

PRAB: Policy Note IV

Reshaping Europe's Space: Does the Schengen Border Code's Reform undermine people (on the move)'s fundamental rights?



**Protecting Rights
at Borders**

The PRAB initiative gathers partner organisations operating across eight countries in Europe: Belarus ([Human Constanta](#)); Bosnia and Herzegovina ([Danish Refugee Council \(DRC\) BiH](#)); Greece ([Greek Council for Refugees \(GCR\)](#) and [DRC Greece](#)); Italy ([Associazione per gli Studi Giuridici sull'Immigrazione \(ASGI\)](#); [Diaconia Valdese \(DV\)](#) and [DRC Italy](#)); Lithuania ([Diversity Development Group](#) and [Sienos Grupė](#)); North Macedonia ([Macedonian Young Lawyers Association \(MYLA\)](#)); Poland ([Stowarzyszenia Interwencji Prawnej \(SIP\)](#)); Serbia ([Humanitarian Center for Integration and Tolerance \(HCIT\)](#)); and Belgium ([DRC Brussels](#)).



This project has been supported by the European Philanthropic Initiative for Migration (EPIM), a collaborative initiative of the Network of European Foundations (NEF). The sole responsibility for the project lies with the organiser(s) and the content may not necessarily reflect the positions of EPIM, NEF or EPIM's Partner Foundations.

1. INTRODUCTION: THE GRADUAL EROSION OF THE SCHENGEN AREA OF FREE MOVEMENT

1.1 Reintroduction of Border Controls from 2015 to 2024

Since 2015, several European member states have reinstated internal border controls as a response to alleged threats of terrorism and irregular migration. Germany, Austria, and Slovenia started in September 2015, followed by France, Hungary, Sweden, Norway, Denmark, and Belgium. During the pandemic, border controls were reintroduced for health reasons, and in October 2023, Italy and the Netherlands reintroduced controls citing alleged terrorist threats. Despite the long duration of the reinstated controls – which in some EU member states have been in place for nearly nine years without interruption - the European Commission has not taken decisive action to condemn or end them.

1.2 National and European Jurisprudence on Internal Border Controls

The reintroduction of internal border controls and the practices of readmission and expulsion have been reviewed by national and international courts. In Italy, the Civil Court of Rome ruled in [two cases](#) on the illegality of chain pushbacks to Bosnia [and](#) of the readmission of an unaccompanied minor seeking asylum in Greece. In Austria, the Regional Administrative Court of Styria ruled that a Moroccan national's expulsion to Bosnia was illegal under a bilateral readmission agreement with Slovenia. In France, administrative courts have [upheld](#) appeals against refusals of entry issued by the French police at the Italy-France border.

At the international level, the Court of Justice of the European Union, in its April 26, 2022, ruling (case [NW](#)), clarified that the reintroduction of border controls to address a serious internal security threat must be an exception and only applied as a last resort. The Court concluded that reintroducing controls could not extend beyond six months without new evidence of threats to public order and security, and the same threat cannot be used again. The Court ruled that the Austrian government's extension of controls beyond the two years was incompatible with the Schengen Borders Code (SBC), as no new threats were presented. The Court also found the request to show identity documents and the imposition of administrative penalties to be unlawful if based on a reintroduction of border controls deemed inconsistent with the SBC.

More recently, the Court of Justice addressed expulsions at internal borders during the reintroduction of controls ([Case C-143/2022, judgment of September 21, 2023](#)). It ruled that while refusals of entry under art. 14 Schengen Borders Code could be applied, they must respect the Return Directive (2008/115/EC). Decisions refusing entry can, thus, not be used by States to derogate to key principles of the said Directive. Including the last resort nature of coercive measures; the duty to suspend or postpone removal, pending appeal if there is a risk of chain refoulement, or concerns about the individual's physical, or mental condition.

The European Court of Human Rights has also ruled on readmission practices, such as the cases [A.E. and others v. Italy](#) (November 16, 2023), regarding transfers from Ventimiglia to Taranto, and [H.T. v. Greece and Germany](#) (October 15, 2024), regarding automatic returns from Germany to Greece following the "Seehofer agreement." These rulings highlight how human rights violations at external borders are mirrored at internal borders.

This document aims to analyze crucial aspects of the Schengen Borders Code reform, approved by Regulation (EU) 1717/2024 in June 2024 and implemented in its modified version from July 2024. By putting these reforms within the progressive erosion of the free movement. The analysis focuses on provisions with possible serious consequences for persons on the move. This report is intended to provide some practical guidance on how to raise awareness of likely rights violations and possible ways (interpretations and legal avenues) to help prevent these negative

consequences, especially in view of the coming reforms linked to the legal framework on the external and internal borders.

2. SITUATIONS OF CRISIS, INSTRUMENTALIZATION, AND EXTERNAL SURVEILLANCE

Relevant Provisions:

Article 5: *Crossing of External Borders*

Article 13: *Border Surveillance*

2.1 Introduction

From 2021, the need to develop tools for crisis management and to counter the instrumentalization of migrants by third countries has been affirmed in [several legislative proposals and mechanisms](#) aimed at “ensuring an immediate and appropriate response to hybrid threats.” Certain changes to the new SBC are to be conceived as one of such mechanisms.

2.2 Crisis Situations and the Instrumentalization of Migration in EU Law: Definitions and Mechanisms

Article 5 of the SBC establishes that external borders may only be crossed at designated border crossings and during established opening hours, with some exceptions. If the external border is crossed without authorization outside of these crossing points and times, Member States may impose “effective, proportionate, and dissuasive” sanctions, respecting their international protection obligations (Article 5 §§1-3). Regulation 2024/1717 modifies Article 5 to allow “measures necessary to preserve security, law and order” where “a large number of migrants attempt to cross external borders without authorization, in mass, and using force” (Article 5 § 3, paragraph 2), including the temporary closure of specific border crossings or their restricted opening in cases of migrant instrumentalization, as defined in Article 1§4(b) of Regulation (EU) 2024/1359 on crisis and force majeure situations in migration and asylum.

Art. 5 §3 of the new SBC thus introduces the power of Member States to adopt exceptional measures to prevent access to European territory in two situations: 1) the unauthorized mass arrival of a high number of third-country nationals and 2) the “instrumentalisation of migrants.” Such extraordinary powers have already been exercised in the past by EU Member States in high-risk border situations, such as the collective attempts to cross the Spanish borders at the Ceuta and [Melilla](#) enclaves, where deaths, disappearances and controversial pushback practices have been reported.

The phrasing “a large number of migrants attempt to cross [...] external borders in an unauthorised matter, en masse and using force” echoes terms used by the European Court of Human Rights in the landmark *N.D. and N.T. v. Spain* case, [which negatively shaped](#) the Court's jurisprudence on collective expulsions at land borders.

The situation of instrumentalisation is defined at art. 1§ 4 (b), Regulation (EU) 2024/1359 and refers to cases “where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security”. The Regulation identifies instrumentalisation and the aforementioned case of “mass arrivals of unauthorised third Country nationals” as crisis or force majeure events, distinguishing them from other situations where Member States face significant migration pressures but are not subject to the same exceptional responses, which

include the derogation of key procedural guarantees and, consequently, the effective enjoyment of human rights of the third country nationals concerned.

The notions of “mass arrival” and of “instrumentalisation” remain notably vague and given their large cross-reference in many new legal instruments concerning EU border management, it is likely and predictable that these concepts will be extensively interpreted by EU institutions and Member States as an easy justification to limit freedom of movement, including in the cases foreseen at art. 5 § 3 and 4 SBC, as the recent “Belarusian border crisis” has shown.

2.3 Interconnections Between Crisis Situations, Instrumentalisation, and Border Surveillance

The amendments introduced to the SBC regarding “instrumentalisation of migrants” do not simply grant EU Member States an exceptional power of temporary closure of border crossings or limiting their opening times (Article 5 § 4), being instead part and parcel of a multidimensional system of border management.

Article 13 SBC outlines the concept of “border surveillance”, which is brought to include, together with “traditional” border control activities, preventive measures and tools for improving situational awareness (art. 13 §1), *inter alia* through the reliance on advanced technologies such as drones, sensors, and mobile units (art. 13 §4). This proactive and intelligence-based approach largely relies on the gathering of information, often in collaboration with neighboring third countries, which in turn is included in “situational pictures” (art. 13 §3) aimed at predisposing effective reactive measures.

These include also the border checks on persons disciplined at art. 8 SBC, which can be intensified where necessary and can be conducted in a targeted way following a previous risk analysis.

The role of the European Border and Coast Guard Agency (Frontex) is central to this framework, as a coordinator and re-elaborator of information useful to implement border surveillance and reaction measures. Frontex will be key in ensuring that surveillance technologies are integrated into border control strategies of national authorities in a coordinated way.

In implementing this new legal framework, Member States will need to enhance their border infrastructure, train personnel on new procedures, and implement advanced monitoring systems. The financial and organisational challenges of this implementation are not to be underestimated, also in terms of balancing security needs with maintaining legitimate cross-border movements.

2.4 Increased Use of Technology in Border Surveillance and the Risk of Racial Profiling

The expansion of border surveillance tools in the revised Article 13 introduces concerns about discrimination, particularly the risk of racial profiling. These tools, including drones, motion sensors, and other technologies, can be used for generalised surveillance. One of the most concerning aspect of this technological shift is the increased reliance on artificial intelligence and automated decision-making systems, which can embed and amplify existing biases.

Such technologies may disproportionately affect racialized communities, exacerbating discriminatory patterns already present in traditional border control practices. The use of AI in border surveillance creates a new dimension of ethnic profiling, potentially leading to systemic and pervasive discrimination. The regulation, while expanding surveillance capabilities, lacks specific safeguards to prevent discriminatory use of these technologies. This regulatory gap is particularly troubling given the opacity of automated decision-making processes and the difficulty of subjecting them to effective democratic or judicial scrutiny.

The proportionality of the measures, closely related to the SBC, is another critical issue, particularly concerning the reinstatement of border controls, as analyzed in Chapter 5. The requirement for measures to be “strictly necessary” will require case-by-case assessments, with potential interpretive discrepancies among Member States and EU institutions.

3. POLICE CONTROLS AT THE BORDERS: DISCRETION, UNCERTAINTY, AND RISKS OF ETHNIC PROFILING

Relevant Provisions:

- Art. 2: *Definitions*
- Art. 7: *Conducting Border Checks*
- Art. 8: *Border Checks on Persons*
- Art. 22: *Crossing of Internal Borders*
- Art. 23: *Checks within the Territory*
- Art. 26: *Criteria for the Temporary Reintroduction and Extension of Border Checks at Internal Borders*

3.1 Amendments to Article 23 of the SBC

The absence of checks on individuals at internal borders, regardless of their nationality (Article 22 SBC), is a cornerstone of the Schengen system. Over the past decade, the Schengen area has become increasingly fragmented, not only due to the gradual reintroduction of internal border controls but also the growing use of police checks and cross-border cooperation, as [repeatedly suggested](#) by the European Commission.

Amendments to the SBC aim to strengthen the use of alternative measures to reintroduce border controls, applying only as a last resort. While these changes do not formally alter non-discrimination principles or the limits on profiling (Articles 4 and 7), they risk fostering discriminatory and selective practices based on physical characteristics previously observed in individuals.

Article 23 SBC states that “*the absence of border controls at internal borders shall not affect 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*”. Due to the ambiguity of the concept of “*effect equivalent to border checks*,” the Court of Justice of the European Union (CJEU) has intervened [several](#) times to provide clarifications, particularly regarding the legitimacy of police checks near internal borders aimed not at combating cross-border crime but at controlling irregular immigration.

The CJEU has clarified the concept of “equivalent measure” and the necessary limits to be set by national law to reduce discretion. It has [affirmed](#) that police operations near internal borders aimed at combating irregular immigration are legitimate [as long as](#) they are based on general information and experiences related to illegal residence and subject to limitations on intensity, frequency, and selectivity.

The revised Article 23 reaffirms the legitimate exercise of police powers at the border under national law, provided that they fulfil specific objectives that can be pursued through checks

within territories, which now include the objective of reducing irregular immigration. The revised rule is problematic as, while still excluding the possibility of conducting systematic police checks at the border, it no longer regulates sample checks and allows for the use of monitoring technologies based on risk assessments, potentially increasing the scope for discriminatory practices and expanding the role of European border agencies.

3.2 Police Controls at Internal Borders and the Risk of Profiling

Although the legislative amendments maintain the principle of non-discrimination, they introduce elements that may facilitate the consolidation of already existing discriminatory practices. Article 23 and Article 8, which respectively relate to internal and external border checks, grant authorities' significant discretion in conducting such checks. This discretionary power, especially in the absence of national provisions that limit the intensity, frequency, and selectivity of border checks, could lead to illegitimate practices based on ethnic or racial characteristics. The objectives outlined in the regulation, particularly combating irregular immigration and transnational crime, may justify systematic checks on specific communities, leading to both direct and indirect discrimination. Article 23 does not require authorities to justify the checks, nor does it establish monitoring mechanisms to detect discriminatory patterns. Additionally, there is no obligation for authorities to provide documents explaining the reasons for selecting individuals for checks.

The rule does not introduce specific safeguards against discretionary risk, such as an independent monitoring system for discriminatory behaviors during police controls, which are often conducted in locations not accessible to the public, reducing transparency. Article 23 a), which addresses the transfer of foreigners intercepted near internal borders, further amplifies the risks associated with the first part of Article 23. The urgency of executing checks, the vague criteria for identifying potential subjects, and the discretion involved highlight the potential for discriminatory and unlawful application.

Focus: Ethnic Profiling in Police Controls at the Ventimiglia Railway Station

The risks outlined in the previous paragraphs are practically reflected in the context of the Ventimiglia border area, particularly at the railway station between late 2021 and early 2022. During this period, various local groups documented how controls were mainly targeted at individuals with apparent migratory backgrounds and submitted a report to the Committee on the Elimination of Racial Discrimination (CERD). The [data collected](#) showed that over 97% of police interventions were directed towards people of "migrant origin". These checks often involved requests for not only identity and residence documents but also passports and travel tickets, blurring the line between police and border checks. The experience in Ventimiglia, along with controls in [other internal border areas](#), demonstrated that checks are not limited to the immediate border zones but extend along the entire railway route, including at departure stations. The amendments to Article 23 SBC effectively legalize existing practices, as they permit both authorities and carriers to conduct security checks not only at ports and airports but also at transport hubs, in accordance with national legislation.

Finally, an issue of persistent relevance concerns the execution of police checks on individuals in cases where internal border controls are not reinstated. The ECJ has [examined](#) the legitimacy of checks carried out by carriers which were obliged under national legislation to check passengers' documents before crossing an internal border. The Court reaffirmed that this kind of checks must comply with the rules of the SBC. However, the "new" SBC strengthens carriers' autonomy in executing security checks without imposing safeguards against discriminatory behavior or requiring data collection on the checks conducted.

4. THE NEW PROCEDURE FOR THE TRANSFER OF PERSONS APPREHENDED ON INTERNAL BORDER ZONES

Relevant provisions

- Art. 22: *Crossing of internal borders*
- art. 23a: *Procedure for transferring persons apprehended in internal border areas*
- Annex XII

As is well known, according to Article 22 SBC '*Internal borders may be crossed at any point without a border check being carried out on persons, irrespective of their nationality.*'

Nevertheless, since 2015, several Member States have resorted to simplified and informal return procedures to manage migration flows at internal borders. Some have done so on the basis of the reintroduction of internal border controls, others have resorted to bilateral readmission agreements. In most cases, returns or summary readmissions have resulted in unlawful refoulement, either because they have entailed a violation of the right to apply for asylum or because the removal has violated the principle of non-refoulement or the prohibition of collective expulsions.

The new Article 23a implements a procedure for the transfer of third-country nationals apprehended '*in the vicinity of the internal border*', in effect formalizing the practices followed by some states in recent years and often judged by national and supranational courts to be illegitimate. The new procedure contains some guarantees, but at the same time does not clarify several aspects which remain controversial.

However, this transfer procedure should only apply exceptionally and not be the ordinary way of border management. The transfer procedure is therefore only possible as an alternative to the reintroduction of border controls (as the Commission has often stated). It should be implemented if there are clear indications that the third-country national has arrived directly from the other Member State. 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, based on 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.

Regarding the subjective scope, the transfer procedure can concern anyone who is '***found in border areas***': **there are no exceptions neither for minors nor for persons in a vulnerable condition**. However, there is no burden to assess whether the transfer itself is contrary to the best interests of the child (as Article 3 of the Convention on the Rights of the Child foresees it). It is then expressly stated in the regulation that this procedure '***does not apply to asylum seekers***': in reality, however, it is known that in the past most transfers/returns have involved persons intending to apply for asylum who were denied this right.

Moreover, the transfer procedure cannot be applied to foreign nationals coming directly from non-EU States, nor to persons intercepted outside of controls carried out jointly by the competent authorities of bordering Member States within the framework of bilateral cooperation.

In essence, the Commission has strongly promoted the use of alternative measures to avoid new border blockades in the Schengen area, and these alternative measures include the Article 23a procedure. [The fact that the instrument is to be considered, precisely, as an alternative, implies](#)

[that States cannot proceed with it when border controls are in force](#): in this case, a transfer can never be carried out and if the authorities intercept a foreign person in an irregular condition, the State will have to adopt a return decision under the Return Directive (as already clarified with respect to the previous reference framework by the Court of Justice).

In accordance with the regulation, States are then required to detail more precisely the 'practical modalities' of police cooperation, on the basis of which the transfer procedure may possibly be activated.

As to the modalities of the procedure, there are some indications in Article 23a itself and more details in Annex XII to the regulation. According to the latter, '*transfer orders shall be notified using the standard form in Part B of the Annex*'.

The annex and Article 23a(3) stipulate that transfer orders may be challenged '*in accordance with national law*', but according to a judicial procedure that must guarantee an '*effective remedy in accordance with Article 47 of the Charter*'.

Furthermore, the annex specifies that the appeal against the transfer does not have suspensive effect, and that the **procedure must be completed within 24 hours**: after that time, the State will be obliged to follow the expulsion procedure generally applicable, under Directive 2008/115, on the territory.

The rule does not indicate where the person will be held while awaiting transfer (within 24 hours), it is assumed that he/she will be detained at the premises of the border police, but this would still constitute detention. If the proceedings last longer than 24 hours, and the person is detained, the measure of deprivation of liberty will necessarily have to be communicated to the judicial authority.

Finally, it is stipulated that the transfer procedure is without prejudice to '*existing bilateral agreements or arrangements referred to in Article 6(3) of Directive 2008/115*'.

Focus: Border Management at the Italian-Slovenian Border (2020-2024): From Informal Readmissions to Border Controls

The management of the Italian-Slovenian border has undergone significant transformations since 2020, marked by legal challenges, policy shifts, and evolving cooperation mechanisms. Initially, Italy relied on informal readmission procedures based on a 1996 agreement with Slovenia. This approach faced a decisive turning point in January 2021 when the Civil Court of Rome [declared](#) these informal readmissions illegal, mainly targeting asylum seekers, citing violations of fundamental asylum rights and incompatibility with the Dublin Regulation.

This judicial intervention prompted a substantial shift in border management strategies. The immediate impact of the decision was evident in the impressive reduction of readmissions, with only six individuals readmitted to Slovenia throughout 2021. In response to these limitations, Italian authorities pivoted towards enhanced police cooperation mechanisms. By July 2021, a new system of mixed patrols was established, comprising ten monthly joint patrol services strategically distributed between both countries.

The year 2022 marked a period of technological enhancement and renewed challenges. In January, authorities invested in surveillance infrastructure, purchasing 65 camera traps to create what was termed a "technological wall" along the border. This initiative coincided with a significant increase in arrivals via the Balkan route during the summer and autumn months,

attributed to policy changes at the Bosnia Herzegovina-Croatia border and political transitions in Slovenia. The rising numbers of arrivals pushed the Italian government to intensify, once more, cross-border police cooperation. This enhanced collaboration proved significant, with authorities reporting the prevention of 1,900 unauthorized entries in 2023. December 2022 saw an attempted revival of informal readmissions, though with limited success - only 23 successful readmissions out of 190 requests, with Slovenian authorities largely rejecting cases due to insufficient evidence of prior passage through their territory.

As a consequence of the failure of readmission policies, a pivotal development occurred in October 2023 with Italy's decision to reintroduce internal border controls under Article 28 of the Schengen Border Code. What began as a temporary ten-day measure has been repeatedly extended, with the latest extension in December 2024 prolonging controls for six months. This measure is particularly noteworthy as it represents precisely the type of border management approach that the new transfer provision in Article 23a of the revised Schengen Border Code aims to prevent, offering alternative mechanisms - such as the transfer procedure - for managing migration flows without resorting to internal border controls.

The most recent phase of border management, initiated in November 2023, has seen further enhancement of police cooperation through the establishment of Mixed Brigades of Police Forces and the creation of police coordination centers involving Italy, Slovenia, and Croatia. This development reflects a growing emphasis on trilateral cooperation in addressing irregular border crossings.

5. THE REINTRODUCTION OF INTERNAL BORDER CONTROLS

Relevant provisions

- Art. 25: *General framework for the temporary reintroduction or prolongation of border control at internal borders*
- Art. 25a: *Procedure for cases requiring action due to unforeseeable or foreseeable events*
- Art. 26: *Criteria for the temporary reintroduction and prolongation of border control at internal borders*
- Art. 27: *Notification of temporary reintroduction or prolongation of border control at internal borders and risk assessment*
- Art. 27a: *Consultation with the Member States and opinion of the Commission*
- Art. 28: *Specific mechanism where a large-scale public health emergency puts at risk the overall functioning of the area without internal border control*
- Art. 29: *Specific procedure where exceptional circumstances put the overall functioning of the area without internal border control at risk*

5.1 General prerequisites allowing the reintroduction of border controls

Member State	Date of first introduction (since september 2015)	Number of renewals and/or prorogations	Last renewal/pro rogation	Valid until
--------------	---------------------------------------------------	----------------------------------------	---------------------------	-------------

Italy	21.10.2023	8 times	19.12.2024	18.06.2025 (pending)
Austria	16.10.2015	64 times	12.11.2024	11.05.2025 (pending)
Denmark	04.01.2016	23 times	12.11.2024	11.05.2025 (pending)
France	13.11.2015	20 times	01.11.2024	30.04.2025 (pending)
Germany	13.10.2015	47 times	12.11.2024	15.03.2025 (pending)
Norway	26.11.2015	41 times	12.11.2024	15.11.2024
Netherlands	09.12.2024	1 time		08.06.2025 (pending)
Poland	04.07.2016	15 times	02.02.2024	02.03.2024
Czech republic	14.03.2020	19 times	04.01.2024	02.02.2024
Slovakia	08.04.2020	9 times	24.12.2023	22.01.2024
Slovenia	16.10.2015	10 times	22.12.2024	21.06.2025 (pending)
Sweden	12.11.2015	22 times	12.11.2024	11.05.2025 (pending)

The reform of the SBC has partly changed the preconditions, allowing the reintroduction of border controls. The introductory recitals to the text of the reform state that the reintroduction of internal border controls *'has serious implications for the functioning of the Schengen area and the right to free movement'* and can therefore only be allowed when it is ***'necessary and as a measure of last resort'***. The decision to temporarily reintroduce or extend border control should be strictly necessary and proportionate. Furthermore, States should put in place alternative measures, such as intra-territorial controls (near borders) or the activation of relocation procedures (*see chapter 4*), before resorting to the reintroduction of controls, with regards to the threat posed by the movement of migrants between Member States.

Article 25 SBC considers the possibility that the Member State may unilaterally reintroduce controls 'in all or specific parts of its internal borders'. This can only occur when there is a serious threat to public order or internal security. As anticipated, according to the case law of the Court of Justice, the concept of serious threat must be interpreted restrictively (see [Tsakouridis case, C-145/09](#)). Article 25 SBC itself, however, indicates certain conditions that may integrate the concept of 'serious threat', referring 'in particular' to cases of:

- (a) terrorist attacks or threats, and threats made by serious forms of organised crime;
- (b) large-scale public health emergencies;
- (c) an exceptional situation characterised by sudden large-scale unauthorised movements of third-country nationals between Member States, which 'puts a strain on the overall resources and capabilities of well-prepared competent authorities and which could jeopardise the overall functioning of the area without internal border control' as demonstrated by the analysis of information and all available data, including from relevant Union agencies;
- (d) major or high-profile international events;

Under the new rules, the reintroduction of controls for unauthorised movements of migrants is only permissible if the other means provided for in the regulation are not sufficient to counteract such influxes and movements: a circumstance that must be proven by the state concerned.

The measure to reintroduce controls can only be considered proportionate when the State can prove that the movements are:

- sudden and on a large scale
- such as to jeopardise *'the overall resources and capabilities of well-prepared authorities'*

- such as to jeopardise the entire functioning of the Schengen area.

The subsequent Article 26 clarifies and expands, compared to the previous wording, the criteria on the basis of which the necessity and proportionality of the choice to introduce or extend internal border controls are to be assessed.

5.2 Duration and extension of checks

The duration of border checks is governed by the combined provisions of Articles 25 and 25a: under the latter rule, introduced in 2024, the duration differs depending on whether the Member State is faced with a serious threat of an ‘unforeseeable’ nature and requiring ‘immediate action’, or a ‘foreseeable’ threat.

In the first case, the controls may begin immediately and have an initial duration of 1 month and may be extended for up to 3 months if the serious threat to public order and internal security persists; at the time the controls are introduced, the state must immediately notify the European Parliament, the Council, the Commission and the other states.

In the second case, the State is obliged to notify the same bodies within 4 weeks before the reintroduction of controls, or as soon as possible, and once the measure has been activated, it may last up to 6 months. Possible extensions can be made from 6 months to 6 months, for a maximum duration of no more than 2 years. In fact, there is a further possibility of a 6-month extension when the state ‘considers that a serious exceptional situation exists in relation to a serious and persistent threat’. Any extension must be communicated by the Member State concerned to the European Parliament, the Council, the Commission and the other Member States. The Commission has to take a decision within 3 months, as well as to conduct an assessment on the reasonableness of the decision or on the necessity and proportionality of the prolongation of border control at internal borders.

In any event, on the basis of Article 25(2), checks at internal borders may only be reintroduced if the Member State concerned has established that the measure is necessary and proportionate in the light of the criteria set out in Article 26 above, and in the case of prolongation of the check, also taking into account the risk assessment (26(2) and 27(2) and (3)).

Type of threat	Initial duration of controls	Possible extensions	Notification mode to EP, Council, EC, MS	Maximum term
Unpredictable	no more than 1 month	no more than 3 months	At the time of introduction	3 months
Predictable	6 months	6 month	4 weeks before introduction	2 years (but possibility of further extension by 6 months)
Predictable AND persistent	6 months	Every 6 months up to 2 years + further extensions of 6 months + 6 months	4 weeks before introduction and then, after 2 years, 4 weeks before extension, containing detailed risk assessment	3 years (2 years + 1 year)

The reform of the rules on the reintroduction of controls shows the will to strengthen the role of the EU institutions, in order to limit the persistent lack of coordination between Member States in the Schengen area and the proliferation of the reintroduction of border controls. Therefore, a new Article 27 bis SBC is introduced, which regulates a communication and coordination mechanism between the European Commission and the Member States, which can be activated by the Commission after receiving notification from the State about the reintroduction/extension of controls. The mechanism provides for 'joint meetings' with the State concerned, other States possibly involved in the measure, and the relevant EU agencies.

The new Article 28 SBC regulates a specific mechanism in the event of a large-scale public health emergency endangering the overall functioning of the area without internal border control.

The subsequent Articles 29 and 30, which regulate the specific procedure to be adopted and the criteria for the temporary reintroduction of border control at internal borders in the event of exceptional circumstances jeopardising the overall functioning of the area without internal border control respectively, have not been amended by the new European Regulation. Nonetheless, for a complete analysis of the issue it is useful to analyze these provisions further.

Article 29 in fact provides for the possibility of reintroducing checks at internal borders for a maximum period of six months in the event of exceptional circumstances where the overall functioning of the area without internal border control is put at risk as a result of serious and persistent deficiencies in border control at external borders within the meaning of Article 21, and insofar as these circumstances constitute a serious threat to public policy or internal security in the area without internal border control or parts thereof. This period may be extended no more than three times, for up to a further six months, if the exceptional circumstances persist.

The Article 29 procedure was activated by the Council, on the basis of a Commission proposal, for the first time on 12 May 2016. On that occasion, the Council recommended some of the Member States (Austria, Denmark, Germany, Norway and Sweden) most affected by the secondary movements of migrants from Greece to reintroduce controls at specific parts of their internal borders, those particularly affected by secondary movements of migrants. The recommendation was renewed three times until [11 November 2017](#).

Art. 30 SBC, on the other hand, provides for the criteria to be assessed by the Council when recommending Member States to make use of the procedure for the reintroduction of controls provided for in Art. 29 and discussed above.

Overall, while a strong preference for alternative measures is established, this is not accompanied by any real incentives for Member States that could prevent them from reintroducing internal border controls. Objective proof of this is certainly the fact that as of September 2024, as outlined above, several Member States have already communicated their willingness to reintroduce or extend internal border controls, without any real assessment of the necessity and proportionality of the choice, as well as of the merits of the assumptions.

CONCLUSIONS - 2025: another year on the border

The practice at the EU internal borders in recent years has unfortunately shown that EU Member States are not afraid to systematically reintroduce the EU internal borders and call the entire Schengen system into question. This frequently equaled the systematic violation of third country national's rights. When implementing the new SBC provisions, it is now important to ensure that they are implemented in accordance with European and international human rights law and the EU's moral and legal obligations in relation to asylum and migration, preventing further undermining of the EU Schengen area.

The risk of further violations of human rights is, however, very high.

PRAB partners call :

for:

- monitoring implementation of new SBC in particular the use of technology in border surveillance and security and police checks at internal borders;
- identifying and reporting rights' violations and discriminatory practices in the implementation of new SBC;
- promoting positive practices (e.g. specific trainings) in order to encounter the risk of ethnic profiling;
- create accountability and pathways to justice especially in the context of borders' control and transfer procedures.

The SBC reform manifests the distorted objective of preventing further closures of EU Member States' internal borders through the promotion of more policed, surveilled and informatised frontiers, intended to prevent and deflect the arrival and intra-EU movement of third country nationals. This approach poses the burden of a waning mutual trust among European Countries on the shoulders of one of the most vulnerable categories of EU rights bearers (third country nationals), and opens the door to a surge of further violations of fundamental individual liberties at the Union's borders. The active prevention, monitoring and adjudication of the effects of this hostile policy are more than ever key to safeguard the primacy of human rights in the EU.

