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Subject:	ANNEX to the Commission Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons and replacing Recommendation (C (2019) 7131 final)

Delegations will find attached document C(2022) 7591 final.

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ANNEX

ANNEX

to the

Commission Recommendation

establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons and replacing Recommendation (C (2019) 7131 final)

ANNEX

Practical Handbook for Border Guards

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FOREWORD

The main objective of the Schengen cooperation is the creation of an area without internal border controls.[1] It requires efficient controls at external borders[2] as well as the application of relevant flanking measures in areas such as police and judicial cooperation and visa policy. The provisions on external border control apply nevertheless at internal borders in two cases. The first one relates to the situation where the process for the lifting of internal border controls at these internal borders has not yet been finalised[3]. Border controls at these borders must be carried out in line with the provisions of Title II of Regulation (EU) 2016/399 of the European Parliament and of the Council[4] ('the Schengen Borders Code). The second case refers to the situation where controls at internal borders are temporarily reintroduced by a Schengen State fully applying the Schengen *acquis*[5]. The relevant provisions of Title II then apply *mutatis mutandis* as internal borders are not becoming external borders.[6]

The objective of this Practical Handbook for Border Guards is to lay down guidelines, best practices and recommendations relating to the performance of border guard duties in the Schengen States. The handbook is intended as well to be a user guide for border guards in respect of the measures and decisions to be taken along the borders where the external border provisions apply. The content of this handbook deals essentially with the control of persons at the border and is based on Union instruments regulating the crossing of borders (and in particular the Schengen Borders Code), the issuance of visas, the right of free movement under Union law and the application for asylum. A list of legal acts regulating the areas covered by this handbook is contained in Part IV.

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1 Internal borders as defined in Article 2 (1) of the Schengen Borders Code.

2 External borders as defined in Article 2(2) of the Schengen Borders Code.

3 Article 3(2) of the 2003 Act of Accession (Cyprus), Article 4(2) of the 2005 Act of Accession (Bulgaria and Romania) and Article 4(2) of the 2012 Act of Accession (Croatia).

4 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) (OJ L 77, 23.3.2016, p.1).

5 Article 32 of the Schengen Borders Code.

6 See in particular Report from the Commission to the European Parliament and the Council on the application of Title III (Internal Borders) of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), COM(2010)554. In its proposal for an amendment to the Schengen Borders Code (COM(2021)891) the Commission has proposed an obligation on Member States to lay down measures mitigating the impacts resulting from reintroduced border controls at internal border. Further guidance on such mitigating measures will be elaborated once this proposal will be adopted.

When reference is made in this handbook to other types of control which may or should be carried out at the border (for example, customs, phytosanitary or health-related controls), the relevant Union and national legislation will apply to such types of controls. In any case, Schengen States should always ensure a close cooperation between the different authorities carrying out controls at borders, as well as with authorities carrying out controls within the territory.

This handbook is not intended to create any legally binding obligations upon Schengen States, or to establish new rights and duties for border guards or any other person who might be concerned by it. Only the legal acts on which this handbook is based, or refers to, produce legally binding effects and can be invoked before a national jurisdiction.

PART ONE - DEFINITIONS

1. **'SCHENGEN STATES' (EU Member States implementing the Schengen *acquis* related to external borders as well as *Schengen Associated Countries*):**

1. Belgium
2. Bulgaria
3. Czech Republic
4. Denmark
5. Germany
6. Estonia
7. Greece
8. Spain
9. France
10. Croatia
11. *Iceland*
12. Italy
13. Cyprus
14. Latvia
15. *Liechtenstein*
16. Lithuania
17. Luxembourg
18. Hungary
19. Malta
20. Netherlands
21. *Norway*
22. Austria
23. Poland
24. Portugal
25. Romania
26. Slovenia
27. Slovakia
28. Finland
29. Sweden
30. *Switzerland*

Ireland has been authorised to apply some parts of the Schengen *acquis* but in a limited number of areas (police and judicial cooperation in criminal matters) which do not include external border control. As a consequence, for the purpose of this handbook which focuses on border issues and is addressed to border guards, Ireland is not included when the term "Schengen States" is used.

2. 'EU MEMBER STATES':

1. Belgium
2. Bulgaria
3. Czech Republic
4. Denmark
5. Germany
6. Estonia
7. Ireland
8. Greece
9. Spain
10. France
11. Croatia
12. Italy
13. Cyprus
14. Latvia
15. Lithuania
16. Luxembourg
17. Hungary
18. Malta
19. Netherlands
20. Austria
21. Poland
22. Portugal
23. Romania
24. Slovenia
25. Slovakia
26. Finland
27. Sweden

3. SPECIFIC SITUATION OF SCHENGEN STATES NOT YET FULLY APPLYING THE SCHENGEN *ACQUIS*

Bulgaria, Croatia, Cyprus and Romania do not yet fully apply the Schengen *acquis* and controls at their borders with other Schengen States have not yet been lifted[7].

They apply at all their borders the rules of Title II of the Schengen Borders Code.

The following specific rules apply:

- checks at their borders (for example, with regard to the length of stay, visa, residence permit, level of means of subsistence) are made in relation to their own territory;

[7] On 26 June 2022 Council sent a draft Council Decision on the full application of the provisions of the Schengen acquis in the Republic of Croatia to the European Parliament to receive its opinion (Council document 10624/22).

- provisions of Regulation (EC) No 810/2009 of the European Parliament and of the Council[8] ('the Visa Code') do not apply to Bulgaria, Croatia, Cyprus and Romania. As a consequence, a reference to Schengen visa does not include visa issued by one of these four Schengen States;

- provisions on the Visa Information System (VIS) apply to Bulgaria and Romania since 25 July 2021 on the basis of Council Decision (EU) 2017/1908[9] and with the limitations provided in that Decision (read-only access);

- provisions on the Schengen Information System (SIS) do not apply to Cyprus; they apply fully to Bulgaria and Romania in accordance with Council Decisions 2010/365/EU[10] and (EU) 2018/934[11]; they apply partially to Croatia in accordance with Council Decision (EU) 2017/733[12];

- Schengen States not yet fully applying the Schengen *acquis* unilaterally may recognise certain documents as equivalent to their national visa for transit through or intended short-stay on their territory on the basis of Decision No 565/2014/EU of the European Parliament and of the Council[13].

When reference is made to "Schengen States fully applying the Schengen *acquis"* or to "the area without internal border controls", Bulgaria, Croatia, Cyprus and Romania are not included.

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8 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).

9 Council Decision (EU) 2017/1908 of 12 October 2017 on the putting into effect of certain provisions of the Schengen acquis relating to the Visa Information System in the Republic of Bulgaria and Romania (OJ L 269, 19.10.2017, p. 39), date of application determined by Commission Implementing Decision (EU) 2021/995 of 18 June 2021 determining the date on which Council Decision (EU) 2017/1908 on the putting into effect of certain provisions of the Schengen acquis relating to the Visa Information System in the Republic of Bulgaria and Romania shall start to apply (OJ L 219, 21.6.2021, p. 37).

10 Council Decision 2010/365/EU of 29 June 2010 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 166, 1.7.2010, p.17).

11 Council Decision (EU) 2018/934 on the putting into effect of the remaining provisions of the Schengen *acquis* relating to the the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 165, 2.7.2018, p. 37).

12 Council Decision (EU) 2017/733 of 25 April 2017 on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Croatia (OJ L 108, 26.4.2017, p. 31).

13 Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ L. 157, 27.5.2014, p. 23).

4. **'EEA Countries':** Norway (NO), Iceland (IS) and Liechtenstein (LI).

5. **'Area without internal border controls'** refers to the area made of the territories of the Schengen States fully applying the Schengen *acquis* (and therefore excluding Bulgaria, Croatia, Cyprus and Romania).

6. **'Persons enjoying the right of free movement under Union law'**[14] are nationals of EU Member States, EEA countries and Switzerland, as well as members of their family, regardless of their nationality accompanying or joining them.

7. **'Members of the family of EU, EEA or CH citizens enjoying the right of free movement under Union law'**[15] are, irrespective of their nationality:

- the spouse (independently of the sex of the spouse[16]) and, if this is contracted on the basis of the legislation of an EU or Schengen State and recognised by the legislation of the host EU or Schengen State as equivalent to marriage, the partner with whom the EU/EEA/CH citizen has contracted a registered partnership;

- the direct descendants under the age of 21 or dependants, including those of the spouse or registered partner;

- the dependent direct relatives in the ascending line, including those of the spouse or registered partner;

- any other family members, as listed below, whose entry and/or residence has been facilitated, in accordance with national law, as evidenced by a visa or residence card:

  – dependants;

  – members of the household of the EU/EEA/CH citizen;

14 Article 2, point 5, of the Schengen Borders Code.
15 Article 2, point 2,and Article 3 point 2 of Directive 2004/38/EC.
16 Judgment of the European Court of Justice of 5 June 2018, Case C-673/16, Coman, ECLI:EU:C:2018:385.

- family members strictly requiring the personal care by the EU/EEA citizen on serious health grounds;

- partners with whom the EU/EEA citizen has a durable relationship duly attested.

8. **'EU citizen'**[17] refers to any person holding the nationality of a Member State of the European Union.

9. **'Third-country national'**[18] refers to any person who is not a person enjoying the right of free movement under Union law.[19]

10. **'Border guard'**[20] refers to any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out border control tasks, in accordance with Union and national law.

11. **'Border control'**[21] means the activity carried out at a border in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance.

12. **'Border checks'**[22] means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter or leave the territory of Schengen States or authorised to leave it.

13. **'Systematic checks of relevant databases'**[23] are the checks against relevant databases carried out by border guards with regard to all persons (persons enjoying the right of free movement under Union law and third-country nationals) crossing the external borders, upon entry or exit.

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17 Article 2, point 1, of Directive 2004/38/EC.
18 Article 2, point 6, of the Schengen Boders Code.
19 Nationals of Andorra, Monaco and San Marino are considered third-country nationals, they are, however, exempted from stamping (in future also exempt from EES and ETIAS) and the use of EU lanes by nationals of Andorra and of San Marino is tolerated by Member States according to Council document 13020/04.
20 Article 2, point 14, of the Schengen Boders Code.
21 Article 2, point 10, of the Schengen Boders Code.
22 Article 2, point 11, of the Schengen Boders Code.
23 Based on Article 8(2) of the Schengen Boders Code.

14. **'Relevant databases'**[24] are the databases the border guards must consult when carrying out systematic checks on all persons crossing the external borders. They include:

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

The border guards may also consult other national and Interpol databases.

15. **'Targeted checks of relevant databases'**[25] are the checks of relevant databases based on a risk analysis carried out exclusively on some persons enjoying the right of free movement under Union law at certain border crossing points where a derogation to the principle of systematic checks applies.

16. **'Other checks on persons enjoying the right of free movement under Union law'**[26] are checks on persons enjoying the right of free movement under Union law who are not subject to targeted checks of relevant databases, when a temporary derogation to the systematic checks, is applied; namely the verification of the identity of the holder and of the validity and authenticity of the holder's travel document.

17. **'Thorough checks'**[27] are the checks to be carried out on third-country nationals.

18. **'Second-line checks'**[28] are further checks which may be carried out in a special location away from the place where all persons are checked ("first line").

19. **'Advance Passenger Information (API)'** refer to data collected in accordance with Council Directive 2004/82/EC[29].

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24 Based on Article 8(2), points (a) and (b), of the Schengen Boders Code.
25 Based on Article 8(2a) of the Schengen Borders Code.
26 Based on Article 8(2a), third subparagraph, of the Schengen Borders Code.
27 Based on Article 8(3) of the Schengen Borders Code.
28 Article 2, point 13, of the Schengen Borders Code.

20. **'Border surveillance'**[30] means the surveillance of borders between border crossing points and the surveillance of border crossing points outside their fixed opening hours, in order to prevent persons from circumventing border checks.

21. **'Asylum seeker' or 'Asylum applicant'**[31] means a third-country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken.

22. **'Application for international protection'**[32] means a request made by a third-country national or a stateless person for protection from a Schengen State, who can be understood as seeking refugee status or subsidiary protection status.

23. **'Refugee'**[33] means a third-country national or a stateless person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above is unable or, owing to such fear, unwilling to return to it.

24. **'Person eligible for subsidiary protection'**[34] means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his/her country of origin, or in case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 of Directive 2011/95/EU of the European Parliament and of the Council[35] and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

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29 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).

30 Article 2, point 12, of the Schengen Borders Code.

31 Article 2, point (i), of Directive 2011/95/EU.

32 Article 2, point (h), of Directive 2011/95/EU.

33 Article 2, point (d), of Directive 2011/95/EU.

34 Article 2, point (f), of Directive 2011/95/EU.

35 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a

25. **'Stateless person'**[36] refers to a person who is not considered as a national by any State under the operation of its law.

26. **'Threat to public health'**[37] refers to any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are subject of protection provisions applying to nationals of the Member States. For more details see the guidelines on public health threats.[38]

27. **'Visa'**[39] means an authorisation issued by a Schengen State fully applying the Schengen *acquis* with a view to:

(a) an intended stay on the territory of the area without internal border controls not exceeding 90 days in any 180-day period;

(b) transit through the international transit areas of airports of the Schengen States fully applying the Schengen *acquis*.

28. **'National short-stay visa'** means an authorisation issued by a Schengen State not yet applying the Schengen *acquis* in full with a view to an intended stay on the territory of that Schengen State of a duration of no more than 90 days in any 180-day period.

29. **'Visa with limited territorial validity'**[40] means a visa valid for the territory of one or more of the Schengen States fully applying the Schengen *acquis* but not all these States.

30. **'Airport transit visa'**[41] means a visa valid for transit through the international transit areas of one or more airports of the Schengen States fully applying the Schengen *acquis.*

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uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

36 Article 1 of UN Convention relating to the Status of Stateless Persons

37 Article 2, point 21, of the Schengen Borders Code.

38 For more details, see the guidelines on public health threats, Part II, Section I, point 3.6.

39 Article 2, point 2, of the Visa Code.

40 Article 2, point 4, of the Visa Code.

41 Article 2, point 5, of the Visa Code.

31. **'National airport transit visa'** means a visa valid for transit through the international transit areas of one or more airports of a Schengen State not yet fully applying the *acquis*.

32. **'Long-stay visa'**[42] means a national visa issued by one of the Schengen States fully applying the Schengen *acquis* for stays exceeding three months in accordance with Regulation (EU) No 265/2010 or in accordance with other Union law or its national law and a maximum validity of one year.

33. **'Withdrawal Agreement beneficiary'** means UK nationals and their family members who are beneficiaries of Part Two (citizens rights) of the *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*[43]. Withdrawal Agreement beneficiaries have their previously exercised free movement rights, which they enjoyed as EU citizens, grandfathered only in their host State. With regard to movement in the Schengen States (other than their host State) they are to be treated as legally resident third-country nationals.

42 Article 18 of Schengen Implementing Convention.
43 OJ L 29, 31.1.2020, p. 7–187.

PART TWO - BORDER CHECKS

SECTION I: Border check procedures

1. CHECKS AT BORDER CROSSING POINTS

1.1. The main purpose of border checks at border crossing points is to verify that all persons crossing the border fulfil the entry conditions in the territory of the Schengen States. In case of third-country nationals the entry conditions are checked (see point 3 of this Section). With regard to EU citizens and members of their family the controls aim in particular at verifying the eligibility of the persons concerned to the right to free movement under Union law resulting from Directive 2004/38 of the European Parliament and of the Council[44]. Specific rules apply also for certain categories of persons (see point 3.2 of this Section).

1.2. All persons, both EU/EEA/CH citizens and third-country nationals, must undergo systematic checks against relevant databases upon crossing the external borders[45]. Those databases are:

- SIS;
- SLTD;
- national databases containing information on stolen, misappropriated, lost and invalidated travel documents;

Border guards may also consult other national and Interpol databases.

Derogations from this rule of systematic checks of relevant databases are possible at land and sea borders subject to certain conditions (see point 2.3 of this Section) following a specific procedure for notification of such a derogation (see Appendix A) and risk assessment (see Appendix B).

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44 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

45 Article 8 of the Schengen Borders Code.

At air borders, derogations were possible during a transition period ending on 7 April 2019. Since this date no derogation is possible at any air border anymore.

1.3. Fundamental Rights enshrined in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights must be guaranteed to any person seeking to cross borders. Border control must respect the prohibition of inhuman and degrading treatment and the prohibition of discrimination enshrined, respectively, in Articles 4 and 21 of the Charter of Fundamental Right of the European Union and in Articles 3 and 14 of the European Convention on Human Rights.

In particular, border guards must, in the performance of their duties, fully respect human dignity and any discrimination based on any ground, including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth disability, age or sexual orientation must be prohibited. Any measures taken in the performance of their duties, which limits fundamental rights, must be provided by law, and respect the essence of the rights and freedoms. In accordance with Article 52 of the Charter, limitations to fundamental rights may be made only if they are necessary to meet objectives of general interest recognised by the Union or the need to protect the rights of freedom of others; they must be proportionate.

All travellers have the right to be informed about the nature of the control and have the right to professional, friendly and courteous treatment, in accordance with applicable international, Union and national law.

All travellers must be informed about the processing of their personal data in the context of border controls including checks of databases (for example SIS and VIS databases), including on data subject rights concerning the processing of their personal data. To that end, relevant information should be available at the border crossing points (e.g. information signs, QR code) in the languages usually provided for similar communications. EU rules on the protection of personal data are applicable, in

particular Regulation (EU) 2016/679 of the European Parliament and of the Council[46] and Directive (EU) 2016/680 of the European Parliament and of the Council [47], as well as data protection rules of the SIS and VIS *acquis*.

1.4. Upon request from the person subject to a check, the border guard conducting the check should show him/her his/her service badge, must provide him/her with the service identification number and, if circumstances allow for it, give her/his name. The provision of the name can be refused if there is any reason to assume that the border guard might be severely disadvantaged (for example, if his/her life or physical integrity is threatened). In this latter case, only the number of the badge and the name and address of his/her authority must be provided.

1.5. The border guard in command of the crossing point must deploy appropriate staff in sufficient numbers to carry out effective border control. Border guards must always strike a balance between the need, on the one hand**,** to ensure the smooth crossing of the border by persons who fulfil the entry conditions, and who represent the great majority of travellers (for example, tourists, business persons, students) and the need, on the other hand, of always being vigilant in order to detect persons posing a risk to public policy and internal security as well as potential illegal entries. The need of vigilance concerns in particular a situation when the derogation from the principle of the systematic checks against relevant databases is applied. At the border crossing points not benefiting from derogations, systematic checks against relevant databases need to be carried out by the border guards on all persons crossing the external borders upon entry and exit.

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46 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p.1).

47 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

*** Advice for border guards when conducting border checks:**

- when you take the travel document always have a look at the face of the traveller (try to remember as much as possible of the noticeable features of the traveller's face);

- compare the features of the traveller with the photo and description included in the travel document, match them also with the visa when this is required (this could help to eliminate impostors);

- check the travel document thoroughly in order to rule out the possibility that it is counterfeit or forged (the numbering, printing and stitching of pages, seals and stamps inserted, the inclusion of other persons; all corrections made in the document especially at the personal data page should be clarified by the traveller); systematically check relevant databases (in case this is not done automatically by scanning the travel document); while doing this keeping contact and observing the behaviour and reaction of the traveller (for example excessive nervousness, an aggressive attitude, excessive willingness to co-operate); when checking the Visa Information System, use the number of the visa sticker in combination with verification of fingerprints of the visa holder, and having a VIS-0 marking must be checked using the number of the visa sticker only;

- all travellers must be informed about the processing of their personal data in the context of border controls including checks of databases (for example, SIS and VIS databases), including on data subject rights concerning the processing of their personal data. EU rules on the protection of personal data are applicable. The border guard should provide the traveller with information on the rights of access to the data, rectification of inaccurate data and erasure of unlawfully stored data. The border guard should provide the traveller with the contact details of the competent national authorities, which is the data controller and data protection authority, in order to enable him/her to exercise his/her rights including the right to lodge a complaint

with the data protection authority[48];

– before you stamp the travel document (when required), make sure that the person did not overstay the allowed period (i.e. 90 days within any 180 day period) during his/her last stay within the area without internal border controls or on the territory of Bulgaria, Croatia, Cyprus or Romania taken separetely; for third-country nationals who are family members of EU, EEA and CH citizens, please note that specific provisions apply to them (see point 2.1.2);

– do not interrogate the traveller as a potential criminal or illegally staying third-country national. All questions should be well balanced and asked in a friendly way;

– questions posed by the traveller should not be considered as intrusive and should be answered in a factual and polite manner.

1.6. Use of automated border control (ABC) systems: provisions of the Schengen Borders Code, introduced by Regulation (EU) 2017/2225 amending that Code, as regards the use of the Entry/Exit System (EES), which will start to apply on the date on which the EES is to start operations, contain detailed rules on the use of self-service systems and e-gates. Pending the entry into operation of these new rules, the use of self-service systems and e-gates is already possible and recommended[49] (upon entry and exit and in relation to checks on persons enjoying the right of free movement as well as where appropriate on third-country nationals) provided it is *combined* with a manual check performed by a border guard and, if necessary, stamping. Automated border control systems shall be designed in such a way that they can be used by all persons, with the

48 This information may take the form of a poster or of a leaflet. The leaflet or the poster must be available in all the official languages of the Union and in the language(s) of the countries bordering the Schengen States concerned.

49 Recital 10 of Regulation (EU) 2017/458 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders: *"Technological developments have made it possible, in principle, to consult relevant databases in such a way as to have a limited effect on the duration of border crossings, as the checks for both documents and persons can be carried out in parallel. Automatic border control gates could be relevant in that context."*

exception of children under 12 years of age, and they shall also be designed in a way that fully respects human dignity, in particular in cases involving vulnerable persons. Where Member States decide to use automated border control systems, they shall ensure the presence of a sufficient number of staff to assist persons with the use of such systems and they shall maintain non-automated lanes in sufficient numbers for children, persons accompanying children, vulnerable persons and persons who prefer to use non-automated lanes.

2. CHECKS ON PERSONS ENJOYING THE RIGHT OF FREE MOVEMENT UNDER UNION LAW

2.1. Persons enjoying the right of free movement under Union law should be subject to the systematic checks of relevant databases on entry and exit, namely:

- SIS;
- SLTD;
- national databases containing information on stolen, misappropriated, lost and invalidated travel documents;

Border guards may also consult other national and Interpol databases.

For passports and travel documents containing a storage medium as referred to in Article 1(2) of Council Regulation (EC) No 2252/2004[50], the authenticity of the chip data must be checked.

2.1.1. 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 (facial image and/or fingerprints) integrated into the passport and travel documents issued in accordance with Regulation (EC) No 2252/2004 must be verified. Where possible, such verification must also be carried out in relation to travel documents not covered by that Regulation.

[50] 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).

2.1.2. In the case of third-country nationals who are family members of EU, EEA and CH citizens, they have the right of residence in a Member State for a period of up to three months if they are in possession of a valid passport and are accompanying or joining the EU, EEA or CH citizen, without any limitation to 90 days in a 180-day period.

To be noted that third-country nationals who are family members of EU, EEA and CH citizens are entitled to accompany or join the EU, EEA or CH citizen for consecutive periods of up to three months per Schengen State without any conditions or formalities (except the need to have a visa for third-country nationals from a country subject to a visa requirement where the person is not in possession of a valid residence card or a residence permit as further explained in point 2.8 of this Section).

When the family member travels on his/her own and does not hold a valid residence card or a residence permit (see point 2.8 of this Section), the normal regime concerning the length of the short stay will (re)start to apply, as the conditions for benefiting from the facilitations concerning the free movement of the EU, EEA and CH citizens and their families are not met anymore.

The previous stays performed in the area without internal border controls accompanying or joining the EU, EEA or CH citizen should not be taken into account for the sake of the calculation of the compliance with the 90/180-day rule which is applicable to the short stay only.

***Examples** (in all these examples, the third country national is not in possession of a valid residence card or a residence permit as further explained in point 2.8 of this Section):

An Indian national married to a French citizen may accompany his French spouse to Germany for three months, Spain for two months and Italy for three months, thus staying in the area without internal border controls for a total consecutive period of eight months.

A Japanese citizen is married with an Estonian citizen and has never come to the EU before. The Japanese citizen accompanies his Estonian spouse to Italy for one month. Just after that month, the Estonian spouse leaves Italy and returns to Japan to work. The Japanese citizen can remain alone for another 90 days (the limit of 90 days in any 180-day applies).

A Chinese citizen married to a Swedish citizen spends alone, for business purposes, 15 days in Austria. The Swedish citizen then joins him and they spend one month in Portugal. Just after that month, the Swedish spouse leaves the EU. The Chinese citizen can remain alone for the remaining 75 days in the 180-day period (the limit of 90 days in any 180-day period applies, but the stay performed together with the EU citizen should not be counted (in this example, the one month period) when assessing the respect of the limit of 90 days in any 180-day period).

2.2. A hit in the SIS or in other relevant databases is not in itself a sufficient ground to refuse entry to any persons enjoying the right of free movement under Union law (see point 8.3. of this Section on the rules applying to the refusal of entry of beneficiaries of the right of free movement under Union law).

2.3. Targeted checks of relevant databases are only possible when the systematic checks would have a disproportionate impact on the flow of traffic at certain land and sea border crossing points, and following an assessment of the risks related to the public policy, internal security, public health or international relations of any of the Schengen States. (For further information about the notification procedure and risk assessment, see Appendices A and B).

In such a situation the common risk indicators relevant for foreign terrorist fighters established by the Commission together with Schengen States and relevant agencies should be used to define which persons can be submitted to a targeted check only.

The possibility for Member States laid down in Article 8(2a) to (2f) of the Schengen Borders Code to conduct targeted instead of systematic checks on persons enjoying the right of free movement under Union law must be distinguished from the right of Member States laid down in Article 9 of the Schengen Borders Code, to relax border checks as result of exceptional and unforeseen circumstances (see point 7 of this Section).

	Trigger	Procedural requirements	Substance	Length
Targeted checks at specified border crossing points (BCPs) Article 8(2a) to (2f) of the Schengen Borders Code	- disproportionate impact on flow of traffic	- submission of prior risk assessment to Frontex - notification to Member States, Frontex and Commission - 6-monthly reporting to Frontex and Commission	- Concerns only beneficiaries of free movement - minimum check remains obligatory - Since 7 April 2019 air borders are excluded from possibility of targeted checks.	- must not exceed what is strictly necessary - defined in accordance with risk assessment (i.e. could cover longer periods)
Relaxation Article 9 of the Schengen Borders Code	- unforeseeable events leading to excessive waiting time (eg flood, natural disaster, (civil) war in nearby State, unexpected closure of nearby BCPs, important road accident) - all resources have been exhausted as regards staff, facilities and organisation	- decision taken by border guard in command at BCP - registration of info at BCP in accordance with Annex II point (b) of the Schengen Borders Code - yearly report to the European Parliament and the Commission	- Concerns all travellers - stamping (for third-country nationals) remains obligatory - entry checks have priority over exit checks	temporary, adapted to circumstances justifying it (i.e. a very brief period only)

2.4. When such targeted checks are in place, persons enjoying the right of free movement under Union law on whom targeted checks of relevant databases are not carried out, must undergo "other checks on persons enjoying the right of free movement under Union law" with a view to establishing the person's identity on the basis of the production or presentation of a travel document. Such "other checks" must comprise 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. 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 Schengen States, the border guard must consult the relevant databases referred to in Article 8(2), points (a) and (b), of the Schengen Borders Code.

2.5. The checks against the relevant databases may be carried out in advance on the basis of passenger data received in accordance with Directive 2004/82/EC or in accordance with other Union or national law. Where those checks are carried out in advance on the basis of such passenger information data, the data received in advance must 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, must also be verified.

2.6. To ensure efficient border checks, where there are doubts as to the authenticity of the travel documents or the identity of its holder, at least one of the biometric identifiers (facial image and/or fingerprints) integrated into the travel documents issued in line with Regulation (EC) No 2252/2004 must be verified. Where possible such verification must also be carried out in relation to travel documents not covered by that Regulation (EU passports and travel documents issued by the EU Member State which opted out from its application: Ireland, and passports and travel documents issued by third countries). As regards verification of the authenticity of the data stored in a biometric passport (see point 16 of this Section).

2.7. In order to avoid subjecting persons enjoying the right of free movement under Union law to those systematic checks twice at the land border crossing points with Romania, Bulgaria and Croatia, border authorities may decide based on a risk assessment that checks against relevant databases will be carried out upon exit on a non-systematic basis only. For the time being this arrangement may apply to the following land borders:

- Bulgaria-Greece
- Romania-Hungary
- Bulgaria-Romania
- Croatia-Slovenia
- Croatia-Hungary

2.8. Persons enjoying the right of free movement under Union law are authorised to cross the border of a Schengen State on the basis of the following documents, as a general rule:

– EU, EEA, CH citizens: identity card or passport;

– EU Emergency Travel Document[51];

– Members of the family of EU, EEA and CH citizens who are nationals of a third-country: passport. They may also be required to have a visa, if they are nationals of a third-country subject to the visa obligation, unless they are in possession of:

- a valid residence permit issued by a Schengen State fully applying the Schengen *acquis;*
- or a valid residence card issued under Articles 10 and 20 of Directive 2004/38/EC by an EU Member State or an EEA country, independently of whether they accompany or join the EU or EEA citizen

[51] Decision of the representatives of the governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document (96/409/CFSP) and Council Directive (EU) 2019/997 of 18 June 2019 establishing an EU Emergency Travel Document and repealing Decision 96/409/CFSP (in force but not yet applicable).

Possession of the residence card issued under Articles 10 and 20 of Directive 2004/38/EC constitutes sufficient proof that the holder of that card is a family member of a Union citizen. To be noted that the residence card has visa exempting effect (and in the future also ETIAS exempting effect) in any Member State, including in the EU citizen's Member State of nationality.

***Examples:**

A Slovak citizen resides with her Chinese spouse in Germany. They travel to France. As the Chinese spouse has a German residence card issued under Article 10 of Directive 2004/38/EC, there is no need for an entry visa, both under the Directive or the Schengen Borders Code.

A German citizen resides with his Chinese spouse in Germany. They travel to Spain. As the Chinese spouse holds a German residence permit issued under national law by a Schengen Member State, there is no need for an entry visa under the Schengen Borders Code.

A Slovak citizen resides with her Chinese spouse in Romania. They travel to France. As the Chinese spouse has a Romanian residence card issued under Article 10 of Directive 2004/38/EC, he is exempted from the visa requirement under the Directive.

A Slovak citizen resides with his Chinese spouse in Ireland. The Chinese spouse holding a residence card, issued by Ireland under Article 20 of Directive 2004/38/EC, travels alone to France. The Irish residence card has visa exempting effect in France even if its holder travels alone.

Two Indian citizens, the ***first*** holding a Croatian residence permit and the second holding a Croatian residence card issued under Directive 2004/38/EC, travel to Slovenia: The first will need a visa to enter Slovenia (since Croatian residence permits do not yet have visa exempting effect in the area without internal border controls under relevant Schengen rules), the ***second*** is exempted from visa requirement (since Croatian residence cards have visa exempting effect in the area without internal border controls under Directive 2004/38/EC).

Regarding the format of residence cards, Regulation (EU) 2019/1157 of the European Parliament and of the Council[52] introduced harmonised formats and applies in the EU as from 2 August 2021. This means that residence cards or permanent residence cards issued as from 2 August 2021 have a uniform format. These cards have the same format as that established by Council Regulation (EC) No 1030/2002[53] and as implemented by Implementing Decision C(2018) 7767[54]. They bear the title 'Residence card' or 'Permanent residence card' and the standardised code 'Family Member EU Art 10 DIR 2004/38/EC' or 'Family Member EU Art 20 DIR 2004/38/EC'. To be noted that Regulation (EU) 2019/1157 provides for the gradual phasing out of existing residence cards or permanent residence cards. This means that, for a certain number of years, there will be different formats of residence cards or permanent residence cards in circulation (the ones issued pursuant to Regulation (EU) 2019/1157 and the ones issued previoulsy without a specific format)[55].

Regarding the format of identity cards, for EU citizens, Regulation (EU) 2019/1157[56] introduced harmonised formats for ID cards and applies as from 2 August 2021. Regulation (EU) 2019/1157 provides for the gradual phasing out of existing identity cards[57].

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52 Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement (OJ L 188, 12.7.2019, p. 67) is EEA relevant and needs to be integrated in the EEA Agreement, the process of which is ongoing.

53 Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

54 Commission Implementing Decision C(2018) 7767 of 30 November 2018 laying down the technical specifications for the uniform format for residence permits for third country nationals and repealing Decision C(2002)30691.

55 Pursuant to Article 8(1) of Regulation (EU) 2019/1157, residence cards of family members of Union citizens who are not nationals of a Member State, which do not meet the requirements of Article 7 shall cease to be valid at their expiry or by 3 August 2026, whichever is earlier. Article 8(2) provides for a derogation from Article 8(1) with respect to residence cards which do not meet the minimum security standards set out in part 2 of ICAO document 9303 or which do not include a functional MRZ (machine-readable zone) compliant with part 3 of ICAO document 9303. The latter shall cease to be valid at their expiry or by 3 August 2023, whichever is earlier.

56 Regulation (EU) 2019/1157 is EEA relevant and needs to be integrated in the EEA Agreement, the process of which is ongoing.

57 Pursuant to Article 5(1) of Regulation (EU) 2019/1157, identity cards which do not meet the requirements set out in Article 3 shall cease to be valid at their expiry or by 3 August 2031, whichever is earlier. However, Article 5(2) provides for two derogations. Accordingly, identity cards that do not meet the minimum security standards set out in part 2 of ICAO document 9303 or that do not include a functional MRZ (machine-readable zone) shall cease to be valid at their expiry or by 3 August 2026, whichever is earlier. Identity cards of persons aged 70 and above at 2 August 2021, which do meet the minimum security standards as set out in part 2 of ICAO document 9303 and which do have a functional MRZ, shall cease to be valid at their expiry.

Family member subject to the visa obligation might also present two passports, i.e. a valid passport (without visa) and an invalidated passport containing a valid visa (see part II point 3.1.2. of the Visa Handbook).

For further information on the specific rules relating to family members of EU, EEA and CH citizens, see Part III of the Handbook for the processing of visa applications and the modification of issued visas, hereinafter referred to as the "Visa Code Handbook".

N.B. On the basis of the Agreement between the European Community and its Member States, of one part, and the **Swiss Confederation**, of the other, on the free movement of persons, the above rules regarding checks on persons enjoying the right of free movement under Union law also cover the employees, irrespective of their nationality, of persons providing services, who are integrated in the labour market of Switzerland or one of the EU Member States and posted for the provision of a service in the territory of one of those EU Member States (Article 17 of Annex I to that Agreement).
On the basis of the European Free Trade Association Agreement, the same rules apply to the employees, irrespective of their nationality of persons providing services, who are integrated in the labour market of Switzerland or one of the EEA States and posted for the provisions of a service in the territory of one of those EEA States.

2.9. However, if a person enjoying the right of free movement under Union law does not have the necessary travel documents or, if required, the necessary visas, the Schengen State concerned must, before turning him/her back, give such person every reasonable opportunity to obtain the necessary documents or have them brought to him/her within a reasonable period of time or corroborate or prove by other means that he/she is covered by the right of free movement under Union law.

In case the traveller presents a travel document without a machine readable zone and there is a doubt about his/her identity, a second line check should be carried out.

*** Legal basis – Case law**:

- Directive 2004/38/EC (Articles 4, 5 and 27)

- Schengen Borders Code (Article 8)

- Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, 21 June 1999

- Regulation (EU) 2017/1954

- Judgment of the European Court of Justice of 25 July 2002, Case C-459/99, MRAX vs. Belgium

- Judgment of the European Court of Justice of 17 February 2005, Case C-215/03, Salah Oulane vs. Minister voor Vreemdelingenzaken en Integratie

- Judgment of the European Court of Justice of 31 January 2006, Case C-503/03, Commission vs. Spain

- Judgment of the European Court of Justice of 18 June 2020, Case C-754/18, Ryanair

- Judgment of European Court of Justice in Case C-202/13, Sean McCarthy

3. CHECKS ON THIRD-COUNTRY NATIONALS UPON ENTRY

3.1. The entry conditions to be fulfilled by third-country nationals when entering the territory of a Schengen State are the following:

(a) the possession of a valid travel document or documents authorising them to cross the border, whereby its validity must extend at least three months after the intended date of departure from the Schengen States (although in a justified case of emergency, this obligation may be waived) and it must have been issued within the previous 10 years; the requirement that the travel document must have been issued within the previous ten years must be fulfilled at the day of entry (but not necessarily during the stay)[58], provided that its validity extends until the end of the stay plus three months;

[58] This question is only relevant in those exceptional cases in which the validity of a third country passport is longer than 10 years (for example, 10 years and some months as it was practice in third countries, which allowed the remaining validity of an old passport to be transferred over to the new passport when renewing it). NB: According to international standards, the validity of travel documents should never exceed ten years, therefore the practical relevance of this question should be of temporary nature only.

***Example:**

A third country traveller arrives on 21 November 2022 for a 20 days stay in the EU with a passport issued on 23 November 2012 and valid until 23 March 2023. The entry condition of Article 6(1), point (a), of the Schengen Borders Code is fulfilled, since at the day of arrival the *issuance date* was less than 10 years ago and the *validity* extends beyond three months after the intended date of departure.

(b) the possession of a valid visa, when this is required, except where a third-country national holds a valid residence permit issued by a Schengen State fully applying the Schengen *acquis* which is deemed to be equivalent to a visa or a valid long-stay visa. (Residence permits, long stay visa and other documents listed in subsequent sections include a chip with biometric data which must be checked, as set out in point 3.3 of this Section.) This equivalence does not apply to temporary permits issued pending examination of a first application for a residence permit or an application for asylum;

(c) the justification of the purpose and of the conditions of stay in the Schengen State(s) to be visited, including the possession of sufficient means of subsistence for the duration of the intended stay and for the return to their country of origin (or for transit to a third country into which they are certain to be admitted, for instance because they have a residence permit issued by that country), or the possibility to acquire such means lawfully;

(d) not being a person for whom an alert has been issued in the SIS for the purpose of refusing entry;

(e) not being a person considered as a threat to public policy, internal security, public health or the international relations of any of the Schengen States. This may particularly be the case where no alert exists in a national database entailing a refusal of entry towards the person concerned. In its judgment of 12 December 2019 in case C-380/18, (E.P.) the European Court of Justice expressly recognised that the concept of 'threat to public policy or public security' within the meaning of the Schengen Boders Code is appreciably different from the concept of 'threat to public policy or

public security' within the meaning of free movement rules (Directive 2004/38/EC). Within the meaning of the Schengen Boders Code, infringements which third-country nationals may be suspected of having committed must be sufficiently serious, in the light of their nature and of the punishment which may be imposed, to justify that national's stay on the territory of the Member States being brought to an immediate end. Second, in the absence of a conviction, the competent authorities can invoke a threat to public policy only if there is consistent, objective and specific evidence that provides grounds for suspecting that that third-country national has committed such an offence.

*** Legal basis**:

- Schengen Borders Code (Article 6)

- Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa

- Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 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

- Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC

*** Links**:

-List of third countries whose nationals must be in possession of visas when crossing the external borders and of those whose nationals are exempt from that requirement.

-Information on national derogations from the visa requirements

-Common list of third countries whose nationals are required to be in possession of an airport transit visa when passing through the international transit area of airports situated on the territory of the Member States

-List of third countries whose nationals are required to be in possesion of an airport transit visa, when passing through the international transit area of airports situated on the territory of one Member State

-List of residence permits entitling their holders to transit through the airports of Member States without being required to hold an airport transit visa

3.2. Third-country nationals must be subject to a thorough check. However, special rules apply to the following categories of persons:

(a) heads of State and members of their delegations (point 5.1 of this Section);
(b) pilots of aircraft and other crew members (point 5.2 of this Section);
(c) seafarer (point 5.3 of this Section);
(d) holders of diplomatic, official or service passports and members of international organisations (point 5.4 of this Section);
(e) border residents benefiting from a local border traffic regime (point 5.5 of this Section);
(f) minors (point 5.6 of this Section);
(g) school pupils from third countries resident in an EU State or in a third country not subject to the visa obligation (point 5.7 of this Section);
(h) cross border workers (point 5.8 of this Section);
(i) ADS tourists (point 5.9 of this Section);
(j) rescue services, police, fire brigades and border guards (point 5.10 of this Section);
(k) offshore workers (point 5.11 of this Section).

Checks on **stateless persons** and **refugees** are carried out in the same way as for third-country nationals in general. The validity of travel documents issued by third countries to

refugees and stateless persons can be checked in the "list of travel documents issued by third countries and territorial entities". The question of whether the holder of such travel document requires a visa to enter the EU is regulated by Article 6(2), point (b), of Regulation (EU) 2018/1806, which places this decision in the hands of each Member State. The relevant notifications can be consulted in the table "Exemptions Article 6(2)".

Special rules apply to asylum seekers and applicants for international protection (see point 12 of this Section on asylum seekers).

The border guard must promptly take and transmit the fingerprint data of every third-country national or stateless person who is apprehended in connection with the irregular crossing of an external border of a Schengen State, if they are at least 14 years of age and if they have not been turned back.

N.B. For checks of third-country nationals who are members of the family of EU, EEA or CH citizens (persons enjoying the right of free movement under Union law) see point 2.8 of this Section.

* **Legal basis**:

- Regulation (EU) No 603/2013 of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints (Article 14)

* **Links**:

- Documents issued to stateless persons and refugees by the Schengen States

- Information on national derogations from the visa requirements

3.3. Border guards must **systematically check** third-country nationals against the following databases:

- SIS;
- SLTD;

- national databases containing information on stolen, misappropriated, lost and invalidated travel documents;

Border guards may also consult other national and Interpol databases.

3.4. The checks against the relevant databases may be carried out in advance on the basis of passenger data received in accordance with Directive 2004/82/EC or in accordance with other Union or national law. Where those checks are carried out in advance on the basis of such passenger information data, the data received in advance, must 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, must also be verified.

3.5. For passports and travel documents containing a storage medium[59], the authenticity of the chip data must be checked, subject to the availability of valid certificates. The authenticity and integrity of the data stored in the microchip must be verified when checking biometric passports. In order to verify that the data on the chip have been entered by an authorised authority and have not been tampered with, the content of the chip must be authenticated by Passive Authentication. The Document Signer certificate of the document must be verified against the respective trusted CSCA (Country Signing Certification Authority) certificate of the issuing country. In addition, chip authentication must be done to verify that the chip is genuine and that it has not been cloned[60].

3.6. Third-country nationals must be subject to a thorough check.

At entry, the thorough check consists of the verification of the fulfilment of all entry conditions, i.e.:

- the verification that the third-country national is in possession of a document or documents valid for crossing the border and which has not expired, and that it is

[59] All documents regulated by Union law (passports, identity cards, residence cards, migration-related cards and other travel documents issued based on Union law, including the local border traffic permit) contain a chip with the exception of the visa (paper based). The seafarer´s identity document – even though not based on Union law – also contains a chip.

[60] A cloned chip is where the information is copied from the authentic chip and put on a duplicate chip with no security restrictions.

accompanied, where applicable, by the requisite visa, residence permit or long-stay visa. A third-country national subject to the visa obligation may travel with two passports, i.e. with a valid passport (without visa) and with an invalidated passport containing a valid visa. From May 2022, a digital seal has to be on the visa sticker[61]. It will include all the information written on the sticker except the photograph. This digital seal should be used to verify the authenticity of the data on the visa sticker when it is checked in the territory or at the border of a MS when the VIS is not accessible.

Digital seal – practical example:

Border guards can read and validate the visible digital seal (2D barcode) printed on Schengen visas. The 2D barcode (a square looking like a QR Code at the lower right corner of the visa) adds an extra layer of security and is especially useful for ensuring the authenticity and integrity of Schengen visas when the Visa Information System is inaccessible. If the data encoded in the barcode does not match the personal data of the visa holder printed on the sticker or if the validation of the digital signature fails, then the visa sticker might be counterfeited or forged. If the data encoded in the barcode match the data printed on the sticker, but validation of the digital signature fails for one reason or another, this does not automatically impact the validity of the visa as there may be other reasons for the failure. Regulation (EC) No 810/2009 of the European Parliament and of the Council (Visa Code) and the Visa Handbook set out the procedure for the annulment or revocation of Schengen visas. In the event the Visa Information System is unavailable, and there is a doubt about the authenticity of the visa, it is recommended to contact the visa issuing authority.

[61] Commission Implementing Decision C(2020) 2672 final of 30 April 2020 introducing a digital seal on the uniform format for visas. During a transitional period, until 1 November 2022, Member States may issue both, visas with and without the digital seal.

VISUM/VISA
000000000
DEUTSCHLAND/GERMANY/ALLEMAGNE D
SCHENGEN STAATEN
30-06-20 09-08-20 40
C F2200129O MULT
MOSKAU 20-06-20
MUSTERMANN, OLGA
BESUCHS-/
GESCHAFTSVISUM
ERWERBSTATIG-
KEIT NICHT
ERLAUBT
MUSTER
VCD<<MUSTERMANN<<OLGA<<<<<<<<<<<<<<<
000000000RUS7409185F2008099<M400630

- systematically check relevant databases, (see point 1.5 of this Section, fourth indent in the table), and if his/her means of transport and the objects he/she is transporting are not likely to jeopardise the public policy, internal security, public health or international relations of any of the Schengen States. Such verification must include direct consultation of the data and alerts on persons and objects contained in the SIS and in national data files, and the action to be performed, if any, as a result of an alert;

- the examination of the entry and exit stamps in 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 area without internal border controls or the territory of Bulgaria, Croatia, Cyprus or Romania taken separately[62]- i.e. 90 days in any 180-day period preceding each day of stay;

- the verification regarding the points of departure and destination of the third-country national concerned and the purpose of the intended stay and, where necessary, checking the corresponding supporting documents;

- the verification that the third-country national concerned has sufficient means of subsistence for the duration and purpose of the intended stay, for his/her return to the country of origin or transit to a third country, or that he/she can obtain these means legally. In order to assess the means of subsistence, the reference amounts set by each Schengen State must be taken into account;

- the verification 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 sponsorships, where such declarations are provided for by national legislation and letters of guarantee/invitation from hosts as defined by national legislation, in case the third-country national is staying with a host, may also constitute evidence of sufficient means of subsistence;

62 The separate calculation of the 90/180 days period on the territory of Romania and Bulgaria is set to change following the entering into operation of EES.

- the validity of a credit card can be verified by contacting the issuing company or by using other facilities available at the border crossing point (for example, exchange offices);

- Invitation from hosts can be verified by contacting the host directly or by verifying the host's good faith through the national contact points of the Schengen State of residence of the host;

*** Guidelines on the notion of 'threat to public health' for the purpose of refusing entry:**

This notion covers any disease with epidemic potential as defined by the International Health Regulations (IHR) of the World Health Organisation (WHO) and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of Schengen States.

For the purpose of this Handbook, any threat to the health of the European citizens, as well as decisions on effective measures to be taken, will be assessed and decided through the Community Network set up under Decision 1082/2013/EU of the European Parliament and of the Council and its Early Warning and Response System (EWRS) and the ECDC, set up by Regulation (EC) No 851/2004. The EWRS authorities comprise the EU Member States' public health authorities and they work at national level together with national recognised surveillance institutes. The ECDC performs the risk assessment of the threat (ecdc.europa.eu).

Therefore, the authorities of each EU Member State which are competent for implementing health measures should always be associated, in accordance with national and Union public health legislation and with the procedures established by each Schengen State, with the assessment of the public health risk for the purposes of allowing or refusing entry at the border.

*** Guidelines on the assessment of 'threat to public health' in the situation of a disease with epidemic potential**

The COVID-19 pandemic has reinforced the need for the Union to be better prepared to

respond to crisis situations at the external borders related to situations of diseases with an epidemic potential that are a threat to public health. The adoption of inconsistent and divergent measures at the external borders to address such threats negatively affects the functioning of the area without internal border controls, reduces predictability for travellers and people-to-people contacts. The Commission recommends to take into account the following considerations when applying national measures related to a threat to public health at external borders :

1. Union citizens within the meaning of Article 20(1) TFEU and third-country nationals who, under agreements between the Union and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens, as well as their respective family members, should always be allowed to travel to the EU Member States and non-EU countries to whom the Schengen acquis applies for any purpose, not just to return home.

Where they travel from third countries which are subject to a temporary restriction of non-essential travel, this may be subject to health requirements, such as self-isolation or similar measures, of the Schengen State of destination (provided they impose the same requirements on their own nationals).

2. Third country nationals who are long-term residents under Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, persons deriving their right to reside from other EU Directives, the Withdrawal Agreement or national law or who hold national long-stay visas, as well as their respective family members should also be authorised entry, subject to relevant health measures.

The same should apply also to third country nationals with temporary entry permit [issued for the purpose of crossing the border and exercising the right of legal residence in a Member State upon collecting the residence permit], where appropriate.

Border guards should check the respective documentation (i.e. travel documents, residence permits and any other official documents) in order to verify that third-country nationals fall within the scope defined by the two above subparagraphs.

3. Entry screening of travellers for the symptoms of diseases with epidemiological potential may involve the use of thermal scanning and/or symptom screening or any other devices aimed at detecting the relevant symptoms.

All public agents involved in border, customs, sanitary or any kind of controls at the external borders should be equipped with a personal protection gear composed, where appropriate, of masks, gloves, sanitising gels, etc.

4. When deciding whether the temporary restrictions on non-essential travel to Schengen States apply to a third-country national, previous stay within a certain period in a third country for which the restrictions on non-essential travel have been lifted should be the deciding factor (rather than nationality).

5. At the air borders, Automated Border Control (ABC) gates have an important role in facilitating smooth passenger flows at the main air BCPs; however, e-Gate systems cannot verify the residency of third-country nationals. Schengen States which allow third-country citizens to use ABC gates should consider implementing spot checks for those travellers who use the e-Gates or else to temporarily disable ABC gates for third countries.

6. Border guards will need to familiarise themselves with what third countries' residence and work permits look like plus have a basic understanding of such documents' printing techniques and security features. Besides third countries' residence or work permits, travellers could also possibly present third countries' identity cards and/or driving licences, plus other official documents, in support of their claimed country of residence.

Depending on the circumstances and the type of documents presented, Border guards will need to make best use of all that is available to them as reference material, for example, FADO / iFADO / PRADO21, Frontex Reference Manual and use the resources in conjunction with national document databases plus other commercial options.

7. Travellers need to be informed before their travel of the need to prove their country of residence, thus the need for additional documents, for example, residence permits, work permits, identity cards or driving licences issued by the third-country of residence, and any other official documents that supports the travellers' claimed country of residence. This is

important since third countries' residence or work permit details are not always affixed or indicated on travel documents, especially passports. Non-compliance with the obligation to prove the country of residence could result in refusal of entry.

8. Any decision on refusal of entry needs to be proportionate and non-discriminatory. A measure is considered proportionate on condition that it has been taken following consultation of the health authorities and that it has been considered by them as suitable and necessary to attain the public health objective. In the form with refusal of entry the border guard must specify the reason of refusal in the form under the section 'comments'.

9. The traveller can be provided with an information leaflet on a particular disease. For a healthy traveller there is no need for additional sanitary notification to the authorities of the neighbouring third country to which the traveller is returned from an EU external land border crossing point (road or rail traffic) or from an EU external maritime border crossing point (for example ports designated for regular ferries connections or other ports with cruise ships or individual sailors of fishermen's boats).

10. In order to minimise the arrival of persons from third countries, airport liaison officers or liaison officers in those third countries on the list could conduct pre-boarding checks. Schengen States could also deploy border guards on certain flights with third countries, whose role would be to fly on outgoing flights from Europe in order to conduct pre-boarding checks on return flights. Deploying health inspectors and/or medical personnel directly at BCPs to screen travellers, review health declarations etc. could also be considered.

*** Guidelines on calculation of the length of stay:**

For the 90 days within a 180-days period, the day of entry must be calculated as the first day of stay in the area without internal border controls and the day of exit must be calculated as the last day of stay in this area. For Bulgaria, Croatia, Cyprus and Romania, it corresponds to the day of entry in and exit from the territory of each one of these Schengen States. The notion of "any" implies the application of a "moving" 180-day reference period, looking backwards, at each day of the stay, into the last 180-day period, in order to verify if the 90 days/180 day requirement continues to be fulfilled. This means that an

absence for an uninterrupted period of 90 days allows for a new stay of up to 90 days. See: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/docs/short_stay_schengen_calculator_user_manual_en.pdf

The "short-stay calculator" on the European Commission's/DG HOME's website (https://ec.europa.eu/home-affairs/content/visa-calculator_en or as downloaded from CIRCA) can be used for calculating the period of stay allowed under the new rules. The user's guide contains information on the new rules, the use of the calculator and practical examples. See: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/index_en.htm.

This way of calculating short stays, which applies as of 18 October 2013, does not apply to the visa waiver agreements concluded between the EU and the Bahamas, Brazil, Saint Kitts and Nevis, Mauritius, and Seychelles with respect to which the definition ("3 months during a 6 months period following the date of first entry") applies. The length of stay of non-EU citizens traveling with a visa issued in accordance with the visa facilitation agreements concluded by the EU and certain third countries is to be calculated according to the new calculation method since in these agreements there is a reference to "90 days per period of 180 days".

The periods of stay authorised under a residence permit or a long-stay visa should not be taken into account in the calculation of the duration of short stay (when assessing the compliance with the 90 days in any 180-day rule). This provision thus allows visa-free third-country nationals to legally remain in the territory of Schengen States fully applying the acquis for a subsequent short-term stay. A traveller can show that he or she has respected the conditions relating to the duration of a short stay by the date of expiry of a previous residence permit or long stay visa[63]. National rules or practices which lay down that a third-country national must as a general rule leave its territory after termination of a long-stay (covered by a residence permit or national visa) before being allowed to start a subsequent short-term stay on that territory are not compatible with Schengen rules.

[63] This is also expressly confirmed by Article 12(3) of the Schengen Borders Code (applicable from the date on which the EES is to start operations).

Responsibility for complying with the 90/180-day rule lies with the traveller[64]. If a third-country national does not make use of the possibility offered by Article 12 of the Schengen Borders Code or Article 14(8) of Regulation (EU) 2017/2226 of the European Parliament and of the Council[65] to request the registration of the start of a short-term stay (or to be considered as having entered for a short-term stay) at the date of expiry of a previous residence permit or long-stay visa, he/she risks being considered as illegally staying with resulting negative consequences, in accordance with the presumption set out in Article 12 of the Schengen Borders Code or Article 20 of Regulation (EU) 2017/2226. This presumption may, however, subsequently be rebutted in accordance with Article 12 the Schengen Borders Code.

***Examples:**

A Canadian student whose residence permit "student" in Austria expires on 31 July intends to make an interrail trip through several Schengen States in August. The Canadian student must not necessarily leave the EU, but he/she may start a short-term stay immediately upon expiry of the residence permit. For that purpose he should, before 31 July, request the competent authorities under Article 12 of the Schengen Borders Code or Article 20 of Regulation (E) 2017/2226 to be considered as having entered on 1 August. (NB: In addition, once the Regulation EU) 2018/1240 of the European Parliament and of the Council[66] will have become applicable, he/she will also be required to hold a valid travel authorisation.)

An Indian researcher whose residence permit "researcher" in Austria expires on 31 July intends to make a hiking trip through the Alps (in Austria and Italy, but spending most

64 Article 14(8) of Regulation (EU) 2017/2226 explicitly provides that "…where the short stay of a third-country national who is present on the territory of a Member State starts directly after a stay based on a residence permit or a long-stay visa and no previous individual file has been created, that third-country national may request the competent authorities … to create an individual file and an entry/exit record by entering the data …."

65 Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

66 Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

time in Austria) in August. The Indian researchers must not necessarily leave the EU, but he/she may start a short-term stay immediately upon expiry of the residence permit. For that purpose he/she must have applied for a short-stay visa at an Austrian consulate (for example, in Prague, or Bratislava) and must have been issued such a visa before 1 August. In addition he/she should, before 31 July, request the competent authorities under Article 12 of the Schengen Borders Code or Article 20 of Regulation (E) 2017/2226 to be considered as having entered on 1 August.

As regards possible extensions of short-term stays under bilateral agreements, Article 20(2) of the Schengen Implementing Convention[67] contains detailed rules for handling these specific cases.

3.6.1. Thorough checks at exit consist of:

- the verification that the third-country national is in possession of a document valid for crossing the border;
- the verification of the travel document for signs of falsification or counterfeiting;
- the verification by means of mandatory systematic checks against relevant databases that the third-country national is not considered to be a threat to public policy, internal security or the international relations of any of the Schengen States;
- for passports and travel documents containing a storage medium, the authenticity of the chip data must be checked, subject to the availability of valid certificates. The authenticity and integrity of the data stored in the microchip should be verified when checking biometric passports. In order to verify that the data on the chip have been entered by an authorised authority and have not been tampered with, the content of the chip should be authenticated by Passive Authentication. The Document Signer certificate of the document should be verified against the respective trusted CSCA certificate of the issuing country. If supported, chip authentication should be used to verify that the chip is genuine.

3.6.2. Further checks on exit may comprise:

- the verification that the person is in possession of a valid visa, if required, except when he/she is holding a valid residence permit issued by a Schengen State or a valid long-stay visa or other documents authorising a stay or a re-entry into their territory.

[67] Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

- the verification that the person did not exceed the maximum duration of authorised stay.

3.7. Third-country nationals holding a valid residence permit should, as a general rule, not be asked to prove the purpose of the intended stay nor the possession of means of subsistence. The other checks – and in particular the examination of travel and residence documents, the searches in the SIS and in national databases – must, however, be carried out as explained in points 1.2 and 3.6.2 of this Section. For Withdrawal Agreement beneficiaries, detailed guidance on how they can evidence their status is set out in Annex 42 to this Handbook.

3.8. In order not to slow down the checking procedures at the entry/exit booths in the first line, and where there is a need for making additional verifications, these may be carried out in a location separate from the booths ('second-line checks').

If requested by the third-country national, and where appropriate facilities exist, such thorough checks must be carried out in a non-public area designated for that purpose. In case of second-line checks, the third-country national concerned must be given written information about the purpose of such checks as well as about the procedure. This information may take the form of a poster or of a leaflet to be handed over to the person. The leaflet or the poster must be available in all the official languages of the Union and in the language(s) of the countries bordering the Schengen States concerned.

*** Legal basis:**

- Schengen Borders Code (Article 7 and 8, Annexes I and IV)

- Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC

- Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control

- Council Regulation No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States

- International Health Regulations (WHO)

4. SEARCHES IN THE SCHENGEN INFORMATION SYSTEM (SIS) AND STOLEN AND LOST TRAVEL DOCUMENTS (SLTD)

4.1. All persons and their travel documents need to be cross-checked against the SIS during border checks. The national border control applications usually offer an integrated check of persons and their travel documents against relevant databases. The SIS contains alerts on persons and objects falling under one of the following alert categories:

- Alerts on return (Article 3 of Regulation (EU) 2018/1860 of the European Parliament and of the Council[68]), this alert category covers third-country nationals subject to a return decision for the purpose of verifying that the obligation to return has been complied with and of supporting the enforcement of the return decisions;

- Refusal of entry or stay (Article 24 of Regulation (EU) 2018/1861 of the European Parliament and of the Council[69]), this alert category covers third-country nationals[70] who are not entitled to enter into or stay in the territory of the Schengen States[71];

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68 Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p. 1).

69 Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

70 An alert concerning a third-country national who is a family member of an EU citizen should be dealt with pursuant to Article 26 of Regulation (EU) 2018/1861(see point 8.3, Section I).

71 Cyprus does not have access to the SIS yet, therefore, for the purposes of this chapter, Schengen States mean all except Cyprus. Croatia is able to access refusal of entry alerts, but is not obliged to refuse entry into or stay on its territory to third-country nationals for whom an alert has been issued by another Schengen State in accordance with Regulation (EC) No 1987/2006, but can decide to act on such alert. Croatia is not able to enter refusal of entry alerts to SIS for time being.

- Persons wanted for arrest (Article 26 of Regulation (EU) 2018/1862 of the European Parliament and of the Council[72]), this alert category covers persons for whom a European Arrest Warrant, a Iceland/Norway arrest warrant[73] or Extradition Request (Switzerland and Liechtenstein) has been issued;

- Missing persons (Article 32(1), points (a) and (b), of Regulation (EU) 2018/1862), the purpose of this alert category is to find missing persons, including children and unaccompanied minors, and to place them under protection if lawful and necessary;

- Vulnerable persons at risk i.e., Children at risk of abduction /Children who need to be prevented from travelling/ vulnerable adults who need to prevented from travelling (Article 32(1), points (c), (d) and (e), of Regulation (EU) 2018/1862), the purpose of this alert is to prevent children from being abducted and vulnerable persons from travelling without authoritisation or from being taken unlawfully abroad. The main difference between issuing an alert on a missing person and an alert on vulnerable persons to be prevented from traveling, is that in the latter case the person is not yet missing, but is at risk of going missing ('preventive alerts');

- Persons sought to assist with a judicial procedure (Article 34 of Regulation (EU) 2018/1862), the purpose of this alert category is to find out the place of residence or domicile of persons sought to assist with criminal judicial procedures (for example witnesses);

- Persons and objects for discreet checks, inquiry checks or specific checks (Article 36 of Regulation (EU) 2018/1862), the purpose of this alert is to obtain information about persons or related objects for the purposes of prosecuting criminal offences and for the prevention of threats to public or national security;

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72 Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).

73 Based on the surrender agreement between EU Member States and Iceland and Norway which started to apply in 2019: The Agreement of 28 June 2006 between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway entered into force on 1 November 2019 (OJ L 292, 21.10.2006, p. 2).

- Objects for seizure or use as evidence in criminal procedures (Article 38 of Regulation (EU) 2018/1862), this alert covers objects (vehicles, trailers, caravans, industrial equipment and components of industrial equipment, boats, boat engines, firearms, vehicle registration certificates and vehicle number plates, banknotes and false banknotes, items of information technology) and documents (blank official documents, issued identity documents, such as passports, identity cards, residence permits, travel documents and driving licences which have been stolen, misappropriated, lost or invalidated or are false) that are being sought for the purposes of seizure or use as evidence in criminal proceedings.

- Alerts on unknown wanted person containing only fingerprints data (Article 40 of Regulation (EU) 2018/1862). This alert category contains latent prints discovered at crime scenes or scenes of terrorist offences. The purpose of this alert category is to find the suspected unknown perpetrator of the offence.

It is possible to encounter during a check in SIS multiple alerts on the same person. This is due to the fact that several Schengen States[74] may issue an alert on the same person. In case of such a hit, all requests for action will be displayed on the screen. As long as the requests for action are compatible, all actions will need to be taken in respect of the person.

Certain categories of alerts on persons are 'incompatible'[75]. That means that a new alert on the same person may only be entered if it is 'compatible' with the already existing alert. When an alert is incompatible, it means that it has been considered that the action requested by the alert by one Schengen State competes with the action requested in the alert by another Schengen State. The following alert categories are incompatible:

- alerts for refusal of entry and stay and alerts on missing persons to be protected;

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74 For the purposes of issuing alerts in SIS, here the Schengen States mean all, excluding Cyprus (which does not have access to SIS) and Croatia (for issuing refusal of entry alerts, as it cannot issue these alerts) but including Ireland for some of the alert categories. Ireland does not have access to and cannot issue SIS refusal of entry and return alerts.

75 See the table in Annex 4 to the SIRENE Manual (Commission Implementing Decision of 18 November 2021 laying down detailed rules for the tasks of the SIRENE Bureaux and the exchange of supplementary information regarding alerts in the Schengen Information System in the field of police cooperation and judicial cooperation in criminal matters ('SIRENE Manual - Police') C(2021) 7901 final) and Commission Implementing Decision of 18 November 2021 laying down detailed rules for the tasks of the SIRENE Bureaux and the exchange of supplementary information regarding alerts in the Schengen Information System in the field of border checks and return ('SIRENE Manual - Borders and return' C(2021) 7900 final.

- alerts for refusal of entry and stay and alerts on vulnerable persons at risk;
- alerts on return and alerts on missing persons to be protected;
- alerts on return and alerts on vulnerable persons at risk;
- alerts on missing persons and alerts on vulnerable persons at risk.

If a competing or potentially incompatible alert is found, the SIRENE Bureau should be contacted immediately to assist.

There is an order of priority of alerts agreed but it is allowed to derogate from this when both Schengen States agree. The order of priority of those alerts that can be incompatible is the following:

1) alerts for refusal of entry and stay;
2) alerts on return accompanied by an entry ban;
3) alerts on missing persons to be protected;
4) alerts on vulnerable persons at risk;
5) alerts for missing persons to be located;
6) alerts on return not accompanied by an entry ban.

If there is a hit on an SIS alert and an Interpol "alert" at the same time, the SIS procedure must be followed as SIS alerts take precedence. The hit reports must be sent to the SIRENE Bureau and not to the Interpol National Central Bureau.

4.2. **Biometric searches**

Biometric searches have been introduced with the implementation of the SIS automated fingerprint identification system (SIS AFIS) functionality. This means that the SIS can be searched also on the basis of the fingerprints, not only alphanumeric data.

In line with Article 33 of Regulation 2018/1861 and Article 43(2) of Regulation 2018/1862 dactyloscopic data in SIS may be searched in all cases where it is considered to be necessary to identify a person (i.e., determine whether the person checked is the subject of a SIS alert). The necessity to check SIS with dactyloscopic data in any particular case must be decided in line with EU and national rules. The dactyloscopic data must be searched in cases where the identity of the person cannot be ascertained by other means (i.e., based on the alphanumeric data, document description, photographs or facial images).

4.3. Object extensions

Certain categories of alerts on persons (persons wanted for arrest, missing and vulnerable persons and persons sought to assist with criminal proceedings) may contain 'object extensions', holding information on an object connected to the person sought and added with the purpose of locating the person.

Object extensions can be added on the following types of objects: vehicles, trailers and caravans; boats; containers; aircraft; firearms (only for alerts for arrest); blank documents.

All alerts on persons may contain 'identification document descriptions', which is data to describe the (valid) identification document (for example travel document or residence permit) used by the alert subject. It is also possible to attach a copy of the document to the alert.

The purpose of inserting objects and identification documents as alert extensions to an alert on a person is to facilitate the search of a person who is subject to an alert - in this case, the object or an identification document itself is not a subject of the alert.

Alerts on objects under Articles 36 and 38 of the Regulation (EU) 2018/1862 have their own purpose as defined in the relevant SIS regulations: to carry out a discreet, inquiry or specific check in case of Article 36 or to seize or protect the object in case of Article 38.

4.4. Actions to be taken in case of a hit in the SIS

In case of a hit in the SIS on a person or an object, the action to be taken will be displayed on the screen of the border guard.

4.4.1. The individuals wanted for arrest must be apprehended and turned over to the authorities competent to take a decision on temporary custody with the intention of extradition or surrender to the requesting EU or Schengen State.

In case an alert for arrest has been flagged by your country, the reason for the alert will still appear as 'Person for arrest and surrender or extradition', but the action to be taken will not require to arrest the person but will request to 'determine the place of residence or domicile of the person'.

4.4.2. The action which should be taken with regard to the third-country nationals for whom the return alert is issued will depend where the hit is encountered.

(a) If the person is at an external border and is leaving the territory of the Schengen States, the information about the fact that the person has been located at the external borders at exit and has left the territory of the Schengen States, also the place and time of the check and whether or not the person was subject to removal (forced return) must be collected and passed on to national SIRENE Bureau.

After receiving the information about the hit, i.e. confirmation that the person has left the territory of Schengen States, the issuing Schengen State must delete the alert on return without delay. Moreover, where applicable, an alert for refusal of entry and stay must be entered (or return alert converted to refusal of entry alert) by the issuing Schengen State without delay when the return decision is accompanied by an entry ban.

In case the person is leaving from the territory of the Schengen State that issued the return decision, the issuing Schengen State must also inform its own authorities in case of a hit, so that the return is confirmed and refusal of entry alert is issued by these authorities when applicable.

The re-entry of the person should be refused on the basis of the refusal of entry alert in SIS when such alert was entered. The person can be refused entry on the basis of other conditions provided for in the Schengen Borders Code.

(b) If the person is encountered at an external border and is entering the territory of the Schengen States, the fact that the person has been located at the external borders at entry, the place and time of the check must be collected and passed on to national SIRENE Bureau.

After receiving the information about the hit, the issuing Schengen State must delete the alert on return without delay. Moreover, where applicable, an alert for refusal of entry and stay must be entered (return alert converted to refusal of entry alert) by the issuing Schengen State without delay when the return decision is accompanied by an entry ban.

In case the person is entering the territory of the Schengen State that issued the return decision, the issuing Schengen State must also inform its own authorities in case of a hit, so that the return is confirmed and refusal of entry alert is issued by these authorities when applicable.

The entry of the person to the Schengen States should be refused on the basis of the refusal of entry alert in the SIS when such alert was entered. The person can be refused entry on the basis of other conditions provided for in the Schengen Borders Code.

(c) And if the person is located within the country, if national law permits, the person must be stopped and questioned, the competent national authority responsible for return must be contacted with a view to returning the person as well as the national SIRENE Bureau.

It is not allowed to issue alerts on return on third-country nationals who are beneficiaries of the right of free movement. Where there is a hit on refusal of entry alert entered in accordance with Article 24 of Regulation 2018/1861 on a third-country national who is a beneficiary of the right of free movement within the Union, the executing Schengen State must immediately consult the issuing Schengen State, through the exchange of supplementary information, in order to decide without delay on the action to be taken. See further details in point 8.3 of this Section.

4.4.3. Third-country nationals to whom entry is refused must be refused entry and returned to the place they came from or to their country of origin as quickly as possible, if the circumstances allow it. Such persons must remain under supervision by border guards until their departure from the territory of the Schengen State. In the event of a hit on an

alert for refusal of entry and stay concerning a third-country national who is the holder of a residence permit, special attention should be paid to check the authenticity and the validity of the residence permit. In addition, the national SIRENE Bureau should be immediately contacted in order to launch the consultation procedure laid down in Article 30 of Regulation (EU) 2018/1861 and Article 36 of the SIRENE Manual[76].

For third-country nationals who are family members of EU citizens see the specific provisions that apply to them (see point 8.3 of this Section).

In the event of a hit on an alert for refusal of entry concerning a Withdrawal Agreement beneficiary, see the specific guidance set out in Annex 42 to this Handbook.

4.4.4. An adult person must be asked for prior consent before informing the party who reported him/her as missing.

4.4.5. Special attention must be paid to minors (whether or not unaccompanied) and missing adults that are vulnerable and need to be taken under protection. In case of a hit on a vulnerable minor, child at risk of abduction, child who needs to be prevented from travelling or vulnerable adult who needs to be prevented from travelling, national law permitting, the person must be stopped and brought before the competent authority who can authorise taking the person to a safe place in order to prevent the person from continuing the journey. The competent national authority must be contacted immediately in order to decide whether the person should be put under protection. The national SIRENE Bureau should be also contacted for further information on the case.

4.4.6. Data included for the purposes of discreet, inquiry or specific checks should allow the obtaining of information such as:

- the fact that the person who is subject of an alert has been located;
- the place, time or reason for the check;
- the route and destination of the journey;

[76] *Ibid.*

- the persons accompanying the subject of the alert who can reasonably be expected to be associated with the subject of the alert;
- the objects used or carried, including travel documents;
- the circumstances under which the person or the vehicle boat, aircraft or container was located;
- any other information being sought by the issuing Schengen State.

During the collection of this information on the basis of discrete check alert, the discreet nature of the check should be maintained.

During the inquiry check, the same information should be collected, without the need to maintain the discreet nature of the check.

During specific checks, persons, vehicles, boats, aircraft, containers and objects carried may be searched in order to obtain the information listed in this point.

Additional questions that need to be asked might be displayed for discreet, inquiry or specific checks.

Where it is indicated in the alert that "immediate action" is required the information listed in this point should be communicated without delay to the national SIRENE Bureau.

*** Request for information about an SIS alert**

If a person requests information about the processing of his/her personal data in the SIS and about his/her access rights, the border guard should provide the person with the coordinates of the competent national authority which is the data controller of SIS where he/she can exercise his/her rights, and of data protection authorities, and inform on the possiblity to lodge a complaint with the latter.

4.4.7. Objects for seizure or use as evidence in criminal proceedings include:

- motor vehicles regardless of the propulsion system;

- identifiable component parts of motor vehicles;
- trailers with an unladen weight exceeding 750 kg;
- caravans;
- industrial equipment;
- identifiable component parts of industrial equipment;
- boats and boat engines;
- containers;
- aircraft and aircraft engines;
- firearms;
- blank official documents which have been stolen, misappropriated, lost or purport to be such a document but are false;
- issued identity documents, such as passports, identity cards, residence permits, travel documents and driving licences which have been stolen, misappropriated, lost or invalidated or purport to be such a document but are false;
- vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated or purport to be such a document or plate but are false;
- banknotes (registered notes) and false banknotes;
- items of information technology.

*** Best practice – seizure of travel documents:**

Border guards should seize all travel documents that are registered in SIS as stolen, misappropriated, lost or invalidated or purport to be such a document or plate but are false, in particular when it concerns a document that has been invalidated for travelling purposes It may occur that the holder of a document registered in SIS for seizure can prove that he

or she is the rightful owner of this document, that the document was registered in SIS because it was reported as lost or stolen, but that the person found the document again and forgot to report this to the competent authorities. In such a case, the identity of the holder of the travel document and his or her right to use the document for travelling purposes should always be verified with the competent authorities, where necessary in cooperation with the national SIRENE Bureau

For further information on the action to be taken in case of a SIS alert, border guards should contact the national SIRENE Bureau and consult the national procedures on follow-up actions in case of a SIS hit.

*** Legal basis:**

- Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals

- Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006

- Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU

- Commission Implementing Decision of 15 January 2021 laying down the technical rules necessary for entering, updating, deleting and searching data in the Schengen Information System (SIS) and other implementing measures in the field of police cooperation and judicial cooperation in criminal matters C(2021) 92 final

- Commission Implementing Decision of 15 February 2021 laying down the technical rules necessary for entering, updating, deleting and searching data in the Schengen Information System (SIS) and other implementing measures in the field of border checks and return C(2021) 660 final

- Commission Implementing Decision of 18 November 2021 laying down detailed rules for the tasks of the SIRENE Bureaux and the exchange of supplementary information regarding alerts in the Schengen Information System in the field of police cooperation and judicial cooperation in criminal matters ('SIRENE Manual - Police') C(2021) 7901 final

- Commission Implementing Decision of 18 November 2021 laying down detailed rules for the tasks of the SIRENE Bureaux and the exchange of supplementary information regarding alerts in the Schengen Information System in the field of border checks and return ('SIRENE Manual - Borders and return') C(2021) 7900 final

4.5. Travel documents of all persons need to be cross-checked against the Interpol's SLTD during border checks. The SLTD contains details of stolen and lost passports as submitted to the STLD database by the country which issued a document. In case of a hit in the SLTD the border guard should take the action required/recommended under national law.

5. SPECIAL RULES FOR CHECKS ON CERTAIN CATEGORIES OF PERSONS

5.1. Heads of State

Heads of State and members of their delegations, whose arrival and departure have been officially announced through diplomatic channels to the border guards, may not be subject to border checks.

*** Legal basis:**

- Schengen Borders Code (Annex VII)

5.2. Pilots of aircraft

5.2.1. Pilots of aircraft and other crew members may cross the border in the course of their duties on the basis of their pilot's licence or crewmember certificate as provided for in

Annex 9 to the Convention of 7 December 1944 on International Civil Aviation (ICAO Convention), when they:

(a) embark and disembark in a stop-over airport or airport of arrival situated in the territory of a Schengen State;

(b) enter the territory of a municipality of a stop-over airport or airport of arrival situated in the territory of a Schengen State;

(c) travel, by any means of transport, to an airport situated in the territory of a Schengen State in order to embark on an aircraft departing from that same airport.

In all other cases, the general entry conditions for third-country nationals must be fulfilled.

5.2.2. Wherever possible, during the checks at airports, priority should be given to checks on aircraft crews, i.e. they should be checked either before passengers or at special dedicated locations. Crews known to staff responsible for border controls in the performance of their duties may be subject to random checks only.

*** Legal basis:**

- Schengen Borders Code (Annex VII)

- ICAO Convention

5.3. Seafarer[77]

5.3.1. Schengen States may authorise seamen holding a seafarer's identity document issued in accordance with the International Labour Organisation (ILO) Seafarers' Identity Documents Convention No 108 (1958) or No 185 (2003), the Convention on Facilitation of International Maritime Traffic (FAL Convention) and the relevant national law, to enter the Schengen States by going ashore to stay in the area of the port

[77] The Schengen Borders Code uses the term "seamen". For the purposes of this Handbook, the term "seafarer" is preferred, since both ILO Conventions No 108 and 185 as well as the Convention on Facilitation of International Maritime Traffic (FAL) refer to it.

where their ships call or in the adjacent municipalities, or exit the Schengen States by returning to their ships, without presenting themselves at a border crossing point, on condition that they appear on their ship's crew list, which has previously been submitted for checking by the competent authorities.

However, on the basis of an assessment of the risks of internal security and illegal immigration, seafarer must be subject to a check in accordance with Article 8 of the Schengen Border Code by the border guards before they go ashore.

5.3.2. Seafarer who intend to stay outside the municipalities situated in the vicinity of ports must comply with the general conditions for entry into the territory of the Schengen States.

However, holders of a valid seaman's book or a seafarer's identity document may be authorised to enter the territory of a Schengen State, even if they are not in possession of a valid visa and/or they cannot demonstrate the possession of sufficient means of subsistence in the following circumstances:

- boarding a ship which has already anchored or is about to arrive in a port of a Schengen State;
- transit to a third country or return to the country of origin;
- emergency cases or cases of necessity (illness, dismissal, end of contract etc).

In such cases, holders of a seaman's book or a seafarer's identity document who are required to hold a visa on account of their nationality and are not in possession of one when entering the territory of a Schengen State may be issued with a visa at the border (see point 9 of this Section).

*** Legal basis:**

- Schengen Borders Code (Annex VII)
- ILO Convention No 185
- FAL Convention

5.4. Holders of diplomatic, official or service passports and members of international organisations

5.4.1. In view of the special privileges or immunities they enjoy, the holders of diplomatic, official or service passports issued by third States and their Governments recognised by the Schengen States, who are travelling in the course of their duties, may be given priority over other travellers at border checks even though they remain, where applicable, subject to the requirement for a visa. Persons holding these documents must not be required to prove that they have sufficient means of subsistence.

5.4.2. If a person presenting himself/herself at the external border invokes privileges, immunities and exemptions, the border guard may require him/her to provide evidence of his/her status by producing the appropriate documents, in particular certificates issued by the accrediting State or a diplomatic passport or other means. Where there are doubts, the border guard may, in urgent cases, contact directly the Ministry of Foreign Affairs.

Moreover, border guards may not refuse the holders of diplomatic, official or service passports entry to the territory of the Schengen States without first consulting the appropriate national authorities. This also applies where an alert on the person has been entered in the SIS.

5.4.3. Accredited members of diplomatic missions and of consular representations and their families may enter the territory of the Schengen States on presentation of a card issued by the Schengen States' Ministries of Foreign Affairs and of the document authorising them to cross the border.

The check of the entry conditions is not necessary when the diplomat enters the territory of the Schengen State where he/she is accredited, and where he/she has a right of long-term stay.

5.4.4. Diplomats who are accredited outside the territory of the Schengen States must satisfy the general entry requirements when travelling for private purposes.

5.4.5. When there is a risk and justified suspicion of wrongdoing or criminal activity by diplomats, the Foreign Ministry of the country concerned must be informed immediately.

5.4.6. In accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961, diplomats only enjoy inviolability and other immunities in the country in which they are accredited and in those countries they transit through to take up or to return to their post or when returning to their own country. This does not apply if they are travelling for private purposes.

5.4.7. Members of international organisations holding documents issued by the international organisations listed in this point and carrying out their duties may, where possible, be granted preferential treatment during border checks.

The following documents, in particular, must be taken into consideration:

– United Nations laissez-passer issued to staff of the United Nations and subordinate agencies under the Convention on Privileges and Immunities of Specialised Agencies adopted by the United Nations General Assembly on 21 November 1947 in New York;

– European Union (EU) laissez-passer;

– legitimacy certificate issued by the Secretary-General of the Council of Europe;

– documents issued pursuant to paragraph 2 of Article III of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Force (military ID cards accompanied by a travel order, travel warrant, or an individual or collective movement order) as well as documents issued in the framework of the Partnership for Peace.

As general rule, holders of these documents are not required to prove that they have sufficient means of subsistence.

*** Legal basis:**

- Schengen Borders Code (Annex VII)

- Vienna Convention on Diplomatic Relations of 18 April 1961

**** Link:***

- Information on national derogations from the visa requirements

5.5. Border residents benefiting from a local border traffic regime

5.5.1. Border residents of a neighbouring third country who are in possession of a local border traffic ('LBT') permit issued in the framework of a local border traffic regime, based on a bilateral agreement between a Schengen State and the third country concerned, benefit from a special treatment when crossing the border, i.e.:

– they are not required to be in possession of a visa, if they hold a LBT permit issued by the Schengen State which border they want to cross. They may be required to be in possession of a passport, together with the LBT permit, if this is provided for in the bilateral agreements with the third country concerned;

– after ascertaining the validity and authenticity of the LBT permit which proves the status of border resident of the person, no further checks on the purpose of the journey, or on the possession of means of subsistence, should be carried out;

– neither the LBT permit, nor the passport, when it is required, should be stamped at entry or exit.

5.5.2. Border crossing for these permit holders may be further facilitated, in the framework of the bilateral agreements between a Schengen State and a third country, in accordance with point 3 of Section II.

*** Legal basis:**

- Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention;

- Bilateral agreements concluded by Schengen States on local border traffic

5.6. **Minors**

5.6.1. Minors deserve the particular attention of border guards, whether they are travelling accompanied or not. All minors should be treated in accordance with the principle of the 'best interest of the child' during border procedures. Minors should be prioritised during border procedures, and a child-friendly treatment and atmosphere should always be ensured. Border guards have the duty to provide information and explain the border procedures in a child-friendly way (for example, use interpreters or draw pictures) and make sure that the minors understand. This includes an initial determination of the possible need of international protection in the case of migrant minors who arrive to the EU irregularly and their prompt referral to the national child protection authorities in accordance with their age and needs.

In cases there is doubt about the real age of the person, the person should be treated as a child until age assessment procedure concludes otherwise. In such cases, and in particular where it appears possible that the person is a minor, the person should be referred as soon as possible to the authorities competent for taking in charge minors, including for performing an age assessment. If there are serious grounds for suspecting that they may have been unlawfully removed from the care of the person legally exercising parental custody over them, or in case of any suspicion of abuse of mistreatment, the national child protection authorities should be contacted as soon as possible.

As regards minors who are crossing the external air border of the European Union, the Guidelines for borders guards established by Frontex in its VEGA Handbook: Children at airports, should be taken into account.

5.6.2. During border checks, in the case of accompanied minors, the border guard must check that the persons accompanying minors have parental custody over them, especially where minors are accompanied by only one adult. If so, the border guard will have to make all necessary investigations in order to prevent the abduction or in any case unlawful removal of the minor.

In order to avoid that children go missing, registration needs to be ensured as speedily as possible, especially in cases of undocumented children.

5.6.3. Unaccompanied minors must be scrutinised, by means of a thorough check of their travel and supporting documents, in order to ensure that they do not enter or leave the territory against the wishes of the person(s) having parental custody. Child-friendly language adapted to the minor's age maturity should be used in all contacts with the minors and may include the assistance of an interpreter or cultural mediator, if necessary.

5.6.4. If there is doubt whether a minor who is a citizen of the EU or a third-country national legally residing in the EU is authorised to cross the border on exit, the national point of contact on minors of the EU or Schengen State of the minor's nationality or residence should be contacted.

If information is received indicating the possibility of abduction or suspicion of a unauthorised exit of a minor who is a citizen of the EU or a third-country national legally resident in the EU, the border guard should:

– refuse the exit of the minor, or

– in circumstances where there are insufficient grounds to refuse the exit of a minor but there are concerns on the right of parental care, collect information about the person accompanying the minor and their destination. That information should, in accordance with the applicable national legislation, be forwarded immediately to the national point of contact on minors of the EU or Schengen State of nationality or residence of the minor.

In the context of the procedures set out in point 5.6 of this Section, the tasks for the national contact points on minors should include:

– providing, where possible, information on the identity (name, nationality and date of birth) of the minor and of the person accompanying the minor and on the relationship between them;

– alerting other national agencies concerned with minors who give cause for concern and informing them about any precautionary measures concerning the minors;

– providing advice and assistance to other EU or Schengen States on national procedures and document requirements.

*** Legal basis:**

- Schengen Borders Code (Annex VII)

*** Links:**

- List of national contact points for consultation purposes on minors

- List of contact points in Member States for border management issues

- VEGA Handbook: Children at airports: children at risk on the move: Guidelines for border guards

5.7. **School pupils from third countries resident in an EU Member State or in a third country not subject to the visa obligation**[78]

5.7.1. School pupils who are nationals of a third country subject to the visa obligation but who are legally resident in an EU Member State and who travel in the framework of a school excursion are not required to be in possession of a visa for a transit or for a short stay on the territory of another EU Member State, provided the following conditions are fulfilled:

(a) they are accompanied by a teacher from the school in question, who is in possession of a valid travel document and of a visa if required;

(b) the teacher is able to produce a form, issued by the school, and which allows to identify all the school pupils participating to the excursion, and where the purpose and circumstances of the intended stay or transit are clearly specified;

(c) the school pupils are in possession of a document valid for crossing the border.

[78] Point 5.7 does not apply to Norway, Iceland, Switzerland and Liechtenstein.

However, this latter requirement – the possession of a valid travel document – is waived if:

– the form referred to in point (b) contains a current photo of those pupils who are not able to identify themselves with an ID card bearing a photograph;

– the competent authority of the EU Member State where the school pupils reside confirms their residence status as well as their right to re-entry on its territory and ensures that the form is authenticated accordingly (i.e., with the stamp of the national competent authority);

– the EU Member State where the school pupils reside has notified other EU Member States that it wishes its lists to be recognised as a valid travel document.

5.7.2. The provisions set out in point 5.7.1 do not exempt school pupils, nor the teacher(s) accompanying them from being subject to border checks in accordance with the general rules (point 1 of this Section).

Entry or transit may be refused to them if there are grounds for doing so, in accordance with point 8 of this Section.

5.7.3. The visa exemption may also be extended to school pupils on a school excursion who are nationals of third countries subject to the visa obligation but who reside in a third country which is exempted from that obligation (for example, school pupils of Turkish nationality legally residing in Montenegro).

*** Legal basis:**

- 94/795/JHA: Council Decision of 30 November 1994 on a joint action adopted by the Council on the basis of Article K.3.2.b of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State

- Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 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

5.8. Cross-border workers

Cross-border workers and other categories of regular cross-border commuters who are well known to the border guards owing to their frequent crossing of the border at the same border crossing point and who have not been revealed by an initial check to be the subject of an alert in the SIS or in a national data file must be subject only to random checks to ensure that they hold a valid document authorising them to cross the border and fulfil the necessary entry conditions. The random checks have to be carried out in accordance with the procedures applicable, respectively, to third-country nationals in general and to persons enjoying the right of free movement under Union law.

Thorough checks must be carried out on those persons from time to time, without warning and at irregular intervals.

*** Legal basis:**

- Schengen Borders Code (Annex VII)

5.9. ADS tourists

The Memorandum of Understanding between the European Community and the National Tourism Administration of the Peoples' Republic of China on visa and related issues concerning tourist groups from the Peoples' Republic of China (Approved Destination Status)[79] specifically regulates the travel of tourist groups of Chinese citizens from China to the territory of the Union.

Participants in such Chinese travel groups ("ADS tourists"), which should be composed of at least 5 persons, must enter and leave the territory of the Union as a group. They must as well travel within the territory of the Union as a group according to the pre-established travel programme.

As a rule, ADS tourists must be accompanied by a tour leader, who must ensure that they enter and leave the Union as a group.

The normal checking procedures (see point 1.2 of this Section) must be carried out on groups of ADS tourists. Checks may also include the verification of the ADS status, which should, in any case, be indicated in the visa sticker. Visas carrying the reference "ADS" are always individual visas. Also the tour leader must be submitted to the normal checking procedures which include the verification of its status of tour leader.

Supporting documents, proving the ADS and tour leader status, may also be requested by the border guard.

*** Legal basis:**

- Council Decision of 8 March 2004 concerning the conclusion of the Memorandum of Understanding between the European Community and the National Tourism Administration of the Peoples' Republic of China on visa and related issues concerning tourist groups from the Peoples' Republic of China (ADS)

5.10. Rescue services, police, fire brigades and border guards

[79] OJ L 83, 20.3.2004, p. 14.

The arrangements for the entry and exit of members of rescue services, police, fire brigades acting in emergency situations as well as border guards crossing the border in exercise of their professional tasks must be laid down by national law.

5.11. Offshore workers

Offshore workers, who regularly return to the Schengen States without having stayed on the territory of a third country should not be systematically checked. Nevertheless, an assessment of the risks of irregular immigration should be taken into account in order to determine the frequency of the checks to be carried out.

5.12. Intra-corporate transferees

The intra-EU mobility scheme established by Directive 2014/66/EU of the European Parliament and of the Council[80] lays down autonomous rules which allow holders of an intra-corporate transferee (ICT)- including holders of an ICT permit issued by a Schengen State not yet fully applying the Schengen *acquis* to exercise mobility and to enter, stay and work in one or several second EU Member States bound by that Directive (i.e. all EU Member States except Denmark and Ireland).

Short-term mobility (up to 90 days in any 180-day period per EU Member State bound by Directive 2014/66/EU): Holders of an ICT permit are not required to be in possession of a valid visa, if they provide evidence that they are moving to a second EU Member State bound by Directive 2014/66/EU in the context of intra-EU mobility authorised under that Directive. Such evidence must be provided by means of:

(a) a copy of the notification sent by the host entity in the first EU Member State bound by Directive 2014/66/EU in accordance with Article 21(2) of that Directive; *or*

(b) a letter from the host entity in the second EU Member State bound by that Directive that specifies at least the details of the duration of the intra-EU mobility and the location of the host entity or entities in the second EU Member State bound by that Directive.

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[80] Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p.1).

The allowed maximum period of cumulated short-term stays in second EU Member States bound by Directive 2014/66/EU under ICT mobility rules may exceed 90 days in any 180-day period. Subsequent short-term stays of up to 90 days in any 180-day period per EU Member State bound by Directive 2014/66/EU in different EU Member States bound by that Directive are authorised and may add up to a significant part of the overall maximum duration of residence of intra-corporate transferees (three years for managers and specialists; one year for trainee employees) depending on the circumstances of each individual case. The rules on short-term mobility are directly applicable as of 29 November 2016.

* **Example**:

An Indian manager holding a Croatian ICT permit may stay 170 days (90 days of short-term mobility in Italy followed by 80 days of short-term mobility in Germany) during a 180-day period without infringing Schengen rules.

Long-term mobility (more than 90 days per EU Member State bound by Directive 2014/66/EU): The rules on long-term mobility depend on the choice made by the relevant second EU Member State bound by that Directive when transposing it (see table below). The second EU Member State bound by Directive 2014/66/EU may either require a residence permit "mobile ICT" (application procedure) to be issued by that second EU Member State bound by that Directive or opt for applying the rules on short-term mobility. In the first case, the residence permit "mobile ICT" must be required; in the latter case, the rules on short-term mobility apply.

Summary- procedures chosen for short-term and long-term mobility

(no procedure / notification / application)

	Short-term mobility	Long-term mobility
BE	no procedure	application
BG	no procedure	application
CZ	no procedure	application
DE	notification	application

EE	notification	notification
EL	notification	notification
ES	notification	notification
FR	notification	application
HR	no procedure	application
IT	no procedure	application
CY	notification	application
LV	no procedure	application
LT	no procedure	application
LU	notification	application
HU	notification	application
MT	notification	application
NL	notification	application
AT	no procedure	application
PL	notification	application
PT	no procedure	application
RO	notification	application
SI	notification	application
SK	notification	notification
FI	notification	application
SE	no procedure	application

*** Legal basis:**

- Directive 2014/66/EU (Articles 20 to 23)

5.13. Researchers and their family members

The intra-EU mobility scheme established by Directive (EU) 2016/801 of the European Parliament and of the Council [81] lays down autonomous rules which allow researchers and their family members holding a residence permit or long-stay visa issued by an EU Member State bound by the provisions of that Directive, including those holding a residence permit or long-stay visa issued by a Schengen State not yet fully applying the Schengen *acquis* to exercise mobility and to enter and stay in one or several second EU Member States bound by the provisions of that Directive (i.e. all EU Member States except Denmark and Ireland).

Short-term mobility (up to 180 days in any 360-day period per EU Member State bound by Directive (EU) 2016/801).

Holders of a researcher permit or long-stay visa are not required to be in possession of a valid visa or residence permit of the EU Member State they are entering, if they provide evidence that they are moving to a second EU Member State bound by Directive (EU) 2016/801 in the context of intra-EU mobility authorised under that Directive. Such evidence must be provided by means of:

(a) a copy of the notification sent to the competent authorities of the first and second EU Member State bound by Directive (EU) 2016/801 in accordance with Article 28(2) of that Directive; or

(b) a copy of the hosting agreement specifying the details of the mobility of the researcher or, where the details of the mobility are not specified in the hosting agreement, a letter from the research organisation in the second Member State bound by Directive (EU) 2016/801 that specifies at least the duration of the intra-EU mobility and the location of the research organisation in that second Member State.

The researcher's family members who hold a residence permit are equally not required to be in possession of a valid visa or residence permit of the EU Member State they are entering, if they provide evidence that they are accompanying the researcher who is moving to a second EU Member State bound by Directive (EU) 2016/801 in the context of intra-EU mobility authorised under that Directive. Such evidence must be provided by means of the

[81] Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21).

valid residence permit issued by the first EU Member State bound by that Directive and either

(a) a copy of the notification sent to the competent authorities of the first and second EU Member State bound by Directive (EU) 2016/801 in accordance with its Article 30(2)or

(b) evidence that they are accompanying the researcher.

Researchers and their family members are allowed to stay in one second EU Member State bound by Directive (EU) 2016/801 for up to 180 days in any 360-day period. Subsequent short-term stays of up to 180 days in any 360-day period per EU Member State bound by Directive (EU) 2016/801 in different EU Member States bound by that Directive are authorised and may add up to a significant part of the overall duration of residence of the researcher and their family members depending on the circumstances of each individual case. The rules on short-term mobility are directly applicable as of 24 May 2018.

*** Example:**

A Nigerian researcher holding a Bulgarian residence permit or long-stay visa may stay 250 days (150 days of short-term mobility in Italy followed by 100 days of short-term mobility in Germany) without infringing Schengen rules.

Long-term mobility (more than 180 days per EU Member State bound by Directive (EU) 2016/801): The rules on long-term mobility depend on the choice made by the relevant second EU Member State bound by Directive (EU) 2016/801 when transposing it (see below table.) The second EU Member State bound by Directive (EU) 2016/801 may either require a residence permit or a long-stay visa with the mention "researcher-mobility" (application procedure) to be issued by that second EU Member State bound by that Directive or opt for applying the rules on short-term mobility. In the first case, the residence permit or long-stay visa "researcher-mobility" must be required: in the latter case, the rules on short-term mobility apply. The procedure for family members is identical to that applied to the researcher.

Summary - procedures chosen for short-term and long-term mobility

(no procedure / notification / application)

	Short-term mobility	Long-term mobility
BE	(no procedure)	(application)
BG	notification	application
CZ	no procedure	no procedure
DE	notification	application
EE	notification	notification
EL	notification	application
ES	notification	notification
FR	notification	notification
HR	no procedure	application
IT	notification	application
CY	notification	application
LV	no procedure	application
LT	no procedure	application
LU	notification	application
HU	notification	application
MT	notification	application
NL	notification	application
AT	no procedure	application
PL	notification	application
PT	no procedure	application
RO	notification	application
SI	notification	application
SK	notification	notification
FI	notification	notification

SE	no procedure	application

*** Legal basis:**

Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (Articles 27, 28, 29, 30 and 32)

5.14. Students

The intra-EU mobility scheme established by Directive (EU) 2016/801 lays down autonomous rules which allow holders of a student's residence permit or long-stay visa issued by an EU Member State bound by the provisions of that Directive, including those holding a residence permit or long-stay visa issued by a Schengen State not yet fully applying the Schengen *acquis* and who are covered by a Union or multilateral programme that comprises mobility measures or by an agreement between two or more higher education institutions to exercise mobility and to enter, stay and study in one or several second EU Member States bound by Directive (EU) 2016/801 (i.e. all EU Member States except Denmark and Ireland) for up to 360 days per EU Member State bound by that Directive.

Holders of a student's residence permit or long-stay visa referring to a specific programme or agreement are not required to be in possession of a valid visa or residence permit of the EU Member State they are entering, if they provide evidence that they are moving to a second EU Member State bound by Directive (EU) 2016/801 in the context of intra-EU mobility authorised under that Directive. Such evidence must be provided by means of:

(a) a copy of the notification sent to the competent authorities of the first and second EU Member State bound by Directive (EU) 2016/801 in accordance with its Article 31(2); or

(b) evidence that the student carries out part of the studies in the second Member State bound by Directive (EU) 2016/801 in the framework of a Union or multilateral

programme that comprises mobility measures or an agreement between two or more higher education institutions.

Subsequent stays of up to 360 days per EU Member State bound by Directive (EU) 2016/801 in different EU Member States bound by that Directive are authorised and may add up to a significant part of the overall maximum duration of residence of students depending on the circumstances of each individual case. The rules on student mobility are directly applicable as of 24 May 2018.

*** Example:**

An American student holding a Romanian student residence permit and taking part in the Erasmus + programme in a German university may stay for up to 360 days in Germany without infringing Schengen rules.

Summary - procedure chosen for student's mobility

(no procedure / notification)

	Student's mobility
BE	(notification)
BG	notification
CZ	no procedure
DE	notification
EE	no procedure
EL	notification
ES	notification
FR	notification
HR	no procedure
IT	notification
CY	notification
LV	no procedure
LT	no procedure
LU	notification
HU	notification
MT	notification
NL	notification
AT	no procedure
PL	notification
PT	notification
RO	notification
SI	notification
SK	notification

FI	notification
SE	notification

*** Legal basis:**

- Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (Articles 27, 31 and 32).

5.15. Withdrawal Agreement beneficiaries

Annexes 42 and 43 to this Handbook provide detailed clarifications regarding the treatment at the external borders, as of 1 January 2021, of UK nationals and their family members who are beneficiaries of Part Two of the Withdrawal Agreement on citizens' rights[82]. Guidance on Withdrawal Agreement beneficiaries' non-inclusion in the EES and the ETIAS will be issued closer to the entry into application of these two systems.

For all purposes and considerations other than those expressly covered in Annexes 42 and 43 as well as in the forthcoming guidance in relation to the EES and ETIAS, UK nationals and their family members who are Withdrawal Agreement beneficiaries are to be treated in the same way as any other third-country national legally residing in a Schengen State.

Withdrawal Agreement beneficiaries have their previously exercised free movement rights, which they enjoyed as EU citizens, grandfathered only in their host State. With regard to movement in Schengen States other than their host State, they are to be treated as third-country nationals legally resident in that host State.

6. STAMPING OF TRAVEL DOCUMENTS

6.1. Pending the start of operation of the Entry/Exit Sytem, the travel documents of all third-country nationals must be stamped systematically on entry and exit. The stamp does not constitute proof that a thorough check has been carried out; it only makes it possible to

[82] Annex 42 also includes in its Section 2 a reference to other Withdrawal Agreements concluded between the UK and Schengen-associated States.

establish, with certainty, the date and place of the crossing of the border. Stamping is also intended to ensure that it is possible to verify, during checks on entry and exit whether the allowed maximum duration of a third-country national's stay in the area without internal border controls or in the territory of Bulgaria, Croatia, Cyprus and Romania taken separately – 90 days in any 180 days period – has been respected.

6.2. No entry or exit stamp must be affixed in the following cases:

(a) to the travel documents of nationals of the EU Member States, Norway, Iceland, Liechtenstein and Switzerland;

(b) to the travel documents of Heads of State and dignitaries whose arrival has been officially announced in advance through diplomatic channels;

(c) to pilots' licences or the certificates of aircraft crew members;

(d) to the travel documents of seafarer who are present within the territory of a Schengen State only when their ship calls in and in the area of the port of call;

(e) to the travel documents of crew and passengers of cruise ships who are not subject to border checks, in those cases provided for in point 2, Section IV;

(f) to documents enabling nationals of Andorra, Monaco and San Marino to cross the border;

(g) to documents of border residents enjoying a local border traffic regime (point 3, Section II);

(h) to the travel documents of crews of passengers and goods trains on international connections;

(i) to the travel documents of nationals of third countries who present a residence card provided for in Directive 2004/38/EC and issued by an EU Member State or an EEA country, independently of whether they accompany or join the EU or EEA citizen.

Article 11(1) of the Schengen Borders Code clarifies that a Member State may stamp the travel document of third-country nationals holding a residence permit or long-stay visa

issued by that Member State. By comparison, the same would apply to beneficiaries of the Withdrawal Agreement. However, the Commission does not consider such stamping as useful since the purpose of stamping is to establish whether a third country national respected the authorised length of a short stay within the area without internal border control and this logic cannot be applied to third country nationals holding a right to a long-term stay. The Commission therefore recommends – notably as regards beneficiaries of the Withdrawal Agreement – to refrain from stamping. In any case, should stamping nevertheless take place, such stamp cannot affect the length of the authorised long-term stay.

The travel document of family members of EU, EEA and CH citizens who are third-country nationals must also be stamped, unless they present a residence card issued in accordance with Directive 2004/38/EC. Regulation (EU) 2019/1157 has introduced harmonised formats for residence cards and applies in the EU as from 2 August 2021. This means that residence cards or permanent residence cards issued as from 2 August 2021 have a uniform format (see point 2.8 of this Section). For those issued before, even if a residence card issued under the Directive 2004/38/EC has not been notified pursuant to Article 39 of the Schengen Borders Code, Member States have to ensure that his/her holder does not need a visa for entry. Indeed, this obligation flows directly from the Directive 2004/38/EC.

*** Examples:**

1) An Indian national, spouse of a German citizen, holder of a Dutch residence card (indicating her quality of a family member of an EU citizen): the travel document of this person must not be stamped, independently of whether she accompanies or joins her spouse.

2) A Moldovan spouse of an Italian national, who is in possession of an Irish residence card (indicating the status of family member of a EU citizen) the travel document of this person must not be stamped, independently of whether the Moldovan spouse accompanies or joins her spouse.

3) An Indian national, spouse of a French citizen, holder of a Schengen visa but not (yet)

of a residence card, joining the French citizen in Germany: in this case, the travel document of this person must be stamped.

6.3. Exceptionally, at the request of a third-country national, and if the insertion of the entry/exit stamp might cause serious difficulties to the person, it can be affixed on a separate sheet. The sheet must be given to the third-country national.

6.4. It may also happen that, in practice, the document enabling a third-country national to cross the border is no longer suitable for affixing a stamp, as there are no more available pages. In such a case, the third-country national should be recommended to apply for a new passport, so that stamps can continue to be affixed there in the future.

However, as an exception - and particularly in the case of regular cross-border commuters - a separate sheet can be used, to which further stamps can be affixed. The sheet must be given to the third-country national.

In any case, the lack of empty pages in a passport is not, in itself, a valid and sufficient ground to refuse the entry of a person (see point 8 of this Section, on the grounds for refusal).

*** Recommended practice:**

The sheet referred to in point 6.3 and 6.4 should contain the following details, as a minimum requirement:

- name and location of the border posts;

- date of issue;

- name of the holder of the travel document;

- number of the travel document;

- stamp and official seal of the border crossing point;

- name and signature of the border guard.

6.5. In the case of entry and exit of third-country nationals subject to the visa obligation, the stamp must, as a general rule, be affixed on the page facing the one on which the visa is affixed. If several stamps have to be affixed (for example in the case of a multiple-entry visa), this must also be done on the page facing the one on which the visa is affixed. If that page cannot be used, the stamp must be entered on the following page. The machine readable zone must not be stamped, and the stamps cannot be affixed on the personal data and other pages where original formal notes are made.

*** Recommended practices**:

- stamps should be affixed, if possible, in chronological order to make it easier to find the date at which the person has crossed the border for the last time;

- the exit stamp should be affixed in the proximity of the entry stamp;

- the stamp should be affixed in a horizontal position so that it can be easily read;

- no stamp should be affixed over already existing stamps, including those affixed by other countries.

6.6. Different types of stamps are used to furnish proof of entry and exit (a rectangular stamp for entry, a rectangular stamp with rounded corners for exit). These stamps contain the letter(s) designating the country as well as indicating the border post, date, check number and a pictogram indicating the mode of travel used upon entry and exit (overland, by air or by sea).

Queries about entry and exit stamps, as well as documentation relating to forged, counterfeit, lost or incorrectly affixed stamps, can be asked to the contact point established by each Schengen State for this purpose.

6.7. Each border crossing point must keep a record of the entry and exit stamps handed over to and returned by each border guard carrying out the checks. This will also include the reference of each respective stamp, which may need to be used for comparative purposes at a later date.

When the stamps are not used, they must be locked and access to them must be limited to the authorised border guards.

6.8. The security codes on the stamps must be changed at regular intervals not exceeding one month.

6.9. If, at exit, it appears that the travel document of a third-country national does not bear an entry stamp, the border guard may presume that the holder has entered illegally the area without internal borders or the territory of a Schengen State not yet fully applying the *acquis* and/or has exceeded the maximum duration of stay. If so, a penalty provided by national law may be imposed.

6.10. In its judgment of 5 February 2020, Staatssecretaris van Justitie en Veiligheid (Signing-on of seamen in the port of Rotterdam) (C-341/18), the European Court of Justice decided that in a very specific scenario in which the premise on which the the Schengen Boders Code is based, namely that border control would be followed "*shortly thereafter*" by physical exit/entry, was not respected in a blatant way (5-10 weeks of delay between signing on a ship and the ship´s departure) the date of the exit stamp should not correspond to the date of the exit check, but to the date of real departure (physical crossing of the external borders).

Member States retain discretion on interpreting the notion of "shortly thereafter". However, the accepted maximum period should never be longer than 10 days. Member States may set shorter maximum periods (which should not be shorter than 3 days) and they may also set differing periods for regular and exceptional circumstances. The date of the exit stamp should correspond to the date of the exit check (and not to the real date of departure) unless the real date of departure takes place after the maximum period accepted by the relevant Member State.

*** Legal basis:**

- Schengen Borders Code (Article 11 and Annex IV)

- Directive 2004/38/EC (Article 5)

- Schengen Convention (Article 21).

- List of contact points for exchanging information on security codes on entry and exit stamps

7. RELAXATION OF CHECKS

7.1. Border checks at external borders or internal borders where controls have not yet been lifted may be relaxed as a result of exceptional and unforeseen circumstances. Such exceptional and unforeseen circumstances are met where unforeseeable events lead to such intensity of traffic that the waiting time at the border crossing point becomes excessive, and all resources have been exhausted as regards staff, facilities and organisation. This could be the case if, for example, there is a flood or another serious natural disaster which prevents the crossing of the border at other border crossing points, so that the traffic flows of several border crossing points are diverted to only one.

7.2. The determination of what constitues an "excessive" waiting time is an assessment, dependent on multiple factors, made by the border guard in command of the border crossing point. Given the nature of relaxations as an exception from conducting systematic checks, which may undermine the objective of the Schengen Borders Code and may result in a negative impact on the security in Schengen States, this assessment should be guided by common criteria. As a general rule the Commission recommends to only provide for relaxation if all available resources have been used to the maximum extent possible and the consequences of an unforeseen event lead to (or are likely to lead to) waiting times exceeding 60 minutes.

7.3. It is always necessary to clearly distinguish between the justifications for the temporary use of *targeted checks* under Article 8(2a) of the Schengen Borders Code (see point 2.3) and the justifications for *relaxations* under Article 9 of the Schengen Borders Code. Even though the underlying challenges may be similar, such as infrastructural issues, IT processing issues, downtimes of IT systems and, or, heavy traffic/peak tourist season, leading to excessive waiting times, the key criterion for justifying relaxations is its *unpredictability*. Certain situations can be "unforeseeable", such as for instance a traffic jam due to a road accident, unforeseen IT problems or the situations referred to in point 7.1. Other situations, such as heavy road or air traffic during tourist seasons or scheduled IT updates, are as a general rule "foreseeable" and therefore not covered. In cases that fulfil the requirement of an unforeseeable event, due attention should be paid to the requirement of exhausting all resources with regard to staff, facilities and

organisation before use is made of relaxations which should only be a measure of last resort.

*** Checklist before deciding on relaxation of border checks:**

1. Are the circumstance really exceptional and unforeseeable (and not just a foreseeable seasonal peak of traffic) ?

2. Have really all resources with regard to staff, facilities and organisation been exhausted?

3. Do the circumstances lead (or are likely to lead) to waiting times exceeding 60 minutes? (NB: it is not necessary to wait until this waiting time is reached, relaxation may be launched already before.)

7.4. Where border checks are relaxed, border checks on entry movements must in principle take priority over border checks on exit movements. The decision to relax checks must be taken by the border guard in command at the border crossing point. Such relaxation of checks must be temporary, must be adapted to the circumstances justifying it and must be introduced gradually.

7.5. Even in the event of border checks being relaxed, the border guard must stamp the travel documents of third-country nationals both on entry and exit, in accordance with point 6 of this Section, and must carry out at least a check that consists of establishing the third-country national's identity.

*** Legal basis:**

- Schengen Borders Code (Article 9)

8. REFUSAL OF ENTRY

8.1. Third-country nationals must be refused entry in the following cases:

(a) they have no valid travel documents;

(b) they have false (counterfeit/forged) travel document;

(c) they have no valid visa, when this is required, residence permit or a long-stay visa issued by a Schengen State[83];

(d) they are in possession of false (counterfeit/forged) visas or residence permits;

(e) they do not have appropriate documentation justifying the purpose and conditions of stay;

(f) they have already stayed for 90 days during any 180-day period (which entails considering the 180-day period preceding each day of stay) in the area without internal border controls or in the territory of Bulgaria, Croatia, Cyprus or Romania:

(g) they lack sufficient means of subsistence in relation to the period and form of stay, or the means to return to the country of origin or transit;

(h) they are persons for whom an alert for the purpose of refusing entry has been issued in the SIS[84] or in national databases;

(i) they are a threat to public policy, internal security, public health or the international relations of one or more Schengen States.

*** Examples:**

1) A team of cyclists from Nigeria is going to Turkey, claiming they are going to take part in a cycling race organised there. They arrive in Warsaw-Airport (PL), stating that they will reach Turkey by bus. During the first-line check it is found that, though they have a valid visa to transit through Poland, they are not in possession of a visa valid for entering Turkey. A more in-depth interrogation is done in the second line, where they present a document confirming the participation to the race and they claim that there will be no problem with obtaining visas at the Turkish border. However, the cyclists do not even possess the bicycles needed for the race nor can explain convincingly where and how they

[83] Residence permit and long-stay visa issued by Bulgaria, Croatia, Cyprus or Romania are not valid for entry on the territory of the area without internal border controls.

[84] Bulgarian, Croatian and Romanian border guards are not obliged to refuse entry to third-country nationals for whom an alert refusal of entry has been inserted in the SIS.

will get them once in Turkey. After consultations with the Turkish border guards about the question, and taking account of their negative opinion about the possibility of issuing a visa at the border in such a case, a decision of refusal of entry is taken.

2) A Moldovan citizen arrives at the external border by car, claiming to travel to Germany for tourist purposes. At the first line check it is ascertained that the traveller is not able to show any document (hotel booking, letter of invitation etc), proving where he is going to stay in Germany, nor can he prove that he has enough means of subsistence to cover the stay and the return. In such a case, a decision of refusal is taken.

3) A Tunisian citizen arrives at Schiphol (NL) airport. His purpose of travel is to see his relatives (brothers and sisters) residing in Brussels (BE). He has a valid Schengen visa, a return ticket and a letter of invitation/guarantee by his hosts residing in Belgium. However, this letter is not authenticated by the competent Belgian authorities (as the Belgian law requires). In such a case, before taking a decision about allowing entry or not, further verifications should be made such as: examining the passport to see if the person has been issued Schengen visas before and used them lawfully; comparing previous entry/exit stamps to see whether the person has overstayed in the area without internal border controls in the past; taking contact with the competent Belgian authorities asking them to make the necessary verifications about the hosts. These verifications aim to check the good faith of the person; a decision will be taken only on the basis of the result of such verifications.

4) A plane from Shanghai lands at Helsinki-Vantaa Airport (FI). The WHO has declared a public health emergency of international concern (on the basis of the risk of SARS), which requires strict precautions to be taken on all passengers arriving from China. All passengers are requested to fill in a locator card, including plane seat number and contact details in case they subsequently need to be traced. In the terminal all passengers go through a special designated corridor where medical equipment is installed. Some Chinese and EU nationals present symptoms of SARS and are still infective. After consultations with doctors a decision is taken to refuse entry to the Chinese nationals (provided they don´t require immediate medical treatment) and to hospitalise the EU nationals immediately because of the serious threat of spread of disease. Other passengers

on the plane are contacted using the details on the locator cards and asked to report to a doctor. This does not exclude the possibility of taking alternative measures, such as quarantine, where appropriate and justified on public health grounds.

5) A group of football fans from Turkey arrive at the external border. They travel by coach. During the border checks it is found that they possess some dangerous tools like baseball sticks, nunchaku, knives and other objects which could be used against other people. In this case, entry must be refused on grounds of public policy, unless the travellers accept to surrender the dangerous equipment before crossing the Polish border.

6) A group of young Moroccan tourists travelling by ferry from Tanger arrive at Alicante harbour (ES). The itinerary of the group is said to include two cities in Spain (Barcelona and Madrid) and several cities of France. They are going back to Morocco by plane, from Paris-Charles de Gaulle airport; they have valid tickets for the return journey. During the border check one of them does not have a valid Schengen visa, stating that this was due to lack of time. The purpose of the journey is ascertained and the travellers have enough means of subsistence. However, the person cannot prove in any way that he could not apply for a visa in advance nor that there are unforeseeable or imperative reasons to allow him to enter. In such a case, and in the absence of any humanitarian grounds and/or international obligations, the person without the visa is to be refused entry.

7) A Russian family is crossing the Estonian border by car. However, the vehicle appears to have a serious mechanical problem (i.e., the brakes not functioning), which could put other people in danger. In such conditions, the persons cannot be allowed entry with that car until the problem is fixed. However, if all other entry conditions are fulfilled, they must be allowed to enter the territory on foot or by other means.

8) A Somalian citizen, who has a Somalian ordinary passport and holds a residence permit issued by another Schengen State fully applying the Schengen *acquis*, wants to enter the territory of the Czech Republic for transit purposes to reach this other Schengen State. The person is not included in the national databases for the purpose of refusing entry. The Czech Republic does not recognise the ordinary Somalian passports. The entry conditions laid down in Article 6(1) of the Schengen Borders Code include holding a valid travel document entitling the holder to cross the external border. However, there is

no formal hierarchy of such entry conditions; the exceptions set out in Article 6(5) of the Schengen Borders Code apply to any of the conditions set out in para 1. of Article 6 of the Schengen Borders Code. This means that any third-country national who does not fulfil all the conditions laid down in Article 6(1) of the Schengen Borders Code, but who holds a residence permit or a long-stay visa should be authorised to enter the territory of the other Member States for transit purposes so that they may reach the territory of the Schengen State fully applying the Schengen *acquis*, 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. In the case of the Somalian citizen, the Czech Republic should authorise the person to enter the Czech Republic for transit purposes so that he/she can reach the territory of the Schengen State fully applying the Schengen *acquis* which issued the residence permit.

8.2. A Schengen State should not refuse entry and let the third-country national enter into its territory in the following cases:

(a) on humanitarian grounds, on grounds of national interest or because of international obligations;

(b) if a person not in possession of a visa fulfils the criteria for being issued a visa at the border (point 9 of this Section);

(c) solely because the person holds a multiple entry visa issued by another Member State;

(d) solely because the person holds a multiple entry visa but travels for a purpose other than that might be indicated in the 'comments' section of the visa sticker. The national comments used by some Member States may be linked to the (main) purpose for which the visa was applied for. Such an entry on the visa sticker does not prevent the holder from using a valid multiple entry visa to travel for other purposes (see also point 8.6 of this Section);

(e) if the person holds a valid residence permit or a long-stay visa issued by a Schengen State fully applying the Schengen *acquis*, but does not fulfil all the

entry conditions laid down in Article 6(1) of the Schengen Borders Code, the person should be authorised to enter the territory of the other Schengen States for transit purposes so that the person concerned may reach the territory of the Schengen State fully applying the *acquis* which issued the residence permit or the long-stay visa. Transit can, however, be refused in case there is an alert concerning this person in national databases of a Schengen State whose external borders the person is seeking to cross and the alert is accompanied by instructions to refuse entry or transit. In case the holder of the residence permit is subject to an alert on refusal of entry or stay in SIS, the national SIRENE Bureau should be immediately contacted in order to launch the consultation procedure laid down in Article 30 of Regulation (EU) 2018/1861 and Article 36 of the SIRENE Manual – Borders and return..

*** Legal basis:**

- Schengen Borders Code (Articles 1, 4, 6, 8, 14 and Annex V)

- Visa Code (Articles 32, 35 and Annex VI)

- Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC

- National entries in the 'comments' section of the visa sticker

8.3. Persons enjoying the right of free movement under Union law may only be refused entry on grounds of public policy or public security as referred to under Directive 2004/38/EC, i.e. when their personal conduct represents a genuine, present, and sufficiently serious threat affecting one of the fundamental interests of society.

8.3.1. Consequently, even an alert in the SIS cannot be considered, in itself, as a sufficient ground for automatically refusing the entry of these persons; in such a case, the border guard must always make a thorough assessment of the situation and assess it in the light of the principles referred to in point 8.3. of this Section.

If the alert has been entered by another Schengen State, the border guard must take immediate contact, via the SIRENE Bureau network, by contacting the national SIRENE Bureau, with the responsible authorities of the Schengen State that has entered the alert. The latter must check, in particular, the reason(s) why the alert was inserted and whether these reasons are still valid. This information must be transmitted without any delay to the authorities of the requesting Schengen State. The border guards may, by any other available means, and where applicable, contact authorities of another Schengen State which issued the residence card to verify its validity.

The alert on refusal of entry will contain some information that might help to determine the reasons why the alert was enterred. The alert will contain information on whether the decision for refusal of entry and stay is based on:

(1) a previous conviction as referred to in Article 24(2), point (a), of Regulation 2018/1861 ; or

(2) a serious security threat as referred to in Article 24(2), point (b), of Regulation 2018/1861; or

(3) circumvention of Union or national law on entry and stay as referred to in Article 24(2), point (c), of Regulation 2018/1861; or

(4) an entry ban as referred to in Article 24(1), point (b), of Regulation 2018/1861 ; or

(5) a restrictive measure referred to in Article 25 of Regulation 2018/1861 .

In addition, it is possible to indicate in the alert itself the type of offence, when refusal of entry alerts are related criminal offences. It is also possible for the issuing Schengen State to indicate in the alert whether the person concerned is a family member of a citizen of the Union or other person who is a beneficiary of the right of free movement.

However, the issuing Schengen State should still be always consulted in case when there is a hit on third-country national who is a beneficiary of a right of free movement.

On the basis of the information received, the competent authorities will make an assessment based on the criteria explained in point 8.3 of this Section. On that basis, the border guard will admit or refuse entry to the person in question.

If it is not possible to obtain the information within a reasonable delay, the person in question must be allowed to enter the territory. In this case, the border guards, as well as the other competent national authorities, can make the necessary verifications after the person entered the territory and take, where necessary, the appropriate measures afterwards.

The action listed in Point 8.3.1 of this Section is without prejudice to other actions to be performed as a consequence of a SIS alert, such as the arrest of the person, the adoption of protection measures, information on lost and stolen documents etc. In case such consultation reveals a SIS alert on the need to seize a document, it has to be seized immediately and the SIRENE Bureau must be contacted for further information without any delay.

*** Legal basis/Case-law***:*

- Directive 2004/38/EC (Articles 27 to 33)

- Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC

- Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control

- Judgment of the European Court of Justice of 3 July 1980, Case C 157/79, Regina vs. Stanislaus Pieck.

- Judgment of the European Court of Justice of 31 January 2006, Case C 503/03, Commission vs. Spain.

8.3.2. If a person enjoying the right of free movement under Union law does not have the necessary travel documents or, if required, the necessary visas, the Schengen State concerned must, before turning him/her back, give such person every reasonable opportunity to obtain the necessary documents or have them brought to him/her within a reasonable period of time or corroborate or prove by other means that he/she is covered by the right of free movement under Union law.

*** Legal basis/Case-law:**

- Directive 2004/38/EC (Articles 5 and 27 to33) read in conjunction with Commission Communication COM (2009) 313 final

- Judgment of the European Court of Justice of 25 July 2002, Case C 459/99, MRAX vs. Belgium.

- Judgment of the European Court of Justice of 17 February 2005, Case C 215/03, Salah Oulane vs. Minister voor Vreemdelingenzaken en Integratie.

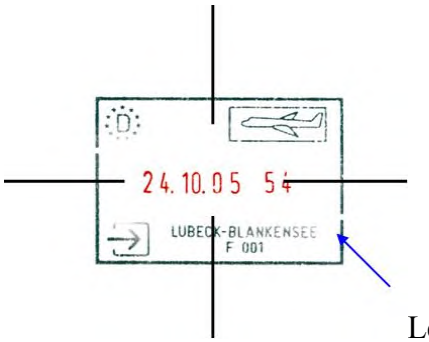
8.4. When refusing the entry to third-country nationals, the checking officer must:

(a) fill in the standard form for refusing entry substantiating the reason(s) for refusal, and give it to the third-country national concerned, who must sign the form and must be given a copy of the signed form. In case the third-country national refuses to sign, the border guard will indicate this refusal in the form under the section "comments";

(b) affix an entry stamp on the passport, cancelled by an indelible cross in black ink and write opposite it on the right-hand side, also in indelible ink, the letter(s) corresponding to the reason(s) for refusing entry, as listed in the form for refusing entry (see an example below). In view of the clear wording of Annex V, part A, point 1, of the Schengen Borders Code (as well as in Article 18 of Regulation (EU) 2017/2226 which reflects the same approach) ("When

refusing entry, border guard shall …. affix an entry stamp, cancelled….") border guards should affix the cancelled stamp at the moment of the refusal of entry decision.

Example of a refusal of entry stamp:



Letter indicating the reason for refusal of entry in accordance with uniform form

8.5. Where the officer responsible for checks finds that the holder of a visa has been the subject of an alert in the SIS for the purposes of being refused entry, he/she must revoke the visa by applying a stamp stating 'REVOKED'. For further details, see point 10 of this Section. When a visa has been revoked, the relevant data must be entered into the VIS. Regarding the actions to be carried out in VIS, see Annex 32 to this Handbook.

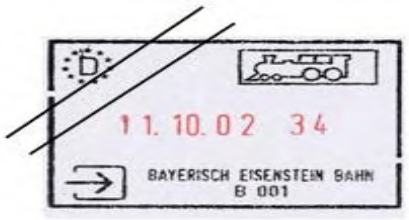
When a Member State has revoked a visa issued by another Member State it is recommended to forward the information by means of the form set out in Annex 31 to this Handbook.

8.6. The visa must not be annulled or revoked solely because the third-country national was not able to produce the supporting document(s) requested to justify the purpose of the journey. In the latter case, a further enquiry must be made by the border guard in order to assess whether the person obtained the visa in a fraudulent way and represents a risk in terms of irregular immigration. If necessary, contacts with the competent authorities of the Schengen State having issued the visa will be taken. Only if it is ascertained that the visa was obtained in a fraudulent way, must such a visa be annulled by the border guard by applying a stamp stating 'ANNULLED'. For further details, see point 10 of this Section. When a visa has been annulled, the relevant data must be entered into the VIS. Regarding the actions to be carried out in VIS, see Annex 32 to this Handbook.

When a Member State has annulled a visa issued by another Member State, it is recommended to forward the information by means of the form set out in Annex 30 to this Handbook.

Best practice: annulment of an entry or exit stamp in cases other than refusal of entry:

There can be cases where a stamp that has already been affixed on a passport has to be annulled (for example, if the wrong stamp was affixed by mistake by the border guard). In such cases, the traveller bears no responsibility for it and therefore the stamp cannot be cancelled in the same ways as when a person is refused entry. It is therefore recommended to annul the stamp by running two parallel lines through the top left-hand corner of it like in the example below:



8.7. In accordance with the right to an effective remedy and to a fair trial enshrined in Article 47 of the EU Charteer of Fundamental Rights, all persons to whom entry has been refused, or a visa holder whose visa has been annulled or revoked, should have the right to appeal in accordance with national law. A written indication on procedures for appeal and on contact points able to provide information on representatives competent to act on behalf of the third-country national must be given to the latter.

When a visa has been annulled or revoked, as appropriate, the border guard must fill in the standard form for notifying and motivating annulment of a visa, substantiating the reason(s) for the annulment or revocation, and submit it to the third-country national concerned (see Annex 25 to this Handbook).

8.8. If a person enjoying the right of free movement under Union law is refused entry, the border guard must always provide the person with a written decision. The decision must be drafted in such a way that the person concerned is able to comprehend its content and

the implications. The decision must also include precise and full indication of the public policy or public security grounds on which the decision taken is based, unless this is contrary to the interests of State security. The decision must also specify the court or administrative authority with which the person concerned may lodge an appeal and the time limit for the appeal. Forms may be used to notify a negative decision but the motivation given must always allow for a full justification of the grounds on which the decision was taken in the concrete case. Indicating one or more of several options by only ticking the boxes in the standard form is therefore not sufficient in the case of refusal of entry to a family member of an EU citizen.

8.9. The decision to refuse entry must be performed immediately.

8.10. If the refused third-country national has been brought by a carrier by air, sea or land the carrier must be obliged immediately to assume responsibility for him/her again. The carrier must, in particular, be obliged to return the third-country national to the third State from which they were transported or to the third State which issued the travel document on which they travelled or to any other third State to which they are certain to be admitted. When the refused third-country national cannot be taken back immediately, the carrier must be made responsible to bear all necessary costs related to return travel. If the carrier is not able to return the third-country national, it must be obliged to ensure his/her return by any other means (for example, by contacting another carrier).

8.11. Penalties must be imposed on the carrier in accordance with Directive 2001/51/EC and with national law.

8.12. The border guards must take all appropriate measures, based on local circumstances, in order to prevent third-country nationals refused entry from entering illegally (for instance, by ensuring that they remain in the transit area of an airport, or by prohibiting them from going ashore at a seaport).

*** Legal basis:**

- Directive 2004/38/EC (Articles 5, and 27 to 33) read in conjunction with Commission Communication COM (2009) 313 final

- Schengen Borders Code (Article 14 and Annex V)

- Schengen Convention (Article 26);

- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985;

- Visa Code (Article 34 and Annex VI)

9. VISAS APPLIED FOR AT THE BORDER, INCLUDING TO SEAFARERS IN TRANSIT, AND REFUSAL OF SUCH VISAS

The common visa policy is not yet applied by Bulgaria, Croatia, Cyprus and Romania. National visas issued by these four countries are therefore not valid for circulating in the area without internal border controls. Bulgaria, Croatia, Cyprus and Romania may however allow entry to, or transit through, their territory for holders of uniform visas issued by the Schengen States.

9.1. Types of visas:

See points 27 to 32 of Part One of this Handbook

For further information on the different types of visas, see point 8 of Part II of the Visa Code Handbook

For further information on the issuance of visas at the border, see part IV of the Visa Code Handbook

For further information on specific rules for issuing visas at border to members of the family of EU/EEA citizens and CH citizens, see Part III of the Visa Code Handbook

*** Legal basis:**

- Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 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

- Visa Code (Article 2)

*** Links:**

- Filling in the visa sticker

- Examples of filled in visa stickers

10. ANNULMENT AND REVOCATION OF VISAS

See points 2 and 3 of Part V of the Visa Code Handbook

*** Legal basis:**

- Visa Code (Article 34 and Annex VI)

11. SPECIAL TRANSIT SCHEMES

11.1. Facilitated Transit Document (FTD) and Facilitated Railway Transit Document (FRTD)

11.1.1. On 1 July 2003, a new travel regime for transit between Kaliningrad and mainland Russia entered into force. It introduced two types of documents- a Facilitated Transit Document (FTD) and a Facilitated Railway Transit Document (FRTD). Those documents are needed for crossing the territory of Lithuania in order to enable and facilitate the travel of third-country nationals who travel between two parts of their own country which are not geographically contiguous.

11.1.2. The FTD serves for multiple- entry direct transit by any kind of transport by land through the territory of Lithuania. It is issued by Lithuanian authorities and is valid for a maximum period of up to three years. A transit based on FTD cannot exceed 24 hours.

11.1.3. The FRTD serves for single return trips by train and is valid for up to three months. A transit based on a FRTD cannot exceed six hours.

11.1.4. FTD/FRTD have the same value as a visa and must be issued in a uniform format by consular authorities in accordance with Council Regulations (EC) No 693/2003[85] and (EC) No 694/2003[86]. They cannot be issued at the border.

*** Legal basis:**

- Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual

- Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003

85 Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 099, 17.4.2003, p. 8)

86 Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) N° 693/2003 (OJ L 099, 17.4.2003, p. 15).

11.2. **Transit through the territory of Schengen States not yet fully implementing the Schengen *acquis*[87]**

11.2.1. Until Bulgaria, Croatia, Cyprus and Romania join the area without internal border controls, they may recognise: visas valid for two or multiple entries; long-term visas; and residence permits issued by a Schengen State;

as equivalent to their national visas for the purpose of transit through their territory or intended stays on their territory not exceeding 90 days in any 180 days period.

11.2.2. The holders of the documents referred to in point 11.2.1 must be subject to normal checking procedures (point 1 of this Section).

*** Legal basis:**

- Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC

12. **ASYLUM-SEEKERS/APPLICANTS FOR INTERNATIONAL PROTECTION[88]**

*** General principles:**

All applications for international protection, including those made at the border, must be examined by EU Member States so as to determine whether they are admissible and/or whether the applicant qualifies either for refugee status, in accordance with the Geneva Convention relating to the Status of Refugees of 28 July 1951 as supplemented by the New

87 This point only applies to Bulgaria, Croatia, Cyprus and Romania.

88 This point applies to Denmark, Ireland, Norway, Iceland, Liechtenstein and Switzerland as far as the determination of the Member State responsible for examining an asylum application and Eurodac are concerned.
This point applies to Ireland insofar as it concerns Directive 2005/85/EC.

York Protocol of 31 January 1967, or for subsidiary protection status, on the basis of the criteria laid down in Directive 2011/95/EU.

The EU Member State responsible for examining the application is determined in accordance with Regulation (EU) No 604/2013 of the European Parliament and of the Council[89] (Dublin III Regulation).

The procedure must be in accordance with Directive 2013/32/EU of the European Parliament and of the Council[90].

12.1. A third-country national must be considered as an applicant for asylum/international protection if he/she expresses – in any way – fear of persecution or of suffering serious harm if he/she is returned to his/her country of origin or former habitual residence.

The wish for international protection does not need to be expressed in any particular form. The word "asylum" does not need to be used expressly; the defining element is the expression of fear of what might happen upon return. In case of doubt about whether a certain declaration can be construed as a wish to apply for asylum or for another form of international protection, the border guards must consult the national authority(-ies) responsible for the examination of applications for international protection.

12.2. All third-country nationals who express a wish to apply for asylum/international protection at the border (including the territorial sea, airport and seaport transit zones) must be given the opportunity to lodge the application as soon as possible. To this end, border guards must inform the applicants, in a language they may reasonably be expected to understand, of the procedure to be followed (how and where to lodge the application), as well as of their rights and obligations, including of the possible consequences of not complying with their obligations and not cooperating with the border guards.

89 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

90 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

In order to avoid misunderstandings, and to be sure that applicants are adequately informed of their rights and obligations, as well as of the procedure, if an applicant for international protection does not have sufficient knowledge of the language spoken in the EU Member State concerned, the services of an interpreter must be called upon.

12.3. The competent national authorities designated by each EU Member State for the purpose of examining applications for international protection must be informed that an application for international protection has been made.

No decision to return the applicant must be taken by the border guard without prior consultation with the competent national authority responsible for the examination of applications for international protection.

12.4. Fingerprints of all fingers of every applicant for asylum of at least 14 years of age must be taken, in accordance with the national legislation of the EU Member State, and sent to the Eurodac Central System to make checks in the EURODAC system possible.

*** Legal basis:**

- Geneva Convention 28 July 1951 and New York Protocol;

- Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice;

- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person;

- Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national;

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted;

- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection;

- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection;

- Charter of Fundamental Rights of the European Union, in particular Article 4 (prohibition of torture and inhuman or degrading treatment or punishment) and Article 18 (right to asylum) and Article 19 (protection in the event of removal, expulsion or extradition).

13. REGISTRATION OF INFORMATION AT THE BORDER

At all border crossing points, all service information and any other particularly important information must be registered manually or electronically. The information to be registered must include, in particular:

– the names of the border guard responsible locally for border checks and of the other officers in each team;

– any relaxation of checks on persons;

– the issuing, at the border, of visas and of documents in place of passports and of visas;

– persons apprehended and complaints (criminal offences and administrative breaches);

– persons refused entry (grounds for refusal and nationality);

– the security codes of entry and exit stamps, the identity of border guards using the stamps at any given date or shift, as well as the information related to lost and stolen stamps;

– complaints from persons subject to checks;

– other particularly important police or judicial measures;

– particular occurrences.

14. COOPERATION WITH OTHER SERVICES

Border guards must cooperate closely with all state authorities deployed at the border- for example, customs authorities or other services competent for goods-related security matters, or services responsible for transport security.

15. MARKING OF FRAUDULENT DOCUMENTS

In cases where a border guard, while performing border checks detects a document which is fraudulent he/she should refuse entry to the third-country national, and mark the document according to the Schengen Borders Code (Annex V, Part A and B).

The border guard should take all the necessary measures to prevent the further use of the fraudulent document. In order to achieve this objective he/she should, as a general rule, seize the document.

Where it is necessary to hand over the document to the competent authorities (border control or others) of the third country/country of origin concerned (directly, through the carrier companies or through diplomatic channels), the border guard should:

- invalidate the document - by hole-punching or cutting the document, where possible in the machine readable zone (MRZ);

or, if this is not possible:

- mark the document as follows (only in cases when the document is not marked as described in the first parapraph of this point):

1) Paper

Marking the lower left corner of a passport's last page and, if possible, marking as well the page on which the signs of falsification or counterfeiting can be found, by building in a small triangle around letter "F", with a red hard-nibbed pen (unless that page is full, in which case the adjoining pages should be used);

2) Polymer

Marking a void area on a polymer based stand-alone document, by building in a small triangle around letter "F", using an UV ink pen, preferably red;

Or (only for completely counterfeit documents)

Marking a void area on a polymer based stand-alone counterfeit document by punching or cutting the document in the area where personal data and security features imitations are not affected.

In the particular case of fraud concerning documents which appear to have been issued by another Schengen State, the seized document should be returned to that State, once the national proceedings linked to the seizure of the document are completed.

16. VERIFICATION OF THE AUTHENTICITY OF THE DATA STORED IN A BIOMETRIC PASSPORT

To ensure efficient border checks, the authenticity and integrity of the data stored in the microchip should be verified when checking biometric passports. In order to verify that the data on the chip have been entered by an authorised authority and have not been tampered with, the content of the chip should be authenticated by Passive Authentication. The Document Signer certificate of the document should be verified against the respective trusted CSCA certificate of the issuing country. If supported, chip authentication should be used to verify that the chip is genuine.

17. VALIDITY OF CHILDREN ENTRIES IN PARENTS' PASSPORTS

Regulation (EC) No 2252/2004 provides that, since 26 June 2012, the following regime applies to holders of passports issued by Schengen States:

1. Children regardless of their age need their own passport;

2. Children are not allowed to travel only on the basis of inscription in their parents' passports;

3. Passports of parents remain valid for the parents after 26 June 2012 even if they contain inscription of their children's names.

Those provisions do not apply to Ireland. They also do not apply to passports issued by third-countries other than the Schengen Associated Countries.

The provisions of Directive 2004/38/EC apply when EU/EEA families travel from one EU/EEA Member State to another, when they transit through an EU/EEA Member State (when leaving to a third country or when returning from a third country) and when they return from a third country to a EU/EEA Member State other than the one of their nationality.

In accordance with Article 5(4) of Directive 2004/38/EC[91], the absence of an individual passport for children who are entered in the passport of their parents should not automatically lead to a refusal to leave or to enter the territory of a Schengen State. Unless there are reasonable doubts as to the identity and nationality of the children entered in the passports of their parents, the presentation of the parent's passport should in principle be considered as proof that the children concerned are, as EU citizens, covered by the right of free movement under Union law .

However, the right of EU citizens, regardless of their age, to move and reside freely should not be used to circumvent Regulation (EC) No 2252/2004, in particular where there are

[91] Article 5(4) of Directive 2004/38/EC: Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence.

serious grounds for suspecting that a child may have been unlawfully removed from the custody of the person(s) legally exercising parental care over them.

SECTION II: Land borders

1. CHECKS ON ROAD TRAFFIC

1.1. The border guard in command of a crossing point must ensure that effective checks on persons and documents are carried out, while at the same time ensuring the safety and flow of road traffic. To that end technical improvements should be introduced, where necessary, to reduce the response times of consulting the relevant databases. Where relevant, the technical infrastructure of border crossings should be improved, including the increased use of passport readers and mobile terminals.

1.2. If possible, there should be separate lanes installed for persons enjoying the right of free movement under Union law and other third-country nationals, in accordance with general rules on the separation of lanes.

1.3. Checks should be carried out, wherever possible, by two border guard officers.

*** Legal basis:**

- Schengen Borders Code (Articles 8 and 10 and Annex VI)

*** Best practices:**

● The means of transportation should be searched when:

(a) there is a justified suspicion that people, drugs, explosive materials and/or weapons are hidden inside a vehicle;

(b) there is a justified suspicion that the driver or passengers of the vehicle committed a crime or an administrative breach;

(c) the presented vehicle documents are incomplete or false.

In any case, the national law of the Schengen State concerned will apply to such searches.

● Sniffer dogs should be used for random checks in order to detect explosive materials, drugs and hidden people.

Checks on private vehicles:

● Checks on persons travelling in private vehicles should be carried out as follows, wherever possible:

(a) the driver and passengers may remain inside the vehicle during checks;

(b) the border guard officer checks documents and compares them with the persons crossing the border;

(c) a second border guard officer watches at the same time the persons inside the car and secures the checking officer.

● When there is a suspicion that a travel document, driving licence, insurance or registration document has been forged all travellers should leave the car. The car should be searched thoroughly. These activities should be performed at the second line of control.

Checks on buses:

● Checks on persons travelling by bus can be performed in a passenger terminal or inside the bus, depending on the circumstances. When the check is performed inside the bus the following measures should be taken, wherever possible:

(a) the checking of documents should start with a check on the driver of the bus and the group leader, if it is a case of organised travel;

(b) in case of doubts about the travel document or the purpose of the journey, or where there are indications that a person may be a threat to public policy, internal security or public health of the Schengen States, he/she should be asked to leave the bus and be subjected to an in-depth check at the second line, a second border guard officer watches at the same time the persons inside the bus and secures the checking officer.

● In the event of heavy traffic, bus passengers on regular local lines should be checked first if local circumstances allow for it.

While checking travel documents inside the bus, officers should use portable electronic devices, particularly for the searches in the SIS.

Checks on lorries:

Checks on lorries should be carried out as follows, in close cooperation with the competent customs authorities

(a) Wherever possible there should be a special lane for lorries where:

- the lorry and its contents can be searched in a convenient way;
- sniffer dogs can be used without any disturbance;
- technical equipment for searching can be used (i.e. x-ray devices and carbon dioxide detectors).

(b) During checks on lorries the border guard officer should pay special attention to lorries with containers where stolen cars, trafficked people or dangerous materials may be hidden. All documentation of the contents should be carefully checked.

(c) All lorries should be searched thoroughly where:

- customs seals were broken;
- tarpaulin was destroyed or sewn;
- there is a suspicion that persons, drugs, dangerous or explosive materials may be hidden inside.

● The following additional checks may also be performed:

(a) road traffic control, including compliance with social provisions (for example, roadworthiness of the car, the driver's working hours and rest time, the driver's insurance);

(b) road transportation control (the agreement of the transport of goods with documents);

(c) control of the presence of radioactive and hazardous goods.

All these additional controls are conducted under Union law and the national regulations of each Schengen State.

1.4. Schengen States may conclude or maintain bilateral agreements with neighbouring third countries concerning the establishment of shared border crossing points, where their border guards and third-country border guards carry out exit and entry checks one after another in accordance with their national law on the territory of the other party. Such shared border crossing points may be located either on the territory of a Schengen State or on the territory of a third country.

2. CHECKS ON RAIL TRAFFIC

2.1. The commanding border guard officer on duty at the rail border crossing point should gather information about rail schedules and the foreseeable number of rail passengers in order to ensure efficient border checks.

2.2. Checks at borders where the provisions on external borders apply can be carried out in one of the following three ways:

(a) in the first station of arrival or the last station of departure;

(b) on board the train, during transit between the last station of departure and the first station of arrival, regardless of direction.

2.3. The border check comprises a check on:

(a) the crew of the train;

(b) passengers going abroad;

(c) passengers coming from abroad who were not checked previously;

(d) the train's exterior.

2.4. The border control of passengers of high-speed trains may be performed in either one of the following ways:

(a) in the stations where persons board the train;

(b) in the stations where persons disembark within the territory of the Schengen States;

(c) on board the train during transit between stations provided that the persons stay on board the train.

2.5. With respect to high-speed trains from outside the area without internal border controls making several stops in the territory of the Schengen States, if the rail transport carrier is in a position to board passengers exclusively for the remaining part of the journey within the area without internal border controls, such passengers must be subject to entry checks either on the train or at the station of destination, except where checks have been carried out in the station where they boarded the train.

In such a case, persons who wish to take the train exclusively for the remaining part of the journey must receive clear notification prior to the train's departure that they will be subject to entry checks during the journey or at the station of destination.

When travelling in the opposite direction, the persons on board the train must be subject to exit checks under similar arrangements.

2.6. The border guard may inspect the cavities of carriages in order to ensure that persons or objects subject to border checks are not concealed in them. Border guard officers will always search the train thoroughly when there is a suspicion of hidden explosive materials or drugs.

2.7. Where there are reasons to believe that persons who have been reported or suspected of having committed an offence, or third-country nationals intending to enter illegally, are hiding on a train, the border guard, if he/she cannot act in accordance with his/her national provisions, must notify the authorities of the Schengen State towards or within whose territory the train is moving.

***Legal basis:**

- Schengen Borders Code (Article 8 and Annex VI)

***Best practices:**

● While performing the check on the platform in the first station of arrival or the last station before departure, the train should be guarded in order to prevent individuals from avoiding the border check. The checking officers and the officers guarding the train should be in contact at all times.

● During the checks on passengers on board the train, passengers should not be allowed to move along the train.

● The check of a goods train should consist of checking documents of the train crew and examining the carriages of the train.

● During the border control of passenger and goods trains the border guard should pay special attention to passengers and objects where there is a risk of transporting of explosive materials. To perform this duty correctly sniffer dogs should be used.

● The border check on board a train should be completed before the agreed railway station.

● Control measures should, in principle, not lead to delays in the scheduled departure of trains. If a delay is nevertheless caused, the station master should be notified as soon as possible.

3. LOCAL BORDER TRAFFIC

3.1. Schengen States may conclude bilateral agreements with neighbouring third countries in order to establish a facilitated regime of "local border traffic" for border residents. This regime applies to third-country nationals residing in the border area (50 km maximum) of a third country neighbouring a Schengen State, who, as a general rule, reside for at least one year in that area (exceptions can be provided for in the bilateral agreements) and have legitimate reasons (family links, economic, social or cultural motives) to cross the border very frequently. Under this regime, border residents are only allowed to cross the border to stay in the border area of a Schengen State for a maximum uninterrupted stay of three months.

3.2. The bilateral agreements may provide the following:

(a) the setting up of specific border crossing points reserved for border residents;

(b) the definition of specific lanes at border crossing points reserved for border residents;

(c) in exceptional cases justified by the local circumstances, the authorisation for border residents to cross the border outside border crossing points and fixed hours. This applies, for example, to situations where a farmer needs to cross the border frequently to work on his/her field, or where a town is cut across by the border. In such cases, the place where the border may be crossed should be specified in their LBT permit (see point 5.5, Section I).

3.3. Border residents who cross the border in accordance with points (a) and (b), and who are well known to the border guards due to their frequent crossing of the border, can usually be subject only to random checks. However, thorough checks must be carried out on them from time to time, without warning and at irregular intervals.

3.4. When the facilitation under point 3.2(c), is provided for in the bilateral agreement with a third country (i.e., to allow the crossing of the border outside authorised border crossing points), the Schengen State concerned must carry out random checks and maintain regular surveillance along the border in order to prevent unauthorised border crossing.

3.5. Further details on the checks to be carried out on border residents benefiting from the local border traffic regime are specified in point 5.5, Section I.

*** Legal basis:**

- Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention

- Bilateral agreements on local border traffic

SECTION III: Air borders

1. CHECKS AT THE AIRPORT

1.1. To ensure efficient border checks at the airport, border guards must gather all necessary information about the air traffic schedule in order to deploy sufficient staff in accordance with the flow of passengers, taking into account that priority should be given to arriving passengers.

The technical infrastructure of border crossings should be improved, including the increased use of passport readers, e-gates and mobile terminals.
Technical improvements should be introduced, where necessary, to reduce the response times of consultation with the relevant databases.

1.2. Appropriate infrastructure must be put in place in order to separate internal flights (flights between airports located in the area without internal border controls) from external flights and prevent unauthorised circulation of persons and/or documents between these two areas.

1.3. Border checks will usually be carried out at the authorised border crossing point within the airport; however, when there is a risk related to internal security and illegal immigration, the border check may be carried out on the aircraft or at the gate.

1.4. Access to the international transit area must be controlled; checks will normally not be carried out in the transit area, unless the assessment of the risks related to illegal migration or internal security justifies it.

*** Best practices:**

● Checks on crew members should be performed prior to those on passengers and in a separate location.

● Wherever possible, a separate place for the second line of border checks should be created.

● Wherever possible, there should be a separate line for diplomats and passengers with reduced mobility.

● All parts of the airport should be under strict surveillance through monitoring and patrolling, especially of the area where passengers go through check-in, the passport control zone and the transit area. For security reasons any luggage abandoned by its owner or other suspicious objects should be immediately reported to the security authorities.

1.5. The place where border checks are carried out must be determined in accordance with the following procedure:

(a) Passengers on a flight from an airport located outside the area without internal border controls to a Schengen State must be subject to an entry check at the airport of arrival of this flight. Passengers from a flight operating within the area without internal border controls who board a flight for outside this area (transfer passengers) must be subject to an exit check at the airport of departure of the latter flight.

*** Examples:**

- Flight from Brasilia to Lisbon with a connection in Lisbon to Paris, the entry check is in Lisbon.

- Flight from Paris to Lisbon with a transfer to Brasilia, the exit check is in Lisbon.

(b) For flights from or to an airport located outside the area without internal border controls with no transfer passengers and flights making more than one stopover at the airports within the area without internal border controls where there is no change of plane:

(i) passengers on flights from or to an airport located outside the area without internal border controls where there is no prior or subsequent transfer within the territory of the area without internal border controls must be subject to an entry check at the airport of entry and an exit check at the airport of exit;

*** Examples:**

- Flight from New York to Berlin, the entry check is in Berlin.

- Flight from Berlin to New York, the exit check is in Berlin.

(ii) passengers on flights from or to an airport located outside the area without internal border controls with more than one stopover on the territory of the area without internal border controls where there is no change of plane (transit passengers), and provided that passengers cannot board the aircraft for the leg situated within the area without internal border controls, must be subject to an entry check at the airport of arrival and an exit check at the airport of departure;

*** Examples:**

- Flight from Beijing-Helsinki-Frankfurt-Paris, with stops in Helsinki, Frankfurt only for disembarking passengers (boarding for the remaining leg is prohibited), the entry checks are performed for passengers disembarking in Helsinki, Frankfurt and Paris respectively

- Flight from Paris-Frankfurt-Helsinki-Beijing, stopovers in Frankfurt and Helsinki only for boarding passengers (disembarking is prohibited). The exit checks are in Paris, Frankfurt and Helsinki.

- Flight from Sofia-Helsinki-Frankfurt-Paris, with stops in Helsinki, Frankfurt only for disembarking passengers (boarding for the remaining leg is prohibited), the entry checks are performed for passengers disembarking in Helsinki, Frankfurt and Paris respectively

- Flight from Paris-Frankfurt-Helsinki-Sofia, stopovers in Frankfurt and Helsinki only for boarding passengers (disembarking is prohibited). The exit checks are in Paris, Frankfurt and Helsinki.

(iii) where an airline may, for flights from an airport located outside the area without internal border controls with more than one stopover within the area without internal border controls, board passengers only for the remaining leg within this territory, passengers must be subject to an exit check at the airport of departure and an entry check at the airport of arrival. Checks on passengers who, during these stopovers, are already on board the aircraft and have not boarded in the area without internal border controls must be carried out in accordance with point (b)(ii). The reverse procedure must apply to this category of flights where the country of destination is outside the area without internal border control.

*** Examples:**

- Flight from New York-Paris-Frankfurt-Rome, boarding being authorised at the Paris and Frankfurt stopovers. Entry checks for passengers landing in Paris, Frankfurt (including those who boarded in Paris) and Rome (including those who boarded in Paris and Frankfurt).

-Flight from Hamburg–Brussels-Paris-Cairo, boarding being authorised at the stopovers in Brussels and in Paris. Exit checks take place in Hamburg, Brussels and Paris.

1.6. When a plane has to land, in cases of *force majeure* or imminent danger at the nearest landing field which is not a border crossing point, the plane can continue its flight after authorisation of border guards and, as far as customs checks are concerned, of customs administrations. When a plane has to land, in cases of *force majeure* or imminent danger, at an airport which is a border crossing point it is recommended to proceed in the following way:

*** Examples:**

1. A flight originating from a third country with a third-country destination which makes an emergency stopover in the area without internal border control:

If the passengers stay in the transit area, they do not enter the area without internal border control thus no border checks are necessary.

If the passengers do pass the border, for instance because no transit area is present, border checks are necessary and passengers should be provided – if necessary – a visa according to Article 35 of the Visa Code and be registered in the EES/stamped in their passport. If it is not possible, in the described unforeseeable event, to grant a visa (or in the future an ETIAS) at the border, than a derogation under Article 6(5), point (c), of the Schengen Borders Code should be used as measure of last resort.

2. A flight originating from the area without internal border control with a third-country destination which makes an emergency stopover in the area without internal border control:

If the passengers stay in the transit area, they do not (re-)enter the area without internal border control thus no border checks are necessary.

If there is no transit area, what matters is that the passengers have not left the area without internal border control. Hence, the exit stamp should be annulled and another exit check should be carried out before boarding to the new plane. Attention should be paid that this does not result in a registration as overstayer, as this is not the fault of the passenger. (*NB*: Under the EES, a parallel logic and parallel provisions would be applied and the exit record would have to be cancelled/rectified using Article 35(1), (2) and (3) of Regulation (EU) 2017/2226).

3. A flight originating from a third country with a destination in the area without internal border control which makes an emergency stopover in that area:

If the passengers stay in the transit area, they do not enter the area without internal border control thus no border checks are necessary.

If the passengers do pass the border, for instance because no transit area is present, normal border checks for entering the area without internal border control should be performed, as only their point of entry has changed.

*** Best practices:**

● After the landing of a plane a border guard officer should come to the parking place of the plane before the disembarking of passengers when:

- a crime or an offence was committed on board;

- there is a threat to internal security;

- there is a risk of illegal migration;

- there are expelled persons from other countries;

- to gather all necessary information from the crew when there is a need.

● All passengers to whom entry was refused should be separated from others. When they cannot immediately be brought to the place of embarking, they should stay until their

departure in separated areas under the control of border guards.

● Persons who committed a crime or an offence should be transported directly from the aircraft to the specially designated places and handed over to the relevant authorities.

*** Legal basis:**

- Schengen Borders Code (Annex VI)

1.7. Where relevant, the technical infrastructure of border crossings should be improved, including the increased use of passport readers, e-gates and mobile terminals.

Technical improvements should be introduced, where necessary, to reduce the response times of consultation with the relevant databases.

1.8. Advance passenger information (API) data, collected and transmitted by air carriers in accordance with Directive 2004/82/EC which enables more effective checks on all passengers (including EU citizens) on incoming flights crossing the external borders, should be used on a more regular basis. It is for the national authorities to determine on which flights from outside Schengen States, API data must be transmitted, according to the current and up-dated risk assessment. Schengen States may use API data also for law enforcement purposes.

On the basis of national law, Schengen States may request air carriers to transmit API data also for flights between Schengen States fully applying and not yet fully applying the Schengen *acquis*.

2. CHECK IN AERODROMES

2.1. It must be ensured that persons are also checked, in accordance with the general rules, in airports which do not hold the status of international airport under the relevant national law ("aerodromes") but through which the routing of flights from or to an airport located outside the area without internal border controls is authorised.

2.2. It is not necessary to make appropriate arrangements in aerodromes to ensure that inflows of passengers from internal and other flights are physically separated, without

prejudice to Regulation (EC) No 300/2008 establishing common rules in the field of civil aviation security. In addition, when the volume of traffic is low, the border guards need not be present at all times, provided that there is a guarantee that the necessary personnel can be deployed in good time.

2.3. When the presence of border guards is not assured at all times in the aerodrome, the manager of the aerodrome must give adequate notice to the border guards about the arrival or departure of aircraft from or to an airport located outside the area without internal border controls.

*** Legal basis:**

- Schengen Borders Code (Annex VI)

- Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (Text with EEA relevance)

3. CHECKS ON PERSONS ON PRIVATE FLIGHTS

3.1. The captain of a private plane flying from or to an airport located outside the area without internal border controls must transmit to the border guards of the Schengen State of destination and, where appropriate, of the Schengen State of first entry, prior to take-off, a general declaration comprising *inter alia* a flight plan in accordance with Annex 2 to the Convention on International Civil Aviation, as well as information concerning passengers' identity.

3.2. Where private flights coming from outside the area without internal border controls and bound for a State within this area make stop-overs in the territory of other States of the area without internal border controls, the competent authorities of the State of entry into this area must carry out border checks and apply an entry stamp to the general declaration.

3.3. Where uncertainty exists whether a flight is exclusively coming from, or solely bound for, the area without internal border controls without landing outside this area, the

competent authorities must carry out checks on persons in airports and aerodromes in accordance with the general rules.

3.4. The arrangements for the entry and exit of gliders, micro-light aircraft, helicopters, small-scale aircraft capable of flying short distances only and airships are laid down by national law and, where applicable, by bilateral agreements.

*** Legal basis:**

- Schengen Borders Code (Annex VI)

- ICAO Convention

SECTION IV: Sea borders

1. GENERAL CHECKING PROCEDURES ON MARITIME TRAFFIC

1.1. The border guard in command of a crossing point must ensure that effective checks are carried out on passengers and crew of the vessels. The checks will be based upon risk analysis consisting of constant and comprehensive surveillance of the sea area.

1.2. Checks on ships must be carried out at the port of arrival or departure, or in an area set aside for that purpose, located in the immediate vicinity of the vessel or on board ship in the territorial waters as defined by the United Nations Convention on the Law of the Sea (UNCLOS). However, in accordance with the agreements reached on the matter, checks may also be carried out during crossings or upon the ship's arrival in or departure, from the area without internal border controls.

No systematic border checks should be carried out on persons staying aboard. However, a search of the ship and checks on the persons staying aboard should be carried out when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration.

1.3. The master, the ship's agent, or any other person duly authorised, must assemble a list of the crew and of all passengers onboard containing the information required in the forms 5 (crew list) and 6 (passenger list) of the Convention on Facilitation of International

Maritime Traffic (FAL Convention) as well as, where applicable, the visa or residence permit numbers.

The crew include all persons actually employed for duties on board during a voyage in the working or service of a ship and included in the crew list.

1.4. The list(s) referred to in point 1.3 must be handed over to the border guards or to other authorities without delay at the latest twenty-four hours before arriving in the port, or at the latest at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours, or, if the port of call is not known or is changed during the voyage, as soon as this information is available.

1.5. A confirmation of receipt (signed copy of the list(s) or an electronic receipt confirmation) must be returned to the master, who must produce it on request when the ship is in port.

1.6. Any changes in the crew or passengers' lists must be notified immediately to the border guards by the captain or the ship owner's agent.

1.7. The master of the ship is obliged to inform border guards about the presence of stowaways on his/her ship at the latest twenty-four hours before arriving in the port, or at the latest at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours, or, if the port of call is not known or it is changed during the voyage, as soon as this information is available. Stowaways remain under the responsibility of the master.

1.8. The captain must notify the border guards of the ship's departure. When it is impossible he must advise the appropriate shipping authority and give them the second copy of the previously completed and signed list.

*** Legal basis:**

- Schengen Borders Code (Annex VI)

2. CHECKS ON CRUISE SHIPS

2.1. Cruise ships are ships which follow a given itinerary in accordance with a predetermined programme, which includes a programme of tourist activities in the various ports, and which normally neither take passengers on nor allow passengers to disembark during the voyage.

2.2. The cruise ship's master must transmit to the border guards the itinerary and the programme of the cruise, as soon as they have been established and no later than twenty-four hours before arriving in the port, or at the latest at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours, or, if the port of call is not known or it is changed during the voyage, as soon as this information is available.

2.3. If the itinerary of a cruise ship comprises exclusively ports situated in the territory of the area without internal border controls, no border checks must be carried out and the cruise ship may dock at ports which are not border crossing points. Nevertheless, checks must be carried out on the crew and passengers of those ships only when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration.

2.4. If the itinerary of a cruise ship comprises both ports situated in the territory of the area without internal border controls and ports situated outside that area the border checks must be carried out as follows:

(a) where the cruise ship comes from a port situated outside the area without internal border controls and calls for the first time at a port situated in a Schengen State, crew and passengers must be subject to entry checks on the basis of the nominal lists of crew and passengers[92].

*** Example:**

- a cruise ship sailing from Tunis to Palermo.

See “recommended practices” set out in point 2.7 of this Section.

[92] As set out in point 2.6 of this Section, checks on the basis of nominal lists or other risk related checks are different from checks under Article 8 of the Schengen Borders Code and do not result in stamping or EES records.

Passengers going ashore must be subject to entry checks according to the general rules unless an assessment of the risks related to security and illegal immigration shows that there is no need to carry out the checks[93].

(b) where the cruise ship comes from a port situated outside the area without internal border controls and calls again at a port situated in this area, crew and passengers must be subject to entry checks on the basis of the nominal lists of crew and passengers , to the extent that these lists have been modified since the cruise ship called in the previous port situated in the territory of a Schengen State.

*** Example:**

- a cruise ship's route is: from Istanbul to Athens, then to Tunis and on to Barcelona.

See "recommended practices" set out in point 2.7.

Passengers going ashore must be subject to entry checks according to the general rules unless an assessment of the risks related to security and illegal immigration shows that there is no need to carry out the checks, such as in the case of touristic excursions or daytrips. If there are no changes in the nominal list, there is no need to identify each passenger with the travel document. Nevertheless, the disembarking passengers must have their travel documents with them all the time and show them to the border guard officers upon request.

(c) where the cruise ship comes from a port situated inside the territory of the area without internal border controls and calls at such a port, passengers going ashore must be subject to entry checks in accordance with the general rules if an assessment of the risks related to security and illegal immigration so requires.

*** Example:**

[93] Such as in the case of organised touristic excursions or daytrips during a stopover at a port, as explained in point 2.7.

- a cruise ship coming originally from Tunis and then docking, successively at the ports of Palermo, Genoa and Barcelona.

See “recommended practices” set out in point 2.7.

(d) where a cruise ship departs from a port situated in a Schengen State to a port situated outside the area without internal border control, crew and passengers must be subject to exit checks on the basis of the nominal lists of crew and passengers. If an assessment of the risks related to security and illegal immigration so requires, passengers going on board must be subject to exit checks in accordance with general rules[94].

*** Example:**

- a cruise ship sailing from Barcelona to Tunis.

See “recommended practices” set out in point 2.7.

(e) where a cruise ship departs from one port situated in the area without internal border controls to another, no exit checks must be carried out. Nevertheless, checks must be carried out on the crew and passengers of those ships only when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration[95].

*** Example:**

- a cruise ship sailing from Genoa to Barcelona and then continuing outside the area without internal border controls (for example, Tunis).

See “recommended practices” set out in point 2.7.

2.5. The crews and passangers lists must be transmitted to the respective border guards by the cruise ship's captain or, failing that, the ship owner's agent at the latest twenty-four

94 See footnote 102.
95 See footnote 102.

hours before arriving in the port, or at the latest at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours, or, if the port of call is not known or it is changed during the voyage, as soon as this information is available. A confirmation of receipt (signed copy of the list(s) or an electronic receipt confirmation) must be returned to the master, who must produce it on request when the ship is in port.

2.6. In those cases where, on the basis of the assessment of the risks related to internal security and illegal migration, border guards decide that it is not necessary to carry out checks under Article 8 of the Schengen Borders Code on cruise passengers in accordance with the general rules on border checks, there is no requirement to stamp travel documents. Checks on the basis of nominal lists or other risk related checks are different from checks under Article 8 of the Schengen Borders Code and do not result in stamping or EES records.

2.7. In the assessment of the security and migratory risks for the purposes of determining whether entry or exit checks are necessary, border guards should take into account *inter alia* the following elements: the nationality of the travellers, any available information on the shipping company and its reliability, any situation report and relevant information in their possession, including information obtained from other Schengen States or neighbouring third countries and the itinerary of the cruise. The assessment should also take into account the need to have corresponding entry and exit records for each individual traveller, so as to prevent “fake overstayers” (travellers with an entry, but no exit record) and “fake irregular migrants” (travellers presenting themselves to an exit check without entry record), thus ensuring the reliability of the EES data and avoiding possible issues with incomplete registers of third country nationals as mentioned.

*** Recommended practices:**

In the case of cruise-ships with an itinerary comprising both Schengen and third country ports, it is recommended, for the purpose of registration of third country nationals in the EES, as a general rule:

- to conduct *exit* checks under Article 8 of the Schengen Borders Code when passengers (or crew) enter the cruise ship at the beginning of their cruise;

- to conduct *entry* checks under Article 8 of the Schengen Borders Code when passengers (or crew) exit the cruise ship at the end of their cruise ; - *not to conduct entry or exit* checks under Article 8 of the Schengen Borders Code in the context of organised touristic excursions or daytrips during a stopover at a Schengen port;

- *not to conduct entry or exit* checks under Article 8 of the Schengen Borders Code on passengers remaining on board the cruise ship during a stopover at a Schengen port.

This is without prejudice to the prerogative of Member States to, according to the analysis of risks to internal security or illegal immigration, perform checks (different from checks under Article 8 of the Schengen Borders Code) on a cruise ship according to Annex VI to the Schengen Borders Code. In case such checks are performed, the third country nationals controlled will not be registered in EES.

*** Legal basis:**

- Schengen Borders Code (Annex VI)

3. CHECKS ON PLEASURE BOATING

3.1. Pleasure boating is the use of pleasure boats for sporting or tourism purposes.

3.2. Persons on board pleasure boats coming from or departing to a port situated in a Schengen State must not be subject to border checks and may enter a port which is not a border crossing point.

However, when according to the assessment of the risks of irregular immigration, and in particular where the coastline of a State not part of the area without internal border controls is located in the immediate vicinity of the territory of the Schengen State concerned, checks on these persons and/or a physical search of the pleasure boats must be carried out.

3.3. A pleasure boat coming from outside the area without internal border controls may, exceptionally, enter a port which is not a border crossing point. In these cases, the persons on board must notify the port authorities in order to be authorised to enter this port. The port authorities must contact the authorities in the nearest port designated as border crossing point in order to report the vessel's arrival. The declaration regarding passengers must be made by lodging the list of persons on board with the port authorities. This list must be made available to the border guards, at the latest upon arrival. Likewise, if for reasons of force majeure the pleasure boat coming from outside the area without internal border controls has to dock in a port other than a border crossing point, the port authorities must contact the authorities in the nearest port designated as a border crossing point in order to report the vessel's presence. The use of this exception must not become the rule and has to be restricted to exceptional circumstances including *force majeure* (for example extreme weather conditions, emergency medical issues, machine breakdown or other technical problems, involvement in SAR operations, …..). Other exceptional circumstances which may justify the use of the exception could be: sporting events and situations characterized by an exceptionally large influx of pleasure boats in a specific geographical area making it materially difficult to absorb the increase in activity at a crossing point. In all these cases border checks will have to be conducted by authorities of the nearest (or a close) border crossing point.

3.4. During these checks, a document containing all the technical characteristics of the boat and the names of the persons on board must be handed in. A copy of this document must be given to the authorities in the ports of entry and departure. As long as the boat remains in the territorial waters of one of the Schengen States applying the Schengen *acquis* in full, a copy of this list must be included amongst the ship's papers.

3.5. Random checks on pleasure boats must be carried out irrespective of the assessment of the risks of irregular immigration.

*** Legal basis:**

- Schengen Borders Code (Annex VI)

4. CHECKS ON COASTAL FISHING

4.1. Coastal fishing is fishing carried out with the aid of vessels which return every day or within 36 hours to a port situated in the area without internal border controls without calling at a port situated outside this area.

4.2. The crews of coastal fisheries' vessels who return every day or within 36 hours to the port of registration or to any other port situated in the territory of the area without internal border controls, without docking in a port situated outside this area must not be systematically checked.

4.3. When there is a risk of irregular immigration, in particular where the coastline of a third State is located in the immediate vicinity of the territory of the Schengen State concerned, checks on persons and/or a physical search of the vessel must be carried out.

4.4. The crews of coastal fisheries' vessels not registered in a port situated within the area without internal border controls must be checked in accordance with the provisions relating to seafarer (point 5.3 of Section I). The ship's captain must notify the competent authorities of any alteration to the crew list and of the presence of any passengers.

*** Legal basis:**

- Schengen Borders Code (Annex VI)

5. CHECKS ON FERRY CONNECTIONS

5.1. Checks must be carried out on persons on board ferry connections with ports situated outside the area without control at internal border. The following rules must apply:

(a) where possible, separate lanes for citizens of EU Member States, EEA and Switzerland and their family members must be provided;

(b) checks on foot passengers must be carried out individually;

(c) checks on vehicle occupants must be carried out while they are at the vehicle (in the vehicle or next to the vehicle);

(d) ferry passengers travelling by coach must be considered as foot passengers. These passengers must alight from the coach for the checks;

(e) checks on heavy goods vehicle drivers and any accompanying persons must be conducted while the occupants are at the vehicle; this check will in principle be organised separately from checks on the other passengers;

(f) to ensure that checks are carried out quickly, there must be an adequate number of gates;

(g) so as to detect illegally staying third-country nationals in particular, random searches must be made on the means of transport used by the passengers, and where applicable on the loads and other goods stowed in the means of transport;

(h) ferry crew members must be dealt with in the same way as commercial ship crew members;

(i) point 1.3 of this Section (the obligation to submit passenger and crew lists) does not apply. If a list of the persons on board has to be drawn up in accordance with Council Directive 98/41/EC[96] on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community, a copy of that list must be transmitted not later than thirty minutes after departure from a port situated outside the area without internal border controls by the master to the competent authority of the first port of arrival in the Schengen States.

[96] Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community (OJ L 188, 2.7.1998, p. 35).

The rules on checks on ferry connections set out this point, fixed in Annex VI, point 3.2.9 to the Schengen Border Code, relate to checks "on board ferry connections". As regards checks which are carried out on vehicles outside the ferry (before rolling on the ferry or after rolling off the ferry) the more flexible rules in relation to land borders, set out in Annex VI, point 1.1.3 to the Schengen Borders Code, may be applied. As a general rule, persons travelling in vehicles may remain inside them during checks. However, if circumstances so require, persons may be requested to alight from their vehicles. In such a situation passengers may also be directed to pedestrian lanes.

*** Legal basis:**

- Schengen Borders Code (Annex VI)

5.2. Where a ferry coming from outside the area without internal border controls with more than one stop within this area takes passengers on board only for the remaining leg within that territory, those passengers should be subject to an exit check at the port of departure and an entry check at the port of arrival. Checks on persons who, during those stop-overs, are already on board the ferry and have not boarded in the area without internal border controls must be carried out at the port of arrival. The reverse procedure should apply where the country of destination is not part of the area without internal border controls.

6. CARGO CONNECTIONS BETWEEN PORTS LOCATED IN THE TERRITORY OF THE AREA WITHOUT INTERNAL BORDER CONTROLS

6.1. No border checks should be carried out on cargo connections between the same two or more ports situated inside the area without internal border controls not calling at any ports outside this area and consisting of the transport of goods.

Nevertheless, checks should be carried out on the crew and passengers of those ships only when they are justified on the basis of an assessment of the risks relating to internal security and illegal immigration.

SECTION V: Checks on inland waterways shipping

1. INLAND WATERWAYS SHIPPING

1.1. Inland waterways shipping involving the crossing of an external border covers the use, for business or leisure purposes, of all types of boat and floating vessels on rivers, canals and lakes.

1.2. The checks to be carried out on inland waterways shipping are the same as those to be carried out on maritime traffic in general.

1.3. As regards boats used for business purposes, the captain and the persons employed on board who appear on the crew list and members of the families of these persons who live on board must be regarded as crew members or equivalent.

*** Legal basis:**

- Schengen Borders Code (Annex VI)

PART THREE: BORDER SURVEILLANCE

1. PURPOSE OF SURVEILLANCE

1.1. The main purposes of the surveillance of external borders at places other than border crossing points and surveillance of these crossing points outside opening hours are:

(a) to prevent and discourage unauthorised border crossings;

(b) to counter cross-border criminality;

(c) to apply or to take measures against persons who have crossed the border illegally;

(d) to maintain reliable situational awareness and reaction capability;

(e) to support identification and registration of persons crossing borders illegally.

1.2. The officer in command must take all necessary measures to prevent the unauthorised crossing of the border and deploy the staff and other resources based upon the assessment of the risk of irregular immigration and of cross-border criminality.

The resources used should be selected in accordance with the type and nature of the border (land, inland waterway or sea).

2. THE METHODS OF SURVEILLANCE

2.1. The surveillance may be carried out by using either stationary or mobile units which perform their duties by:

(a) patrolling;

(b) stationing at places known or perceived to be sensitive.

2.2. Frequent and sudden changes to the periods and methods of surveillance should be made so as to detect effectively unauthorised border crossings.

2.3. The main tasks of patrolling are:

(a) to monitor the terrain they operate in;

(b) to ensure that there is no risk to public policy and internal security in the patrolling area;

(c) to check documents of persons present in the area who are not known to the patrol team;

(d) to stop all suspect persons who do not carry any documents and ask them to explain in detail their reasons for being present in that area;

(e) to stop and bring persons who crossed or tried to cross the border illegally to the nearest border guard's station to identify, register and fingerprint for purposes related to Regulation (EU) No 603/2013 irregular border crossers and asylum seekers who are at least 14 years old;

(f) to secure all evidence related to unauthorised border crossings or other border incidents.

Special service dogs for tracking should be used during patrolling. Helicopters, patrol boats and terrain vehicles should also be used in order to enhance the patrolling and monitoring of the border.

2.4. The main tasks of stationing are:

(a) to observe the places which are perceived to be sensitive to illegal border crossing or smuggling;

(b) to stop and bring to the border guard station people who crossed the border illegally or who tried to do so.

2.5. According to the information obtained, special operations should be organised in order to catch trafficked people and traffickers.

2.6. Surveillance should be supported by integrated, mobile and portable technical surveillance systems and equipment (i.e radars, drones, CCTV, different sensors, and infrared vision or thermal cameras to guarantee night vision capability).

*** Legal basis:**

- Schengen Borders Code (Article 13)

PART FOUR: LIST OF RELEVANT LEGAL INSTRUMENTS

- **Union law:**

  - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990 (OJ L 239, 22.9.2000, p. 19);

  - Council Decision 94/795/JHA of 30 November 1994 on a joint action adopted by the Council on the basis of Article K.3.2.b of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State (OJ L 327, 19.12.1994, p. 1);

  - Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p.1);

  - Charter of Fundamental Rights of the European Union (OJ C 364, 18.12.2000, p.1) ;

  - Council Directive No 2001/51 of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187 10. 7.2001, p. 45);

  - 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*);*

  - Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1);

  - Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 099, 17.4.2003, p. 8);

  - Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) N° 693/2003 (OJ L 099, 17.4.2003, p. 15);

– Council Decision 2004/265/EC of 8 March 2004 concerning the conclusion of a Memorandum of Understanding between the European Community and the National Tourism Administration of the Peoples' Republic of China on visa and related issues concerning tourist groups from the Peoples' Republic of China (ADS) (OJ L 83, 20.3.2004, p. 12);

– Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control (OJ L 142, 30.4.2004, p. 1);

– Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 229, 29.6.2004, p. 35);

– Council Regulation 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);

– Decision No 896/2006 of the European Parliament and of the Council of 14 June 2006 establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory (OJ L 167, 20.6.2006, p. 8);

– Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p. 1);

– Council Decision No 2007/801/EC of 6 December 2007 on the full application of the provisions of the Schengen *acquis* in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Republic of Poland, the Republic of Slovenia and the Slovak Republic (OJ L 323, 8.12.2007, p. 34);

– Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97, 9.4.2008, p.72);

– Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60);

– Council Decision No 2008/903/EC of the European Parliament and of the Council of 27 November 2008 on the full application of the provisions of the Schengen *acquis* in the Swiss Confederation **(**OJ L 327, 5.12.2008, p. 15**);**

– Regulation (EC) No 810/2009 of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1);

– Regulation (EU) No 265/2010 of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa (OJ L 85, 31.3.2010, p. 1);

– Council Decision 2011/842/EU of 13 December 2011 on the full application of the provisions of the Schengen *acquis* in the Principality of Liechtenstein (OJ L 334, 16.12.2011, p. 27);

– Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L337, 20.12.2011, p.9);

– Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p.60);

– Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin Regulation) (OJL 180 of 29.6.2013, p. 31);

– Regulation (EU) No 603/2013 of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p.1);

– Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p.1);

– Commission implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 39, 8.2.2014, p.1);

– Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ L157, 27.5.2014, p.23);

– Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p.1);

– 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) (OJ L 77, 23.3.2016, p. 1);

– Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ L 119, 4.5.2016, p.1);

– Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, (OJ L 119, 4.5.2016, p. 89);

– Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ L 132, 21.5.2016, p. 21);

– Council Decision (EU) 2017/733 of 25 April 2017 on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Croatia (OJ L 108, 26.4.2017, p. 31);

– Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p.1);

– Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p.14);

– Regulation (EU) 2018/1862 of the European Parliamend and of the Council of 28. November 2018 on the establishment, operation and use of the SIS in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p.56);

– Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 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 303, 28.11.2018, p. 39);

– Council Decision (EU) 2018/934 of 25 June 2018 on the putting into effect of the remaining provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 165, 2.7.2018, p. 37);

– Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 of the European Parliament and of the Council of 20. June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement (OJ L 188, 12.7.2019, p. 67);

– Commission Implementing Decision C(2020) 395 final of 28.1.2020 amending Commission Decision C(2010) 1620 final as regards the replacement of the Handbook for the processing of visa applications and the modification of issued visas (Visa Code Handbook I).

- **International law:**

– Convention of 7 December 1944 on International Civil Aviation (ICAO Convention, Annex 2 and 9;

– European Convention for the protection of Human Rights of 4 November 1950 and its Protocols;

– Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967;

– Vienna Convention on Diplomatic Relations of 18 April 1961;

– Convention on Facilitation of International Maritime Traffic (FAL) of 9 April 1965;

– Agreement between the European Community and its Member States, of one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ L 114, 30.4.2002, p. 6);

– ILO Convention on Seafarers' Identity Documents (No 185) of 19 June 2003;

– Bilateral agreements on local border traffic;

– Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ C 384I , 12.11.2019, p. 1).

APPENDIX A

NOTIFICATION PROCEDURE

When a Member State[97] intends to carry out targeted checks on persons enjoying the right of free movement under Union law, in accordance with Article 8(2a) of the Schengen Borders Code, it must notify without delay the intended application of those targeted checks to:

(a) the other Member States,

(b) the European Border and Coast Guard Agency (the Agency) and

(c) the Commission.

The Member State concerned may decide to classify the notification or parts thereof.

In the notification, the grounds, scope and duration for the derogation must be explained as follows in order to ensure the *effet utile* of the notification and, in particular, to allow the other Member States, the Commission and the Agency to express possible concerns.

The grounds must be supported by objective elements pertinent to the derogation from the systematic checks at specific border crossing points.

In particular the Member State concerned should present:

- the main characteristics of the flow at the concerned border crossing point(s) such as the categories of persons crossing;

- the estimated share of third-country nationals and share of persons enjoying the right of free movement under Union law crossing that border;

- indication that the alleged increase of the waiting time is due to the systematic checks (and not, for instance, to road works in the area adjacent to the border crossing point). A general reference to the upcoming holidays period is not sufficient in this regard. There is no universal indicator of the disproportionate impact on the traffic flow applicable to all Member States or border crossing points. The assessment of the disproportionate effect on the waiting time cannot ignore the average waiting time or previously experienced delays;

- how the derogation will remedy the disproportionate impact on the flow of traffic faced at the border crossing point(s) concerned.

The border crossing point(s) concerned must be specified.

[97] In this text, "Member State" is to be understood as including the four Schengen Associated Countries.

The planned duration of the derogation must be proportionate and must not exceed what is necessary. The final foreseen date of derogation must be indicated for each border crossing point. Open-ended derogations are not acceptable. In accordance with Article 15 of the Schengen Borders Code Member States are committed to deploy appropriate staff and resources in sufficient numbers to ensure the implementation of the systematic checks against relevant databases.

The Member State should indicate in the notification the date of transmission of the risk assessment to the Agency as required by Article 8(2a) of the Schengen Borders Code, and explain the main elements from the risk assessment allowing the addressees of such notification to take informed position.

Where other Member States, the Agency or the Commission have concerns about the intention to derogate from the rule of the systematic checks against databases, they must notify the Member State concerned of these concerns within two weeks after receiving the notification. The Member State must take those concerns into account.

The Member States should establish their internal channels of communication and must notify other Member States and the Commission via their Permanent Representation sending the notification to the point of contact within the Permanent Representation and the functional mailbox (mailto:HOME-B1-BORDERS@ec.europa.eu) respectively.

APPENDIX B

PROCEDURE WITH REGARD TO THE IMPLEMENTATION OF A DEROGATION FROM THE PRINCIPLE OF THE SYSTEMATIC CHECKS AGAINST RELEVANT DATABASES UNDER ARTICLE 8 OF THE SCHENGEN BORDERS CODE) INCLUDING THE RISK ASSESSMENT

Article 8(2a) of the Schengen Borders Code allows Member States to derogate from the principle of the systematic checks against relevant databases with regard to persons enjoying the right of free movement under Union law who cross the external borders provided that two cumulative conditions are fulfilled:

1. The Member State concerned must demonstrate a disproportionate impact on the flow of traffic in relation to carrying out of systematic checks on persons enjoying the right of free movement under Union law.
2. Before taking a decision on the derogation, the Member State concerned must prepare a risk assessment demonstrating that applying checks on a targeted basis on persons enjoying the right of free movement under Union law would not lead to a security risk.

In order to ensure the *effet utile* of the provisions concerning the temporary derogation, the following aspects related to assessing the risk of carrying out checks on a targeted basis and to the follow-up of a notification of the intention to derogate should be clarified as follows:

A. The risk assessment

1. The Member State that wants to derogate prepares a risk assessment according to the CIRAM methodology.

The Agency, in close cooperation with the Member States, will develop a standardised reporting template which will exploit synergies with other already existing risk assessments and vulnerability assessments, and provide access to it on-line.

2. The risk assessment concluding that there is low [or medium] threat is submitted to the Agency before effective implementation of the derogation, using standardised reporting template. In exceptional circumstances (for example an exceptional and unforeseen influx of EU/EEA/CH passengers at a certain border crossing point) the risk assessment can be submitted simultaneously with the implementation of the derogation only if the notification alone has already provided extensive information to demonstrate immediate disproportionate impact on the flow of traffic for the specific border crossing point.

According to Article 8(2a), second subparagraph, of the Schengen Borders Code: "*The risk assessment shall state the reasons for the temporary reduction to targeted checks against the databases, taking 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.*" As derogations can apply to persons enjoying the right of free movement under Union law only, the risk assessment should focus on assessing the risks caused by the persons enjoying the right of free movement under Union law at the specific border crossing points.

In concrete terms, the risk assessment of the Member State as set out in Article 8(2a) of the Schengen Borders Code prepared in line with the CIRAM methodology and a template must include:

I. Description of the reason for the temporary reduction to targeted checks against the databases and, provision of quantitative data (for example, projected passenger flow, processing time per passenger or similar) that demonstrates a disproportionate impact on the flow of traffic at the chosen border crossing point/s after options for increasing capacities have been exhausted.

II. Estimated share of the total number and the dominant profiles of travellers enjoying the right of free movement under Union law that could pose a threat related to public policy, internal security, public health or international relations of any of the Member States during the period of time when a derogation of systematic checks will be performed.

III. Assessment of the possible impact of the derogation on the security, i.e. public policy, internal security, etc of the Member States, including the assessment of possible impact of the derogation on travel connections to other Member States.

A risk assessment concluding that the risks related to the public policy, internal security, public health or international relations of any of the Member States are high will not lead to a derogation.

On the basis of a risk assessment concluding that the risks related to the public policy, internal security, public health or international relations of any of the Member States are low [or medium], the Member State concerned should establish that the identified risks for each border crossing point concerned are mitigated with adequate strategies and means. These strategies and means will be described in the risk assessment to be submitted to the Agency.

3. The Agency evaluates the transmitted risk assessment within a timeframe agreed with the Member State in question. The Agency may use its own resources and information, especially information collected via vulnerability assessments, for evaluating risk assessments submitted by the Member States. It may seek for advice of Europol or other EU agencies.

A. In case the risk assessment is incomplete or the information provided is not relevant, the Agency must contact the Member State concerned as soon as possible to seek for additional information/justification.
In case the completed risk assessment is not submitted within the deadline agreed with the Agency, the Agency should alert the other Member States and the Commission about the situation after one final request made to the concerned Member State.

B. In case of a disagreement between the Member State concerned and the Agency over the completeness and relevancy of the risk assessment provided, a common understanding will be sought on a bilateral basis within a reasonable period of time (maximum within two weeks).

If the divergences persist, the Agency must alert the Commission and the other Member States. A meeting involving the Agency, the Member State concerned, the Commission and, where appropriate, other Member States can be conveyed. In such case, the Commission organises the meeting and invites relevant stakeholders to participate.

The views of the Agency should be first communicated for comments to the Member State who submitted the risk assessment. The Agency must inform the Commission and other Member States about its views.

4. The Member State concerned must update the risk assessment regularly. When doing so, point A.1 to A.3 should also be followed, where applicable.

B. Notification of the intention to derogate and follow-up to such notification:

1. The Member State concerned notifies the intention to derogate to other Member States, Commission and the Agency. The notification should meet the minimum requirements set out in Appendix A to this Handbook,

2. The Member States, the Agency or the Commission having concerns about the intention to carry out targeted checks against the databases, must notify the Member State in question of those concerns without delay. The other Member States or the Commission can ask the Agency to verify if the grounds for their concerns are justified.

The Member States having concerns can also inform the Agency, the Commission and other Member States of their concerns. While the concerns should be clarified in principle on a bilateral basis with the Member State notifying the intention of derogation, given the number or character of the concerns (for example, related to the same aspect) a meeting for all the parties who raised concerns can be conveyed, while informing about this fact other parties entitled to submit concerns but who have not done so. Such meeting can be conveyed at the initiative of any of the entitled parties. The Commission is responsible for arranging and for chairing such meeting.

3. The Member State intending to derogate from the systematic checks against databases on persons enjoying the right of free movement under Union law must take those concerns into account.

4. The Member State concerned must 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 on persons enjoying the right of free movement under Union law. The reports should provide detailed information on the actual use of targeted checks at specific border crossing points, data concerning the flow of traffic at these border crossing points benefiting from the derogation and about their impact on the evolution of the risk assessment related to the public policy, internal security, public health or international relations in the Member State concerned.

For each BCP and for each timeslot when derogations have been used, at least the following information must be included by the Member State in its report:

- exact time where derogations have been used (Started at: hours and minutes in UTC. Ended at: hours and minutes in UTC.);
- number of passengers that were crossing the border, broken down by nationality and direction of travel (entry/exit);
- number of persons enjoying the right of free movement under Union law that were not checked against databases on entry, broken down by citizenship and direction of travel (entry/exit);
- number of persons enjoying the right of free movement under Union law that were checked against databases, broken down by citizenship and direction of travel (entry/exit);
- number of hits against the relevant data bases passengers that were subject to targeted checks, broken down by direction of travel (entry/exit), citizenship and databases.

In addition, where appropriate, Member States should endeavour to provide the following contextual information by BCP and by months covering the reporting period[98]:

- number of passengers crossing the border, broken down by nationality and direction of travel (entry/exit);
- number of hits in relevant databases during systematic checks, broken down by direction of travel (entry/exit) and citizenship.

[98] This reporting obligation may be reviewed after the first reporting.

LIST OF ANNEXES TO THE PRACTICAL HANDBOOK FOR BORDER GUARDS

1. List of national services responsible for border control.
2. List of contact points in Member States for border management issues.
3. List of contact points for exchanging information on security codes of entry and exit stamps.
4. List of border crossing points.
5. Table of travel documents entitling the holder to cross the external borders and which may be endorsed with a visa (= Annex 10 to the Visa Code Handbook (same title)).
6. List of third countries whose nationals must be in possession of visas when crossing the external borders and of those whose nationals are exempt from that requirement (= Annex 1 to the Visa Code Handbook).
7. Transit of third-country nationals holding a visa/residence permit issued by Schengen States through the territories of Bulgaria, Cyprus and Romania.
8. Exceptions to the visa requirement for holders of diplomatic passports, official-duty passports and other official passports (= Annex 5 "Information on national derogations from the visa requirements" to the Visa Code Handbook).
9. Exceptions to the visa requirement for recognised refugees and stateless persons **(**= Annex 5 "Information on national derogations from the visa requirements" to the Visa Code Handbook).
10. Other exceptions to the visa requirement (= Annex 5 "Information on national derogations from the visa requirements" to the Visa Code Handbook).
11. Exceptions from the visa exemption as regards persons carrying out a paid activity (= Annex 5 "Information on national derogations from the visa requirements" to the Visa Code Handbook).
12. List of third countries whose nationals are subject to the airport transit visa requirement

(= Annex 7 to the Visa Code Handbook:

- Annex 7A "Common list of third countries whose nationals are required to be in possession of an airport transit visa when passing through the internaional transit area of airports situated on the territory of the Member States".

- Annex 7B "List of third countries whose nationals are required to be in possession of an airport transit visa when passing through the internaional transit area of airports situated on the territory of one/some Member States".

- Annex 7C "List of residence permits entitling their holders to transit through the airports of member states without being required to hold an airport transit visa").

13. Uniform format for visa stickers and information on their technical specifications and security features (= Annex 19 "The visa sticker" to the Visa Code Handbook).
14. How to fill in visa stickers (= Annex 20 "Filling in the visa sticker" to the Visa Code Handbook).
15. Information to be entered, if necessary, in the comments section (= Annex 22 "National entries in the "comments" section of the visa sticker "to the Visa Code Handbook).
16. Instructions on inserting information in the optical reading area (annex is redundant, information is included in Annex 14 to this Handbook.
17. Specimen of filled in visa stickers (further guidelines) (= Annex 21 "Examples of filled in visa stickers" to the Visa Code Handbook).
18. Examples of visa stickers issued by Member States (with photographs).
19. Facilitated transit document (FTD) and Facilitated Rail Transit document (FRTD).
20. Specimen of cards issued by Foreign Ministries of the Member States.
21. Fees to be charged, in euros, corresponding to the administrative costs of processing visa applications (for further information see point 4.4 of Part II of the Visa Code Handbook).
22. List of residence permits issued by Member States.
23. Specimen of residence permits issued by Member States.
24. Supporting documents to verify the fulfilment of entry conditions.
25. Reference amounts required for the crossing of the external border fixed by national authorities (= Annex 18 to the Visa Code Handbook).

26. Standard form for approval of evidence regarding the respect of conditions of duration of a short stay in cases where the travel document does not bear an entry stamp.
27. National practices on rebuttal of presumption of illegal entry when a stamp is lacking.
28. Standard form for refusal of entry at the border, including standard form for notifying and motivating annulment or revocation of a visa substantiating the reason(s) for the annulement.
29. Operational instructions for issuing visas at the border to seafarers in transit who are subject to visa requirements (= Annex 26 to the Visa Code Handbook).
30. List of school pupils travelling in the framework of a school excursion within the European Union (= to Annex 3 to the Visa Code Handbook).
31. List of national authorities competent for addressing request for access to personal data entered in the SIS.
32. Model signs indicating lanes at border crossing points.
33. Specimen harmonised forms providing proof of invitation, sponsorship and accommodation drafted by the contracting parties (= Annex 15 "Specimen of MS' forms providing proof of sponsorship and/or accommodation" to the Visa Code Handbook).
34. Specimen of documents issued to refugees, stateless persons benefiting from subsidiary protection.
35. Specimen of collective documents.
36. List of agreements on local border traffic and specimen of permits issued by Member States for that purpose.
37. List of national contact points for consultation purposes on minors.
38. Guidelines on the movement of Turkish nationals crossing the external borders of EU Member States in order to provide services within the EU (= Annex 6 to the Visa Code Handbook).
39. **S**tandard form for recognising a return decision for the purposes of transit by land.
40. Certificate for international transport worker.
41. Extension of legal stay related to Covid-19 – national practices.
42. Guidelines on the treatment of beneficiaries of the Withdrawal Agreement.

43. Specimen of documents that beneficiaries of the Withdrawal Agreements (EU-UK, IS/LI/NO-UK, CH-UK) may hold before being in possession of the new residence document issued either in accordance with Commission Implementing Decision C(2020) 1114 final of 21.2.2020[99] (see also Annex 42 to this Handbook) or in accordance with the Withdrawal Agreements concluded by Iceland, Liechtenstein and Norway on the one hand and Switzerland on the other hand.

[99] Commission Implementing Decision of 21.2.2020 on documents to be issued by Member States pursuant to Article 18(1) and (4) and Article 26 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (C(2020) 1114 final).