

# 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](#)

[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](#)

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

[Communication: Back to Schengen – A Roadmap](#)