



19/09/2023

# **COMPROMISE AMENDMENTS**

**Sylvie Guillaume**

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

**Proposal for a regulation**

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

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**Amendment 1**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 96, 97, 98, 2, 99

**Proposal for a regulation**  
**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

**Proposal for a regulation**  
**Recital 2**

*Text proposed by the Commission*

*Amendment*

(2) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 (“Schengen Borders Code”)<sup>42</sup> 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***

(2) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 (“Schengen Borders Code”)<sup>42</sup> ***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***

**Schengen Area.**

**external borders of the Member States of the Union. .**

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<sup>42</sup> 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.

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<sup>42</sup> 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

## **Amendment 2**

### **Rapporteur**

Compromise amendment replacing Amendment(s): 3, 100, 101, 102, 103

## **Proposal for a regulation**

### **Recital 3**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

*to ensure the absence of any controls on persons, whatever their nationality, when crossing internal borders while enabling Member States to provide an effective response to challenges they face.*

Or. en

### Amendment 3 Rapporteur

Compromise amendment replacing Amendment(s): 4, 106, 107

### Proposal for a regulation Recital 4

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

### Amendment 4 Rapporteur

**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 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 health<sup>43</sup>, notably in case of the recognition of a public health emergency, and the revised mandate of the European Centre for Disease Control.<sup>44</sup>***

*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 ***to a large-scale*** public health emergency ***with a serious cross-border threat to health, recognised by the Commission at Union level in accordance with Regulation (EU) 2022/2371.***

<sup>43</sup> COM(2020)727.

<sup>44</sup> 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.

<sup>43</sup> COM(2020)727.

<sup>44</sup> 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

## **Amendment 5** **Rapporteur**

Compromise amendment replacing Amendment(s): 6, 115, 116

### **Proposal for a regulation** **Recital 6**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## **Amendment 6** **Rapporteur**

## 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 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***

#### *Amendment*

(7) Importantly, in line with the applicable obligations under Union and international law, Union citizens and third-country nationals who, under agreements between the Union and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens, as well as their respective family members should always be permitted to enter the Union. ***Similarly, in accordance with Union law and international law, beneficiaries of international protection and those persons seeking asylum shall not be prohibited from entering the Union.*** Residents in the Union should also always be permitted to return to the Union. ***That delegated*** act should contain all necessary elements to ensure that restrictions on travel are effective, targeted, non-discriminatory and proportionate to the evolving epidemiological situation. It should specify, where relevant, any categories of travellers whose travel should be exempted from restrictions on entry. In addition, or alternatively, the act should specify any geographical areas or third countries from which travel may be subject to specific measures, based on an objective methodology and criteria applicable thereto that should ***derive from*** the epidemiological situation. The act could specify the conditions under which travel may be permitted such as testing, quarantine, self-isolation or any other appropriate measures, such as the need to fill in a passenger locator form or other contact tracing tool and having regard, in particular, to any Union systems developed to facilitate travel under safe conditions,

*worsens in one or more geographical areas.*

such as digital certification systems. *In duly justified cases, where grounds of urgency so require, the Commission should adopt an immediately applicable delegated act under the urgency procedure provided for under this Regulation.*

Or. en

## Amendment 7 Rapporteur

Compromise amendment replacing Amendment(s): 13, 140, 141

## 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 information exchange, the provision of equipment, capacity building and training to national border guards, targeted information and risk analysis, the deployment of the Standing Corps, *as well as assistance in search and rescue operations for persons in distress at sea launched and carried out in accordance with Regulation (EU) No 656/2014.* The Agency's new mandate offers considerable opportunities *for Member States to be assisted in their* border control activities, including *with regard to* return operations and a launch of rapid border intervention and/or return intervention at the request and on the territory of the host Member State concerned. *These activities are to be conducted in compliance with fundamental rights obligations.*

Or. en



## Amendment 8

### Rapporteur

Compromise amendment replacing Amendment(s): 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 ***provide*** to the Member States.

Or. en

**Amendment 9**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 15, 145

**Proposal for a regulation**  
**Recital 15**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 10**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 16, 148, 150

**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 EU rules on the use of artificial intelligence and Union data protection law, the Commission should be empowered to specify, in delegated acts adopted under this Regulation, appropriate standards for border surveillance, concerning in***

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.***

particular the new technologies that Member States may use, while taking into account the type of borders (land, sea or air), the impact levels attributed to each external border section in accordance with Article 34 of Regulation (EU) 2019/1896 and other relevant factors. ***During such surveillance, third-country nationals should not be subject to intrusive biometric technologies.***

Or. en

## **Amendment 11**

### **Rapporteur**

Compromise amendment replacing Amendment(s): 17, 153, 155

## **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 and does not lead to any form of discrimination.***

Or. en

## **Proposal for a regulation**

### **Recital 24**

*Text proposed by the Commission*

(24) It is necessary to ensure that checks carried out by Member States in exercise of national competences remain fully consistent with an area that is free of internal border controls. In accordance with the case law of the Court of Justice, the more extensive the indications are that checks conducted by Member States at their border areas have an equivalent effect to border control, having regard to the objective of such checks, their territorial scope and possible differences compared to checks carried out in the remainder of the territory of the Member State concerned, the greater the need for strict and detailed rules and limitations laying down the conditions for the exercise, by the Member States, of their police powers in a border area.

*Amendment*

(24) It is necessary to ensure that checks carried out by Member States in exercise of national competences remain fully consistent with an area that is free of internal border controls. In accordance with the case law of the Court of Justice, the more extensive the indications are that checks conducted by Member States at their border areas have an equivalent effect to border control, having regard to the objective of such checks, their territorial scope and possible differences compared to checks carried out in the remainder of the territory of the Member State concerned, the greater the need for strict and detailed rules and limitations laying down the conditions for the exercise, by the Member States, of their police powers in a border area.

Or. en

**Amendment 12**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 18, 157, 160

**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

*Amendment*

(18) While the prohibition of internal border controls also extends to checks having equivalent effects, checks by ***police or other public powers might*** not be considered equivalent to the exercise of border checks where they do not have border control as an objective, where they are based on general ***law enforcement*** information and experience regarding possible threats to public security or public policy, where they aim ***in particular*** to

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.

combat cross-border *crime, reduce irregular migration or contain the spread of an infectious disease with epidemic potential as identified by the European Centre for Disease Control*, where they are devised and executed in a manner clearly distinct from systematic checks on persons at the external *or internal* borders, and where they are conducted at transport hubs, such as ports, train or bus stations and airports or directly on board of passenger transport services, and where they are based on risk analysis. *At the same time, where competent authorities exercise police powers in a border area, they are entitled to do so only subject to strict detailed rules and limitations laid down by Member States in order not to imperil the attainment of the objective of the abolition of internal border controls.*

Or. en

#### **Amendment 13** **Rapporteur**

Compromise amendment replacing Amendment(s): 19, 164, 165

#### **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

#### **Amendment 14** **Rapporteur**

Compromise amendment replacing Amendment(s): 20, 169

## 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

## Amendment 15

### Rapporteur

Compromise amendment replacing Amendment(s): 183

## Proposal for a regulation

### Recital 24 a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 16**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 189 (part)

**Proposal for a regulation**  
**Recital 24 b (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 17**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 23, 188 (part), 189 (part)

**Proposal for a regulation**  
**Recital 25**

*Text proposed by the Commission*

*Amendment*

***(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

***(25) In order to strengthen the functioning of the Schengen area, and to assist Member States in countering irregular migration, including between Member States, and combat irregular***

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.*

stays, *within the last ten years, the Union legislature has adopted numerous flanking measures, including the establishment of an Entry-Exit System, the establishment of a European Travel Information and Authorisation System, the establishment of a European Criminal Records database in respect of third country nationals, the reform of the Schengen Information System, the reform of the Visa Information System, two substantial overhauls of the mandate of the European Border and Coast Guard Agency, and the establishment of an interoperability framework to allow EU databases in the Area of Freedom, Security and Justice to communicate with one another.*

Or. en

**Proposal for a regulation**  
**Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en



**Proposal for a regulation**  
**Recital 25 b (new)**

*Text proposed by the Commission*

*Amendment*

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

**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***

(26) The procedure by which a Member State may transfer third country nationals ***with no right to stay*** to a Member State from where the person came directly should take place swiftly but be ***limited and*** subject to safeguards and carried out in full respect of fundamental rights, ***in particular*** the principle of non-discrimination enshrined in Article 21 of the Charter. ***Since Union-level rules governing persons seeking international protection and beneficiaries of international protection are laid down in the asylum acquis, including the procedures for the transfer of such persons between Member States, it should be clear that this procedure should not apply, in any circumstances, to persons seeking international protection or beneficiaries of international protection. In line with Articles 9 and 24 of the Charter, such a procedure should not apply to minors or members of their***

*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.*

*family arriving together from another Member State. Moreover, the procedure should also not apply to third-country nationals who are holders of long-term residence permits or their family members, third-country nationals who enjoy the right to free movement in the Union, third-country nationals who are holders of valid long-stay visas and their family members in accordance with national law, third country nationals who are holders of a valid short stay visa or to third country nationals who are entitled to visa-free travel within the Schengen Area in so far as they have been on the territory for less than 90 days in any 180-day period.*

Or. en

**Proposal for a regulation**  
**Recital 26 a (new)**

*Text proposed by the Commission*

*Amendment*

*(26 a) It should be possible for the authorities to carry out a verification of relevant information immediately available to the authorities concerning the movements of the persons who may be the subject of such a procedure. 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 have an effective remedy before a court or tribunal to appeal against or seek review of the transfer decision. This*

*remedy should not have suspensive effect.*

Or. en

**Amendment 18**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 26, 200, 201, 202

**Proposal for a regulation**  
**Recital 28**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 19**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 27, 203, 204, 205

**Proposal for a regulation**  
**Recital 29**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 20**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 207, 208

**Proposal for a regulation**  
**Recital 30**

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

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

Or. en

## **Amendment 21**

### **Rapporteur**

Compromise amendment replacing Amendment(s): 28 (part), 211 (part), 212 (part)

## **Proposal for a regulation**

### **Recital 31**

(31) The new Schengen area safeguard mechanism ***should allow the Council to adopt, upon a proposal by the Commission, a decision*** authorising the reintroduction or prolongation of internal border controls, where this is justified by a particular threat, identified on the basis of notifications received from individual Member States, ***or*** other available information, ***in particular a risk assessment, in case of prolongation of internal border controls beyond six***

(31) ***Given the politically sensitive nature of a decision which regulates the possibility for Member States to reintroduce or prolong internal border control in particular circumstances, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to initiate*** the new ***Union-level*** Schengen area safeguard mechanism authorising the reintroduction or prolongation of internal border controls, where this is justified by a particular threat,

*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.*

identified on the basis of notifications received from *several* individual Member States, *a risk assessment*, and other available information, *and to provide supplementary rules on mitigating measures that should be established at national and Union level. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.* The Commission *when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.*

Or. en

## Amendment 22 Rapporteur

Compromise amendment replacing Amendment(s): 29, 215 (part), 216

## Proposal for a regulation Recital 32

### *Text proposed by the Commission*

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

### *Amendment*

(32) In determining whether a reintroduction or prolongation of internal border controls by the Member States is justified, the **Commission** should take into account *that internal border control remains a measure of last resort which has a serious impact on all persons having the right to move within the area without internal border control. The Commission should assess whether the measure is appropriate, necessary and proportionate. The scope and duration of any temporary reintroduction of such measures should be restricted to the minimum needed to respond to the serious threat to public policy or internal security. The Commission should consider* whether any other measures that could ensure a

high level of security within the territory are available. In the event that a prolongation of the controls is not considered justified, ***internal border controls should be lifted immediately and*** the Commission should recommend the use of other measures deemed more appropriate to address the identified threat.

Or. en

## **Proposal for a regulation**

### **Recital 33**

#### *Text proposed by the Commission*

(33) The establishment of the new Schengen area safeguard mechanism should not affect the right of Member States to have prior recourse to unilateral measures in accordance with the Regulation, where the situation so requires. However, once adopted, the Union measure should become the single basis for a coordinated response to the threat identified.

#### *Amendment*

(33) The establishment of the new Schengen area safeguard mechanism should not affect the right of Member States to have prior recourse to unilateral measures in accordance with the Regulation, where the situation so requires. However, once adopted, the Union measure should become the single basis for a coordinated response to the threat identified.

Or. en

## **Amendment 23**

### **Rapporteur**

Compromise amendment replacing Amendment(s): 30 (part), 221 (part), 222 (part), 223 (part)

## **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***

#### *Amendment*

(34) In order to ensure compliance with the principle of proportionality, the ***delegated act*** should be adopted for a limited period of time of up to six months that may be prolonged subject to regular review, ***up to a maximum period of two years in exceptional cases***. The initial

*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*.

*delegated act* should include an assessment of the expected impact of the measures adopted, including its adverse side-effects, with a view to determining if controls at internal borders are justified or whether less restrictive measures could be applied in their place in an effective manner. *Any* subsequent *delegated act prolonging internal border control* should take account of the evolution of the identified threat. The Member States should immediately notify the Commission, *the Parliament*, and the Member States of the reintroduction of internal border controls in accordance with the *delegated act*.

Or. en

## Amendment 24

### Rapporteur

Compromise amendment replacing Amendment(s): 32, 33, 229, 230, 231, 232, 233, 277 (part)

## 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 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.

#### *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 *and the rights of individuals*. In order to ensure that any decision to reintroduce border controls is only taken where necessary, as a measure of last resort, the decision on temporary reintroduction or prolongation of border controls should be based on common criteria *and be strictly necessary and proportionate*. The proportionality principle requires that the reintroduction of internal border controls be subject to safeguards that *are to be respected before internal border controls are considered*



*and that* increase over time.

Or. en

**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. Where Member States reintroduce internal border controls for foreseeable threats, they should be able to do so for a period of three months, renewable up to a maximum period of 18 months.***

Or. en

**Amendment 25**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 34, 236, 237, 238 (part)

**Proposal for a regulation**  
**Recital 37**

*Text proposed by the Commission*

*Amendment*

(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

(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 ***as well as the appropriateness of alternative measures to pursue the same objectives as internal border controls, such as proportionate checks as carried out in the exercise of police or other public powers or through forms of police cooperation as provided for under Union law, including***

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.**

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

Or. en

## Amendment 26 Rapporteur

Compromise amendment replacing Amendment(s): 35, 240, 242

## 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

*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*. Such measures should include measures to assure a smooth operation of transit of goods and transport personnel and seafarers by the establishment of ‘green lanes’. In addition, and to take account of the need to ensure the movement of persons whose activities may be essential for preserving the supply chain or the provision of essential services, Member States should also apply the existing guidelines on cross-border workers<sup>45</sup>. 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.

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<sup>45</sup> 2020/C 102 I/03.

controls should be accompanied by mitigating measures, *but always with a view to lifting internal border control as soon as possible*. Such measures should include measures to assure a smooth operation of transit of goods and transport personnel and seafarers by the establishment of ‘green lanes’. In addition, and to take account of the need to ensure the movement of persons whose activities may be essential for preserving the supply chain or the provision of essential services, Member States should also apply the existing guidelines on cross-border workers<sup>45</sup>. Against this background, the rules for the reintroduction of border controls at internal borders should take account of the guidelines and recommendations adopted throughout the COVID-19 pandemic as a solid safety net for the Single Market, for the purpose of assuring that they are applied by the Member States as mitigating measures during reintroduced internal border controls, with a view to safeguarding the interests of cross-border regions and of ‘twin cities’ including for instance authorisations or derogations for the inhabitants of cross-border regions.

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<sup>45</sup> 2020/C 102 I/03.

Or. en

## **Amendment 27**

### **Rapporteur**

Compromise amendment replacing Amendment(s): 36 (part), 37 (part), 38 (part), 245 (part), 246, 247, 251, 252 (part), 257 (part), 258 (part), 260

## **Proposal for a regulation**

### **Recital 39**

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

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

Or. en

## **Proposal for a regulation**

### **Recital 40**

(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

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

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.

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

## Proposal for a regulation

### Recital 41

#### *Text proposed by the Commission*

(41) The Commission should be entitled to request additional information based on the notification received, including on the risk assessment or cooperation and coordination measures with the Member States affected by the planned prolongation of border control at internal borders. Where the notification does not comply with the minimum requirements, the Commission should discuss the notification with the Member State concerned and request additional information or a resubmission of the notification.

#### *Amendment*

(41) The Commission should be entitled to request additional information based on the notification received, including on the risk assessment or cooperation and coordination measures with the Member States affected by the planned prolongation of border control at internal borders. Where the notification does not comply with the minimum requirements, the Commission should discuss the notification with the Member State concerned and request additional information or a resubmission of the notification.

Or. en

## 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***

#### *Amendment*

(42) In order to ensure sufficient ***level of supervision, transparency and accountability with regard to*** actions ***taken by Member States*** affecting travel without internal border controls, the Member States should ***provide the notifications of reintroduction of internal border control to*** the European Parliament, the Council ***and the Commission at the same time in***

**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 Mechanism<sup>46</sup>.

**accordance with this Regulation.** Every year, pursuant to Article 33 of the Schengen Borders Code, the Commission should present to the European Parliament and to the Council a report on the functioning of the area without internal border control ('State of Schengen report') which should pay particular attention to the *border controls that have been in place for longer than twelve months. The report should include all the decisions to reintroduce internal border control and details of the actions taken by the Commission with regard to internal border controls reintroduced*. It should also assess the necessity and proportionality of the *all* reintroductions of border controls in the period covered by that Report *building on the information available from the competent authorities of the Member States*. The State of Schengen report shall also cover the reporting obligations resulting from Article 20 of the Schengen Evaluation Mechanism<sup>46</sup>.

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<sup>46</sup> 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.

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<sup>46</sup> 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

## **Amendment 28**

### **Rapporteur**

Compromise amendment replacing Amendment(s): 39, 262, 263 (part), 264 (part)

## **Proposal for a regulation**

### **Recital 43**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 29**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 40, 267, 268, 27, 278 (part)

**Proposal for a regulation**  
**Recital 44**

*Text proposed by the Commission*

(44) The Commission and Member States should retain the possibility to express any concern as regards the necessity and proportionality of a decision of a Member State to reintroduce internal border controls for reason of urgency or to address a foreseeable threat. In case

*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.

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

Or. en

**Proposal for a regulation**  
**Recital 44 a (new)**

*Text proposed by the Commission*

*Amendment*

*(44 a) Where a Member State considers that there are exceptional situations justifying the continued need for internal border control in excess of the maximum period of 18 months based on the same foreseeable serious threat, it should be able to request the Commission to propose to the Council an implementing decision authorising the prolongation of internal border control for a period of three months. If the Council adopts such an implementing decision, and at the end of that three-month period, the Member State in question still considers that the exceptional situation remains, it may make a maximum of two further requests to the Commission for a prolongation of a*



***further three months.***

**Amendment 30**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 41 (part), 274 (part), 275, 276

**Proposal for a regulation**  
**Recital 45**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 31**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 42, 280 (part), 281 (part)

**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

**Amendment 32**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 283 (part)

**Proposal for a regulation**  
**Recital 47**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 33**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 44, 297, 298, 292, 293, 43 (in part), 8, 119, 120, 9, 123, 124, 10, 128, 129, 11, 132, 133, 12, 136, 137

## **Proposal for a regulation**

### **Article 1 – paragraph 1 – point 2**

Regulation (EU) No 2016/399

### **Article 5 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

‘

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

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

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

**(b) third-country nationals who are long-term residents under Council Directive 2003/109/EC<sup>56</sup>, 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.**

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

Or. en

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 1 – point b**

Regulation (EU) No 2016/399

**Article 2 – paragraph 1 – point 27**

*Text proposed by the Commission*

*Amendment*

**27. ‘instrumentalisation of migrants’** **deleted**  
***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;***

Or. en

**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 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*** **deleted**

*functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security.*

Or. en

**Proposal for a regulation**  
**Recital 9**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

**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*

*deleted*

*supplemented, where appropriate, by the imposition of restrictive measures by the Union.*

Or. en

**Proposal for a regulation**  
**Recital 11**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

**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*

*deleted*

*such decision should take into account whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants. Furthermore, any such limitations should take full account of the rights of Union citizens, third country nationals who are beneficiaries of the right of free movement pursuant an international agreement and third-country nationals who are long-term residents under national or Union law or are holders of long-term visas, as well as their respective family members. Such limitations should also be applied in a manner that ensures respect for obligations related to access to international protection, in particular the principle of non-refoulement.*

Or. en

#### **Amendment 34**

##### **Rapporteur**

Compromise amendment replacing Amendment(s): 45, 306, 310, 312, 46, 315, 47, 318, 319, 48, 324, 325, 326, 331, 49, 327, 290, 291

#### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 3**

Regulation (EU) No 2016/399

Article 13

##### *Text proposed by the Commission*

Article 13

Border surveillance

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

##### *Amendment*

Article 13

Border surveillance

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

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

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

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

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

4. Surveillance shall be carried out by stationary or mobile units which perform their duties by patrolling or stationing themselves at places known or perceived to be sensitive, the aim of such surveillance being to prevent unauthorised border crossings or apprehend individuals crossing the border **illegally**. Surveillance may also be carried out by technical means, including electronic means, equipment and surveillance systems.

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

2. The border guards shall use **all necessary resources, including** stationary or mobile units to carry out border surveillance.

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

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

4. Surveillance shall be carried out by stationary or mobile units which perform their duties by patrolling or stationing themselves at places known or perceived to be sensitive, the aim of such surveillance being to prevent unauthorised border crossings or apprehend individuals crossing the border **irregularly**. Surveillance may also be carried out by technical means, including electronic means, equipment and surveillance systems, **where it is conducted in accordance with Article 5 of the Regulation of the European Parliament and of the Council laying down**



**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.**

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

6. Without prejudice to the support that the European Border and Coast Guard Agency may provide to the Member States, **in the event of a situation of instrumentalisation of migrants**, the Agency may carry out a vulnerability assessment as provided for in Articles 10(1), point (c), and Article 32 of Regulation (EU) 2019/1896 of the European Parliament and Council<sup>57</sup>, with a view to providing the necessary support to the Member State concerned.

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

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning additional measures governing

6. Without prejudice to the support that the European Border and Coast Guard Agency may provide to the Member States, **where a Member State introduces internal border control on the basis of Article 25(1)(c)**, the Agency may, **upon request of that Member State**, also carry out a vulnerability assessment as provided for in Articles 10(1), point (c), and Article 32 of Regulation (EU) 2019/1896 of the European Parliament and Council<sup>57</sup>, with a view to providing the necessary support to the Member State concerned.

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

7. **For the purposes of paragraph 4**, the Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning additional measures

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.

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

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

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

Or. en

## **Proposal for a regulation**

**Article 1 – paragraph 1 – point 1 – point a**  
Regulation (EU) No 2016/399  
Article 2 – paragraph 1 – point 12

### *Text proposed by the Commission*

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

### *Amendment*

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

Or. en

**Amendment 35**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 50, 333

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4 – introductory part**

Regulation (EU) No 2016/399

Chapter V – title

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 36**

**Rapporteur**

Compromise amendment replacing Amendment(s): 337, 338, 51, 339, 52, 341, 342, 343, 345, 347, 536

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4 – paragraph 1**

Regulation (EU) No 2016/399

Article 21a

*Text proposed by the Commission*

*Amendment*

Article 21a

Article 21a

Restrictions on travel to the European Union

Restrictions on travel to the European Union

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***.

1. This Article shall apply to ***a large scale public health emergency***, where ***a serious cross-border threat to health necessitates coordination at Union level in order to ensure a high level of human health protection, recognised by the Commission at Union level in accordance with Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU***.

2. ***The Council, on the basis of a proposal by the Commission, may adopt***

2. ***In situations of a large scale public health emergency*** the Commission

***an implementing regulation***, providing for temporary restrictions on travel to the Member States.

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

3. The following categories of persons shall be exempted from the restrictions on entry, independent of the purpose of their travel:

- a) persons enjoying the right of free movement under Union law;
- b) third-country nationals who are long-term residents under Directive 2003/109/EC, persons deriving their right to reside from other instruments of Union law or national law or who hold national long-term visas, as well as their respective family members.

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

- a) define any categories of persons undertaking non-essential travel to be exempted from any restrictions applicable to travel;
- b) identify any geographical areas or third countries from which non-essential travel may be subject to restrictions or exemptions from restrictions, having regard to the particular situation of the areas or countries concerned on the basis of objective methodology and criteria, including, in particular, the epidemiological situation;
- c) lay down the conditions under

***shall be empowered to adopt delegated acts in accordance with Article 37*** providing for temporary restrictions on travel to the Member States.

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

3. The following categories of persons shall be exempted from the restrictions on entry, independent of the purpose of their travel:

- a) persons enjoying the right of free movement under Union law;
- b) third-country nationals who are long-term residents under Directive 2003/109/EC, persons deriving their right to reside from other instruments of Union law or national law or who hold national long-term visas, as well as their respective family members;

***b a) beneficiaries of international protection.***

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

- a) define any categories of persons undertaking non-essential travel to be exempted from any restrictions applicable to travel;
- b) identify any geographical areas or third countries from which non-essential travel may be subject to restrictions or exemptions from restrictions, having regard to the particular situation of the areas or countries concerned on the basis of objective methodology and criteria, including, in particular, the epidemiological situation;
- c) lay down the conditions under

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

d) lay down the conditions under which travel restrictions may be imposed, exceptionally, on persons undertaking essential travel, in the event that the epidemiological situation worsens quickly and, in particular where a variant of concern or variant of interest has been detected.

5. Restrictions on essential travel referred to in paragraph 4(d) may not include restrictions on entry as regards travellers listed in point i. and points iv. to viii. of Annex XI.

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

d) lay down the conditions under which travel restrictions may be imposed, exceptionally, on persons undertaking essential travel, in the event that the epidemiological situation worsens quickly and, in particular where a variant of concern or variant of interest has been detected.

5. Restrictions on essential travel referred to in paragraph 4(d) may not include restrictions on entry as regards travellers listed in point i. and points iv. to viii. of Annex XI.

***5 a. Where, in a situation of a large scale public health emergency with serious cross-border threats to health recognised by the Commission, imperative grounds of urgency so require, the procedure provided for in Article 37a shall apply to delegated acts adopted pursuant to this Article.***

Or. en

## **Proposal for a regulation**

### **Article 1 – paragraph 1 – point 1 – point b**

Regulation (EU) No 2016/399

Article 2 – paragraph 1 – point 27a

*Text proposed by the Commission*

*Amendment*

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

**Proposal for a regulation****Article 1 – paragraph 1 – point 15 b (new)**

Regulation (EU) 2016/399

Article 37a(new)

*Text proposed by the Commission**Amendment****(15 b) The following Article 37a is inserted:******Article 37a******Urgency procedure***

***1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2.***

***2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.***

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

Or. en

**Proposal for a regulation****Article 1 – paragraph 1 – point 18**

Regulation (EU) 2016/399

Annex XI

*Text proposed by the Commission**Amendment***Essential Travel**

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

**Essential Travel**

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

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

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- ii. Frontier workers;
- iii. Transport personnel;
- iv. Diplomats, staff of international organisations and people invited by international organisations whose physical presence is required for the well-functioning of these organisations, military personnel and humanitarian aid workers and civil protection personnel in the exercise of their functions;
- v. Passengers in transit;
- vi. Passengers travelling for imperative family reasons;
- vii. Seafarers;
- viii. Persons in need of international protection or for other humanitarian reasons

## **Amendment 37**

### **Rapporteur**

Compromise amendment replacing Amendment(s): 178, 349, 350, 351, 53, 54, 352, 353, 354, 355, 356, 357, 358, 359, 55, 360, 361, 362, 363

## **Proposal for a regulation**

### **Article 1 – paragraph 1 – point 5**

Regulation (EU) No 2016/399

#### **Article 23**

*Text proposed by the Commission*

Article 23

Exercise of public powers

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

- a) the exercise of police or other public powers by the competent authorities

*Amendment*

Article 23

Exercise of public powers

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

- a) the exercise of police or other public powers by the competent authorities

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

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

- i) do not have border control as an objective;
- ii) are based on general information and experience of the competent authorities regarding possible threats to public security or public policy and aim, in particular, to:
  - combat cross-border crime;
  - **combat irregular residence or stay, linked to** irregular migration; or
  - contain the spread of an infectious disease with epidemic potential as **detected** by the European Centre for Disease Control;
- iii) are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders, including where they are conducted at transport hubs or directly on board of passenger services and when they are based on risk analysis;
- iv) are carried out, where appropriate, on the basis of monitoring and surveillance technologies generally used in the territory,

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

***That exercise of police or other public powers by the competent authorities of the Member States in their territory, in particular in their border areas, shall not have a disproportionate impact on fluidity of movement across borders, in particular, by leading to excessive waiting times. Within the meaning of the first subparagraph,*** the exercise by competent authorities of their powers may not, in particular, be considered equivalent to the exercise of border checks when the measures:

- i) do not have border control as an objective;
- ii) are based on general **law enforcement** information and experience of the competent authorities regarding possible threats to public security or public policy and aim, in particular, to:
  - combat cross-border crime;
  - **reduce** irregular migration; or
  - contain the spread of an infectious disease with epidemic potential as **identified** by the European Centre for Disease Control;
- iii) are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders, including where they are conducted at transport hubs or directly on board of passenger services and when they are based on risk analysis;
- iv) are carried out, where appropriate, on the basis of monitoring and surveillance technologies generally used in the territory,



for the purposes of addressing threats to public security **or public policy** as set out under ii);

b) the possibility for a Member State to carry out security checks on persons carried out at transport hubs by the competent authorities under the law of each Member State, by their competent authorities or by carriers, provided that such checks are also carried out on persons travelling within a Member State;

c) the possibility for a Member State to provide by law for an obligation to hold or carry papers and documents;

d) the possibility for a Member State to provide by law for an obligation on third-country nationals to report their presence on its territory pursuant to the provisions of Article 22 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ('the Schengen Convention');

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

***in accordance with the Artificial Intelligence Act and in line with national legislation,*** for the purposes of addressing threats to public security as set out under ii).

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

b) the possibility for a Member State to carry out security checks on persons carried out at transport hubs by the competent authorities under the law of each Member State, by their competent authorities or by carriers, provided that such checks are also carried out on persons travelling within a Member State;

c) the possibility for a Member State to provide by law for an obligation to hold or carry papers and documents;

d) the possibility for a Member State to provide by law for an obligation on third-country nationals to report their presence on its territory pursuant to the provisions of Article 22 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ('the Schengen Convention');

***deleted***

Or. en

**Proposal for a regulation**  
**Recital 23**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. en

**Amendment 38**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 56, 364, 366, 367, 369, 370

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

*Text proposed by the Commission*

*Amendment*

Article 23a

Article 23a

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

Procedure for **the possible transfer of** persons apprehended **in the vicinity of** 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:

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

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

**deleted**

***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.***

***deleted***

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

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

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

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

***a) unaccompanied minors;***

***b) minors and members of their family arriving together from another Member State;***

***c) third-country nationals who are holders of EU long-term residence permits and their family members in accordance with Council Directive 2003/209/EC concerning the status of third-country nationals who are long-term residents;***

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

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

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

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

*h) applicants for international protection within the meaning of Article 4 of Regulation xxx/xxx (the Asylum Procedures Regulation) and beneficiaries of international protection within the meaning of Article 2 of Regulation xxx/xxx (the Qualifications Regulation).*

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

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.

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

*2a. A third-country national, apprehended in the vicinity of the internal borders, who is refused the right to stay in a Member State in accordance with this article shall have the right to an effective remedy before a court or tribunal. Any appeal shall be conducted in accordance with national law. Member*

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.

*States shall ensure that written information on contact points able to provide information on representatives competent to act on behalf of the third-country national, in accordance with national law, is given to the third-country national, in a language that they understand or are reasonably supposed to understand. The lodging of such an appeal shall not have suspensive effect.*

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

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

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

Or. en

## **Amendment 39**

### **Rapporteur**

Compromise amendment replacing Amendment(s): 21, 22, 177

## **Proposal for a regulation**

### **Article 1 – paragraph 1 – point 7**

*Text proposed by the Commission*

Article 24

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

*Amendment*

Article 24

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

Or. en

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

Or. en

**Proposal for a regulation**  
**Recital 22**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

**Amendment 40**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 375, 57, 376, 377, 58, 378, 379, 380, 59, 382, 383, 384

**Proposal for a regulation**  
**Article 1 – paragraph 1 – point 8**  
Regulation (EU) No 2016/399  
Article 25

*Text proposed by the Commission*

*Amendment*

Article 25

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

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

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

- (a) *activities relating to* terrorism or organised crime;
- (b) large scale public health emergencies;
- (c) *a situation characterised by large scale* unauthorised *movements* of third-country nationals between *the* Member

Article 25

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

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

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

- (a) *an identified and immediate threat of acts of* terrorism or *of serious* organised crime;
- (b) large scale public health emergencies;
- (c) *an exceptional situation in which there is an unexpected and sudden large-scale* unauthorised *movement* of third-

States, putting at risk the overall functioning of the area without internal border control;

(d) large scale or high profile international events such as sporting, trade or political events.

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

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

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

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

country nationals between Member States, putting at risk the overall functioning of the area without internal border control;

(d) large scale or high profile international events such as sporting, trade or political events.

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

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

*deleted*

Or. en

#### **Amendment 41** **Rapporteur**

Compromise amendment replacing Amendment(s): 386, 60, 389, 390, 391, 392, 394, 397, 399, 61, 402, 404, 405, 407, 62, 408, 409, 410, 31, 224 (part), 226, 73, 477, 478



**Proposal for a regulation**  
**Article 1 – paragraph 1 – point 9**  
Regulation (EU) No 2016/399  
Article 25a

*Text proposed by the Commission*

Article 25a

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

1. Where a serious threat to public policy or internal security in a Member State is unforeseeable and requires immediate action, the Member State may, on an exceptional basis, immediately reintroduce border control at internal borders.
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).
3. For the purposes of paragraph 1, border control at internal borders may be immediately reintroduced for a limited period of up to one month. If the serious threat to public policy or internal security persists beyond that period, the Member State may prolong the border control at internal borders for further periods, leading to a maximum duration not exceeding three months.
4. Where a serious threat to public policy or internal security is foreseeable in a Member State, the Member State shall notify the Commission and the other Member States ***and the Commission*** in accordance with Article 27(1), at the latest four weeks before the planned reintroduction of border controls, or within a shorter period where the circumstances giving rise to the need to reintroduce

*Amendment*

Article 25a

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

1. Where a serious threat to public policy or internal security in a Member State is unforeseeable and requires immediate action, the Member State may, on an exceptional basis, immediately reintroduce border control at internal borders.
2. The Member State shall, at the same time as reintroducing border control under paragraph 1, notify ***the European Parliament, the Council,*** the Commission and the other Member States of the reintroduction of border controls, in accordance with Article 27(1).
3. For the purposes of paragraph 1, border control at internal borders may be immediately reintroduced for a limited period of up to one month. If the serious threat to public policy or internal security persists beyond that period, the Member State may prolong the border control at internal borders for further periods, leading to a maximum duration not exceeding three months.
4. Where a serious threat to public policy or internal security is foreseeable in a Member State, the Member State ***may, as a last resort, reintroduce internal border control at internal borders in accordance with this Article. That Member State*** shall notify ***the European Parliament, the Council,*** the Commission and the other Member States in accordance with Article 27(1), at the latest four weeks before the

border controls at internal borders become known less than four weeks before the planned reintroduction.

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*.

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

planned reintroduction of border controls, or within a shorter period where the circumstances giving rise to the need to reintroduce border controls at internal borders become known less than four weeks before the planned reintroduction.

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

*deleted*

~~**6 a. — Where a Member State considers that there are exceptional situations justifying the continued need for internal border control in excess of the maximum period referred to in paragraph 5, based on the same foreseeable serious threat to public policy or internal security that justified the introduction of internal border control pursuant to paragraph 4, it may request the Commission to propose to the Council an implementing decision authorising the prolongation of border control by the Member State concerned beyond that maximum period in respect of that ongoing serious threat to public policy or internal security.**~~

~~**In that request, the Member State shall substantiate the continue threat to public policy or internal security, taking into**~~

account the opinion of the Commission given pursuant to paragraph 3 of Article 27a.

The Commission shall make such a proposal to the Council only where it considers that the prolongation of internal border control in the specific Member State is justified as a measure of last resort to protect the common interests within the area without internal border controls, and where all other measures, in particular those referred to in Article 23 and Article 23a, are ineffective in mitigating the serious threat identified. In evaluating the request of a Member State, the Commission shall determine whether the criteria laid down in Article 26 are met.

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

The Council implementing decision shall permit the prolongation of internal border control for a maximum period of three months. Where at the end of that three-month period, the Member State concerned considers that the serious threat to public policy or internal security for the same foreseeable threat persists, and that internal border controls should be further prolonged, it may make one further request to the Commission to propose a further prolongation for the same maximum period to the Council. The Commission and, where necessary, the Council shall assess such a final request based on the criteria set out in the

~~second and third subparagraphs above and having assessed the compatibility with the Treaties of such a final prolongation.~~

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

Or. en

## 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

## Amendment 42

### Rapporteur

Compromise amendment replacing Amendment(s): 63, 64, 65, 66, 67, 413, 414, 420, 422, 424, 425, 426, 427, 428, 430, 431, 432, 433, 434, 435, 436, 437, 438, 440, 441

## Proposal for a regulation

### Article 1 – paragraph 1 – point 10

Regulation (EU) No 2016/399

Article 26

#### *Text proposed by the Commission*

##### Article 26

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

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

(a) the appropriateness of the measure of reintroducing border controls at internal border, having regard to the nature of the serious threat identified and in particular, whether the reintroduction of border controls at internal borders is likely to adequately remedy the threat to public policy or internal security;

#### *Amendment*

##### Article 26

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

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

(a) the appropriateness of the measure of reintroducing border controls at internal border, having regard to the nature of the serious threat identified and in particular, whether the reintroduction of border controls at internal borders is likely to adequately remedy the threat to public policy or internal security;

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

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

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

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

**(a e) other forms of police cooperation provided for under Union law, including**

*on matters such as joint patrols, joint operations, joint investigation teams, cross-border hot pursuits or cross-border surveillance;*

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

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

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

*(iii) the principle of non-discrimination.*

*deleted*

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

*— 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.*

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:*

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

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

*c) forms of police cooperation as provided for under Union law, including on matters such as joint patrols, joint*

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

*deleted*

*deleted*

*deleted*

*operations, joint investigation teams, cross-border hot pursuits, or cross-border surveillance.*

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

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

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

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

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

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

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

***Where border controls at internal borders have been prolonged beyond a period of six months, the necessity, proportionality and duration of those controls shall be discussed in the Schengen Forum convened for that purpose.***

Or. en

**Proposal for a regulation  
Article 1 – paragraph 1 – point 16**

*Text proposed by the Commission*

Article 39

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

*Amendment*

Article 39

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

Or. en

**Amendment 43**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 68, 446, 449, 454, 462

**Proposal for a regulation**  
**Article 1 – paragraph 1 – point 11**  
Regulation (EU) No 2016/399  
Article 27

*Text proposed by the Commission*

Article 27

Notification of temporary reintroduction of internal border controls and risk assessment

1. Notifications by Member States of the reintroduction or prolongation of internal border controls shall contain the following information:
  - (a) the reasons for the reintroduction or prolongation, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security;
  - (b) the scope of the proposed reintroduction or prolongation, specifying at which part or parts of the internal borders border control is to be reintroduced, or prolonged;

*Amendment*

Article 27

Notification of temporary reintroduction of internal border controls and risk assessment

1. Notifications by Member States of the reintroduction or prolongation of internal border controls shall contain the following information:
  - (a) the reasons for the reintroduction or prolongation, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security;
  - (b) the scope of the proposed reintroduction or prolongation, specifying at which part or parts of the internal borders border control is to be reintroduced, or prolonged;



- (c) the names of the authorised crossing-points;
- (d) the date and duration of the planned reintroduction or prolongation;
- (e) the *considerations* as to the necessity and proportionality referred to in Article 26(1) and, in the case of a prolongation, in Article 26(2);
- (f) where appropriate, the measures to be taken by *the* other Member States.

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

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

2. Where border controls have been in place for six months in accordance with Article 25a(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.*

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

- (c) the names of the authorised crossing-points;
- (d) the date and duration of the planned reintroduction or prolongation;
- (e) the *assessment* as to the necessity and proportionality referred to in Article 26(1) and, in the case of a prolongation *beyond a period of six months, the risk assessment as referred to* in Article 26(2);
- (f) where appropriate, the measures to be taken by other Member States.

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

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

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

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

agencies in line with their respective mandates and data analysis from relevant information systems.

4. The Member State concerned shall upon request by the Commission, provide any further information, including on the coordination measures with the Member States affected by the planned prolongation of border control at internal borders as well as further information needed to assess the possible use of measures referred to in Article 23 and 23a .

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

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

agencies in line with their respective mandates and data analysis from relevant information systems.

4. The Member State concerned shall upon request by the Commission, provide any further information, including on the coordination measures with the Member States affected by the planned prolongation of border control at internal borders as well as further information needed to assess the possible use of measures referred to in Article 23 and 23a .

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

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

Or. en

#### **Amendment 44** **Rapporteur**

Compromise amendment replacing Amendment(s): 71, 465, 472, 475, 476,

**Proposal for a regulation**  
**Article 1 – paragraph 1 – point 12**  
Regulation (EU) No 2016/399  
Article 27a

Article 27a

Consultation with the Member States and opinion of the Commission

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

The 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.

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

2. Following the receipt of notifications, submitted in relation to the reintroduction or prolongation of border controls at internal borders, the Commission or any other Member State may, without prejudice to Article 72 TFEU, issue an opinion, if, based on the information contained in the notification

Article 27a

Consultation with the Member States and opinion of the Commission

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

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

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

2. Following the receipt of notifications, submitted in relation to the reintroduction or prolongation of border controls at internal borders, the Commission or any other Member State may, without prejudice to Article 72 TFEU, issue an opinion, if, based on the information contained in the notification

and risk assessment, where appropriate, or any additional information, they have concerns as regards the necessity or proportionality of the planned reintroduction or prolongation of border control at internal borders.

3. Following receipt of notifications submitted in relation to a prolongation of border control at the internal border under Article 25a(4) which leads to the continuation of border controls at internal borders for ***eighteen*** months ***in total***, the Commission shall issue an opinion on necessity and proportionality of such internal border controls.

4. Where an opinion referred to in

and risk assessment, where appropriate, or any additional information, they have concerns as regards the necessity or proportionality of the planned reintroduction or prolongation of border control at internal borders.

3. Following receipt of notifications submitted in relation to a prolongation of border control at the internal border under Article 25a(4) which leads to the continuation of border controls at internal borders for ***a period beyond nine*** months, the Commission shall issue an opinion on necessity and proportionality of such internal border controls.

***The opinion of the Commission shall include at least:***

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

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

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

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

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

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

4. Where an opinion referred to in

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

5. Where a Member State considers that there are exceptional situations justifying the continued need for internal border controls in excess of the maximum period referred to in Article 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.*

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

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

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

*The Commission shall make such a proposal to the Council only where it considers that the prolongation of internal border control in the specific Member State is justified as a measure of last resort to protect the common interests within the area without internal border controls, and where all other measures, in particular those referred to in Article 23 and Article 23a, are ineffective in mitigating the serious threat identified. In evaluating the request of a Member State, the Commission shall determine whether the criteria laid down in Article 26 are met.*

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

The Council implementing decision shall permit the prolongation of internal border control for a maximum period of three months. That implementing decision may be renewed on two further occasions for maximum periods of three months, up to a maximum total duration of nine months, where at the end of the relevant three-month period, the Member State concerned considers that the serious threat to public policy or internal security for the same foreseeable threat persists, and that internal border controls should be further prolonged.

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

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

Or. en

## Amendment 45

### Rapporteur

Compromise amendment replacing Amendment(s): 74, 75, 77, 78, 483, 484, 485, 490, 493, 494, 495, 496, 497, 499

## Proposal for a regulation

### Article 1 – paragraph 1 – point 13

Regulation (EU) No 2016/399

Article 28

#### *Text proposed by the Commission*

##### Article 28

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

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

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*

##### Article 28

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

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

2. The ***delegated act*** shall cover a period of up to six months and may be renewed ***no more than three times*** for further periods of up to six months, taking into account the review referred to in paragraph 5. ***The maximum duration of the internal border controls on the basis***

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

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

5. The Commission shall 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.

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

7. The Commission may issue a recommendation indicating other measures as referred to in Articles 23 and 23a that could complement internal border controls or be more suitable to address the identified threat to internal security or public policy as referred to in paragraph 1.

***of the particularly serious threat identified shall not exceed two years.***

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

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

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

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

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.

Or. en

**Amendment 46**  
**Rapporteur**



Compromise amendment replacing Amendment(s): 80, 81, 82, 83, 84, 85, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 516, 517, 518

## Proposal for a regulation

### Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 2016/399

Article 31 – paragraph 2

#### *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**:

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

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

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

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

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

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

**Member States shall not be required to provide all the information referred to in the paragraph 2 in cases justified on public security grounds.**

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

#### *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.

*deleted*

*deleted*

*deleted*

*deleted*

*deleted*

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

*deleted*

*deleted*

*forwarding and handling of classified information which are applicable between the European Parliament and the Commission.*

Or. en

**Amendment 47**  
**Rapporteur**

Compromise amendment replacing Amendment(s): 86, 87, 88, 523, 524, 525, 527, 528, 532

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 15**

Regulation (EU) No 2016/399

Article 33

*Text proposed by the Commission*

Article 33

Report on the reintroduction of border control at internal borders

1. Within four weeks of the lifting of border control at internal borders, Member States which have carried out border controls at internal borders shall present a report to the European Parliament, the Council and the Commission on the reintroduction and, where applicable, the prolongation of border control at internal borders.
2. Without prejudice to the first paragraph 1, where border controls are prolonged as referred to in Article 25a(5), the Member State concerned shall submit a report at the expiry of **twelve** months and every **twelve** months thereafter if border control is exceptionally maintained.
3. The report shall outline, in particular, the initial and follow-up assessment of the necessity of border controls **and the respect** of the criteria referred to in Articles 26, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting

*Amendment*

Article 33

Report on the reintroduction of border control at internal borders

1. Within four weeks of the lifting of border control at internal borders, Member States which have carried out border controls at internal borders shall present a report to the European Parliament, the Council and the Commission on the reintroduction and, where applicable, the prolongation of border control at internal borders.
2. Without prejudice to the first paragraph 1, where border controls are prolonged as referred to in Article 25a(5), the Member State concerned shall submit a report at the expiry of **six** months and every **six** months thereafter if border control is exceptionally maintained.
3. The report shall outline, in particular, the initial and follow-up assessment of the necessity **and proportionality** of border controls, **the fulfilment** of the criteria referred to in Articles 26, the operation of the checks, the practical cooperation with neighbouring

impact on the movement of persons in particular in the cross-border regions, the effectiveness of the reintroduction of border control at internal borders, including an ex-post assessment of the proportionality of the reintroduction of border control.

4. The Commission shall adopt a uniform format for such report and make it available online.

5. The Commission may issue an opinion on that ex-post assessment of the temporary reintroduction of border control at one or more internal borders or at parts thereof.

6. The Commission shall present to the European Parliament and to the Council, at least annually, a report on the functioning of the area without internal border 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.

Member States, the resulting impact on the *free* movement of persons in particular in the cross-border regions, the effectiveness of the reintroduction of border control at internal borders, including an ex-post assessment of the *necessity and* proportionality of the reintroduction of border control.

4. The Commission shall adopt a uniform format for such report and make it available online.

5. The Commission may issue an opinion on that ex-post assessment of the temporary reintroduction of border control at one or more internal borders or at parts thereof.

6. The Commission shall present to the European Parliament and to the Council, at least annually, a report on the functioning of the area without internal border control entitled ('State of Schengen report'). The report shall include a list of all decisions to reintroduce border control at internal borders taken during the relevant year *as well as the actions taken by the Commission with regard to internal border controls reintroduced. The report shall pay particular attention to the border controls that have been in place for longer than twelve months, and shall* include an assessment of the necessity and proportionality of the reintroductions of border controls in the period covered by that report. *The report shall be accompanied by the report to be provided pursuant to Article 25 of Regulation (EU) 2022/922 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013.*

Or. en

**Amendment 48**  
**Rapporteur**

Compromise amendment replacing Amendment(s): AMs 52 (part), 74 (part), 341 (part), 342 (part), 483 (part), 484 (part)

**Proposal for a regulation**

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

Regulation (EU) 2016/399

Article 37

*Present text*

Article 37

Exercise of the delegation

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

4. As soon as it adopts a delegated act, the

*Amendment*

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

Article 37

Exercise of the delegation

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

***3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.***

4. As soon as it adopts a delegated act, the

Commission shall notify it simultaneously to the European Parliament and to the Council.

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

Commission shall notify it simultaneously to the European Parliament and to the Council.

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

"

Or. en

(02016R0399)

## Amendment 49

### Rapporteur

Compromise amendment replacing Amendment(s): 89, 538, 539

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 19

Regulation (EU) 2016/399

Annex XII(new) - PART A

#### *Text proposed by the Commission*

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**

#### *Amendment*

Procedure for **the possible transfer of** persons apprehended **in the vicinity of** 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 **law**

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

***enforcement*** 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 decision ***transferring a person*** 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,

***deleted***

- d) the grounds for ***transfer***,
- e) the date of ***transfer***,
- f) the Member States to which the third country national was sent back.

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

- deleted***
- b) the number of persons refused stay;
- deleted***
- 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*

nationals apprehended;

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

*deleted*

*local circumstances, to prevent third-country nationals who have been refused entry from entering illegally.*

Or. en

## Proposal for a regulation


### Article 1 – paragraph 1 – point 19

Regulation 2016/399

Annex XII(new) – part B

#### *Text proposed by the Commission*

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

	Name of State _____
Logo of State (Name of Office) _____	
_____ (1)	
<b>TRANSFER PROCEDURE AT INTERNAL BORDERS</b>	
On _____ at (time) _____ at the location (indicate type of the internal border nearby or other relevant information related to the apprehension by a joint patrol) _____	
We, the undersigned, _____ have before us:	
Personal data (subject to availability)	
Surname _____	First name _____
Date of birth _____	Place of birth _____ Sex _____
Nationality _____	Resident in _____
Type of identity document _____	number _____
Issued in _____	on _____
Visa number, if any _____ type _____ issued by _____	
Valid from _____ until _____	
For a period of _____ days: _____	
Coming from _____ by means of _____ (indicate means of transport used, e.g. flight number), he/she is hereby informed that he/she has no right to stay in the country and will be transferred to _____ pursuant to (indicate references to the national law in force), for the following reasons:	
<input type="checkbox"/> (A) has no valid <b>travel</b> document(s)	
<input type="checkbox"/> (B) has a false/counterfeit/forged travel document	
<input type="checkbox"/> (C) has no valid visa or residence permit	
<input type="checkbox"/> (D) has a false/counterfeit/forged visa or residence permit	
<input type="checkbox"/> (E) has no appropriate documentation justifying the purpose and conditions of stay	
<b>The following document(s) could not be provided:</b>	
<input type="checkbox"/> (F) has already stayed for 90 days in the preceding 180-day period on the territory of the Member States of the European Union	
<input type="checkbox"/> (G) does not have sufficient means of subsistence in relation to the period and form of stay, or the means to return to the <b>country of origin or transit</b>	
<input type="checkbox"/> (H) is a person for whom an alert has been issued for the purposes of refusing entry	
<input type="checkbox"/> in the SIS	
<input type="checkbox"/> in the national register	
<input type="checkbox"/> (I) is considered to be a threat to public policy, internal security, public health or the international relations of one or more of the Member States of the European Union (each State must indicate the references to national law relating to such transfer)	
Comments	
<input type="checkbox"/> The person concerned declined to sign the form.	



Person Concerned

Officer responsible for checks

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

*Amendment*

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



Name of State

Logo of State (Name of Office)

(<sup>1</sup>)

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

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

We, the undersigned, \_\_\_\_\_ have before us:

Personal data (subject to availability)

Surname \_\_\_\_\_ First name \_\_\_\_\_

Date of birth \_\_\_\_\_ Place of birth \_\_\_\_\_ Sex \_\_\_\_\_

Nationality \_\_\_\_\_ Resident in \_\_\_\_\_

Type of identity document \_\_\_\_\_ number \_\_\_\_\_

Issued in \_\_\_\_\_ on \_\_\_\_\_

Visa number, if any \_\_\_\_\_ type \_\_\_\_\_ issued by \_\_\_\_\_

Valid from \_\_\_\_\_ until \_\_\_\_\_

For a period of \_\_\_\_\_ days: \_\_\_\_\_

Coming from \_\_\_\_\_ by means of \_\_\_\_\_ (indicate means of transport used, e.g. flight number), he/she is hereby informed that he/she has no right to stay in the country and will be transferred to \_\_\_\_\_ pursuant to (*indicate references to the national law in force*), for the following reasons:

☐ (A) has no valid **identity** document(s)

☐ (B) has a false/counterfeit/forged travel document

☐ (C) has no valid visa or residence permit

☐ (D) has a false/counterfeit/forged visa or residence permit

☐ (E)-deleted

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

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

**(GA) is not an applicant for international protection**

**(GB) is not a minor**

☐ (H) is a person for whom an alert has been issued for the purposes of refusing entry

☐ in the SIS

☐ in the national register

☐ (I) is considered to be a threat to public policy, internal security, public health or the international relations of one or more of the Member States of the European Union (*each State must indicate the references to national law relating to such transfer*)

Comments

☐ The person concerned declined to sign the form.

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

Or. en

## **Amendment 50**

### **Rapporteur**

Compromise amendment replacing Amendment(s): AM 90, 91, 544, 545, 548, 549, 25, 194, 195

## **Proposal for a regulation**

### **Article 2**

Directive 2008/115/EC

Article 6(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

**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

**Proposal for a regulation**  
**Article 4 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

**Proposal for a regulation**  
**Recital 27**

*Text proposed by the Commission*

*Amendment*

***(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***

***(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.

*of Article 6(3) of the Return Directive is  
therefore necessary.*

Or. en