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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft 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 **(first reading)** - Adoption of the legislative act = Statements

Statement by Spain

Schengen is one of the most tangible results of the European Union integration process and thus, one of the most visible and fundamental assets of the Union recognised as such by our citizens. Hence, Spain deems that every amendment to the Schengen Borders Code needs to be proportionate in order to preserve the essence of the Schengen space and to maintain the integrity of the Schengen acquis.

The reform of the Schengen Borders Code remains of key importance to provide the common area without internal borders with the necessary measures and tools to preserve the freedom of movement, while ensuring that the common area is secure.

In this regard, Spain has repeatedly expressed its concern and opposition to some of the key provisions of the proposal.

Firstly, because of the increased possibilities for reintroducing internal border controls and the duration of this measure. Respecting the principle of necessity and proportionality is not just a matter of setting a precise date for the abolition of internal border controls. It is above all, as the Court of Justice of the EU has repeatedly pointed out, about ensuring that the principle of the free movement of persons is not jeopardised and about providing a common response to situations that seriously affect public order or internal security. Spain considers the time limits for the prolongation of the internal border controls provided for in the amendments are disproportionate in terms of the extension and will have a negative impact in the normal functioning of the Schengen area as well as in the mutual trust between the Member States.

Secondly, Spain considers that the procedure for transferring persons apprehended in border areas (article 23a) is meant to avoid the need to resort to the reintroduction of internal border controls. Therefore, concerning paragraph 5 of article 23a Spain considers that the transfer procedure shall only be possible in cases where internal border controls have not been reintroduced. The nature of this procedure as an alternative, not a complementary measure, to the reintroduction of internal border controls should not be decided on a bilateral basis. It should instead be part of a common understanding and harmonised implementation across the EU based on the principle that the temporary reintroduction of internal border controls should be exceptional and used only as a last resort. Against this backdrop, Spain will not be in a position to agree to use such procedure in a bilateral cooperation framework in cases where internal border controls have been reintroduced. Moreover, this transfer procedure is to be regarded as one of various alternative measures at the disposal of Member States to improve mutual cooperation. Thus, it shall by no means be a pre-condition for lifting internal border controls by a Member State and shall always be based on the mutual acceptance by both concerned Member States. Finally, Spain considers the amendments do not provide for the necessary safeguards to apply the transfer procedure to unaccompanied minors.

Spain recalls the application and interpretation of the Regulation must be in accordance with the Treaties and the settled CJEU case law, particularly clear in recent judgments in 2022 and 2023.

Spain is therefore abstaining on the confirmation of the agreement regarding the Regulation of the European Parliament and the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders.

Statement by Slovenia

The Republic of Slovenia acknowledges the need of amending the Regulation (EU) 2016/399 with the aim to boost the resilience of the Schengen Area and to adapt the existing rules to new and developing challenges. We appreciate the efforts made by the Spanish and Belgian Presidencies in reaching a political agreement with the European Parliament, particularly as regards the foreseen measures at EU's external borders. However, we consider that the final compromise text (doc. ST 6331/24) does not provide the necessary or sufficient assurances that the rules on the temporary reintroduction of border controls would in fact contribute to remedying the current state of Schengen and ultimately improve the integrity of our common area.

Slovenia welcomes that the provisional agreement on the general framework for the (unilateral) temporary reintroduction and prolongation of internal border controls contains certain important safeguards to ensure that this truly remains an exceptional measure, proportionate to the identified serious threat and used as a last resort. In the spirit of compromise, we also did not oppose to the inclusion of a serious threat to public policy or internal security arising from large-scale unauthorised movements of third country nationals as possible grounds for the reintroduction of internal border controls. However, Slovenia is of the opinion that the framework could be more ambitious and ensure a more robust governance of the Schengen area through the involvement of the Council of the EU in the procedure, as this could contribute to mutual trust between the Member States.

At the same time, while it is positive that the maximum time limits are set for unilateral reintroductions of internal border controls (in foreseeable events), Slovenia maintains that the maximum possible duration of three years is too long. In our belief, two years is a sufficiently long period to efficiently address the serious threat that has led to the reintroduction of controls in the first place by using alternative measures, including those introduced or improved within this new regulation, and by enhancing police cooperation between the neighbouring Member States. Furthermore, while the provisional agreement does take into the consideration the CJEU judgement of 26 April 2022 in joined cases C-368/20 and C-369/20, whereby the same serious threat could not present the grounds for prolongation of the measure beyond three years, we retain our main concern that there are no sufficient guarantees that the long-lasting internal border controls – the situation we are facing today – would be completely phased out or prevented in the future (but could rather continue, albeit with a possible short-term lifting of the measure).

With a view of the above, the Republic of Slovenia is therefore abstaining on the final compromise text for an agreement 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*.

Statement by the Commission

Article 23a and Annex XII of the Schengen Borders Code establish a transfer procedure between Member States concerning irregularly staying third country nationals apprehended in border areas.

These provisions also establish the modalities for such a transfer procedure which can be applied by Member States on a voluntary basis within a bilateral cooperation framework.

While respecting the principles and conditions set out in Article 23a, Member States could, within this bilateral cooperation framework, envisage that in certain situations the transfer procedure could be used at the time of the reintroduction of internal border controls if justified in view of the local circumstances and on the basis of risk analysis.

The bilateral cooperation framework could also contain arrangements as to the form of involvement of competent national authorities in the checks carried out in the border areas for the purposes of the transfer procedure. It could also include arrangements for information sharing between the competent national authorities so that all the relevant national authorities are kept up to date on the checks being conducted in this framework, in particular when they are not physically present during such checks.