

# Questions & Answers: Preserving and strengthening the Schengen area

As announced by President Juncker in his [letter of intent](#) on 13 September, the European Commission is today proposing measures to preserve and strengthen the Schengen area. The Commission is proposing to **update the Schengen Borders Code** to adapt the rules for the reintroduction of temporary internal border controls to the current needs to respond to evolving and persistent serious threats to public policy or internal security. In an area where persons may move freely, the reintroduction of border controls at internal borders is the exception. **Stronger procedural safeguards** are therefore also being introduced to ensure that border controls at internal borders remain an exception – a measure of last resort – and are used only if necessary and proportionate for a limited period of time, limiting the impact on free movement. The Commission is also publishing a **Communication** on the measures already taken to respond to security challenges at the external borders and within the Schengen area, and a **Recommendation** to Member States on how to better apply, if needed, the current rules on temporary border controls.

## **What steps has the Commission already taken to strengthen the Schengen area?**

Over the past years, the Commission has taken a number of steps to increase security within the Schengen area and to enhance the management of its external borders. The **European Border and Coast Guard Agency** was launched in October 2016 and as of April this year, all travellers crossing the external EU border are **systematically checked against all relevant security databases**. In addition, as part of the immediate action to assist Member States with unprecedented migratory pressure, the Commission developed the **hotspot approach** to swiftly identify, register and fingerprint incoming irregular migrants. The Commission has also taken measures within the Schengen area, including a **Recommendation** to Member States to make better use of police checks and cross-border cooperation and strengthening the **Schengen evaluation mechanism**. In addition, to address the outstanding information gaps, the Commission proposed to enhance the **Schengen Information System (SIS)** and create new systems, namely the **Entry/Exit System (EES)** and the **European Travel Information and Authorisation System (ETIAS)**.

Today's Communication on a Stronger Schengen takes stock of all those measures, drawing conclusions from the implementation of the [Back to Schengen Roadmap](#) of 4 May 2016 and proposing further steps to preserve and strengthen the Schengen area.

## **Why does the Schengen Borders Code need to be amended?**

The Schengen rules have allowed various crisis situations to be successfully dealt with, safeguarding the wider functioning of the Schengen system. During the past 10 years and in the vast majority of cases, the current provisions of the Schengen Borders Code on the temporary reintroduction of internal

border controls, including the set time frames, were sufficient to tackle the identified serious threats. Between 2006 (the date of adoption of the Schengen Borders Code) and 2015, temporary border controls have been reintroduced 36 times and have hardly ever been prolonged, and usually carried out only for a few days or weeks. Moreover, the exceptional procedure of Article 29 of the Schengen Borders Code that was used for the first time following the migration crisis has demonstrated that the Schengen legal framework has the tools to deal with this challenge.

Those tools have served Europe well until now, but faced with new challenges, such as persistent serious cross-border terrorist threats or secondary movements of irregular migrants that constitutes serious threats to public policy or internal security, the Commission has concluded that there is a need to update the Schengen Borders Code rules. In particular, there is a need to adjust the deadlines applicable to the temporary reintroduction of border controls while ensuring stronger procedural safeguards and a coordinated European approach for such controls. In all cases, a Member State intending to reintroduce or prolong such controls should first consider alternative measures, as set out in the Commission Recommendation of 12 May 2017 on proportionate police checks and cross-border cooperation in the Schengen area. The updated rules reinforce this requirement as well as the need to cooperate with neighbouring Member States.

#### **What amendments is the Commission proposing to the Schengen Borders Code?**

The Commission has today proposed **targeted amendments** to the rules concerning the temporary reintroduction of border controls at internal borders in the case of foreseeable events, to ensure that they are able to respond to evolving and persistent serious threats to public policy or internal security and meet the current security challenges. Based on the experiences related to the increase of serious security threats, the proposal is **prolonging the maximum time limit** from six months to one year for the temporary reintroduction of border controls. At the same time, the Commission is adding **stronger procedural guarantees** ensuring that such controls remain an exception, used only as a measure of last resort, and concerned Member States are fully involved. The Commission is also proposing a **new special procedure** for cases where the same serious threat to public policy or internal security persists beyond one year.

How long can controls at an internal border last?

Internal border controls are exceptional measures and should be in place only for as long as necessary and justified and proportionate to the identified serious threats to public policy or internal security.

The maximum deadline for a temporary reintroduction of border controls in the case of foreseeable events posing a serious threat to public policy or internal security (Article 25) is being prolonged from **six months to one year**. Moreover, in the case of long-lasting persistent security threats, an **extraordinary possibility** for prolonging border controls at internal borders for another **two years** is added. This additional prolongation will be subject to a **new special procedure** involving a Recommendation by the Council, based

on an opinion by the Commission, and can only be used to support the commensurate exceptional measures taken at national level (for example a state of emergency). The Council recommendation is a prerequisite for any such further prolongations that can take place only on this basis.

What new safeguards are being introduced?

The additional procedural safeguards include the new obligation for Member States to prepare a **detailed risk assessment** demonstrating in particular that the prolongation of border controls is a measure of last resort. The risk assessment should assess the expected length of the threat and explain how the internal border control would address the identified threat. It should also report in detail on coordination with the neighbouring Member States concerned by such temporary border controls. Moreover, in the case of controls lasting more than six months, the risk assessment is also expected to demonstrate retrospectively the efficiency of the reintroduced border control and explain in detail how the neighbouring Member States, affected by such a prolongation, were consulted and involved in determining the least burdensome operational arrangements.

The Commission will now be required to **issue an opinion** assessing the necessity and proportionality of reintroduced border checks whenever border controls last for more than six months. This is in addition to the opinion that the Commission or any Member State may issue in the case of concerns related to the necessity or proportionality of the intended border controls.

The Commission will also be entitled to ask for any additional information considered necessary for assessing whether the intended reintroduction or prolongation of border controls is really a measure of last resort.

Depending on the serious threat identified, the **European Border and Coast Guard Agency** and **Europol** will be involved in the evaluation of the risk assessment as well as the consultation procedure following an opinion of the Commission or a Member State.

**Will the voice of neighbouring Schengen States be heard?**

The need to take into account the views of neighbouring Schengen States in the spirit of shared responsibility is reflected in the modified requirements concerning the content of the required notification and the newly introduced obligation to submit a risk assessment.

Accordingly, a Member State intending to temporarily reintroduce or prolong border controls will need to include in its notification, where appropriate, measures to be taken by the neighbouring Member States, to be agreed upon prior to the temporary reintroduction of controls at the concerned internal borders.

In the case of an internal border control going beyond six months, the Member State will need to not only demonstrate retrospectively in its risk assessment the efficiency of the reintroduced border control in addressing the identified threat, but also to explain in detail how the neighbouring

Member States affected by such a prolongation were consulted and involved in determining the least burdensome operational arrangements.

Moreover, it is being clarified that, when seeking additional information from the Member States concerned, the Commission may focus in particular on the cooperation with the Member States affected by the planned prolongation of border control. The results of the consultation procedure involves the Commission, Member States concerned and, for the first time, the European Border and Coast Guard Agency and Europol, and will need to be duly taken into account by the Member State planning to reintroduce or prolong controls at internal borders.

**What will happen in November after the expiry of the current internal border controls linked to deficiencies in the management of the external border?**

At the expiry of the current internal border controls in November, following the third and final prolongation legally possible authorised by the Council for Austria, Germany, Denmark, Sweden and Norway (pursuant to Article 29 of the Schengen Borders Code) in May this year, the exceptional circumstances resulting from the context of the unprecedented migratory and refugee crisis which started in 2015, the deficiencies in the external border management by Greece and the secondary movements resulting from these deficiencies can no longer be invoked to justify reintroduction or prolongation of internal border controls.

All Member States, including those that carry out internal border controls under Article 29 of the Schengen Borders Code, retain the possibility to temporarily reintroduce internal border controls in the event of **another serious threat** to public policy or internal security. To recall, a Schengen State may under the current rules reintroduce temporary border controls at all or parts of its internal borders for a maximum period of two months in cases requiring immediate action (Article 28) and a maximum of six months in case of foreseeable events (Article 25). In such cases, the Commission will assess the necessity and proportionality of the controls carried out on a case by case basis.

The Commission has adopted a **Recommendation** on the implementation of these rules. The objective of this Recommendation is to ensure that, while the Member States are in the best position to assess what measures are the most appropriate to address the identified serious threat to public policy or internal security, any future decisions introducing border controls at internal border should be done in a way to ensure that the Common interest is safeguarded.

Member States are reminded that the introduction of temporary internal border controls must **remain an exceptional measure of last resort** and that alternative measures, such as police checks and cross-border cooperation should be prioritised. The Recommendation stresses that where the reintroduction of temporary internal border control is necessary, Member States should take measures to limit as much as possible the impact on free movement and internal market, and cooperate closely with its neighbours. For example, this cooperation should include a constant review and adaptation of

the border controls to the evolving needs and impact on the ground.

For More Information

[Press release](#): State of the Union: Preserving and strengthening Schengen to improve security and safeguard Europe's freedoms

[Communication on preserving and strengthening Schengen](#)

[Regulation amending the rules applicable to the temporary reintroduction of border control at internal border](#)

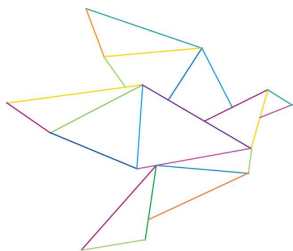
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[Factsheet](#): The Schengen rules explained – September 2017

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## [State of the Union 2017 – Preserving and strengthening Schengen to improve security and safeguard Europe's freedoms](#)



As announced by President Juncker in his [letter of intent](#) on 13 September, the European Commission is today proposing measures to preserve and strengthen the Schengen area. The Commission is proposing to **update the Schengen Borders Code** to adapt the rules for the reintroduction of temporary internal border controls to the current needs to respond to evolving and persistent serious threats to public policy or internal security. **Stronger procedural safeguards** are also being introduced to ensure that border controls at internal borders remain an exception – a measure of last resort – and are used only if necessary and proportionate, limiting the impact on free movement. The Commission is also publishing a **Communication** on the measures

already taken to respond to security challenges at the external borders and within the Schengen area, and a Recommendation to Member States on how to better apply, if needed, the current rules on temporary border controls.

First Vice-President Frans **Timmermans** said: *"The Schengen Border Code rules for reintroducing internal border controls were devised in a different time, with different challenges. The exceptional circumstances that we see now, such as the increased terrorist threat, have led us to propose a Schengen Border Code more fit for purpose in this new day and age. Member States should be allowed to act in an exceptional situation when confronted with serious threats to their public policy or internal security. At the same time, they should act only under strict conditions. This is how we secure free movement and promote security within Schengen."*

Commissioner for Migration, Home Affairs and Citizenship Dimitris **Avramopoulos** said: *"Schengen is one of the major achievements of European integration and we are fully committed to safeguard, preserve and strengthen it. The absence of internal border control constitutes the very essence of Schengen. But in a common area without border controls, security concerns are common too. This is why we must do everything to preserve the careful balance between free movement and mobility on the one hand, and security on the other. And we can only achieve this through a coordinated and united Schengen framework, which should include Romania and Bulgaria too."*

Commissioner for the Security Union Julian **King** said: *"EU Member States should be able to take steps to reinforce their security – in exceptional circumstances, and in a framework that respects the huge importance and benefits of the Schengen zone."*

Over the past years, the Commission has taken a number of steps to increase security within the Schengen area and to enhance the management of its external borders. The Schengen Borders Code has been amended on several previous occasions to ensure that it remains fit for purpose. Member States have used the Schengen rules to introduce temporary controls within the foreseen time limits and conditions, respecting and safeguarding the wider functioning of the Schengen system. The tools in place have served Europe well until now, but faced with new security challenges, the Schengen Borders Code needs to be **updated to prolong the time limits for internal border controls**, coupled with **stronger safeguards**. The Commission's proposals today will update the rules, while making sure they are used more effectively and only in exceptional situations as a measure of last resort when necessary and proportionate. The reinforced rules also tighten the duty to cooperate with neighbouring Member States, in particular, to minimise impact on free movement.

In addition, to improve the joint application of the Schengen Borders Code and wider Schengen rules, and echoing the call made by President Juncker in his State of the Union address, the Communication invites the Council now to take the decision fully integrating **Bulgaria and Romania** into the Schengen area, with **Croatia** becoming a full member once all the criteria are met.

An improved Schengen Borders Code to face current threats

Whilst the current rules on the temporary reintroduction of internal border controls have proven sufficient in the vast majority of cases, the time limits foreseen in the legislation may not always be sufficient when Member States face evolving serious threats to public order or internal security. The Commission is therefore proposing to adjust the applicable **time limits** under **Articles 25 and 27** of the Schengen Borders Code to up to one year (instead of six months), while at the same time introducing **stricter procedural safeguards**, including the obligation for Member States to assess if **alternative measures** could address the identified threat more efficiently and the submission of a **detailed risk assessment**.

Under today's proposals, Member States will also be able to **exceptionally prolong controls** if the same threat persists beyond one year and when commensurate exceptional national measures within the territory, such as a state of emergency, have also been taken to address this threat. Such prolongation would require a **Recommendation of the Council**, which would need to take into account the opinion given by the Commission, and would be strictly limited to 6 month periods with the possibility to prolong no more than three times up to a maximum period of two years.

Pending the adoption of these legislative amendments, the Commission is also issuing guidance today to Member States on the better application of the existing Schengen rules, in the form of a **Recommendation**. Member States are reminded that the introduction of temporary internal border controls must remain an **exceptional measure of last resort**, the impact on free movement should be limited and that alternative measures, such as police checks and cross-border cooperation, should be prioritised. Member States must regularly evaluate any temporary controls, inform and cooperate with other concerned Member States, and refrain from any unjustified measures.

Finally, for Member States to confront threats in a united way, standing together in a stronger Schengen area, it is now high time that **Bulgaria and Romania** become full Schengen members. The Council should take the decision to approve their Schengen accession and lift controls at the internal borders between these two Member States and their EU neighbours. Bulgaria and Romania have demonstrated their capacity to defend the EU's external borders, and should therefore become members of our internal border-free zone.

## Background

The Schengen area is the largest free travel area in the world. It allows more than 400 million EU citizens, as well as visitors, to move freely and goods and services to flow unhindered. Schengen is one of the major achievements of European integration which should be safeguarded and preserved.

Since its conception, the Schengen area has been confronted with different types of challenges and threats. The Schengen rules have been ensuring the wider functioning of the Schengen system, allowing it to respond to the challenges. For instance, as a result of secondary movements of irregular migrants and deficiencies in the management of the external borders in Greece, the Commission triggered the Article 29 procedure of the Schengen

Borders Code; this provided for the temporary reintroduction of internal border controls for the five most concerned countries (Austria, Denmark, Germany, Norway, Sweden), based on a detailed Schengen Evaluation by the Commission.

For More Information

[Q&A](#): Preserving and strengthening the Schengen area

[Communication on preserving and strengthening Schengen](#)

[Regulation amending the rules applicable to the temporary reintroduction of border control at internal border](#)

[Recommendation on the implementation of the provisions of the Schengen Borders Code on temporary reintroduction of border control at internal borders in the Schengen area](#)

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## [Mergers: Commission opens in-depth investigation into proposed merger between Essilor and Luxottica](#)

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *“Half of Europeans wear glasses and almost all of us will need vision correction one day. Therefore we need to carefully assess whether the proposed merger would lead to higher prices or reduced choices for opticians and ultimately consumers”*.

The proposed merger would combine two leaders in the optical industry. Essilor is the largest supplier of ophthalmic lenses, both worldwide and in Europe. Luxottica is the largest supplier of eyewear, both worldwide and in Europe, and has well-known brands in its portfolio such as Ray-Ban and Oakley. Both companies sell their products to opticians who then sell finished spectacles and sunglasses to consumers.

### **The Commission’s preliminary competition concerns**

The Commission’s initial market investigation raised several issues relating



in particular to the combination of Essilor's strong market position in lenses and Luxottica's strong market position in eyewear.

At this stage, the Commission is concerned that, following the transaction, the merged entity may use Luxottica's powerful brands to convince opticians to buy Essilor lenses and exclude other lens suppliers from the markets, through practices such as bundling or tying. The Commission will investigate whether such conduct could lead to adverse effects on competition, such as limiting purchase choices or increasing prices.

In addition, the Commission will further assess whether:

- the merged entity would use Essilor's strength in ophthalmic lenses to exclude rival eyewear suppliers from the markets,
- the merger would remove important emerging competition from Luxottica in lenses and from Essilor in eyewear.

The transaction was notified to the Commission on 22 August 2017. The Commission now has 90 working days, until 12 February 2018, to take a decision. The opening of an in-depth investigation does not prejudice the outcome of the investigation.

### **Companies and products**

**Essilor**, headquartered in France, mainly manufactures and sells ophthalmic lenses and markets them to opticians worldwide. Its flagship brands are Varilux, Crizal, Transitions, Eyezen, and Xperio. Essilor also sells optical machines, optical instruments and eyewear, and it operates optician retail businesses, mainly outside of Europe.

**Luxottica**, headquartered in Italy, designs, manufactures and distributes prescription frames and sunglasses. Its portfolio includes proprietary brands such as Ray-Ban, Oakley and Persol, as well as more than 15 licensed brands including Armani, Chanel, Dolce & Gabbana, Prada and Versace. Luxottica also operates optician retail businesses, mainly in the US but also in Italy through Salmoiraghi & Viganò, in the UK through David Clulow and worldwide through Sunglass Hut.

### **Merger control rules and procedures**

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the Merger Regulation) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

In addition to the current transaction, there are two on-going phase II merger investigations: the [proposed acquisition of NXP by Qualcomm](#) and the [proposed acquisition of Monsanto by Bayer](#).

More information will be available on the [competition website](#), in the Commission's [public case register](#) under the case number [M.8394](#).

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