



2021/0428(COD)

8.11.2022

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DRAFT 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.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	69

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 Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2022),
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

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,

Or. en

Justification

The additional legal basis is deemed unnecessary, in particular in the light of the deletion of certain provisions of the Commission proposal.

Amendment 2

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 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

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

Or. en

Justification

Alignment with Article 1 of Regulation 2016/399.

Amendment 3

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

Amendment

(3) In recent years, *many Member States have resorted to internal border control to address* challenges, which by

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.***

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 this area of freedom, security and justice remains 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 and the need ***for a clearer*** and more robust framework ***to ensure the absence of any controls on persons, whatever their nationality, when crossing internal borders while enabling Member States to provide an*** effective response to challenges ***they face.***

Or. en

Justification

It is important to identify the increased use of internal border control as a political response to problems often deep-rooted and more closely linked to different policy areas than Schengen. The Union's policy in this area is defined in primary EU law and that policy should be reflected in the text of the Proposal.

Amendment 4

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

Amendment

(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 ***the Union as a whole and of all its*** Member States, ***in particular those,*** which have abolished internal border control.

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.

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.

Or. en

Amendment 5

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 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

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 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 ***where*** the European Centre for Disease Prevention and Control ***has identified an infectious disease with epidemic potential.*** This mechanism

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.

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.

Or. en

Justification

It is not clear why the Commission should be entitled to identify infectious disease with epidemic potential. This is clearly a task for the European Centre for Disease Control.

Amendment 6

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

Amendment

(6) ***This Union-level*** mechanism should provide for the adoption by the Council, upon a proposal by the Commission, ***and after having consulted the European Parliament***, 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 ***those restrictions and other***

Member States, implementing powers should be conferred on the Council to adopt such a regulation, acting on a proposal from the Commission.

measures. 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, ***and after having consulted the European Parliament.***

Or. en

Justification

Parliament should have a role in the adoption of such Regulations governing entry into the Schengen area.

Amendment 7

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 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

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 and international law, 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. The 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

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.***

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.

Or. en

Justification

The epidemiological situation must provide the basis for criteria applying when it comes to restricting travel and introducing restrictive measures in that regard. The Council Regulation would need to be revised if the epidemiological situation worsens to such an extent that measures not foreseen in the initial Regulation are needed. It would be expected that the initial Regulation would provide sufficient scope for measures to be proportionate to the threat to public health.

Amendment 8

Proposal for a regulation Recital 8

Text proposed by the Commission

Amendment

(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 as referring to a situation where a third country instigates irregular migratory flows to the Union by actively

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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.

Or. en

Justification

The Commission has made a separate legal proposal with a separate legal base on the issue of instrumentalisation. It is not an issue to be addressed through the Schengen Borders Code.

Amendment 9

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.*

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Or. en

Justification

The Commission has made a separate legal proposal with a separate legal base on the issue of instrumentalisation. It is not an issue to be addressed through the Schengen Borders Code.

Amendment 10

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

Or. en

Justification

The Commission has made a separate legal proposal with a separate legal base on the issue of instrumentalisation. It is not an issue to be addressed through the Schengen Borders Code.

Amendment 11

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,

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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.

Or. en

Justification

The Commission has made a separate legal proposal with a separate legal base on the issue of instrumentalisation. It is not an issue to be addressed through the Schengen Borders Code.

Amendment 12

**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

deleted

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.

Or. en

Justification

The Commission has made a separate legal proposal with a separate legal base on the issue of instrumentalisation. It is not an issue to be addressed through the Schengen Borders Code.

Amendment 13

Proposal for a regulation

Recital 13

Text proposed by the Commission

(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 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.

Amendment

(13) The European Border and Coast Guard Agency assists Member States with implementing the operational aspects of external border management, including 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 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.

Or. en

Justification

No screening procedure presently exists under EU law.

Amendment 14

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 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.

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 be providing to the Member States.

Or. en

Justification

Alignment with the wording of Article 41(1) of the EBCG Regulation

Amendment 15

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 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, needs to **respect Union's primary law and Union data protection law, and should** be based on and exercised in accordance with clearly defined provisions of national law.

Or. en

Justification

As the protection of personal data is a fundamental right, any technologies used at the external or internal borders needs to be in line with the Charter of fundamental rights and with EU data protection law.

Amendment 16

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

Amendment

(16) **In accordance with Union rules on the use of artificial intelligence,** 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

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.**

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.

Or. en

Justification

The Commission has made a separate legal proposal with a separate legal base on the issue of instrumentalisation. It is not an issue to be addressed through the Schengen Borders Code.

Amendment 17

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 – **whatever 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.**

Or. en

Justification

TFEU Art 77(2)(e) requires the co-legislators to adopt measures concerning the absence of any controls on persons, whatever their nationality, when crossing internal borders. Aligned with the language of the current Schengen Borders Code, which also reflects the case-law of the CJEU.

Amendment 18

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 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 **police** information and experience regarding possible threats to public security or public policy, where they aim **in particular** to combat cross-border **crime**, where they are devised and executed in a manner clearly distinct from systematic checks on persons at the external **and 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 imperil the attainment of the objective of the abolition of internal border controls.**

Or. en

Justification

The wording should remain closer to the existing wording in the Schengen Borders Code. The Rapporteur does not agree with dealing with matters more properly reserved for the EU asylum acquis in the Schengen Borders Code.

Amendment 19

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

(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.

Or. en

Justification

The text is similar to the current recital 26 of the Schengen Borders Code. As this is an amending Regulation, this principle in this Regulation should be restated.

Amendment 20

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

(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.

Or. en

Justification

The actions taken by Member States to tackle irregular migration cannot be allowed to justify

internal border control.

Amendment 21

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 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.***

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

Or. en

Amendment 22

Proposal for a regulation

Recital 22

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 23

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

(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 ***unlawful*** stays, ***within the last ten years, the Union has adopted numerous flanking measures, including the establishment of an Entry/Exit System (EES), the establishment of a European Travel Information and Authorisation System (ETIAS), the establishment of a European Criminal Records database in respect of third country nationals, the reform of the Schengen Information System (SIS), the reform of the Visa Information System (VIS), two substantial overhauls of the mandate of the European Border and Coast Guard Agency, and the establishment of an interoperability framework to allow Union databases in the area of freedom, security and justice to communicate with one another.***

Or. en

Justification

It is important to highlight the measures already taken to protect the Schengen Area without internal border control. The deletion is consequential to the deletion of Article 23a.

Amendment 24

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 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.* *deleted*

Or. en

Justification

It is not the role of the Schengen Borders Code to introduce an internal return procedure into the Schengen Area. This is clearly contrary to the spirit of the Schengen Area without internal border control and reflects the need for progress on reform of other policy areas.

Amendment 25

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.

Or. en

Justification

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 only serve to bi-pass EU rules.

Amendment 26

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 threats to the Schengen area may require the adoption, by the Member States, of measures at the internal borders. **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 or be recommended by a Union institution**. Under the existing rules, **the introduction** 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.

Or. en

Justification

The basis on which the temporary reintroduction of internal border control should take place is already set out in the current version of the Schengen Borders Code, see Recital 23. This basis should not be confused by new recitals suggesting a different approach.

Amendment 27

Proposal for a regulation Recital 29

Text proposed by the Commission

(29) **Furthermore, a serious threat to**

Amendment

deleted

public policy or internal security can also 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.

Or. en

Justification

The need for reform in other policy areas should not be used as a pretext for internal border control. This recital is simply offering Member States a new ground for introducing internal border control which was until now not lawful. It is impossible to reconcile this recital with the legal basis as laid down in Article 77(2)(e).

Amendment 28

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,

Amendment

(31) The new **Union-level** Schengen area safeguard mechanism should allow the Council to adopt, upon a proposal by the Commission, **and after having consulted the European Parliament**, a decision authorising the reintroduction or

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.

prolongation of internal border controls, where this is justified by a particular threat, identified on the basis of notifications received from individual Member States, *a risk assessment, and* other available information. 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, *and after having consulted the European Parliament*.

Or. en

Justification

Parliament as a co-legislator needs to be given a role in determining whether the reintroduction of internal border control is appropriate.

Amendment 29

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, the Council and the Parliament* 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 reintroduction or prolongation of internal border controls should be exceptional and the principle of proportionality should be respected. 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 Council 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.

Or. en

Amendment 30

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 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.

Amendment

(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, *up to a maximum period of two years in exceptional cases*. The initial decision 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 internal borders are justified or whether less restrictive measures *should* 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, *the European Parliament*, and the Member States of the reintroduction of internal border controls in accordance with the decision of the Council.

Or. en

Amendment 31

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.

Or. en

Justification

The cumulation of periods of internal border control is not conducive to reducing the use of internal border control and has been ruled unlawful by the CJEU. Precisely this sort of cumulation of grounds for internal border controls was used by Member States to keep border controls in place for longer.

Amendment 32

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 States ***or at a Union level***, has serious implications for the functioning of the

Amendment

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

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 *and be strictly necessary and proportionate*. The proportionality principle requires that the reintroduction of internal border controls be subject to safeguards that increase over time.

Or. en

Amendment 33

Proposal for a regulation

Recital 36 a (new)

Text proposed by the Commission

Amendment

(36 a) 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.

Or. en

Justification

The text is in line with the Parliament's first reading position on previous proposed reform of the SBC.

Amendment 34

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. 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 *and the European Parliament*. In case of prolongation of internal border controls for foreseeable events beyond an initial period of *three* months, the Member State should also *carry out a risk assessment, including an assessment of* 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 powers or through forms of police cooperation as provided for under Union law.

Or. en

Amendment 35

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

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 if needed, *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

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.

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.

⁴⁵ 2020/C 102 I/03.

Or. en

Amendment 36

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

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***, the Commission should adopt a template for the notification of reintroduction of border controls at internal borders ***by way of a delegated*** act. Member States should be

notification, without prejudice to the functioning of appropriate and secure police cooperation channels.

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.

Or. en

Justification

Given that the notification by Member States is so important in determining compliance with the Schengen Borders Code rules, the notification template must be considered to be an element that will supplement non-essential elements of the Regulation.

Amendment 37

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

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, Member States should prepare a risk assessment to be submitted to the Commission when internal border controls are prolonged beyond an initial *three* 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, *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.

Or. en

Amendment 38

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.

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

(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 detailed information to*** the European Parliament and the Council ***on*** 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 ***border controls that have been in place for longer than six months***. It should also assess the necessity and proportionality of the ***all*** 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.

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.

Or. en

Justification

The State of Schengen Report should focus on the Schengen Area without internal border control and the lifting of internal border controls that have been introduced.

Amendment 39

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 provide for 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, their time-line ***and possible mitigating measures***. Where the Commission or a Member State has issued an opinion expressing concerns regarding the reintroduction of border controls, such consultations should be mandatory.

Or. en

Amendment 40

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

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 **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.

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 **six** 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 **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.

Or. en

Justification

Such indefinite internal border controls have been ruled unlawful by the CJEU.

Amendment 41

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

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 **introduction** 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.

place for *a period exceeding six months*, such a report should also be submitted after *that first six months period*. 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.

Or. en

Amendment 42

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.

Or. en

Justification

Aligned with Article 21 of the Charter of Fundamental Rights.

Amendment 43

Proposal for a regulation Article 1 – paragraph 1 – point 1 – point b Regulation (EU) 2016/399 Article 2 – paragraph 1 – point 27

Text proposed by the Commission

Amendment

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;*

27. *‘large scale public health emergency’ means a situation where the European Centre for Disease Prevention and Control has identified 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.*

Or. en

Justification

The use of the term “large scale public health emergency” in Article 25 requires a suitable definition. In line with the other provisions related to public health, a large scale public health emergency means the existence of an epidemic. There is no justification or added value for including a definition of “instrumentalisation” in the Schengen Borders Code. If there is to be such a definition, then it should properly be in the proposed Regulation on Instrumentalisation.

Amendment 44

Proposal for a regulation

Article 1 – paragraph 1 – point 2

Regulation (EU) 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*

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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).

Or. en

Justification

It is not clear why Member States, who are already entitled to close border crossing points (BCP) under the current Schengen Borders Code, need new grounds on which to do so. From a practical perspective, if persons are arriving at the external border seeking protection, it is important that BCPs remain open so that they can effectively exercise their right to seek protection.

Amendment 45

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Article 13 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

subject to procedures respecting Directive 2008/115/EC.

concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC.

Or. en

Justification

The crossing of borders is not illegal. The application of the Return Directive must be without prejudice to the rights of those seeking international protection

Amendment 46

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 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 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.

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 *irregularly*. Surveillance may also be carried out by technical means, including electronic means, equipment and surveillance systems ***and shall be conducted in accordance with Article 5 of Regulation (EU) .../... of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts.***

Or. en

Justification

In a time of rapid technological advances, in particular in the field of artificial intelligence, it is important to underline the that there are limitations on equipment that should be used for

border surveillance.

Amendment 47

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 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.

Or. en

Justification

Consequential amendment based on the Rapporteur's view that instrumentalisation should not form part of the SBC. It is not clear what the remaining added value of the provision would be.

Amendment 48

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 2016/399

Article 13 – paragraph 6

Text proposed by the Commission

Amendment

6. Without prejudice to the support that the European Border and Coast Guard Agency may provide to the

deleted

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.*

Or. en

Justification

Consequential amendment based on the Rapporteur's view that instrumentalisation should not form part of the SBC. It is not clear what the remaining added value of the provision would be. This provision does not alter the mandate of the EBCG, therefore it has no added value.

Amendment 49

Proposal for a regulation
Article 1 – paragraph 1 – point 3
Regulation (EU) 2016/399
Article 13 – paragraph 7

Text proposed by the Commission

7. 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, 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

7. 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 Article 5 of 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.

Or. en

Justification

The use of artificial intelligence (AI) in surveillance and monitoring technologies will be established in the AI Act. It is important to stress that any standards proposed by the Commission by way of delegated acts must be within the framework of that instrument, in so far as they concern AI.

Amendment 50

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – introductory part

Regulation (EU) 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 borders ***control***”

Or. en

Amendment 51

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – paragraph 1

Regulation (EU) 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 Health Organization.

Amendment

1. This Article shall apply to situations where the European Centre for Disease Prevention and Control 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 Health Organization.

Or. en

Justification

In order to avoid confusion or politicisation, the identification of such infectious diseases should be left to the competent Agency.

Amendment 52

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – paragraph 1

Regulation (EU) 2016/399

Article 21a – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

The Council, on the basis of a proposal by the Commission, **and after having consulted the European Parliament**, may adopt an implementing regulation, providing for temporary restrictions on travel to the Member States.

Or. en

Justification

While external border control remains primarily a Member States competence, it is competence shared with Frontex under the EBGC Regulation. In that context, where restrictions are to be

introduced at Union level at external borders, the co-legislators must have a role in the relevant legal act.

Amendment 53

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 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 **police** information and experience of the competent authorities regarding possible threats to public security or public policy and aim, in particular, to:

Or. en

Amendment 54

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 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** **deleted**

Amendment

Or. en

Justification

In accordance with Recital 26 of the current Schengen Borders Code, migration should not, per se, be considered to be a threat to public policy or internal security. The use of border control measures to prevent migration within the Schengen area is contrary to the requirements on co-legislators laid down in Article 77(2)(e) TFEU.

Amendment 55

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 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**

Or. en

Justification

This provision is not appropriate in the light of the CJEU ruling in Case C-817/19

Amendment 56

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) 2016/399

Article 23a

Text proposed by the Commission

Amendment

(6) *The following Article 23a is inserted:* **deleted**

Article 23a

Procedure for transferring persons apprehended at the internal borders

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:

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);

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

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.

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.

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.

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.

Or. en

Justification

It is not the role of the Schengen Borders Code to introduce an internal return procedure into the Schengen Area. This is clearly contrary to the spirit of the Schengen Area without internal

border control and rather reflects the need for progress on reform of other policy areas.

Amendment 57

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) 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) *a direct and immediate threat of acts of* terrorism or *of serious* organised crime;

Or. en

Justification

It is important to recall that internal border control is a measure of last resort. The provision as proposed is much too broad in that context.

Amendment 58

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) 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

deleted

Or. en

Amendment 59

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) 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.

Or. en

Amendment 60

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) 2016/399

Article 25a – paragraph 2

Text proposed by the Commission

Amendment

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).

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

Or. en

Amendment 61

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) 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** 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**.

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 **three** months.

Any prolongation shall be notified to the Commission, **the European Parliament** and the other Member States in accordance with Article 27 and within the time limits referred to in paragraph 4. The maximum duration of border control at internal borders shall not exceed **one year**.

Or. en

Justification

Given that internal border control should remain the exception and not the rule, a period of six months internal border control without further assessment is deemed too long. Internal border control cannot become the de facto situation in an area without internal border control. The Member State should be in a position, within a period of one year, to resolve the identified threat or to have implemented other measures to properly manage the threat.

Amendment 62

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) 2016/399

Article 25a – paragraph 6

Text proposed by the Commission

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

Amendment

deleted

referred to in paragraph 3.

Or. en

Amendment 63

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) 2016/399

Article 26 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

(b) *whether measures other than the temporary reintroduction of border control at internal borders are likely to sufficiently remedy the threat to public policy or internal security;*

*– 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.*

Or. en

Justification

It is important to set out clear and detailed requirements for the Member States when assessing whether internal border control is necessary and proportionate. If the internal border will not remedy the threat identified, the Member State should not introduce internal border control.

Amendment 64

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) 2016/399

Article 26 – paragraph 1 – point b a new

Text proposed by the Commission

Amendment

(ba) *the proportionality of the temporary reintroduction of border control in relation to the threat to public*

policy and internal security by taking into account:

– 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;

Or. en

Amendment 65

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) 2016/399

Article 26 – paragraph 1 – point b b new

Text proposed by the Commission

Amendment

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

Or. en

Amendment 66

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) 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 States decides to prolong the border control at internal borders pursuant to Article 25a(5), it shall **carry out a risk assessment which should reassess the criteria laid down in paragraph 1 and** assess in detail whether the objectives pursued by such

prolongation could be attained by:

Or. en

Amendment 67

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) 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

Or. en

Amendment 68

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) 2016/399

Article 27 – paragraph 2

Text proposed by the Commission

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. 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.

2. Where border controls have been in place for **three** months in accordance with Article 25a(4), any subsequent notification for the prolongation of such controls shall include a risk assessment **in accordance with Article 26(2)**. 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.

Or. en

Amendment 69

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) 2016/399

Article 27 – paragraph 3

Text proposed by the Commission

Amendment

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.*

deleted

Or. en

Amendment 70

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) 2016/399

Article 27 – paragraph 4

Text proposed by the Commission

Amendment

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* .

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.

Or. en

Amendment 71

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) 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, as well as the ways of ensuring implementation of the mutual cooperation between the Member States in relation to the reintroduced border controls.

Or. en

Justification

The principles of necessity and proportionality should guide decisions on internal border controls and not a test of relevance.

Amendment 72

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) 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 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.

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 **six** months in total, the Commission shall issue an opinion on necessity and proportionality of such internal border controls.

Or. en

Justification

In a context where internal border control remains the exception, waiting for 18 months before having an opinion of the Commission is not feasible. In line with earlier amendments, this opinion should be presented automatically when internal border control is prolonged beyond six months.

Amendment 73

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) 2016/399

Article 27a – paragraph 5

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 74

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) 2016/399

Article 28 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Where the Commission, establishes that **a particularly** serious threat to internal security or public policy affects a majority of Member States at **the same time, in**

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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.

such a way as to put at immediate risk the overall functioning of the area without internal border, it may, make a proposal to the Council to adopt – *after having consulted European Parliament* – an implementing decision authorising the reintroduction of border controls by Member States where the available measures referred to in Articles 23 are not sufficient to address the threat.

Or. en

Amendment 75

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) 2016/399

Article 28 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The decision shall cover a period of up to six months and may be renewed *no more than three times*, upon proposal from the Commission, 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.*

Or. en

Justification

Since the threat is particularly serious and exists at a Union level, a potentially longer period for resolving the problem is acceptable. Nevertheless, the mechanism must come to an end after two years, as is required under Article 29 in respect of the specific procedure where exceptional circumstances put the overall functioning of the area without internal border control at risk.

Amendment 76

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) 2016/399

Article 28 – paragraph 3

Text proposed by the Commission

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 Council decision, be based on that decision.*

deleted

Or. en

Amendment 77

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) 2016/399

Article 28 – paragraph 5

Text proposed by the Commission

Amendment

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.

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 *assessing* whether the measures remain justified *and to proposing the lifting of internal border control as soon as possible*.

Or. en

Justification

The Commission should be encouraged to work towards the re-establishment of the area of internal border control as soon as possible.

Amendment 78

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) 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 Commission, **the European Parliament**, and the other Member States in the Council of a reintroduction of border controls in accordance with the decision referred to in paragraph 1.

Or. en

Amendment 79

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) 2016/399

Article 28 – paragraph 7

Text proposed by the Commission

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.

Amendment

7. The Commission may issue a recommendation indicating other measures as referred to in **Article 23** 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.

Or. en

Amendment 80

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) 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 the same time **inform** the European Parliament and the Council of the following:

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 **provide the notification to** the European Parliament and the Council of the following:

Or. en

Justification

There is no need for additional bureaucracy regarding notifications of internal border controls. The Member States should send the same notification - with the same level of detail - to the Parliament and the Council, without prejudice to their right to classify some of the information in the notification.

Amendment 81

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) 2016/399

Article 31 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 82

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) 2016/399

Article 31 – paragraph 2 – point c

Text proposed by the Commission

c) ***the names of the authorised***

Amendment

deleted

crossing-points;

Or. en

Amendment 83

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) 2016/399

Article 31 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

Or. en

Amendment 84

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) 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***

Or. en

Amendment 85

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) 2016/399

Article 31 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

***Member States shall not be required to
provide all the information referred to in*** ***deleted***

the paragraph 2 in cases justified on public security grounds.

Or. en

Justification

The right of Member States to classify the information should be retained. A further right not to provide the information is counter-productive and contrary to the spirit of mutual and sincere cooperation.

Amendment 86

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) 2016/399

Article 33 – paragraph 2

Text proposed by the Commission

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.

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 **six** months if border control is exceptionally maintained.

Or. en

Amendment 87

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) 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

Amendment

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.

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 **necessity and** proportionality of the reintroduction of border control.

Or. en

Amendment 88

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) 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 the necessity and proportionality of the reintroductions of border controls in the period covered by that report.

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. **The report shall pay particular attention to the border controls that have been in place for longer than six months, and shall** include an assessment of the necessity and proportionality of the reintroductions of border controls in the period covered by that report. **The report shall also cover the reporting obligations resulting from Article 20 of the Schengen Evaluation Mechanism.**

Or. en

Justification

The State of Schengen Report should focus on the Schengen Area without internal border

control and the lifting of internal border controls that have been introduced.

Amendment 89

Proposal for a regulation

Article 1 – paragraph 1 – point 19

Regulation (EU) 2016/399

Annex XII

Text proposed by the Commission

Amendment

(19) *A new Annex XII is added:* **deleted**

ANNEX XII

PART A

Procedure for transferring persons apprehended at the internal borders

1. *Decisions shall state the grounds for finding that a person has no right to stay. They shall take effect immediately.*

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

The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the 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 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 refusal,*
- e) the date of refusal,*
- f) the Member States to which the third country national was sent back.*

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

- a) the number of persons refused entry;*
- b) the number of persons refused stay;*
- c) the number of persons sent back;*
- d) the Member State(s) to which persons were sent back;*
- e) where this information is available, the nationality of the third country nationals apprehended;*
- f) the grounds for 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 sent back.*

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.*

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.

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.

PART B

Standard form for transferring persons apprehended at the internal borders [...]

Or. en

Amendment 90

Proposal for a regulation

Article 2

Directive 2008/115/EC

Article 6 – paragraph 3

Text proposed by the Commission

Amendment

Article 2

deleted

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 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).**

Or. en

Justification

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 only serve to bypass EU rules.

Amendment 91

Proposal for a regulation Article 3

Text proposed by the Commission

Amendment

Article 3

deleted

**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 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.

Or. en

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.

Furthermore, and in this same context, the Rapporteur considers - as set out in the recitals of the current Schengen Borders Code - that migration does not, per se, pose “a serious threat to internal security”. As such, she does not agree with the introduction of the concept of large-scale unauthorised movements of third country nationals as a Schengen concept, as proposed by the Commission. She has proposed to delete this concept.

Regarding the new procedure for internal Schengen returns (Article 23a), and 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.. Viewing the Commission's proposal as too open-ended in this regard, the Rapporteur has therefore proposed time limits of:

- (i) 1 month, renewable up to 3 months for unforeseeable threats;
- (ii) 3 months, renewable for periods of 3 months up to maximum of 1 year for foreseeable threats; and that
- (iii) where a MS intends to renew internal border control after 3 months, it is required to provide a risk assessment;
- (iv) where a MS intends to renew internal border control for a period beyond 6 months, the Commission would then be obliged to give its opinion on the necessity and proportionality of such internal border control.

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. This requires a proposal from the Commission for a Council Decision. Before adopting its Decision, the Council should first consult the European Parliament. The procedure should be the same for renewal of internal border control under this mechanism.

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.