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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders - Outcome of the European Parliament's first reading (Strasbourg, 22 to 25 April 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 163) to the abovementioned proposal for a Regulation, for which the rapporteur, Sylvie GUILLAUME (S&D, FR), had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 24 April 2024, the plenary adopted the compromise amendment (amendment number 163) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0323

Schengen Borders Code

European Parliament legislative resolution of 24 April 2024 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (COM(2021)0891 – C9-0473/2021 – 2021/0428(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0891),
- having regard to Article 294(2) and Article 77(2), point (b) and (e) and Article 79(2), point (c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0473/2021),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 18 May 2022¹,
- having regard to the opinion of the Committee of the Regions of 12 October 2022²,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 14 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0280/2023),

¹ OJ C 323, 26.8.2022, p. 69.

² OJ C 498, 30.12.2022, p. 114.

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 24 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2), points (b) and (e) and Article 79(2), point (c), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

- (1) In accordance with Article 3(2) of the Treaty on European Union (TEU), the Union comprises an area of freedom, security and justice that is free of internal border control, in which the free movement of persons is ensured in conjunction with appropriate measures regarding external border control, asylum, immigration and the prevention and combating of crime.


¹ *OJ C 323, 26.8.2022, p. 69.*

² *OJ C 498, 30.12.2022, p. 114.*

³ Position of the European Parliament of 24 April 2024.

- (2) *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. It is important that the normal functioning and strengthening of such an area, which is based on trust and solidarity, is a common objective of the Union and the Member States which have agreed to take part in it. In that respect, the temporary reintroduction of border control at internal borders should be exceptional and used only as a last resort, where appropriate subject to consultation and cooperation between the Member States concerned and the Commission as guardian of the Treaties.*
- (3) Regulation (EU) 2016/399 of the European Parliament and of the Council (Schengen Borders Code)⁴ lays down rules governing the movement of persons to and from the area without internal border control (the “Schengen Area”) as well as between the Member States that participate in the Schengen Area.
- (4) 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 policy 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 *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.*

⁴ 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).

- (5) 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 the 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 relevant Union agencies  and management of the Schengen Evaluation and Monitoring Mechanism established by Council Regulation (EU) 2022/922⁵. 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.
- (6) ***European integrated border management is based on the four-tier access control model, set out in Regulation (EU) 2019/1896 of the European Parliament and of the Council⁶. Border control, including measures to facilitate legitimate border crossings, forms a key part of the European integrated border management. In order to prevent and detect cross-border crime at the external borders, in particular migrant smuggling, trafficking in human beings, and terrorism, Member States together with the European Border and Coast Guard Agency, established by Regulation (EU) 2019/1896, should implement European integrated border management, based on the four-tier access control model.***

⁵ ~~Council Regulation (EU) 2022/922 of 9 June 2022 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 (OJ L 160, 15.6.2022, p. 1).~~

⁶ 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, p. 1).

- (7) ■ The COVID-19 pandemic has shown that threats to public health can require uniform rules concerning travel restrictions for travel into the 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 the adoption and lifting, in a timely manner, of coordinated measures at Union level. The new mechanism at the external border should be applied *in the event of a large-scale public health emergency with a serious cross-border threat to health, recognised by the Commission at Union level without prejudice to Regulation (EU) 2022/2371 of the European Parliament and of the Council⁷, taking into account information from competent national authorities.*
- (8) *In the event of a large-scale public health emergency*, the mechanism should provide for the adoption of an implementing Regulation setting out *temporary* restrictions on travel, including restrictions on entry and *minimum temporary health-related restrictions*, and the conditions for lifting them. In view of the politically sensitive nature of such restrictions which concern the right to enter the territory of Member States, implementing powers should be conferred on the Council to adopt such an implementing Regulation (the “implementing Regulation”), acting on a proposal from the Commission.

⁷ *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 (OJ L 314, 6.12.2022, p. 26).*

- (9) 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, ***and in particular to the Member State in which they legally reside. The implementing Regulation should lay down minimum temporary health-related restrictions to which those persons could be subject. As regards third-country nationals legally residing in Ireland, Member States should, on a reciprocal basis, allow those residents to return to Ireland by transiting through the territory of the Member States. Ireland is invited to align its national policy with the restrictions on travel to the European Union.*** The implementing Regulation 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 ***identify***, where ***required by the nature of the large-scale public health emergency, the*** categories of ***persons undertaking essential travel listed in Annex XI, part B***, to be exempted from restrictions on entry ***and lay down the conditions under which it should be possible, exceptionally, for travel restrictions to be imposed on those travellers.*** In addition, or alternatively, the implementing Regulation should ***determine*** any geographical areas or third countries from which it should be possible to subject travel to specific measures ***and establish a procedure for the periodic review of the situation and of the travel restrictions***, based on an objective methodology and objective criteria applicable to that procedure, including, in particular, the epidemiological situation. The implementing Regulation could specify the conditions under which travel might be permitted such as testing, quarantine, self-isolation or any other appropriate measures, such as a requirement to fill in a passenger locator form or to use 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 implementing Regulation could also set up a mechanism allowing additional measures to be taken in the event the epidemiological situation dramatically worsens in one or more geographical areas.

- (10) *The effectiveness of restrictions on travel to the Union is premised on applying uniform rules to third countries and third-country nationals. The application of uniform rules by means of the implementing Regulation should ensure the protection of public health and thus preserve the functioning of the area without internal border controls. Member States could adopt stricter temporary health and other related restrictions than those laid down in the implementing Regulation provided that such restrictions do not have a negative impact on the functioning of the area without internal border control. In addition, Member States could adopt restrictions on travel in the absence of an implementing Regulation. The implementing Regulation should take into account the specific situation of the Overseas Countries or Territories referred to in Article 355(2) of the Treaty on the Functioning of the European Union (TFEU) and listed in Annex II thereto.*
- (11) *Transit within the Union for Union citizens and their family members, as well as for certain categories of essential travellers should not be subject to temporary health-related restrictions on travel to their final destination. Any temporary health-related restrictions to be applied, should be applied upon arrival at the final destination.*

- (12) It is also necessary to reinforce the rules and safeguards in Union law in order to allow Member States to act swiftly to counter situations of instrumentalisation . Such instrumentalisation should be understood *within the meaning of Article 1(4), point (b), first sentence, of Regulation (EU) .../... of the European Parliament and of the Council*⁸. *Situations in which hostile non-state actors are involved in organised crime, in particular migrant smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union ■ or a Member State. Furthermore, humanitarian assistance should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.*

⁸ *Regulation (EU) 2024/... of the European Parliament and of the Council of ... addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 (OJ ...).*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

- (13) As regards Cyprus, Council Regulation (EC) No 866/2004⁹ provides for specific rules that apply to the line between the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control and those areas in which it does not exercise effective control. Although that line does not constitute an external border, a situation where a third-country or hostile non-state actor encourages or facilitates the movement of third-country nationals to cross that line is considered as instrumentalisation.**

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

⁹ **Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession (OJ L 161, 30.4.2004, p. 128).**

- (15) 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 European Border and Coast Guard standing corps, *as well as assistance in search and rescue operations for persons in distress at sea, that are launched and carried out in accordance with Regulation (EU) No 656/2014 of the European Parliament and of the Council¹⁰. The European Border and Coast Guard Agency's new mandate offers considerable opportunities for Member States to be assisted in border control tasks, including inter alia with regard to screening and in return operations.*

- (16) ■ Technical means to prevent unauthorised crossings of the border ■ could include modern technologies such as drones and motion sensors, as well as mobile units, *and, where appropriate, all types of stationary and mobile infrastructure*. The use of such technical means, in particular, technologies capable of collecting personal data, needs to be based on and exercised in accordance with clearly defined provisions of national law.

¹⁰ *Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 189, 27.6.2014, p. 93).*

- (17) The power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission *to supplement Regulation (EU) 2016/399 in respect of addition to Annex XI, Part B, of further categories of persons undertaking essential travel and in respect of additional measures governing surveillance, including the development of common minimum standards for border surveillance. Those common minimum standards should take* into account the type of borders, i.e. land, sea or air borders, the impact levels attributed to each external border section in accordance with Article 34 of Regulation (EU) 2019/1896 and other relevant factors, *such as geographical particularities*. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (18) In an area without internal border control, persons, *whatever their nationality*, should be able to move freely and in security between Member States. In that regard, it should be clarified that the prohibition of border controls at internal borders does not affect the competence of Member States to carry out checks on their territory **■** including *in their border areas* for purposes other than border control. It should, in particular, be clarified that competent national authorities, including health or law enforcement authorities, remain, in principle *entitled to exercise public powers under national law provided that the effect of those powers is not equivalent to border checks*.

¹¹ OJ L 123, 12.5.2016, p. 1, ELI: http://data.europa.eu/eli/agree_interinstit/2016/512/oj.

(19) While the prohibition of border control at internal borders also extends to checks having equivalent effect, checks by competent authorities *of the Member States* should not be considered equivalent to border checks where they do not have border control as an objective, where they are based on general *police* information and experience *or public health information* regarding possible threats to public security or public policy, **■** where they aim *in particular* to combat *cross-border crime, reduce illegal immigration 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 **■** borders, and where they are conducted at transport hubs, such as ports, train or bus stations and airports *as well as freight terminals* or directly on board of passenger transport services, and where they are based on *a risk assessment*.

■

(20) The *reduction* of illegal *immigration* and of cross-border crime linked to *it*, such as trafficking in human beings, migrant smuggling and document fraud and other forms of cross-border crime, could **■** encompass measures allowing *for* 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 *a risk assessment*.

- (21) The use of modern technologies to monitor traffic flows, in particular 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 border control at internal borders 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. ■
- (22) In order to allow for such technologies to be effective, it should be possible to apply proportionate speed limits at road crossing-points.
- (23) *In the exercise of police or other public powers by the competent authorities of the Member States in their territory, in particular in their border areas, it is important that the exercise of those powers does not have a disproportionate impact on the fluid traffic flow at road crossing-points at internal borders, in particular, by leading to excessive waiting times. In a spirit of dialogue and cooperation, it is important that Member States inform the neighbouring Member State of their actions, in particular when the action is expected to have a more significant effect on cross-border traffic.*

- (24) The prohibition of border control at internal borders should not restrict the carrying out of checks provided for *under* Union law. The rules provided for in this Regulation, do not therefore, affect the applicable rules regarding the carrying out of checks on passenger data against relevant databases in advance of arrival.
- (25) 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 control. In accordance with the case law of the Court of Justice of the European Union, the more extensive the indications are that checks conducted by Member States at their border areas have an effect equivalent 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.
- (26) ■ In order to strengthen the functioning of the Schengen area, Member States should be able to take additional measures to counter irregular movements between Member States ■ . Where national law enforcement authorities of a Member State apprehend ■ third-country nationals *with no right to stay in that Member State, in border areas during checks conducted by the competent authorities within a bilateral cooperation framework, which could include, in particular, joint police patrols*, it should be possible for those authorities *to transfer the third-country nationals to the Member State from which they entered the transferring Member State provided that the third country nationals have no right to stay in the transferring Member State*. The Member State from where the *third-country nationals* came directly should in turn be required to receive the apprehended *third-country* nationals.

- (27) *The transfer procedure should not apply to third-country nationals who are holders of Union long-term residence permits and their family members in accordance with Council Directive 2003/109/EC¹², third-country nationals that are family members of Union citizens that enjoy the right to free movement in accordance with Directive 2004/38/EC of the European Parliament and of the Council¹³, third-country nationals who are holders of a valid long-stay visa and their family members in accordance with national law, third-country nationals who are holders of a valid short-stay visa, 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, applicants, as defined in Article 3, point 13 of Regulation (EU) ... of the European Parliament and of the Council¹⁴⁺ and beneficiaries of international protection, as defined in Article 3, point 4 of Regulation (EU) ... of the European Parliament and of the Council¹⁵⁺⁺. With regard to applicants apprehended in the framework of bilateral cooperation, the relevant provisions of Regulation (EU) ... of the European Parliament and of the Council¹⁶⁺ should apply.*

¹² 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).

¹³ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

¹⁴ Regulation (EU) ... of the European Parliament and of the Council of ... establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A (COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

¹⁵ Regulation (EU) ... of the European Parliament and of the Council of ... on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ ...).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223COD)) and insert the number, date, and OJ reference of that Regulation in the footnote.

¹⁶ Regulation (EU) ... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ ...).

- (28) The procedure by which a Member State should be able to transfer apprehended ■ third-country nationals *with no right to stay* to a Member State from where the person came directly should take place swiftly but be subject to safeguards and be carried out in full respect of fundamental rights and the principle of non-discrimination enshrined in Article 21 of the Charter of Fundamental Rights of the European Union (‘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 could include objective elements that would allow the authorities to conclude that the person had recently travelled from another Member State, such as the possession of documents, including receipts or invoices, evidencing recent travel from another Member State. *Third-country* nationals that are subject to the transfer procedure should be provided with a reasoned decision in writing. While the decision should be immediately enforceable, the *third-country* national should be afforded an effective remedy to appeal against or seek review of the transfer decision. That remedy should not have suspensive effect.
- (29) The transfer procedure provided for under this Regulation *is optional and* does not affect the existing possibility for Member States to return *illegally staying third-country* nationals in accordance with bilateral agreements or arrangements referred to in Article 6(3) of Directive 2008/115/EC of the European Parliament and of the Council¹⁷ (the “Return Directive”), where such persons are detected outside of ■ *border areas*.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

¹⁷ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

- (30) *When making use of the transfer procedure provided for under this Regulation, Member States should establish practical arrangements under their bilateral cooperation frameworks, including with a view to, as a rule, avoiding the use of that transfer procedure, in particular on the sections of the internal borders where control has been temporarily reintroduced or prolonged.*
- (31) *Where a third-country national who has been subject to a transfer decision is brought to the border by a carrier, the competent authority are able in accordance with national law, to make arrangements with the carrier so that the third-country national is transferred without delay to the receiving Member State.*
- (32) *In the context of unannounced visits pursuant to Article 4(3) of Regulation (EU) 2022/922, it is important that the Commission pay particular attention to the implementation of the transfer procedure.*

- (33) *In an area where persons are able to move freely, without internal frontiers, which constitutes one of the main achievements of the Union in accordance with Article 3(2) TEU, the reintroduction of border control at internal borders should remain an exception and should only be a measure of last resort. Exceptions to and derogations from the principle of the free movement of persons are to be interpreted strictly. In order not to compromise the very principle that there is to be no internal border control, as enshrined in Article 3(2) TEU and reiterated in Article 67(2) TFEU, the reintroduction of border control at internal borders on account of the same threat should be for clearly defined periods in accordance with this Regulation.*
- (34) In exceptional cases, addressing threats to the Schengen area might, *as a last resort*, require the adoption, by the Member States, of measures at the internal borders. *As the free movement of persons is affected by the temporary reintroduction of border control at internal borders, any decision to reintroduce such border 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.* Member States remain competent to determine the need for the temporary reintroduction or prolongation of border control. Under the existing rules, the reintroduction of border control 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.

- (35) Furthermore, a serious threat to public policy or internal security *could* also result from *sudden* large- scale unauthorised movements of *third-country nationals* between the Member States, where that creates a situation putting a *substantial* strain on the overall resources and capacities of *well-prepared competent authorities and is likely to put at risk the overall functioning of the area without internal border control, and* where the other means provided for under this Regulation are not sufficient to address those 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 relevant Union agencies in line with their respective mandates. ■
- (36) *The COVID-19 pandemic demonstrated the need for a Union-wide* mechanism that would apply to situations where, within the Schengen area, a *large-scale* public *health emergency* affects *several* Member States *at the same time*, putting at risk the well-functioning of the Schengen area. The ■ new Schengen area *safeguarding* mechanism *should permit* coordinated solutions to protect the interests of persons entitled to benefit from the area without internal border control, by maximising the effectiveness of the measures taken while minimising their negative side-effects.

(37) The new Schengen area safeguard mechanism should allow the Council to adopt, upon a proposal by the Commission, a decision authorising the temporary reintroduction or prolongation of border control at internal borders, where ***a large-scale public health emergency has been recognised at Union level***. Given the politically sensitive nature of such a decision which regulates the possibility for Member States to reintroduce or prolong border control at internal borders in particular circumstances, implementing powers to adopt a decision should be conferred on the Council, acting on a proposal from the Commission. ***That decision should include any appropriate mitigating measures.***

- (38) 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 this 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.
- (39) 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 ***large-scale public health emergency persists***. 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 whether border 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 ***threat to public health***. The Member States should immediately notify ***the European Parliament***, the Commission and the other Member States of the reintroduction of border control at internal borders in accordance with the decision of the Council.

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- (40) The reintroduction of border control 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 ***and the right to free movement***. In order to ensure that any decision to reintroduce border control is taken only where necessary, as a measure of last resort, the decision on temporary reintroduction or prolongation of border control should be based on common criteria, ***and be strictly necessary and proportionate***.
- (41) ***In accordance with the case-law of the Court of Justice of the European Union, a derogation from the fundamental principle of free movement of persons must 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.***

- (42) In the first instance, Member States should assess the appropriateness of temporary border control at internal borders having regard to the nature of the serious threat identified *as well as the appropriateness of alternative measures to pursue the same objectives as border control at internal borders, 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 the possibility to use the transfer procedure, or common measures regarding temporary travel restrictions*. In this context, the Member States should pay particular attention to and assess the likely impact of border control at internal borders on the movement of persons within the area without internal border control 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 the case of prolongation of border control at internal borders for foreseeable events beyond an initial period of six months, the Member State should also *carry out a risk assessment. That risk assessment should 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 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 border control at internal borders in order to maintain the principle of free movement*.

- (43) In order to limit harmful consequences resulting from the reintroduction of border control at internal borders, any decision to reintroduce border control at internal borders should be accompanied by mitigating measures ■ . 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 *could* also apply the existing guidelines on cross-border workers set out in the Communication from the Commission of 30 March 2020 entitled ‘Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak’. The rules for the reintroduction of border control at internal borders should, therefore, 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 border control at internal borders. 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.

- (44) 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 border control at internal borders. In order to ensure the *proper monitoring of border control that has been reintroduced at internal borders, and to improve the quality of the information it receives*, the Commission should adopt an implementing act to establish a template for the notification of reintroduction of border control at internal borders. Member States should *not be required to provide all the information in cases justified on public security grounds, taking into account the confidentiality of ongoing investigations. 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 ■ channels.
- (45) In order to ensure that border control at internal borders is truly a last resort measure applied only for as long as necessary and in order to allow for assessing the necessity and proportionality of border control at internal borders 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 border control at internal borders is prolonged beyond an initial *period of* 6 months in response to foreseeable threats. The Member States must in particular, explain, the scale and evolution of the identified serious threat, including how long the identified serious threat is expected to persist and which sections of the internal borders may be affected, *why alternative measures will not resolve the identified threat*, as well as their coordination measures with the other Member States that are impacted or likely to be impacted by border control at internal borders.

- (46) 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 ***request that Member State to complete its initial notification.***
- (47) ***At least once per year, the Commission should report to the European Parliament and to the Council jointly on the functioning of the area without internal border control ('State of Schengen report'). The Commission should be able to also discuss that report separately with the European Parliament and the Council [REDACTED]. The report should 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 border control reintroduced at internal borders. The report should pay particular attention to the border control that has been in place for longer than 12 months. It should also include an assessment of the necessity and proportionality of the reintroduction and prolongations of border control at internal borders in the period covered by that report as well as information on the trends within the area without internal border control as regards the unauthorised movements of third-country nationals, taking into account available information from the relevant Union agencies and data analysis from relevant information systems. The State of Schengen report should also cover the reporting obligations resulting from Article 20 of the Schengen Evaluation and Monitoring Mechanism.***

- (48) *The State of Schengen report should be accompanied by the report to be provided pursuant to Article 25 of Regulation (EU) 2022/922.*
- (49) The mechanism for the temporary reintroduction of border control 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. *A consultation should be organised by the Commission where a Member State directly affected so requests.* Relevant Union agencies should 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 practical arrangements for carrying out border control* at internal borders *and their duration*. Where the Commission or a Member State has issued an opinion expressing concerns regarding the reintroduction of border control, such consultations should be mandatory.

- (50) 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 border control at internal borders for reason of urgency or to address a foreseeable threat. Where internal border control is reintroduced and prolonged for foreseeable threats for combined periods exceeding **12 months**, the Commission should issue an opinion assessing the necessity and proportionality of such border control at internal borders. ***Where a Member State considers that there is a major exceptional situation justifying the continued need for border control at internal borders for a period exceeding 2 years, additional safeguards should be set in terms of risk assessment. The notification by the Member State concerned should include the measures it intends to adopt, in cooperation with other Member States where appropriate, enabling the threat to be addressed as well as a presentation of the means, actions, conditions and timeline considered with a view to lifting border control at internal borders as soon as possible in order for the principle of free movement to be maintained.*** ■ The Commission should in such a case issue a ***new*** opinion. ■ Such an opinion is without prejudice to the enforcement measures, including infringement actions, which the Commission, ***in its role as guardian of the Treaties***, should be able 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. ***Although in the area without internal border control a serious threat to public policy or internal security in a Member State is not necessarily limited in time, in order to maintain the principle of free movement, it is necessary to limit the maximum duration of border control at internal borders based on the same serious threat, which should not exceed 2 years. In exceptional circumstances and under certain conditions Member States should be able to prolong border control at internal borders for two further periods of six months. In any event, border control at internal borders based on the same serious threat should not exceed 3 years in total.***

- (51) In order to enable the ex post analysis of the decision on the temporary reintroduction of border control at 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 that border control. Where the controls are kept in place for prolonged periods of time, another such report should be submitted after 12 months, and again **12 months** thereafter if, exceptionally, controls are maintained ■ . The report should outline, in particular, the initial and follow-up assessment of the need for border control at internal borders and the respect of the criteria for reintroduction of ■ that border control. The Commission should adopt an implementing act to establish a template for such reports and make the template available online.
- (52) When implementing this Regulation, Member States are not to 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.
- (53) The competent authorities **referred to in this Regulation** should, **in all activities undertaken by them under this Regulation, including when using their powers to carry out checks, fully** respect ■ the rules on data protection under Union law. Regulation (EU) 2016/679 of the European Parliament and of the Council¹⁸ or Directive (EU) 2016/680 of the European Parliament and of the Council¹⁹ apply to the processing of personal data by competent national authorities for the purposes of this Regulation, in their respective field of application.

¹⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (*OJ L 119, 4.5.2016, p. 1*, ELI: <http://data.europa.eu/eli/reg/2016/679/oj>).

¹⁹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (*OJ L 119, 4.5.2016, p. 89*, ELI: <http://data.europa.eu/eli/dir/2016/680/oj>).

- (54) Since the objective of this Regulation, namely to strengthen the functioning of the Schengen area, cannot be sufficiently achieved by Member States acting alone, as an amendment of the common rules established at Union level is necessary, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (55) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

- (56) This Regulation constitutes a development of the provisions of the Schengen acquis, in which Ireland does not take part, in accordance with Council Decision 2002/192/EC²⁰; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (57) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen acquis²¹, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC²².

²⁰ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20, ELI: <http://data.europa.eu/eli/dec/2002/192/oj>).

²¹ OJ L 176, 10.7.1999, p. 36, ELI: [http://data.europa.eu/eli/agree_international/1999/439\(1\)/oj](http://data.europa.eu/eli/agree_international/1999/439(1)/oj).

²² Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31, ELI: <http://data.europa.eu/eli/dec/1999/437/oj>).

- (58) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis²³ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC²⁴.
- (59) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis²⁵ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU²⁶.

²³ OJ L 53, 27.2.2008, p. 52.

²⁴ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1, ELI: <http://data.europa.eu/eli/dec/2008/146/oj>).

²⁵ OJ L 160, 18.6.2011, p. 21.

²⁶ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19, ELI: <http://data.europa.eu/eli/dec/2011/350/oj>).

- (60) This Regulation is without prejudice to the application of Directive 2004/38/EC.
- (61) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter.
- (62) Regulation (EU) 2016/399 ■ should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2016/399 is amended as follows:

- (1) Article 2 *is amended* as follows:

- (a) point 12 is replaced by the following:

"12. 'border surveillance' means the surveillance of borders between ***border*** crossing points and ***the surveillance*** of border crossing points outside fixed opening hours, including preventative measures, ***to prevent or detect*** unauthorised border crossings or the circumvention of border checks, ***to contribute to raising situational awareness, to counter cross-border criminality and to take measures against persons who have crossed the border illegally***";

(b) the following points ■ are added:

"27. 'large-scale public health emergency' means a public health emergency, that is recognised at Union level by the Commission, taking into account information from competent national authorities, where a serious cross-border threat to health could have large-scale repercussions on the exercise of the right to free movement.

28. 'essential travel' means travel by a person who is exempted from restrictions on entry pursuant to Article 21a(4) or (5) , in connection with an essential function or need , taking into account any applicable international obligations of the Union and of the Member States ■ ;

29. 'non-essential travel' means travel other than essential travel;

30. 'transport hubs' means airports, sea or river ports, train or bus stations *and freight terminals.*";

(2) *in Article 5, the following subparagraph is added to paragraph 3:*

"Member States may, where a large number of migrants attempt to cross their external borders in an unauthorised manner, en masse and using force, take the necessary measures to preserve security, law and order."

(3) in Article 5, *the following* paragraph is added:

"4. *Member States may, in particular* in a situation of instrumentalisation of migrants *as referred to in Article 1(4), point (b) first sentence of Regulation (EU) .../... of the European Parliament and of the Council*⁺, *temporarily close, or limit* the opening hours of, *specific* border crossing points as notified pursuant to paragraph 1, second subparagraph of this Article, where the circumstances so require.

Any *measures* pursuant to the first subparagraph *of this paragraph and paragraph 3, second subparagraph of this Article*, shall be implemented in a manner that is proportionate and that takes full account of the rights of:

- (a) 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^{**}, persons deriving their right to reside from other instruments of Union or national law or who hold national *long-stay* visas, as well as their respective family members; *and*
- (c) third-country nationals seeking international protection.

* *Regulation (EU) .../... of the European Parliament and of the Council of ... addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 (OJ ...).*

** 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). ";

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 19/24 (2020/0277COD)) and insert the number, date and OJ reference of that Regulation in the asterisk footnote below this amending point.

(4) Article 13 is replaced by the following:

"Article 13

Border surveillance

1. The main purpose of border surveillance shall be to **prevent *or detect*** unauthorised border crossings, to ***contribute to raising situational awareness, to*** counter cross-border criminality and to take measures against persons who have crossed the border illegally. ***It shall also involve the carrying out of risk analyses. Without prejudice to Articles 3 and 4,*** a person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC.
2. The border guards shall use ***all necessary resources, including*** stationary or mobile units, to carry out border surveillance. Border surveillance shall be carried out in such a way as to prevent and discourage persons from unauthorised border crossings between border crossing points ***or*** from circumventing the checks at border crossing points, ***and shall be carried out in full compliance 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. It shall ***make use of situational pictures, to be better able to reduce the loss of lives of migrants at, along or in proximity of the external borders. It shall*** involve frequent and sudden changes to surveillance periods and other methods or techniques, in order to prevent or detect unauthorised border crossings effectively.

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 *is* to prevent unauthorised border crossings or to apprehend individuals *in connection with an unauthorised crossing of the external border*¹. Surveillance may also be carried out by using technical means, including electronic means, equipment, *surveillance systems and, where appropriate, all types of stationary and mobile infrastructure*.

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5. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 of this Regulation concerning additional measures governing surveillance, including the development of *common minimum* standards for border surveillance². *Those common minimum standards shall take* into account the type of borders, i.e. *land, sea or air borders*, the impact levels attributed to each external border section in accordance with Article 34 of ³ Regulation (EU) 2019/1896 of the European Parliament and of the Council* and other relevant factors, *such as geographical particularities*.

* 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, p. 1).

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- (5) Chapter V is renamed as follows: «Specific measures relating to the external borders»;
- (6) the following Article ■ is inserted:

"Article 21a

Temporary restrictions on travel to the Union

1. This Article shall apply to *large-scale public health emergencies*.
2. The Council, on the basis of a proposal by the Commission, may adopt an implementing Regulation providing for temporary restrictions on travel to the Member States *to be applied at the external borders*.

■ Temporary restrictions on travel may include temporary restrictions on entry to the Member States and *temporary health-related restrictions that are* necessary for the protection of public health in the area without internal border control■. *Those temporary healthrelated restrictions may include* testing, quarantine and self-isolation.

Temporary restrictions on travel to the Union shall be proportionate and non-discriminatory. Where a Member State adopts stricter restrictions than those laid down in the implementing act, those restrictions shall not have a negative impact on the functioning of the area without internal border control. Temporary health-related restrictions on persons enjoying the right of free movement under Union law shall comply with Directive 2004/38/EC at all times .

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, *including beneficiaries of international protection or persons* who hold national *long-stay* visas, as well as their respective family members.
4. Categories of persons listed in Annex XI, part A, *shall be exempted from restrictions on entry.*
5. *Any category of persons listed in Annex XI, part B, shall be exempted from restrictions on entry where that category is included in the implementing regulation referred to in paragraph 2.*

6. The implementing Regulation referred to in paragraph 2 shall, where appropriate:
- (a) *identify, where required by the nature of the large-scale public health emergency, the categories of persons undertaking [] essential travel listed in Annex XI, part B, to be exempted from [] restrictions on entry;*
 - (b) *determine* any geographical areas or third countries from which [] travel may be subject to restrictions or exemptions from restrictions, *and establish a procedure for the periodic review of the* situation of such areas or countries *and of the restrictions on travel imposed* on the basis of objective methodology and objective criteria, including, in particular, the epidemiological situation;
 - (c) lay down the conditions under which non-essential travel [] may be restricted or exempted 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) *refer to minimum temporary health-related restrictions to which persons referred to in paragraph 3, points (a) and (b), may be subject;*
 - (e) *by way of derogation from paragraphs 4 and 5* lay down the conditions under which travel restrictions may be imposed [] on persons undertaking essential travel [] ;

7. Restrictions on *entry to the Member States for persons undertaking* essential travel *shall be imposed only exceptionally, for a strictly limited period of time, until sufficient information about the large-scale public health emergencies* referred to in paragraph 1, *is available and until the Council, on a proposal by the Commission, identifies and adopts alternative health-related* restrictions *that are necessary to protect public health and that are to be applied to those persons,.."*;

(7) Article 23 is replaced by the following:

"Article 23

Checks within the territory

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 by national law, insofar as the exercise of those powers does not have an effect equivalent to border checks. ■ ***The exercise of such powers may include, where appropriate, the use of monitoring and surveillance technologies generally used in the territory for the purposes of addressing threats to public security or public policy.*** The exercise by competent authorities of their powers *shall* not, in particular, be considered equivalent to the exercise of border checks when the measures ***fulfil each of the following conditions:***
- (i) do not have border control as an objective;
- (ii) are based on general *police* information ***or, where the aim is to contain the spread of an infectious disease, on public health information,*** and the experience of the competent authorities regarding possible threats to public security or public policy and aim, in particular, to:
- combat cross-border crime;
 - ■ ***reduce illegal immigration;*** 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 that is clearly distinct from systematic checks on persons at the external borders, including where they are conducted at transport hubs or directly on board of passenger *transport* services and provided that they are based on *a risk assessment* ;

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- (b) the possibility for the competent authorities of a Member State or for carriers to carry out security checks on persons at transport hubs in accordance with national law ■ , 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 for third-country nationals to report their presence on its territory *and an obligation for managers of establishments providing accommodation to ensure that third-country nationals complete and sign registration forms, with the exception of accompanying spouses or accompanying minors or members of travel groups*, pursuant to the provisions of *Articles 22 and 45, respectively*, 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'). ";

(8) the following Article ■ is inserted:

"Article 23a

Procedure for transferring persons apprehended *in internal border areas*

1. ***Without prejudice to Article 22***, this Article *lays down the procedure for the transfer* of a third-country national *apprehended in border areas as referred to in Article 23*, in circumstances where ■ the following conditions are fulfilled:

■

- (a) the third-country national is apprehended *during checks involving the competent authorities of both Member States within the framework of bilateral cooperation, which may include*, in particular, joint police patrols, *provided that the Member States have agreed to use such a procedure within that bilateral cooperation framework; and*
- (b) there are clear indications that the third-country national has arrived directly from *the other Member State, and it is established that the third- country national has no right to stay on the territory of the Member State in which he or she has arrived*, 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.

The procedure laid down in paragraphs 1 and 2 shall not apply to applicants , as defined in Article 3, point (13) of Regulation (EU) .../... of the European Parliament and of the Council⁺ or to beneficiaries of international protection , as defined in Article 3, point (4) of Regulation (EU) .../... of the European Parliament and of the Council**⁺⁺.*

When transferring a third-country national who the transferring Member State presumes to be a minor, that transferring Member State shall inform the receiving Member State of that presumption and both Member States shall ensure that all measures are taken in the best interests of the child and in accordance with their respective national laws.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 16/24 (2016/0224A (COD)) and insert the number, date and OJ reference of that Regulation in the asterisk footnote below this amending point.

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223 (COD)) and insert the number, date and OJ reference of that Regulation in the asterisk footnote below this amending point.

2. *By way of derogation from Article 6(1) of Directive 2008/115/EC, the competent authorities of a Member State may, where the conditions laid down in paragraph 1 of this Article are met, decide to immediately transfer the third- country national concerned to the Member State from which the person arrived, in accordance with the procedure set out in Annex XII.*
3. *Third-country nationals apprehended in border areas and transferred under the procedure in this Article shall have the right to appeal. Appeals against the transfer decision shall be conducted in accordance with national law of the transferring Member State. Those third-country nationals shall be provided with an effective remedy in accordance with Article 47 of the Charter. A written indication of contact points able to provide information on representatives competent to act on behalf of those third-country nationals in accordance with national law shall also be given to them by the transferring Member State in a language that they understand or are reasonably supposed to understand. Lodging such an appeal shall not have suspensive effect.*
4. Where a *transferring* Member State applies the procedure referred to in paragraph 2, the receiving Member State shall be required to take all measures necessary to receive the third-country national concerned in accordance with the procedures set out in Annex XII. *All relevant provisions of Directive 2008/115/EC shall apply in the receiving Member State.*

5. *Member States shall define practical arrangements under their bilateral cooperation frameworks, including with a view to, as a rule, avoiding the use of the procedure referred to in this Article, in particular on the sections of the internal borders where border control has been reintroduced or prolonged.*
6. *The procedure laid down in this Article is without prejudice to existing bilateral agreements or arrangements as referred to in Article 6(3) of Directive 2008/115/EC.*

7. From [] ...[one year from the date the entry into force of this amending Regulation] [] and annually thereafter, Member States shall submit to the Commission the data recorded in accordance with Annex XII, part A, point 4 [] .

* *Regulation (EU) .../... of the European Parliament and of the Council of ... establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ ...).*

** *Regulation (EU) .../... of the European Parliament and of the Council of ... on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU (OJ ...).";*

- (9) [] the first paragraph of Article 24 is replaced by the following:

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

(10) Article 25 is replaced by the following:

"Article 25

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

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

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

- (a) ***terrorist incidents or threats, and threats posed by serious*** organised crime ■ ;
- (b) large-scale public health emergencies;
- (c) ***an exceptional*** situation characterised by ***sudden*** large-scale unauthorised movements of third-country nationals between the Member States, ***putting a substantial strain on the overall resources and capacities of well-prepared competent authorities and which is likely to put*** at risk the overall functioning of the area without internal border ***control, as evidenced by information analysis and all available data, including from relevant Union agencies;***
- (d) large scale or high profile international events ■ ;

2. *In all cases, border control at internal borders shall be reintroduced only 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.*

Border control may only be reintroduced 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, where such control is prolonged, also taking into account the risk assessment referred to in Article 26(2). Border control may also be reintroduced in accordance with Article 29, taking into account the criteria referred to in Article 30.

3. Where the same serious threat persists, border control at internal borders may be prolonged in accordance with Articles 25a ■ or 29, *or, where the threat relates to large-scale public health emergencies, Article 28.*

The same *serious* threat shall be considered to persist where the justification put forward by the Member State for prolonging border control is based on the *same grounds as those* that justified the initial reintroduction of the border control.";

(11) the following Article is inserted:

"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. At the same time as reintroducing border *control* at internal borders under paragraph 1 of this Article, the Member State shall notify *the European Parliament, the Council*, the Commission and the other Member States of the reintroduction of border control, in accordance with Article 27(1).
3. Where a Member State reintroduces border *control* at internal borders under paragraph 1, the border control shall remain in place no longer than 1 month. If the serious threat to public policy or internal security persists for longer than that period, the Member State may prolong border control at internal borders for further periods, up 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 ***European Parliament, the Council, the Commission*** and the ***other Member States*** in accordance with Article 27(1), at the latest 4 weeks before the planned reintroduction of border control, or ***as soon as possible*** where the circumstances giving rise to the need to reintroduce border control at internal borders become known to the Member State less than 4 weeks before the planned reintroduction.
5. ***Where*** paragraph 4 ***of this Article applies***, and without prejudice to paragraph 6, 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 6 months. Any prolongation shall be notified to the ***European Parliament, the Council and the Commission*** and the other Member States in accordance with Article 27 and within the time limits referred to in paragraph 4 of this Article. Subject to paragraph 6 of this Article, the maximum duration of border control at internal borders shall not exceed 2 years.

6. *Where a Member State considers that there is a major exceptional situation with regard to a persisting serious threat justifying the continued need for border control at internal borders in excess of the maximum period referred to in paragraph 5 of this Article it shall notify the European Parliament, the Council and the Commission and the other Member States of its intention to prolong internal border control for an additional period of up to 6 months.. That notification shall be made at the latest 4 weeks before the planned prolongation and, taking into account the opinion of the Commission issued pursuant to Article 27a(3) , shall include a risk assessment in accordance with Article 26(2):*
- (a) substantiating the continued threat to public policy or internal security;*
 - (b) substantiating that alternative measures to remedy the threat are deemed or have been found to be ineffective at the time of the notification;*
 - (c) presenting the mitigating measures considered to accompany the border control at internal borders;*
 - (d) including, where appropriate, a presentation of the means, actions, conditions and timeline considered with a view to lifting the border control at internal borders.*

Within 3 months after the notification referred to in the first subparagraph, the Commission shall issue a new opinion on the necessity and proportionality of the prolongation of border control at internal borders. Following the receipt of that notification, the Commission may, on its own initiative, or shall, at the request of the Member State directly affected, start a consultation process, in accordance with Article 27a(1).

Where, in a major exceptional situation, the continued need for border control at internal borders is confirmed as a result of the procedure referred to in this paragraph, but the additional period of 6 months referred in the first subparagraph is not sufficient to ensure the availability of effective alternative measures to address the persisting threat, a Member State may decide to prolong border control at internal borders for a further and final additional period of up to 6 months, in line with the risk assessment as referred to in the second subparagraph. Where a Member State decides to do so, it shall notify the Commission without delay of its intention to prolong its border control at internal borders. The Commission shall adopt without delay a recommendation on the compatibility of such a final prolongation with the Treaties, in particular with the principles of necessity and proportionality. That recommendation shall also identify, where appropriate with other Member States, the effective compensatory measures to be implemented."

(12) Article 26 is replaced by the following:

"Article 26

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

1. To establish whether the reintroduction of border control at internal borders is necessary and proportionate in accordance with Article 25(2), a Member State shall in particular *assess*:
 - (a) the appropriateness of the measure of reintroducing border control at internal border, having regard to the nature of the serious threat identified and in particular, whether the reintroduction of border control at internal borders is likely to adequately remedy the threat to public policy or internal security *and whether the objectives pursued by such reintroduction could be attained by*:
 - (i) *the use of alternative measures such as proportionate checks carried out in the context of checks within the territory as referred to in Article 23, point (a);*
 - (ii) *the use of the procedure laid down in Article 23a;*
 - (iii) *other forms of police cooperation provided for under Union law;*
 - (iv) *common measures regarding temporary restrictions on travel to the Member States as referred to in Article 21a(2);*
 - (b) the likely impact of such a measure on:
 - i) *the* movement of persons within the area without internal border *control*; and
 - ii) the functioning of the cross-border regions, taking into account the strong social and economic ties between them.

2. Where border *control at internal borders has been in place for 6 months in accordance with* Article 25a(5), *the Member State concerned shall carry out a risk assessment, which, in addition to the elements contained in Article 27, paragraphs 2 and 3, shall also include a reassessment of the criteria laid down in paragraph 1 of this Article.*

3. Where border control at internal borders has been reintroduced or prolonged, the Member States concerned shall ensure that it is accompanied by appropriate measures that mitigate the impact resulting from the reintroduction of border control on persons and the transport of goods, giving particular consideration to the *strong social and economic ties between* cross-border regions, *and to persons undertaking essential travel.*";

(13) Article 27 is replaced by the following:

"Article 27

Notification of temporary reintroduction or prolongation of border control at internal borders and risk assessment

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

- (e) the **assessment of** 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 other Member States.

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

Member States shall *submit the notification using* the template to be established by the Commission pursuant to paragraph 6.

2. Where border control has been in place for 6 months in accordance with Article 25a(5), any subsequent notification for the prolongation of such control shall include a risk assessment. The risk assessment shall present the scale and anticipated evolution of the serious threat, in particular how long the 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 the border control at internal borders.
3. Where **Member States reintroduce or prolong border control because of a situation** referred to in Article 25(1) point (c), **the assessment required by paragraph 1, point (e), of this Article** shall also **include a risk assessment and information on the sudden large-scale** unauthorised movements, including any information obtained from the relevant Union agencies in line with their respective mandates and data analysis from relevant information systems.

4. The Member State concerned shall upon request, provide the Commission 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 shall not be required to provide all the information referred to in paragraphs 1 to 4 of this Article in cases justified on public security grounds, taking into account the confidentiality of ongoing investigations.*** 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, ***in particular the risk assessments***. Such classification shall not preclude access to information, through appropriate and secure channels, by the other Member States affected by the temporary reintroduction of border control at internal borders. ***Such classification shall not preclude information from being made available by the Member States to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament under this Article shall not include the risk assessments referred to in paragraph 2 and shall comply with rules concerning the forwarding and handling of classified information.***
6. ***The Commission shall adopt an implementing act to establish the template referred to in the third subparagraph of paragraph 1 of this Article and shall make the template available online. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2)."***

(14) the following Article is inserted:

"Article 27a

Consultation with the Member States and opinion of the Commission

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

The objective of the consultation *shall be to examine* in particular the threat to public policy or internal security, the *necessity and proportionality* of the intended reintroduction of border control, at the internal borders taking into account the appropriateness of alternative measures, and, if border control has already been reintroduced, *the impact thereof*, as well as the ways of ensuring implementation of the mutual cooperation between the Member States in relation to the reintroduction of border control at internal borders.

The Member State planning to reintroduce or prolong border control at internal borders shall take *into* account the results of such consultation *when deciding whether to reintroduce or prolong border control at internal borders 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 control at internal borders, the Commission *shall*, or any 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 control at internal borders for **12** months in total, the Commission shall issue an opinion on the necessity and proportionality of such border control.

The opinion of the Commission shall include at least:

- (a) *an assessment of whether the reintroduction or prolongation of border control at internal borders complies with the principles of necessity and proportionality;*
- (b) *an assessment of whether alternative measures to remedy the serious threat were sufficiently explored;*

Where the reintroduction of border control at internal borders is assessed and is considered to respect the principles of necessity and proportionality, the opinion shall contain recommendations, where appropriate, on the improvement of the cooperation between Member States in order to limit the impact of border control at internal borders and contribute to the reduction of the persisting threat.

4. Where an opinion referred to in 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. **■** ";

■

- (15) Article 28 is replaced by the following:

"Article 28

Specific mechanism where *a large-scale* public *health emergency* puts at risk the overall functioning of the area without internal border control

1. Where the Commission establishes that there is a *large-scale* public *health emergency that affects several* Member States, putting at risk the overall functioning of the area without internal border *control*, it may make a proposal to the Council to adopt an implementing decision authorising the reintroduction of border control by Member States, *including any appropriate mitigating measures to be established at national and Union level*, where the available measures referred to in Articles *21a and 23* are not sufficient to address the *large-scale public health emergency. The Member States may request the Commission to submit such a proposal to the Council.*

2. The Council implementing decision referred to in paragraph 1 shall cover a period of up to 6 months and may be renewed, upon proposal from the Commission, for further periods of up to 6 months as long as the ***large-scale public health emergency*** persists, taking into account the review referred to in paragraph 4.
3. Where Member States reintroduce or prolong border control because of the ***large-scale public health emergency*** referred to in paragraph 1, that border control shall, as of the entry into force of the Council implementing decision referred to in paragraph 1, be based on that decision.

■

4. The Commission shall ***regularly*** review the evolution of the ***large-scale public health emergency*** as referred to in paragraph 1, as well as the impact of the measures adopted in accordance with the Council implementing decision referred to in that paragraph, with a view to ***assessing*** whether those measures remain justified ***and if not, to proposing the lifting of border control at internal borders as soon as possible.***
5. Member States shall immediately notify ***the European Parliament, the Council,*** the Commission and the other Member States ■ of a reintroduction of border control in accordance with the decision referred to in paragraph 1.
6. ***Member States may take*** other measures, as referred to in ***Article 23, in order to limit the scope of*** border control at internal borders. ***The Commission shall take those measures into account in the review*** referred to in paragraph 4 of this ***Article.***";

■

(16) Article 33 is replaced by the following:

"Article 33

Report on the reintroduction of border control at internal borders

1. Within 4 weeks of the lifting of border control at internal borders, Member States which have carried out border control 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 paragraph 1, where border control are prolonged as referred to in Article 25a(5), the Member State concerned shall submit a report at the expiry of 12 months and ■ 12 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 control, *the fulfilment* of the criteria referred to in Articles 26, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting impact on the *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 *an implementing act to establish* a uniform format for such report and shall make it available online. *That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).*
5. The Commission may issue an opinion on that ex-post assessment of the temporary reintroduction of border control at one or more internal borders or at parts thereof.
6. *At least once per year*, the Commission shall **report** to the European Parliament and to the Council *jointly* on the functioning of the area without internal border control ■ (the 'State of Schengen report'. *The Commission may also discuss the State of Schengen report separately with the European Parliament and the Council.* 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 the reintroduction of border control at internal borders. The report shall pay particular attention to border control that has been in place for longer than 12 months. It shall also include* an assessment of the necessity and proportionality of the reintroduction *and prolongations* of border control in the period covered by that report *as well as information on the trends within the area without internal border control as regards the unauthorised movements of third-country nationals, taking into account available information from the relevant Union agencies and data analysis from relevant information systems."*

(17) *Article 36 is replaced by the following:*

"Article 36

Amendments to the Annexes

1. *The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning amendments to Annexes III, IV and VIII.*
2. *The Commission shall be empowered to adopt delegated acts in accordance with Article 37 to supplement this Regulation by adding in Annex XI, part B, categories of persons undertaking essential travel.*
3. *Where, in duly justified cases, regarding the nature of the large-scale public health emergency, imperative grounds of urgency so require, the procedure provided for in Article 37a shall apply to delegated acts adopted pursuant to paragraph 2 of this Article.";*

(18) *the following Article is inserted:*

"Article 37a

Urgency procedure

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

(19) in Article 39 (1), the following point is added:

"h) *the* areas considered as ■ cross-border regions and any relevant changes thereto.";

(20) the following Article is inserted:

"Article 42b

Notification of cross-border regions

By ...[6 months from the entry into force of this amending Regulation] ■ , *all* Member States *with common internal borders* shall, *in close cooperation, determine* the areas of their territory considered as ■ cross-border regions, *taking into account the strong social and economic ties between them, and notify the Commission thereof.*

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

- (21) The text set out in the Annex to this Regulation is added as Annexes XI and XII to Regulation (EU) 2016/399.:

Article 2

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

■

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

Done at ,

For the European Parliament

For the Council

The President

The President

ANNEX

"ANNEX XI

Essential Travel

PART A

Categories of persons referred to in Article 21a(4) :

1. Healthcare professionals, health researchers and elderly care professionals;
2. Frontier workers;
3. Transport personnel;
4. 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;
5. Passengers in transit;
6. Passengers travelling for imperative family reasons;
7. Seafarers;
8. Persons in need of international protection or needing to enter for other humanitarian reasons.

PART B

Categories of persons referred to in Article 21a (5) :

- 1. children in early childhood education and care and pupils in education in a neighbouring country and their guardians who accompany them, who cross the border for the purpose of receiving such education, as well as students or persons travelling for educational purposes;***
- 2. seasonal workers, including food producing workers;***
- 3. persons travelling for compelling reasons of animal care or for measures necessary for agriculture and forestry in individual cases;***
- 4. highly qualified workers as well as key and scientific staff whose employment is necessary from an economic, societal and security perspective and whose work cannot be postponed or performed abroad;***
- 5. personnel of the public authorities for defence, public policy, public health and national security - i.e. police staff , border police, immigration, public health, civil protection departments etc. or representatives of law enforcement authorities, if the travel is related to the performance of official duties, including personnel responsible for operating and maintaining critical infrastructure;***

6. *fishermen and persons performing work or providing services on ships or offshore mining and drilling platforms, based on an employment relationship other than a maritime employment contract;*
7. *persons entering the Member State for the purpose of receiving essential medical services, including occupants of emergency vehicles;*
8. *spouses (married, civil partner, cohabiting partner) and children of an essential traveller, including third-country nationals traveling for family reunification;*
9. *third- country nationals traveling to respond to a summons by a judicial authority;*
10. *persons in possession of an International Press Card issued by the International Federation for Journalists;*
11. *care-dependent persons travelling to their care-takers;";*

ANNEX XII

PART A

Procedure for transferring persons apprehended *in internal border areas*

1. **Transfer** decisions *pursuant to Article 23a(2)* shall *be issued by means of a standard form, as set out in Part B of this Annex, completed by the competent national authority*. They shall take effect immediately.
2. ■ The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the **transfer** decision by signing the form and shall be given a copy of the signed form.

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

3. The national authorities issuing a **transfer** decision shall record the *data on the standard form set out in Part B of this Annex*.

■

4. The national authorities issuing a *transfer* decision shall *inform the Commission yearly on the number of persons transferred to other Member States, indicating the Member State(s) to which the persons were transferred, grounds for finding that those persons had no right to stay in the Member State and, where available, the nationality of the third-country nationals apprehended.*



5. *Third-country nationals apprehended in border areas and transferred under this procedure* shall have the right to appeal. Appeals *against the transfer decision* shall be conducted in accordance with national law. *The third-country nationals shall be provided with an effective remedy in accordance with Article 47 of the Charter.* 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* national *authorities* shall ensure that the third-country national subject to a *transfer* decision is transferred, *in the framework of bilateral cooperation as referred to in Article 23a, paragraph 1(a)*, to the competent authorities of the *receiving* Member State. *The transfer shall take place immediately and within 24 hours at the latest. After that, the transfer procedure cannot take place and the relevant provisions of the Directive 2008/115/EC shall apply where appropriate.* The competent national authorities of the *receiving* Member State shall cooperate with the competent national authorities of the *transferring* Member State to that end.

I

PART B

Standard form for transferring persons apprehended *in internal border areas*



Name of State

Logo of State (Name of Office)

TRANSFER PROCEDURE *IN* INTERNAL BORDER *AREAS*

On _____ at (time) _____ at the location (indicate type of the internal border nearby or other relevant information related to the apprehension *in accordance with Article 23a of the Schengen Borders Code*) _____

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 _____ will be transferred to _____ pursuant to *Article 23a of the Schengen Borders Code* :

Grounds for finding that a person *has no right to stay* in the _____ Member _____ State _____ :

Comments

☐ The person concerned declined to sign the form.

Person Concerned _____

Responsible *authorities*

The person concerned may appeal against the *transfer in accordance with* national law. The person concerned receives a copy of this document (*each State must indicate the references to the national law and procedure relating to the right of appeal as well as contact points able to provide information on representatives competent to act on behalf of the third-country national*).

cc