

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)

TITLE II

EXTERNAL BORDERS

CHAPTER I

Crossing of external borders and conditions for entry

Article 5

Crossing of external borders

1 External borders may be crossed only at border crossing points and during the fixed opening hours. The opening hours shall be clearly indicated at border crossing points which are not open 24 hours a day.

Member States shall notify the list of their border crossing points to the Commission in accordance with Article 39.

2 By way of derogation from paragraph 1, exceptions to the obligation to cross external borders only at border crossing points and during fixed opening hours may be allowed:

- a for individuals or groups of persons, where there is a requirement of a special nature for the occasional crossing of external borders outside border crossing points or outside fixed opening hours, provided that they are in possession of the permits required by national law and that there is no conflict with the interests of public policy and the internal security of the Member States. Member States may make specific arrangements in bilateral agreements. General exceptions provided for by national law and bilateral agreements shall be notified to the Commission pursuant to Article 39;
- b for individuals or groups of persons in the event of an unforeseen emergency situation;
- c in accordance with the specific rules set out in Articles 19 and 20 in conjunction with Annexes VI and VII.

3 Without prejudice to the exceptions provided for in paragraph 2 or to their international protection obligations, Member States shall introduce penalties, in accordance with their national law, for the unauthorised crossing of external borders at places other than border crossing points or at times other than the fixed opening hours. Those penalties shall be effective, proportionate and dissuasive.

Article 6

Entry conditions for third-country nationals

1 For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay, the entry conditions for third-country nationals shall be the following:

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- a they are in possession of a valid travel document entitling the holder to cross the border satisfying the following criteria:
 - (i) its validity shall extend at least three months after the intended date of departure from the territory of the Member States. In a justified case of emergency, this obligation may be waived;
 - (ii) it shall have been issued within the previous 10 years;
- b they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001⁽¹⁾, except where they hold a valid residence permit or a valid long-stay visa;
- c they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;
- d they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;
- e they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.

2 For the purposes of implementing paragraph 1, the date of entry shall be considered as the first day of stay on the territory of the Member States and the date of exit shall be considered as the last day of stay on the territory of the Member States. Periods of stay authorised under a residence permit or a long-stay visa shall not be taken into account in the calculation of the duration of stay on the territory of the Member States.

3 A non-exhaustive list of supporting documents which the border guard may request from the third-country national in order to verify the fulfilment of the conditions set out in paragraph 1 (c) is included in Annex I.

4 Means of subsistence shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed.

Reference amounts set by the Member States shall be notified to the Commission in accordance with Article 39.

The assessment of sufficient means of subsistence may be based on the cash, travellers' cheques and credit cards in the third-country national's possession. Declarations of sponsorship, where such declarations are provided for by national law and letters of guarantee from hosts, as defined by national law, where the third-country national is staying with a host, may also constitute evidence of sufficient means of subsistence.

- 5 By way of derogation from paragraph 1:
- a third-country nationals who do not fulfil all the conditions laid down in paragraph 1 but who hold a residence permit or a long-stay visa shall be authorised to enter the territory of the other Member States for transit purposes so that they may reach the territory of the Member State which issued the residence permit or the long-stay visa, unless their names are on the national list of alerts of the Member State whose external borders they are seeking to cross and the alert is accompanied by instructions to refuse entry or transit;

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- b third-country nationals who fulfil the conditions laid down in paragraph 1, except for that laid down in point (b), and who present themselves at the border may be authorised to enter the territory of the Member States, if a visa is issued at the border in accordance with Articles 35 and 36 of Regulation (EC) No 810/2009 of the European Parliament and of the Council⁽²⁾.

Member States shall compile statistics on visas issued at the border in accordance with Article 46 of Regulation (EC) No 810/2009 and Annex XII thereto.

If it is not possible to affix a visa in the document, it shall, exceptionally, be affixed on a separate sheet inserted in the document. In such a case, the uniform format for forms for affixing the visa, laid down by Council Regulation (EC) No 333/2002⁽³⁾, shall be used;

- c third-country nationals who do not fulfil one or more of the conditions laid down in paragraph 1 may be authorised by a Member State to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations. Where the third-country national concerned is the subject of an alert as referred to in paragraph 1(d), the Member State authorising him or her to enter its territory shall inform the other Member States accordingly.

CHAPTER II

Control of external borders and refusal of entry

Article 7

Conduct of border checks

1 Border guards shall, in the performance of their duties, fully respect human dignity, in particular in cases involving vulnerable persons.

Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.

2 While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 8

Border checks on persons

1 Cross-border movement at external borders shall be subject to checks by border guards. Checks shall be carried out in accordance with this chapter.

The checks may also cover the means of transport and objects in the possession of the persons crossing the border. The law of the Member State concerned shall apply to any searches which are carried out.

[^{F12} On entry and on exit, persons enjoying the right of free movement under Union law shall be subject to the following checks:

- a verification of the identity and the nationality of the person and of the authenticity and validity of the travel document for crossing the border, including by consulting the relevant databases, in particular:

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- (1) the SIS;
- (2) Interpol's Stolen and Lost Travel Documents (SLTD) database;
- (3) national databases containing information on stolen, misappropriated, lost and invalidated travel documents.

For passports and travel documents containing a storage medium as referred to in Article 1(2) of Council Regulation (EC) No 2252/2004⁽⁴⁾, the authenticity of the chip data shall be checked.

- b verification that a person enjoying the right of free movement under Union law is not considered to be a threat to the public policy, internal security, public health or international relations of any of the Member States, including by consulting the SIS and other relevant Union databases. This is without prejudice to the consultation of national and Interpol databases.

Where there are doubts as to the authenticity of the travel document or the identity of its holder, at least one of the biometric identifiers integrated into the passports and travel documents issued in accordance with Regulation (EC) No 2252/2004 shall be verified. Where possible, such verification shall also be carried out in relation to travel documents not covered by that Regulation.

- 2a Where the checks against the databases referred to in points (a) and (b) of paragraph 2 would have a disproportionate impact on the flow of traffic, a Member State may decide to carry out those checks on a targeted basis at specified border crossing points, following an assessment of the risks related to the public policy, internal security, public health or international relations of any of the Member States.

The scope and duration of the temporary reduction to targeted checks against the databases shall not exceed what is strictly necessary and shall be defined in accordance with a risk assessment carried out by the Member State concerned. The risk assessment shall state the reasons for the temporary reduction to targeted checks against the databases, take into account, inter alia, the disproportionate impact on the flow of traffic and provide statistics on passengers and incidents related to cross-border crime. It shall be updated regularly.

Persons who, in principle, are not subject to targeted checks against the databases, shall, as a minimum, be subject to a check with a view to establishing their identity on the basis of the production or presentation of travel documents. Such a check shall consist of a rapid and straightforward verification of the validity of the travel document for crossing the border, and of the presence of signs of falsification or counterfeiting, where appropriate by using technical devices, and, in cases where there are doubts about the travel document or where there are indications that such a person could represent a threat to the public policy, internal security, public health or international relations of the Member States, the border guard shall consult the databases referred to in points (a) and (b) of paragraph 2.

The Member State concerned shall transmit its risk assessment and updates thereto to the European Border and Coast Guard Agency ('the Agency'), established by Regulation (EU) 2016/1624 of the European Parliament and of the Council⁽⁵⁾, without delay and shall report every six months to the Commission and to the Agency on the application of the checks against the databases carried out on a targeted basis. The Member State concerned may decide to classify the risk assessment or parts thereof.

2b Where a Member State intends to carry out targeted checks against the databases pursuant to paragraph 2a, it shall notify the other Member States, the Agency and the Commission accordingly without delay. The Member State concerned may decide to classify the notification or parts thereof.

Where the Member States, the Agency or the Commission have concerns about the intention to carry out targeted checks against the databases, they shall notify the Member State in question of those concerns without delay. The Member State in question shall take those concerns into account.

2c The Commission shall, by 8 April 2019, transmit to the European Parliament and the Council an evaluation of the implementation and consequences of paragraph 2.

2d With regard to air borders, paragraphs 2a and 2b shall apply for a maximum transitional period of six months from 7 April 2017.

In exceptional cases, where, at a particular airport, there are specific infrastructural difficulties requiring a longer period of time for adaptations in order to allow for the carrying-out of systematic checks against the databases without having a disproportionate impact on the flow of traffic, the six-month transitional period referred to in the first subparagraph may be prolonged for that particular airport by a maximum of 18 months in accordance with the procedure specified in the third subparagraph.

For that purpose, the Member State shall, at the latest three months before the expiry of the transitional period referred to in the first subparagraph, notify the Commission, the Agency and the other Member States of the specific infrastructural difficulties in the airport concerned, the envisaged measures to remedy them and the required period of time for their implementation.

Where specific infrastructural difficulties requiring a longer period for adaptations exist, the Commission, within one month of receipt of the notification referred to in the third subparagraph and after consulting the Agency, shall authorise the Member State concerned to prolong the transitional period for the airport concerned and, where relevant, shall set the length of such prolongation.

2e The checks against the databases referred to in points (a) and (b) of paragraph 2 may be carried out in advance on the basis of passenger data received in accordance with Council Directive 2004/82/EC⁽⁶⁾ or in accordance with other Union or national law.

Where those checks are carried out in advance on the basis of such passenger data, the data received in advance shall be checked at the border crossing point against the data in the travel document. The identity and the nationality of the person concerned, as well as the authenticity and the validity of the travel document for crossing the border, shall also be verified.

2f By way of derogation from paragraph 2, persons enjoying the right of free movement under Union law who cross the internal land borders of the Member States for which the verification in accordance with the applicable Schengen evaluation procedures has already been successfully completed, but for which the decision on the lifting of controls on their internal borders pursuant to the relevant provisions of the relevant Acts of Accession has not yet been taken, may be subject to the checks on exit referred to in paragraph 2 only on a non-systematic basis, based on a risk assessment.]

3 On entry and exit, third-country nationals shall be subject to thorough checks as follows:

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- a thorough checks on entry shall comprise verification of the conditions governing entry laid down in Article 6(1) and, where applicable, of documents authorising residence and the pursuit of a professional activity. This shall include a detailed examination covering the following aspects:
- (i) ^[F1]verification of the identity and the nationality of the third-country national and of the authenticity and validity of the travel document for crossing the border, including by consulting the relevant databases, in particular:
 - (1) the SIS;
 - (2) Interpol's SLTD database;
 - (3) national databases containing information on stolen, misappropriated, lost and invalidated travel documents.

For passports and travel documents containing a storage medium, the authenticity of the chip data shall be checked, subject to the availability of valid certificates;
 - (ii) verification that the travel document is accompanied, where applicable, by the requisite visa or residence permit;]
 - (iii) examination of the entry and exit stamps on the travel document of the third-country national concerned, in order to verify, by comparing the dates of entry and exit, that the person has not already exceeded the maximum duration of authorised stay in the territory of the Member States;
 - (iv) verification regarding the point of departure and the destination of the third-country national concerned and the purpose of the intended stay, checking, if necessary, the corresponding supporting documents;
 - (v) verification that the third-country national concerned has sufficient means of subsistence for the duration and purpose of the intended stay, for his or her return to the country of origin or transit to a third country into which he or she is certain to be admitted, or that he or she is in a position to acquire such means lawfully;
 - (vi) ^[F1]verification that the third-country national concerned, his or her means of transport and the objects he or she is transporting are not likely to jeopardise the public policy, internal security, public health or international relations of any of the Member States. Such verification shall include direct consultation of the data and alerts on persons and, where necessary, objects included in the SIS and other relevant Union databases, and the action to be performed, if any, as a result of an alert. This is without prejudice to the consultation of national and Interpol databases;]
- b if the third country national holds a visa referred to in Article 6(1)(b), the thorough checks on entry shall also comprise verification of the identity of the holder of the visa and of the authenticity of the visa, by consulting the Visa Information System (VIS) in accordance with Article 18 of Regulation (EC) No 767/2008;
- c by way of derogation, the VIS may be consulted using the number of the visa sticker in all cases and, on a random basis, the number of the visa sticker in combination with the verification of fingerprints where:
- (i) traffic of such intensity arises that the waiting time at the border crossing point becomes excessive;

- (ii) all resources have already been exhausted as regards staff, facilities and organisation; and
- (iii) on the basis of an assessment there is no risk related to internal security and illegal immigration.

However, in all cases where there is doubt as to the identity of the holder of the visa and/or the authenticity of the visa, the VIS shall be consulted systematically using the number of the visa sticker in combination with the verification of fingerprints.

This derogation may be applied only at the border crossing point concerned for as long as the conditions referred to in points (i), (ii) and (iii) are met;

- d the decision to consult the VIS in accordance with point (c) shall be taken by the border guard in command at the border crossing point or at a higher level.

The Member State concerned shall immediately notify the other Member States and the Commission of any such decision;

- e each Member State shall transmit once a year a report on the application of point (c) to the European Parliament and the Commission, which shall include the number of third-country nationals who were checked in the VIS using the number of the visa sticker only and the length of the waiting time referred to in point (c)(i);
- f points (c) and (d) shall apply for a maximum period of three years, beginning three years after the VIS has started operations. The Commission shall, before the end of the second year of application of points (c) and (d), transmit to the European Parliament and to the Council an evaluation of their implementation. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose appropriate amendments to this Regulation;
- g thorough checks on exit shall comprise:

- (i) [F¹verification of the identity and the nationality of the third-country national and of the authenticity and validity of the travel document for crossing the border, including by consulting the relevant databases, in particular:

- (1) the SIS;
- (2) Interpol's SLTD database;
- (3) national databases containing information on stolen, misappropriated, lost and invalidated travel documents.

For passports and travel documents containing a storage medium, the authenticity of the chip data shall be checked, subject to the availability of valid certificates;]

- (ii) [F¹verification that the third-country national concerned is not considered to be a threat to the public policy, internal security, public health or international relations of any of the Member States, including by consulting the SIS and other relevant Union databases. This is without prejudice to the consultation of national and Interpol databases;]
- h in addition to the checks referred to in point (g) thorough checks on exit may also comprise:
 - (i) verification that the person is in possession of a valid visa, if required pursuant to Regulation (EC) No 539/2001, except where he or she holds a valid

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residence permit; such verification may comprise consultation of the VIS in accordance with Article 18 of Regulation (EC) No 767/2008;

(ii) verification that the person did not exceed the maximum duration of authorised stay in the territory of the Member States;

(iii) [^{F2}. . . .]

i for the purpose of identification of any person who may not fulfil, or who may no longer fulfil, the conditions for entry, stay or residence on the territory of the Member States, the VIS may be consulted in accordance with Article 20 of Regulation (EC) No 767/2008^[F1];

^[F3]ia the checks against the databases referred to in point (a)(i) and (vi) and point (g) may be carried out in advance on the basis of passenger data received in accordance with Directive 2004/82/EC or with other Union or national law.

Where those checks are carried out in advance on the basis of such passenger data, the data received in advance shall be checked at the border crossing point against the data in the travel document. The identity and the nationality of the person concerned, as well as the authenticity and validity of the travel document for crossing the border, shall also be verified;

ib where there are doubts as to the authenticity of the travel document or the identity of the third-country national, the checks, where possible, shall include the verification of at least one of the biometric identifiers integrated into the travel documents.]

4 Where facilities exist and if requested by the third-country national, such thorough checks shall be carried out in a private area.

^[F4]a Where on entry or exit, consultation of the relevant databases including the multiple-identity detector through the European search portal established by Article 25(1) and Article 6(1) of Regulation (EU) 2019/817 of the European Parliament and of the Council⁽⁷⁾ respectively results in a yellow link or detects a red link, the border guard shall consult the common identity repository established by Article 17(1) of that Regulation or SIS or both to assess the differences in the linked identity data or travel document data. The border guard shall carry out any additional verification necessary to take a decision on the status and colour of the link.

In accordance with Article 69(1) of Regulation (EU) 2019/817, this paragraph shall apply as from the start of operations of the multiple-identity detector under Article 72(4) of that Regulation.]

5 Without prejudice to the second subparagraph, third-country nationals subject to a thorough second line check shall be given written information in a language which they understand or may reasonably be presumed to understand, or in another effective way, on the purpose of, and the procedure for, such a check.

This information shall be available in all the official languages of the Union and in the language(s) of the country or countries bordering the Member State concerned and shall indicate that the third-country national may request the name or service identification number of the border guards carrying out the thorough second line check, the name of the border crossing point and the date on which the border was crossed.

6 Checks on a person enjoying the right of free movement under Union law shall be carried out in accordance with Directive 2004/38/EC.

7 Detailed rules governing the information to be registered are laid down in Annex II.

8 Where Article 5(2)(a) or (b) applies, Member States may also provide derogations from the rules set out in this Article.

Textual Amendments

- F1** Substituted by Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders.
- F2** Deleted by Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders.
- F3** Inserted by Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders.
- F4** Inserted by Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA.

Article 9

Relaxation of border checks

1 Border checks at external borders may be relaxed as a result of exceptional and unforeseen circumstances. Such exceptional and unforeseen circumstances shall be deemed to be those where unforeseeable events lead to traffic of such intensity that the waiting time at the border crossing point becomes excessive, and all resources have been exhausted as regards staff, facilities and organisation.

2 Where border checks are relaxed in accordance with paragraph 1, border checks on entry movements shall in principle take priority over border checks on exit movements.

The decision to relax checks shall be taken by the border guard in command at the border crossing point.

Such relaxation of checks shall be temporary, adapted to the circumstances justifying it and introduced gradually.

3 Even in the event that checks are relaxed, the border guard shall stamp the travel documents of third-country nationals both on entry and exit, in accordance with Article 11.

4 Each Member State shall transmit once a year a report on the application of this Article to the European Parliament and the Commission.

Article 10

Separate lanes and information on signs

1 Member States shall provide separate lanes, in particular at air border crossing points in order to carry out checks on persons, in accordance with Article 8. Such lanes shall be differentiated by means of the signs bearing the indications set out in Annex III.

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Member States may provide separate lanes at their sea and land border crossing points and at borders between Member States which do not apply Article 22 at their common borders. The signs bearing the indications set out in Annex III shall be used if Member States provide separate lanes at those borders.

Member States shall ensure that such lanes are clearly signposted, including where the rules relating to the use of the different lanes are waived as provided for in paragraph 4, in order to ensure optimal flow levels of persons crossing the border.

2 Persons enjoying the right of free movement under Union law are entitled to use the lanes indicated by the sign shown in Part A ('EU, EEA, CH') of Annex III. They may also use the lanes indicated by the sign shown in Part B1 ('visa not required') and Part B2 ('all passports') of Annex III.

Third-country nationals who are not obliged to possess a visa when crossing the external borders of the Member States in accordance with Regulation (EC) No 539/2001 and third-country nationals who hold a valid residence permit or long-stay visa may use the lanes indicated by the sign shown in Part B1 ('visa not required') of Annex III to this Regulation. They may also use the lanes indicated by the sign shown in Part B2 ('all passports') of Annex III to this Regulation.

All other persons shall use the lanes indicated by the sign shown in Part B2 ('all passports') of Annex III.

The indications on the signs referred to in the first, second and third subparagraphs may be displayed in such language or languages as each Member State considers appropriate.

The provision of separate lanes indicated by the sign shown in Part B1 ('visa not required') of Annex III is not obligatory. Member States shall decide whether to do so and at which border crossing points in accordance with practical needs.

3 At sea and land border crossing points, Member States may separate vehicle traffic into different lanes for light and heavy vehicles and buses by using signs as shown in Part C of Annex III.

Member States may vary the indications on those signs where appropriate in the light of local circumstances.

4 In the event of a temporary imbalance in traffic flows at a particular border crossing point, the rules relating to the use of the different lanes may be waived by the competent authorities for the time necessary to eliminate such imbalance.

Article 11

Stamping of the travel documents

1 The travel documents of third-country nationals shall be systematically stamped on entry and exit. In particular an entry or exit stamp shall be affixed to:

- a the documents, bearing a valid visa, enabling third-country nationals to cross the border;
- b the documents enabling third-country nationals to whom a visa is issued at the border by a Member State to cross the border;
- c the documents enabling third-country nationals not subject to a visa requirement to cross the border.

2 The travel documents of nationals of third countries who are members of the family of a Union citizen to whom Directive 2004/38/EC applies, but who do not present the residence card provided for in that Directive, shall be stamped on entry and exit.

The travel documents of nationals of third countries who are members of the family of nationals of third countries enjoying the right of free movement under Union law, but who do not present the residence card provided for in Directive 2004/38/EC, shall be stamped on entry and exit.

- 3 No entry or exit stamp shall be affixed:
- a to the travel documents of Heads of State and dignitaries whose arrival has been officially announced in advance through diplomatic channels;
 - b to pilots' licences or the certificates of aircraft crew members;
 - c to the travel documents of seamen who are present within the territory of a Member State only when their ship puts in and in the area of the port of call;
 - d to the travel documents of crew and passengers of cruise ships who are not subject to border checks in accordance with point 3.2.3 of Annex VI;
 - e to documents enabling nationals of Andorra, Monaco and San Marino to cross the border;
 - f to the travel documents of crews of passengers and goods trains on international connections;
 - g to the travel documents of nationals of third countries who present a residence card provided for in Directive 2004/38/EC.

Exceptionally, at the request of a third-country national, insertion of an entry or exit stamp may be dispensed with if insertion might cause serious difficulties for that person. In that case, entry or exit shall be recorded on a separate sheet indicating that person's name and passport number. That sheet shall be given to the third-country national. The competent authorities of the Member States may keep statistics of such exceptional cases and may provide those statistics to the Commission.

4 The practical arrangements for stamping are set out in Annex IV.

5 Whenever possible, third-country nationals shall be informed of the border guard's obligation to stamp their travel document on entry and exit, even where checks are relaxed in accordance with Article 9.

Article 12

Presumption as regards fulfilment of conditions of duration of stay

1 If the travel document of a third-country national does not bear an entry stamp, the competent national authorities may presume that the holder does not fulfil, or no longer fulfils, the conditions of duration of stay applicable within the Member State concerned.

2 The presumption referred to in paragraph 1 may be rebutted where the third-country national provides, by any means, credible evidence, such as transport tickets or proof of his or her presence outside the territory of the Member States, that he or she has respected the conditions relating to the duration of a short stay.

In such a case:

- a where the third-country national is found on the territory of a Member State applying the Schengen *acquis* in full, the competent authorities shall indicate, in accordance with

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national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of one of the Member States applying the Schengen *acquis* in full;

- b where the third-country national is found on the territory of a Member State in respect of which the decision contemplated in Article 3(2) of the 2003 Act of Accession, in Article 4(2) of the 2005 Act of Accession and in Article 4(2) of the 2011 Act of Accession has not been taken, the competent authorities shall indicate, in accordance with national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of such a Member State.

In addition to the indications referred to in points (a) and (b), a form as shown in Annex VIII may be given to the third-country national.

Member States shall inform each other and the Commission and the Council General Secretariat of their national practices with regard to the indications referred to in this Article.

3 Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be returned in accordance with Directive 2008/115/EC of the European Parliament and of the Council⁽⁸⁾ and with national law respecting that Directive.

4 The relevant provisions of paragraphs 1 and 2 shall apply *mutatis mutandis* in the absence of an exit stamp.

Article 13

Border surveillance

1 The main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally. 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 stationary or mobile units to carry out border surveillance.

That surveillance shall be carried out in such a way as to prevent and discourage persons from circumventing the checks at border crossing points.

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 involve frequent and sudden changes to surveillance periods, so that unauthorised border crossings are always at risk of being detected.

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 being to apprehend individuals crossing the border illegally. Surveillance may also be carried out by technical means, including electronic means.

5 The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning additional measures governing surveillance.

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Article 14

Refusal of entry

1 A third-country national who does not fulfil all the entry conditions laid down in Article 6(1) and does not belong to the categories of persons referred to in Article 6(5) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.

2 Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.

The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.

3 Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. 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.

Lodging such an appeal shall not have suspensive effect on a decision to refuse entry.

Without prejudice to any compensation granted in accordance with national law, the third-country national concerned shall, where the appeal concludes that the decision to refuse entry was ill-founded, be entitled to correction of the cancelled entry stamp, and any other cancellations or additions which have been made, by the Member State which refused entry.

4 The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned.

5 Member States shall collect statistics on the number of persons refused entry, the grounds for refusal, the nationality of the persons who were refused entry and the type of border (land, air or sea) at which they were refused entry and submit them yearly to the Commission (Eurostat) in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council⁽⁹⁾.

6 Detailed rules governing refusal of entry are given in Part A of Annex V.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2016/399 of the European Parliament and of the Council, TITLE II. (See end of Document for details)

CHAPTER III

Staff and resources for border control and cooperation between Member States

Article 15

Staff and resources for border control

Member States shall deploy appropriate staff and resources in sufficient numbers to carry out border control at the external borders, in accordance with Articles 7 to 14, in such a way as to ensure an efficient, high and uniform level of control at their external borders.

Article 16

Implementation of control

1 The border control provided for by Articles 7 to 14 shall be carried out by border guards in accordance with the provisions of this Regulation and with national law.

When carrying out that border control, the powers to instigate criminal proceedings conferred on border guards by national law and falling outside the scope of this Regulation shall remain unaffected.

Member States shall ensure that the border guards are specialised and properly trained professionals, taking into account common core curricula for border guards established and developed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States ('the Agency') established by Regulation (EC) No 2007/2004. Training curricula shall include specialised training for detecting and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of trafficking. Member States, with the support of the Agency, shall encourage border guards to learn the languages necessary for the carrying-out of their tasks.

2 Member States shall notify to the Commission the list of national services responsible for border control under their national law in accordance with Article 39.

3 To control borders effectively, each Member State shall ensure close and constant cooperation between its national services responsible for border control.

Article 17

Cooperation between Member States

1 The Member States shall assist each other and shall maintain close and constant cooperation with a view to the effective implementation of border control, in accordance with Articles 7 to 16. They shall exchange all relevant information.

2 Operational cooperation between Member States in the field of management of external borders shall be coordinated by the Agency.

3 Without prejudice to the competences of the Agency, Member States may continue operational cooperation with other Member States and/or third countries at external borders,

including the exchange of liaison officers, where such cooperation complements the action of the Agency.

Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.

Member States shall report to the Agency on the operational cooperation referred to in the first subparagraph.

4 Member States shall provide for training on the rules for border control and on fundamental rights. In that regard, account shall be taken of the common training standards as established and further developed by the Agency.

Article 18

Joint control

1 Member States which do not apply Article 22 at their common land borders may, up to the date of application of that Article, jointly control those common borders, in which case a person may be stopped only once for the purpose of carrying out entry and exit checks, without prejudice to the individual responsibility of Member States arising from Articles 7 to 14.

To that end, Member States may conclude bilateral arrangements between themselves.

2 Member States shall inform the Commission of any arrangements concluded in accordance with paragraph 1.

CHAPTER IV

Specific rules for border checks

Article 19

Specific rules for the various types of border and the various means of transport used for crossing the external borders

The specific rules set out in Annex VI shall apply to the checks carried out at the various types of border and on the various means of transport used for crossing border crossing points.

Those specific rules may contain derogations from Articles 5 and 6 and Articles 8 to 14.

Article 20

Specific rules for checks on certain categories of persons

1 The specific rules set out in Annex VII shall apply to checks on the following categories of persons:

- a Heads of State and the members of their delegation(s);
- b pilots of aircraft and other crew members;
- c seamen;

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2016/399 of the European Parliament and of the Council, TITLE II. (See end of Document for details)

- d holders of diplomatic, official or service passports and members of international organisations;
- e cross-border workers;
- f minors;
- g rescue services, police and fire brigades and border guards;
- h offshore workers.

Those specific rules may contain derogations from Articles 5 and 6 and Articles 8 to 14.

2 Member States shall notify to the Commission the model cards issued by their Ministries of Foreign Affairs to accredited members of diplomatic missions and consular representations and members of their families in accordance with Article 39.

CHAPTER V

Specific measures in the case of serious deficiencies relating to external border control

Article 21

Measures at external borders and support by the Agency

1 Where serious deficiencies in the carrying out of external border control are identified in an evaluation report drawn up pursuant to Article 14 of Regulation (EU) No 1053/2013, and with a view to ensuring compliance with the recommendations referred to in Article 15 of that Regulation, the Commission may recommend, by means of an implementing act, that the evaluated Member State take certain specific measures, which may include one or both of the following:

- a initiating the deployment of European border guard teams in accordance with Regulation (EC) No 2007/2004;
- b submitting its strategic plans, based on a risk assessment, including information on the deployment of personnel and equipment, to the Agency for its opinion thereon.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).

2 The Commission shall inform the committee established pursuant to Article 38(1) on a regular basis of the progress in the implementation of the measures referred to in paragraph 1 of this Article and on its impact on the deficiencies identified.

It shall also inform the European Parliament and the Council.

3 Where an evaluation report as referred to in paragraph 1 has concluded that the evaluated Member State is seriously neglecting its obligations and must therefore report on the implementation of the relevant action plan within three months in accordance with Article 16(4) of Regulation (EU) No 1053/2013, and where, following that three-month period, the Commission finds that the situation persists, it may trigger the application of the procedure provided for in Article 29 of this Regulation where all the conditions for doing so are fulfilled.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2016/399 of the European Parliament and of the Council, TITLE II. (See end of Document for details)

- (1) Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).
- (2) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).
- (3) Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (OJ L 53, 23.2.2002, p. 4).
- (4) [^{F1}Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ L 385, 29.12.2004, p. 1).]
- (5) [^{F1}Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).]
- (6) [^{F1}Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24).]
- (7) [^{F4}Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).]
- (8) 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).
- (9) Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

Textual Amendments

- F1** Substituted by Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders.
- F4** Inserted by Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA.

Changes to legislation:

There are currently no known outstanding effects for the Regulation (EU) 2016/399 of the European Parliament and of the Council, TITLE II.