Regulation referred to in paragraph ~~4~~ **2** shall, where appropriate:
  - a) **determine** ~~identify~~ any geographical areas or third countries from which ~~non-essential~~ travel may be subject to restrictions or exemptions from restrictions, **and define a procedure to periodically review the** ~~having regard to the particular situation of the areas or countries concerned~~ **and the restrictions on travel imposed** on the basis of objective methodology and criteria, including, in particular, the epidemiological situation;
  - b) define ~~the any~~ categories of persons undertaking ~~non-essential~~ travel to be exempted from ~~any~~ restrictions **on entry** applicable to travel **when undertaking non-essential travel.**<sup>8</sup>
  - c) lay down the conditions under which travel restrictions may be imposed, ~~exceptionally, on persons undertaking essential travel, in the event that the epidemiological situation worsens quickly and, in particular where a variant of concern or variant of interest has been detected.~~ ;
  - d) **lay down minimum temporary health related restrictions to which persons referred to in Article 3 a) and b) may be subject;**

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<sup>7</sup> Add in recital 7 after "Residents in the Union should always be permitted to enter the Union": "**In line with the applicable obligations under Union law, travel from Ireland should not be subject to restrictions under this Regulation. As regards residents in Ireland, Member States should on a bilateral and reciprocal basis allow those residents to return to Ireland by transiting through the territory of the Member States. Ireland is invited to align its national policy with the restrictions on travel to the European Union to be adopted through an implementing Regulation.**"

<sup>8</sup> In recital 7, add after 'It should specify, ~~where relevant,~~ any categories of travellers whose travel should be exempted from restrictions on entry.': "**These categories could for example include healthcare professionals, cross-border workers, transport personnel, diplomats or other international staff, passengers in transit, passengers travelling for imperative family reasons, seafarers, third-country nationals seeking international protection.**"

- e) lay down the conditions under which non-essential travel as referred to under points (a) and (b) may be restricted or exempt from restrictions **as referred to under points (a) and (b)**, including proof to be presented to support the exemption and the conditions relating to the duration and nature of stay in the areas or countries referred to in point (b);

**e) — lay down the conditions of review of the proportionality and the necessity of these restrictions.**

5. Restrictions on **entry on persons undertaking** essential travel referred to in paragraph 4(d) may **shall** not include restrictions on entry as regards travellers listed in point i. and points iv. to viii. of Annex XI.” **only be imposed exceptionally, for a strictly limited period of time, until sufficient information about the disease referred to in paragraph 1 or a new variant thereof is available and until other health related restrictions, to be applied to those persons, necessary to protect public health, are identified and adopted by the Council.**

- (5) Article 23 is replaced by the following:

“Article 23  
*Exercise of public powers*

**Checks within the territory**

9

The absence of border control at internal borders shall not affect:

- 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 of powers may include, where appropriate, the use of monitoring and surveillance technologies generally used in the territory, for the purposes of addressing threats to public security or public policy.**

The exercise by competent authorities of their powers ~~may~~ **shall** not, in particular, be considered equivalent to the exercise of border checks when the measures **fulfil each of the following conditions:**

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<sup>9</sup> Insert a new recital 24a : **‘The exercise of police or other public powers by the competent authorities of the Member States in their territory, including in their border areas, should not have a disproportionate impact on fluidity of movement across the internal borders, notably by leading to excessive waiting times. Where appropriate, Member State may inform the neighbouring Member State of their actions, in particular when the action is expected to have a more significant effect on cross-border traffic.’**



- i) do not have border control as an objective;
- 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:
  - combat cross-border crime;
  - combat ~~irregular residence or stay, linked to~~ **illegal** migration; or
  - contain the spread of an infectious disease with epidemic potential, **the existence of which has been established** as detected by **the Commission, following the advice of** the European Centre for Disease Control, **and taking into account information from in close cooperation with the competent national authorities;**
- iii) are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders, including where they are conducted at transport hubs or directly on board of passenger **transport** services and when they are based on **a risk assessment** analysis;
- ~~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, public policy as set out under ii);~~
- b) the possibility for a Member State to carry out security checks on persons ~~carried out~~ at transport hubs by the competent authorities **or by carriers** under the law of each Member State, ~~by their competent authorities or by carriers~~, provided that such checks are also carried out on persons travelling within a Member State;
- c) the possibility for a Member State to provide by law for an obligation to hold or carry papers and documents;
- d) the possibility for a Member State to provide by law for an obligation on third-country nationals to report their presence on its territory **and the for an obligation for managers of establishments providing accommodation to see to it that third-country nationals complete and sign registration forms** pursuant **respectively** to the provisions of Articles **22 and 45** of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ('the Schengen Convention');
- 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.”

(6) The following Article 23a is inserted:

“Article 23a

*Procedure for transferring illegally staying third-country nationals apprehended ~~in~~ at the internal border areas*

1. This Article lays down the procedure for the transfer applies to the apprehension of an illegally staying third-country national apprehended in the vicinity of internal borders internal border areas as referred to in Article 23, 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, in circumstances where all of the following conditions are fulfilled:
  - a) ~~the third country national concerned does not or no longer fulfils the entry conditions laid down in Article 6(1);~~
  - b) ~~the third country national is not covered by the derogation laid down in Article 6(5) point (a);~~
  - a e) the third country national is apprehended as part of joint operations cross border police operational cooperation, in particular, during joint police patrols or police checks conducted by the competent authorities in the framework of a within bilateral or multilateral cooperation framework, which may include including joint police patrols; and
  - b d) there are clear indications that the illegally staying third country national has arrived directly from the other 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.
2. The competent authorities of a Member State may, ~~based on a finding~~ after having apprehended that the an illegally staying third country national in the internal border areas 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. This transfer is without prejudice to bilateral agreements or arrangements as referred to in Article 6(3) of Directive 2008/115/EC. <sup>10</sup>

<sup>10</sup> Add at the end of recital 25: ‘The transfer should not apply to persons making an application for international protection or being subject to Article 18 of Regulation (EU) 604/2013.’

3. Where a **transferring** 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.
  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.”
- (7) ~~At the end of €~~**T**he first paragraph of Article 24, ~~the first paragraph~~ is replaced by the following:

“Member States shall remove all obstacles to fluid traffic flow at road crossing-points at internal borders, in particular any speed limits not exclusively based on road-safety considerations or required for the use of the technologies referred to in Article 23, point (a) ~~(iv).~~”

- (8) Article 25 is replaced by the following:

“Article 25

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

1. Where, in the area without internal border controls, there is a serious threat to public policy or internal security in a Member State, that Member State may exceptionally reintroduce border control at all or specific parts of its internal borders.

A serious threat to public policy or internal security may be considered to arise from, in particular:

- (a) activities relating to terrorism or organised crime;
- (b) large scale public health emergencies;
- (c) an **exceptional** 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 controls~~ **putting a strain on the overall resources and capacities of the responsible national services;**
- (d) large scale or high profile international events ~~such as sporting, trade or political events.~~

2. In all cases, border controls at internal borders shall **only** be reintroduced as a measure of last resort. The scope and duration of the temporary reintroduction of border controls shall not exceed what is strictly necessary to respond to the serious threat identified.

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.

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

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.”

- (9) A new Article 25a is inserted after Article 25:

“Article 25a

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

1. Where a serious threat to public policy or internal security in a Member State is unforeseeable and requires immediate action, the Member State may, on an exceptional basis, immediately reintroduce border controls at internal borders.
2. The Member State shall, at the same time as reintroducing border controls under paragraph 1, notify the Commission and the other Member States of the reintroduction of border controls, in accordance with Article 27(1).
3. For the purposes of paragraph 1, border controls at internal borders may be immediately reintroduced for a limited period of up to one month. If 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 further periods, leading to a maximum duration not exceeding three months.
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 **as soon as possible** ~~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.

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

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

(10) Article 26 is replaced by the following:

“Article 26

*Criteria for the temporary reintroduction and prolongation of border control at internal borders*

1. To establish whether the reintroduction of border control at internal borders is necessary and proportionate in accordance with Article 25(2), a Member State shall in particular **assess** ~~consider~~:
  - (a) the appropriateness of the measure of reintroducing border controls at internal border, having regard to the nature of the serious threat identified and in particular, whether the reintroduction of border controls at internal borders is likely to adequately remedy the threat to public policy, or internal security;
  - (b) the likely impact of such a measure on:
    - **the** movement of persons within the area without internal border controls and
    - the functioning of the cross-border regions, taking into account the strong social and economic ties between them.
2. Where a Member State 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:
  - a) the use of alternative measures such as proportionate checks carried out in the context of ~~the lawful~~ **checks within the territory** ~~exercise of powers~~ as referred to in Article 23 point (a);

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

e)b) forms of **forms of** police cooperation as provided for under Union law, **including the procedure referred to in Article 23a**, ~~including on matters such as joint patrols, joint operations, joint investigation teams, cross-border hot pursuits, or cross-border surveillance;~~

**d)c) common measures regarding temporary restrictions on travel to the Member States as referred to in Article 21a(2).**

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.”

(11) Article 27 is replaced by the following:

“Article 27

*Notification of temporary reintroduction of internal border controls and risk assessment*

1. Notifications by Member States of the reintroduction or prolongation of internal border controls shall contain the following information:
  - (a) the reasons for the reintroduction or prolongation, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security;
  - (b) the scope of the proposed reintroduction or prolongation, specifying at which part or parts of the internal borders border control is to be reintroduced, or prolonged;
  - (c) the names of the authorised crossing points;
  - (d) the date and duration of the planned reintroduction or prolongation;
  - (e) the **assessment of** ~~considerations as to~~ the necessity and proportionality referred to in Article 26(1) and, in the case of a prolongation, in Article 26(2);
  - (f) where appropriate, the measures to be taken by the other Member States.

A notification may be submitted jointly by two or more Member States.

**Member States** ~~The notification shall be submit provided the notification using in accordance with a template to be established by the Commission by an implementing act and to be made available online by the Commission. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).”~~

2. Where border controls have been in place for six months in accordance with Article 25a(5), any subsequent notification for the prolongation of such controls shall include a risk assessment. The risk 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.
3. Where **Member States** reintroduce or prolong border controls ~~large-scale unauthorised movements~~ **because of a situation** referred to in Article 25(1) point (cb), 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.
4. The Member State concerned shall upon request by the Commission provide any further information, including on the coordination measures with the Member States affected by the planned prolongation of border control at internal borders as well as further information needed to assess the possible use of measures referred to in Article 23 and 23a.
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.

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.”

6. **The Commission shall adopt an implementing act to establish the template referred to in the third subparagraph of paragraph 1. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).**”

(12) The following Article 27a is inserted:

“Article 27a

*Consultation with the Member States and opinion of the Commission*

1. Following receipt of notifications, submitted under Article 27(1), the Commission may **on its own initiative or at the request of a Member State directly affected** 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.

The **objective of the** consultation **is to examine** ~~shall concern~~ in particular the identified threat to public policy or internal security, the relevance **and proportionality** 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.

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

2. Following the receipt of notifications, submitted in relation to the reintroduction or prolongation of border controls at internal borders, the Commission or any other Member State may, without prejudice to Article 72 TFEU, issue an opinion, if, based on the information contained in the notification and risk assessment, where appropriate, or any additional information, they have concerns as regards the necessity or proportionality of the planned reintroduction or prolongation of border control at internal borders.
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.
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.
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 **25a(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.”



(13) Article 28 is replaced by the following:

“Article 28

*Specific mechanism where the serious threat to public policy or internal security puts at risk the overall functioning of the area without internal border controls*

1. Where the Commission establishes that the same serious threat to internal security or public policy affects a ~~majority of~~ **several** Member States, putting at risk the overall functioning of the area without internal border **controls**, 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 **21a**, 23 and 23a are not sufficient to address the threat. **The Member States may request the Commission to submit such a proposal to the Council.**
2. The decision shall cover a period of 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.
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.
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.
5. The Commission shall **regularly** 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 **assessing** whether the measures remain justified.
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.
7. The Commission may issue a recommendation indicating other measures as referred to in Articles 23 and 23a that could complement internal border controls or be more suitable to address the identified threat to internal security or public policy as referred to in paragraph 1.”

(14) Article 31 is amended as follows:

- a) Article 31 becomes paragraph 1;
- b) the following paragraphs **2 and 3 are** added:
  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:

- a) ~~the details of the internal borders where border control is to be reintroduced~~ **the scope of the proposed reintroduction, specifying at which part(s) of the internal borders control is to be reintroduced;**
  - b) the reasons for the ~~proposed~~ reintroduction;
  - c) the names of the authorised crossing points;
  - d) the date and duration of the planned reintroduction;
  - e) where appropriate, the measures to be taken by the other Member State.
3. Member States shall not be required to provide all the information referred to in the paragraph 2 in cases justified on public security grounds.

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

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.”

(15) Article 33 is replaced by the following:

*“Article 33*

*Report on the reintroduction of border control at internal borders*

1. Within four weeks of the lifting of border control at internal borders, Member States which have carried out border controls at internal borders shall present a report to the European Parliament, the Council and the Commission on the reintroduction and, where applicable, the prolongation of border control at internal borders.
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.
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.

4. The Commission shall adopt a uniform format for such report **to be established by an implementing act** and make it available online. **That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).**
5. The Commission may issue an opinion on that ex-post assessment of the temporary reintroduction of border control at one or more internal borders or at parts thereof.
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 controls entitled ('State of Schengen report'). The report shall include a list of all decisions to reintroduce border controls at internal borders taken during the relevant year. It shall also include an assessment of the necessity and proportionality of the reintroductions **and prolongations** of border controls in the period covered by that report **as well as** information on the trends within the Schengen area **without internal border control** as regards the unauthorised movements of third country nationals, taking into account available information from the relevant Union agencies **and** data analysis from relevant information systems. ~~and an assessment of the necessity and proportionality of the reintroductions of border controls in the period covered by that report.~~

(16) In Article 39(1), the following point (h) is added:

- "h) ~~Member States shall notify to the Commission the local administrative areas considered as the~~ cross-border regions and any relevant changes thereto."

(17) The following Article 42b is added:

*"Article 42b  
Notification of cross-border regions*

By ~~six~~ **six** months of the entry into force of this Regulation at the latest, Member States **with common internal borders** shall **in close cooperation determine** ~~notify the Commission the~~ areas of their territory considered as ~~the~~ cross-border regions **and notify the Commission thereof.**

Member States shall also inform the Commission of any relevant changes thereto."

(18) ~~The following Annex XI is added:~~

~~“ANNEX XI~~

~~Essential Travel~~

~~Essential functions or needs referred to in Article 2, point (23) refers to travel for any of the following function or needs:~~

- ~~i. Healthcare professionals, health researchers, and elderly care professionals;~~
- ~~ii. **Cross border** Frontier workers;~~
- ~~iii. Transport personnel;~~
- ~~iv. Diplomats, staff of international organisations and people invited by international organisations whose physical presence is required for the well functioning of these organisations, military personnel and humanitarian aid workers and civil protection personnel in the exercise of their functions;~~
- ~~v. Passengers in transit;~~
- ~~vi. Passengers travelling for imperative family reasons;~~
- ~~vii. Seafarers;~~
- ~~viii. **Third country nationals** Persons **seeking** in need of international protection or **travelling** for other humanitarian reasons.”~~

(19) A new Annex XII is added:

“ANNEX XII

PART A

*Procedure for transferring illegally staying third-country nationals persons apprehended ~~in at the~~  
~~internal borders~~ areas*

1. **Transfer** ~~Decisions~~ **issued pursuant to Article 23a(2)** shall ~~state the grounds for finding~~ that a person has no right to stay **in the transferring Member State** be issued by means of a standard form, as set out in Part B, completed by the competent national authority. They shall take effect immediately.
2. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the **transfer** decision by signing the form and shall be given a copy of the signed form.

Where the third-country national refuses to sign the standard form, the competent authority shall indicate this refusal in the form under the section ‘comments’.

3. The national authorities issuing a ~~refusal~~ **transfer** decision shall record the following data:
- a) to the extent that these can be established by them, the identity and nationality of the third-country national concerned,
  - b) the references of the identity document, if any,
  - 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.
  - d) the grounds for **transfer** refusal,
  - e) the date of **transfer** refusal,
  - f) the **receiving** Member States ~~to which the third-country national was sent back.~~
4. The national authorities issuing a **transfer** ~~refusal~~ decision shall ~~collect the following data~~ **inform the Commission yearly on the number of persons transferred to other Member States, indicating the Member State(s) to which the persons were transferred and, where available, the nationality of the third-country nationals apprehended.**
- a) ~~the number of persons refused entry;~~
  - b) ~~the number of persons refused stay;~~
  - e) ~~the number of persons **transferred** sent back;~~
  - d) ~~the Member State(s) to which persons were **transferred** sent back;~~
  - e) ~~where this information is available, the nationality of the third-country nationals apprehended;~~
  - f) ~~the grounds for **transfer** refusal of entry and stay;~~
  - g) ~~the type of border as specified in Article 2 point 1 of Regulation (EU) 2016/399 at which the third-country nationals were **transferred** sent back.~~
5. **Third-country nationals** ~~Persons~~ **subject to a transfer decision** ~~refused entry or the right to stay~~ shall have the right to appeal. Appeals **against the transfer decision** 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.

6. The authorities empowered under national law shall ensure that the third-country national subject to a **transfer refusal** decision is transferred to the competent authorities of the **receiving neighbouring** Member State immediately and within 24 hours at the latest. The authorities empowered under national law in the **receiving neighbouring** Member State shall cooperate with the authorities of the **transferring** Member State to that end.
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 **authority** ~~locally~~ may:
- (a) order the carrier, **in accordance with national law**, to take charge of the third-country national and transport him or her without delay to the **receiving** 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 **subject to a transfer decision** ~~refused entry from re-entering illegally~~ **absconding**.

PART B

Standard form for transferring **illegally staying third-country nationals** persons apprehended **in at**  
**the internal border areas**



Name of State

Logo of State (Name of Office)

\_\_\_\_\_

\_\_\_\_\_ (1)

TRANSFER PROCEDURE AT THE INTERNAL BORDER

On \_\_\_\_\_ at (time) \_\_\_\_\_ at the location (indicate type of the internal border nearby or other relevant information related to the apprehension **in accordance with Article 23a** by a joint patrol operation)

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 **Article 23a of the Schengen Borders Code** (indicate references to the national law in force), for the following reasons:

**Where applicable Grounds in accordance with national law, stating that a person has no right to stay in the Member State :**

(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 country of origin or transit

(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 authorities for checks

The person concerned may appeal against the ~~transfer decision that he/she has no right to stay as provided for~~ **in accordance with** 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).

## 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 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 **apply** 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).

### *Article 3*

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

~~2-~~Member States shall adopt and publish, by ~~6~~ **[12]** 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 of those provisions.

They shall apply those provisions from ~~6~~ **[12]** 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.

### *Article 4*

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.