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) (codification)

REGULATION (EU) 2016/399 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(codification)

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)(b) and (e) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) Regulation (EC) No 562/2006 of the European Parliament and of the Council[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) The adoption of measures under Article 77(2)(e) of the Treaty on the Functioning of the European Union (TFEU), with a view to ensuring the absence of any controls on persons crossing internal borders, forms part of the Union's objective of establishing an area without internal frontiers in which the free movement of persons is ensured, as set out in Article 26(2) TFEU.

(3) In accordance with Article 67(2) TFEU, the creation of an area in which persons may move freely is to be flanked by other measures. The common policy on the crossing of external borders, as provided for by Article 77(1)(b) TFEU, is such a measure.

(4) Common measures on the crossing of internal borders by persons and border control at external borders should reflect the Schengen *acquis* incorporated in the Union framework, and in particular the relevant provisions 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[(4)] and the Common Manual[(5)].

(5) Common rules on the movement of persons across borders neither call into question nor affect the rights of free movement enjoyed by Union citizens and members of

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their families and by third-country nationals and members of their families 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.

(6) Border control 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. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.

(7) Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.

(8) Border control comprises not only checks on persons at border crossing points and surveillance between those border crossing points, but also an analysis of the risks for internal security and of the threats that may affect the security of external borders. It is therefore necessary to set out the conditions, criteria and detailed rules governing checks at border crossing points and surveillance at the border, including checks in the Schengen Information System (SIS).

(9) It is necessary to provide for rules dealing with the calculation of the authorised length of short-term stays in the Union. Clear, simple and harmonised rules in all legal acts dealing with this issue would benefit both travellers as well as border and visa authorities.

(10) Since only a verification of fingerprints can confirm with certainty that a person wishing to enter the Schengen area is the person to whom the visa has been issued, provision should be made for the use at external borders of the Visa Information System (VIS) provided for under Regulation (EC) No 767/2008 of the European Parliament and of the Council[(6)].

(11) In order to verify whether the entry conditions for third-country nationals laid down in this Regulation are fulfilled and to manage their tasks successfully, border guards should use all necessary information available, including data which may be consulted in the VIS.

(12) In order to prevent circumvention of border crossing points where the VIS may be used and to guarantee its full effectiveness, there is a particular need to use the VIS in a harmonised way when entry checks are carried out at the external borders.

(13) Since in cases of repeated visa applications it is appropriate for biometric data to be reused and copied from the first visa application in the VIS, use of the VIS for entry checks at the external borders should be compulsory.

(14) The use of the VIS should entail a systematic search in the VIS using the number of the visa sticker in combination with a verification of fingerprints. However, given the potential impact of such searches on waiting times at border crossing points, it should be possible, for a transitional period by way of derogation and in strictly defined

circumstances, to consult the VIS without a systematic verification of fingerprints. Member States should ensure that this derogation is used only where the conditions therefor are fully met and that the duration and frequency of application of this derogation is kept to a strict minimum at the individual border crossing points.

(15) It should be possible to have checks at external borders relaxed in the event of exceptional and unforeseeable circumstances in order to avoid excessive waiting time at border crossing points. The systematic stamping of the documents of third-country nationals remains an obligation in the event of border checks being relaxed. Stamping makes it possible to establish, with certainty, the date on which, and where, the border was crossed, without establishing in all cases that all required travel document control measures have been carried out.

(16) In order to reduce the waiting times of persons enjoying the Union right of free movement, separate lanes, indicated by uniform signs in all Member States, should, where circumstances allow, be provided at border crossing points. Separate lanes should be provided in international airports. Where it is deemed appropriate and if local circumstances so allow, Member States should consider installing separate lanes at sea and land border crossing points.

(17) Member States should ensure that control procedures at external borders do not constitute a major barrier to trade and social and cultural interchange. To that end, they should deploy appropriate numbers of staff and resources.

(18) Member States should designate the national service or services responsible for border-control tasks in accordance with their national law. Where more than one service is responsible in the same Member State, there should be close and constant cooperation between them.

(19) Operational cooperation and assistance between Member States in relation to border control should be managed and coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States ('the Agency'), established by Council Regulation (EC) No 2007/2004[(7)].

(20) This Regulation is without prejudice to checks carried out under general police powers and security checks on persons identical to those carried out for domestic flights, to the possibilities for Member States to carry out exceptional checks on baggage in accordance with Council Regulation (EEC) No 3925/91[(8)], and to national law on carrying travel or identity documents or to the requirement that persons notify the authorities of their presence on the territory of the Member State in question.

(21) In an area where persons may move freely, the reintroduction of border control at internal borders should remain an exception. Border control should not be carried out or formalities imposed solely because such a border is crossed.

(22) 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. In an area without internal border control, it is necessary to have a common response to situations seriously affecting the public policy or internal security of that area, of parts thereof, or of one or more Member States, by allowing for the temporary reintroduction of internal border

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control in exceptional circumstances, but without jeopardising the principle of the free movement of persons. Given the impact that such measures of last resort may have on all persons having the right to move within the area without internal border control, the conditions and procedures for reintroducing such measures should be provided for, in order to ensure that they are exceptional and that the principle of proportionality is respected. The scope and duration of any temporary reintroduction of such measures should be restricted to the bare minimum needed to respond to a serious threat to public policy or internal security.

(23) As free movement of persons is affected by the temporary reintroduction of internal border control, any decision to reintroduce such control should be taken in accordance with commonly agreed criteria and should be duly notified to the Commission or be recommended by a Union institution. In any case, the reintroduction of internal border control should remain an exception and should only be effected as a measure of last resort, for a strictly limited scope and period of time, based on specific objective criteria and on an assessment of its necessity which should be monitored at Union level. Where a serious threat to public policy or internal security requires immediate action, a Member State should be able to reintroduce border control at its internal borders for a period not exceeding ten days. Any prolongation of that period needs to be monitored at Union level.

(24) The necessity and proportionality of reintroducing internal border control should be balanced against the threat to public policy or internal security triggering the need for such reintroduction, as should alternative measures which could be taken at national or Union level, or both, and the impact of such control on the free movement of persons within the area without internal border control.

(25) The reintroduction of internal border control might exceptionally be necessary in the case of a serious threat to public policy or to internal security at the level of the area without internal border control or at national level, in particular following terrorist incidents or threats, or because of threats posed by organised crime.

(26) Migration and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security.

(27) 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.

(28) Based on the experience gathered with respect to the functioning of the area without internal border control and in order to help ensure the consistent implementation of the Schengen *acquis*, the Commission may draw up guidelines on the reintroduction of internal border control in cases which require such a measure on a temporary basis and in cases where immediate action is needed. Those guidelines should provide clear indicators to facilitate the assessment of the circumstances that could constitute serious threats to public policy or internal security.

(29) Where serious deficiencies in the carrying out of external border control are identified in an evaluation report drawn up pursuant to Council Regulation (EU) No 1053/2013[(9)] and with a view to ensuring compliance with the recommendations adopted pursuant to that Regulation, implementing powers should be conferred on the Commission to recommend that the evaluated Member State take specific measures, such as deploying European border guard teams, submitting strategic plans or, as a last resort and taking into account the seriousness of the situation, closing a specific border crossing-point. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(10)]. In the light of Article 2(2)(b)(iii) of that Regulation, the examination procedure is applicable.

(30) The temporary reintroduction of border control at certain internal borders under a specific Union-level procedure could also be justified in the case of exceptional circumstances and as a measure of last resort where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control identified in the context of a rigorous evaluation process in accordance with Articles 14 and 15 of Regulation (EU) No 1053/2013, where those circumstances would constitute a serious threat to public policy or internal security in that area or in parts thereof. Such a specific procedure for the temporary reintroduction of border control at certain internal borders could also be triggered, under the same conditions, as a result of the serious negligence by the evaluated Member State of its obligations. In view of the politically sensitive nature of such measures which touch on national executive and enforcement powers regarding internal border control, implementing powers to adopt recommendations under that specific Union-level procedure should be conferred on the Council, acting on a proposal from the Commission.

(31) Before any recommendation on the temporary reintroduction of border control at certain internal borders is adopted, the possibility of resorting to measures aiming to address the underlying situation, including assistance by Union bodies, offices or agencies, such as the Agency or the European Police Office ('Europol'), established by Council Decision 2009/371/JHA[(11)], and technical or financial support measures at national level, Union level, or both, should be fully explored in a timely manner. Where a serious deficiency is detected, the Commission may provide financial support measures to help the Member State concerned. Moreover, any Commission and Council recommendation should be based on substantiated information.

(32) The Commission should have the possibility to adopt immediately applicable implementing acts where, in duly justified cases relating to the need to prolong border control at internal borders, imperative grounds of urgency so require.

(33) The evaluation reports and the recommendations referred to in Articles 14 and 15 of Regulation (EU) No 1053/2013 should form the basis for the triggering of the specific measures in the case of serious deficiencies relating to external border control and of the specific procedure in case of exceptional circumstances putting the overall functioning of the area without internal border control at risk provided for in this Regulation. The Member States and the Commission jointly conduct regular, objective