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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 December 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 463 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document 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

Delegations will find attached document SWD(2021) 463 final.

Encl.: SWD(2021) 463 final

EUROPEAN COMMISSION

18.05.2021

SEC(2021) 440

REGULATORY SCRUTINY BOARD OPINION

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) 891}

{SWD(2021) 462, 463}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Amendment of the Schengen Borders Code

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The Schengen Borders Code specifies the conditions under which Member States can introduce temporary checks at their internal borders in cases of serious threats to public policy or internal security. Such border checks should be exceptional and temporary. However, in the context of the refugee crisis, the increased threat from terrorism and especially the COVID-19 crisis, the reintroduction of checks at internal borders has become more widespread. This can have negative economic and social impacts.

In 2017, the Commission made a proposal to amend the Schengen rules. Given the absence of agreement on this proposal and the developments in the Schengen area since then, the Commission intends to withdraw its 2017 proposal. It will table a new one that better corresponds to the current needs.

This proposal will accompany a Communication on a Schengen Strategy and a parallel proposal to reform the Schengen evaluation mechanism.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report provides insufficient evidence on the strengths and weaknesses of the current key measures of the Schengen Borders Code.

(2) The description of the policy options and the implementation choices is too vague.

(3) The analysis of impacts is not sufficiently developed.

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should begin by describing the main elements of the 2017 proposal. It should explain the lessons learnt from the negotiations and how the COVID-19 crisis has brought in new perspectives. It should also indicate the room for manoeuvre that the negotiations left for this initiative and how it is reflected in the policy options.

(2) The report should provide more evidence on the effectiveness of internal border controls and alternative measures to such controls. It should explain what lessons can be drawn from past introductions of internal border controls (in particular during the COVID-19 crisis) and why existing coordination mechanisms failed. It should also clarify how it assesses the proportionality of internal border controls vis-à-vis alternative measures. The report should better explain the observed coordination deficiencies of the Integrated Policy Crisis Response mechanism during the COVID-19 pandemic.

The report should describe the content of the policy options more in detail, including the preferred policy option. It should describe how the policy options will be implemented and what the different choices (sub-options) for this implementation are. In particular, it should set out how the new coordination mechanism and contingency planning would work and how the institutional decision process and its temporal framework would function. It should be clear about how effective enforcement will be ensured.

(4) The report should go beyond a purely qualitative impact analysis and present quantitative data wherever possible. It should further specify the benefits of lifting internal border controls, possibly distinguishing between sectors. The report could draw from past efforts of calculating the cost of non-Schengen. It could also refer to anecdotal evidence or case studies (while clearly marking them as such), for example for the administrative costs. The report should also be more explicit about the possible risks of alternative measures for fundamental rights and explain how such risks can be contained. For the comparison of the policy options, the comparative tables should be in line with the accompanying text.

(5) Stakeholders' views should be reflected throughout the report. In particular, the report should transparently report diverging views and address potential concerns on the policy options, implementation choices and impacts.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables. It invites the DG to update it in the final report with further quantitative estimates, as requested above.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG may proceed with the initiative.

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Proposal for a Regulation of the European Parliament and the Council amending the Schengen Borders Code to reinforce Schengen governance

Reference number	PLAN/2020/8753
Submitted to RSB on	19 April 2021
Date of RSB meeting	12 May 2021

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Reducing hurdles to persons and goods moving in the Schengen area	Citizens and other authorised persons can move freely in the Schengen area without unnecessary hurdles without being subject to the long-lasting border checks in response to abstract threat or border checks reintroduced as a first aid measure Exact data not available –benefits largely correspond to savings in terms of time spent when crossing the internal borders	This will allow for truly achieving one of the objectives set out in the Treaty on European Union: Article 3(2) *The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime*
Indirect benefits		
Reviving cross-border labour market	Exact data not available	Benefits will result from saving of time for the cross-border workers, reduction of risk of absenteeism and avoiding that workers get reluctant to seek cross-border employment (business perspective)
Reviving Single Market	Exact data not available	Undisturbed supply chains, taking full potential of cross-border exchange and consumption
Limiting the costs related to the lack of predictability in the crisis situation	Exact data not available	Business and self-employed may expect minimum standards and common rules to apply also in the crisis situation. Carriers may expect uniform rules applicable with regard to carriers liability at the external borders in relation to the application of travel restriction for non-essential travel to the EU by the third country nationals

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Contingency planning for Schengen (including the rules on mitigating measures)	Direct costs	-	-	-	-	-	-
	Indirect costs	-	-	-	-	-	-
Reintroductions of border checks are truly last resort measure; other compensatory measures are privileged	Direct costs	-	-	-	-	-	Costs of preparation of risk assessment and regular reporting
	Indirect costs	-	-	-	-	-	
Uniform application of travel restrictions at the external borders	Direct costs	-	-	-	-	-	-
	Indirect costs	-	-	-	-Limitation of prospects for tourist destinations relying on third country nationals	-	-

Electronically signed on 18/05/2021 10:50 (UTC+02) in accordance with article 11 of Commission Decision C(2020)4482