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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

as regards the reinforcement of checks against relevant databases at external borders introduced with Regulation (EU) 2017/458 amending Regulation (EU) 2016/399

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I. Introduction

In response to the terrorist attacks in Copenhagen in February 2015, in Paris in January and November 2015 and in Brussels in March 2016, Parliament and the Council adopted Regulation (EU) 2017/458 of 15 March 2017[1] (the Regulation) amending Regulation (EU) 2016/399[2] (Schengen Borders Code). This amendment concerned Article 8 on 'Border checks on persons' and strengthened checks of all persons entering or exiting the Schengen area without controls at internal borders ("Schengen area").

Under the Regulation, the Member States and the Schengen Associated Countries ("the Member States") have to run systematic checks against relevant databases on all persons crossing the EU's external borders. This obligation already existed for checks on third-country nationals, but not for persons enjoying the right of free movement under EU law. Under the amended Regulation, also persons enjoying the right of free movement undergo: (i) verification of their identity and nationality and the authenticity and validity of their travel documents; and (ii) verification that they are not considered a threat to the public policy, internal security, public health or international relations of any Member State. The databases to be searched include the Schengen Information System (SIS), Interpol's Stolen and Lost Travel Database (SLTD), and other relevant national databases.

The change was made after it became apparent that many terrorist fighters were also EU citizens who, enjoying the freedom of movement, were previously only subject to limited border checks at the external borders (a visual identity check not allowing for their potential identification as security threats, and checks against databases were run only non-systematically).

The Regulation makes it possible to temporarily reduce systematic checks of databases, by checking relevant databases only on a targeted basis, if systematic checks 'would have a disproportionate impact on the flow of traffic'[3]. Such derogations require notification to the Commission and the European Border and Coast Guard Agency, as well as submission of a risk assessment and subsequent updates, if applicable, to the Agency.

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1 Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders (OJ L 74, 18.3.2017, p. 1).

2 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).

3 Article 8 (2a) of the Schengen Borders Code.

For air border crossing points, this possibility applied only during a 6-month transition period after the Regulation came into force. In justified cases, Member States could prolong this by up to 18 months[4] (leading to a total maximum transition period of 24 months).

This report gives an overview on the implementation and impact of introducing such systematic checks on persons with the right of free movement under EU law, taking into account the outcomes of systematic security checks in the Schengen area, particularly regarding terrorist fighters. It also considers the overall costs for Member States and passengers, identifies challenges and shortcomings in the Regulation's implementation and analyses the impact of the newly introduced rules.

This report was due to Parliament and the Council by 8 April 2019[5]. However, as the Regulation allowed Member States to delay introduction of such systematic checks at their air borders for up to 24 months (i.e. by the time the report was due)[6] and as 13 Member States used this possibility, at the time the report was due the data available would have covered a period when only some Member States were already fully applying the Regulation.

This report is mainly based on a study by an external contractor for the European Commission[7] covering the first 2 years of the Regulation's application, i.e. 7 April 2017 to 7 April 2019. Due to significant gaps in the data available or provided by the Member States to the contractor, the figures available for the study are based in part on estimates and should be interpreted as indicating general trends. In addition to the study, when drafting this report the Commission used other sources covering a longer period of time. These include the First Multiannual Evaluation Programme (2015-2019) on the Functioning of the Schengen Evaluation and Monitoring Mechanism[8] and national reports submitted to the Commission by Member States that applied derogations.

Furthermore, as observed in the Commission's regular assessments and data provided by Frontex, cross-border travel dropped dramatically in 2020 and 2021 due to the COVID-19 pandemic (about -69% and -67% respectively, compared to 2019). Less passenger traffic and tightened controls to contain the virus's spread meant that Member States felt less need to derogate from systematic checks. Therefore, no Member State notified the Commission of their intention to use derogations during this period.

Thanks to the roll-out of vaccination campaigns and the successful adoption of the EU Digital COVID Certificate (EUDCC)[9], cross-border passenger traffic has progressively increased as

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4 Article 8 (2d) of the Schengen Borders Code.

5 Article 8 (2c) of the Schengen Borders Code.

6 Article 8 (2d) of the Schengen Borders Code.

7 Assessment of the implementation of Regulation (EU) 2017/458 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders, February 2020.

8 Report from the Commission to the Council and the European Parliament on the Functioning of the Schengen Evaluation and Monitoring Mechanism pursuant to Article 22 of Council Regulation (EU) No 1053/2013 – COM(2020) 779 final – 25.11.2020.

9 Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic and Regulation (EU) 2021/954 of the European Parliament and of the Council of 14 June 2021 on a framework

of beginning of the second semester of 2021. The EUDCC played a crucial role in facilitating travel in the EU and has also been pivotal in relaunching travel from and to the EU, despite it legally only regulating "inbound" travel to the EU. This increasing trend is expected to continue, and a new peak should be reached in the 2022 summer holiday season.

Given all the above, this report will take stock of the situation, draw the necessary conclusions and recommend any appropriate steps as concerns the application of Article 8 of the Schengen Borders Code.

II. Implementation of Article 8(2) of the Schengen Borders Code

II.1. The Regulation's practical implications

Before the Regulation's entry into force, targeted, non-systematic checks against databases on persons with the right of free movement under EU law were conducted unevenly by the Member States. Based on data gathered in the external study underlying this report, seven Member States already checked such persons systematically at all their borders before the Regulation's entry into force. While other Member States used systematic checks on persons with the right of free movement in limited ways, e.g. only temporarily, at certain border crossing points, or at certain border sections/borders with certain third countries, five Member States declared never having used systematic checks at any border crossing point before Regulation (EU) 2017/458 came into force.

To meet the Regulation's obligations, most Member States updated their operational guidelines for border guards. As systematic checks were already carried out on non-EU citizens, no major changes to their organisational structure, work organisation and processes were necessary. Some 10 Member States also updated their guidelines on risk-profiling of passengers for first line border officers.

From 2017 to 2019, 18 Member States hired additional staff, 11 of them to meet the new requirements under the Regulation. Some Member States used this opportunity to redeploy and retrain existing staff. Most Member States have modified (and continue to modify) the existing infrastructure at border crossing point to accommodate the implementation of systematic checks. According to the border guards interviewed in the framework of the external study, the infrastructure upgrades were generally part of wider reforms often seeking to improve the capacity of airports, ports and border crossings to handle the increased volume of traffic that many Member States have seen in the years prior to the pandemic. These changes have, nevertheless, reportedly facilitated the implementation of systematic checks.

for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) with regard to third-country nationals legally staying or residing in the territories of Member States during the COVID-19 pandemic.

Table 1: Changes to border crossing point infrastructures (2017 – 2019)[10]

	Changes made to implement the Regulation	**Changes made unrelated to the Regulation**
Additional passenger lanes	**Air:** Cyprus, Spain **Land:** Lithuania (planned), Latvia (planned)	**Air:** Bulgaria, Croatia, Cyprus, Slovakia **Land:** Croatia, Greece
Additional control booths	**Sea:** Hungary, Italy, Spain	**Air:** Slovakia, Iceland **All:** France
Overall expansion of Border Crossing Points	**Air:** Hungary, Italy, Lithuania **Sea:** Cyprus	**Air:** Croatia, Finland, Germany, Hungary, Iceland **Sea:** Germany **Land:** Croatia, Bulgaria **All:** Hungary
New queuing arrangements[11]	**Air:** Bulgaria, Denmark, Hungary, Latvia **Land:** Bulgaria **All:** Italy, Spain	-
Stricter separation of EU/non-EU/Automated Border Control lanes	**Air:** Austria, Cyprus[12], Czechia, Denmark, Latvia **Sea:** Cyprus **All:** Croatia, Italy, Spain	-

Source: table based on Border Guards Survey and interviews (Border Guard headquarters and staff)

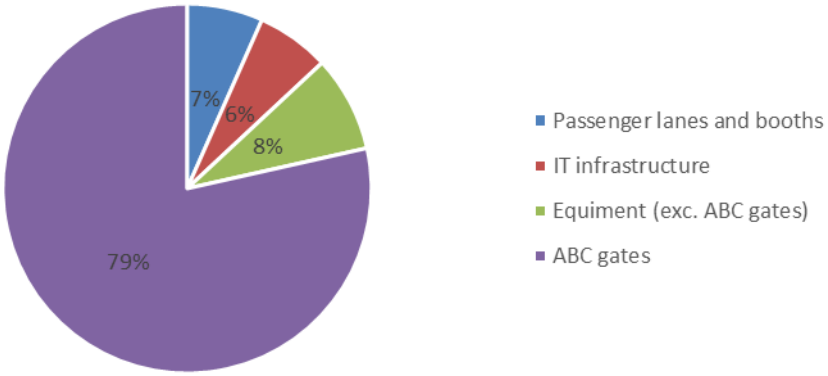
Most Member States also invested in additional equipment, mostly in response to the Regulation, mainly additional Automated Border Control (ABC) gates, which are the most efficient way to reduce additional waiting times while keeping staff costs down (one trained person can guard up to six ABC gates). Other acquisitions included devices for mobile border checks, passport reading machines and fingerprint scanners. Several Member States also invested in their IT systems to accommodate the Regulation's needs. There were also minor adaptions of the processes and infrastructure, e.g. on management of passenger flows, introducing additional passenger lanes and control booths, stricter separation of EU and non-EU lanes.

[10] The period observed covers the first two years of the Regulation's application, i.e. 7 April 2017 to 7 April 2019, when derogations from systematic checks at air borders were still permitted.

[11] Including the ones foreseen under Art. 10(4) of Regulation 2016/399.

[12] At Limassol port, new port queuing arrangements are not always applied.

Figure 1. Investments made by Member States due to the implementation of the Regulation (2017-2019)



Source: Calculation based on survey among Border Guard authorities

Based on data and information gathered by the Commission, in particular during the Schengen Evaluation visits, despite these tangible improvements, the following conclusion was drawn: 'Though the overall quality of controls at the external borders is good, it still varies in and among Member States. Most countries face challenges related to resources, training and operational planning to ensure uniform and systematic checks at all external border crossing points, and efficient external border surveillance'[13]. These challenges also included infrastructural limitations (e.g. the lack of border guard booths at airports) in half of the Member States, particularly during the summer and holiday seasonal peaks. Additionally, some Member States still face shortages of appropriate equipment, in particular to check travellers' fingerprints against the data in their travel documents, which is crucial to verify the traveller's identity.

II.2. Time-limited exceptions

Derogations under Article 8 of the Schengen Borders Code

Article 8(2d) of Regulation (EU) 2016/399 allows for derogation from the principle of systematic checks against relevant databases[14] regarding persons enjoying the right of free movement when two cumulative conditions are fulfilled: (i) the checks against the relevant databases at specified border crossing points would have a disproportionate impact on the flow of traffic; and (ii) the Member State concerned prepares a risk assessment demonstrating that applying checks on a targeted basis would not lead to a security risk.

While derogations on systematic checks are still possible for land and sea borders, derogations at air borders were limited to a maximum transition period of 6 months from the

[13] Report from the Commission to the Council and the European Parliament on the Functioning of the Schengen Evaluation and Monitoring Mechanism pursuant to Article 22 of Council Regulation (EU) No 1053/2013 – COM(2020) 779 final – 25.11.2020 (page 7).

[14] Articles 8(2a) and 8(2b) of the Schengen Borders Code.

Regulation's entry into force[15]. Member States could extend this period by an additional 18 months, until 7 April 2019, in view of exceptional infrastructural difficulties[16].

Based on notifications sent by Member States to the Commission, 13 Member States applied the temporary 6-month derogation between April and October 2017. Among these, 7 Member States extended the derogation by a maximum further 18 months. Four Member States further notified the Commission that they were applying the derogation at land borders, three of those in view of the 2019/2020 holiday season.

Table 2: Notifications sent by Member States on derogations from the principle of systematic checks against relevant databases

	Used derogations within first 6 months (same rules for land and air borders)	Applied derogations for air borders beyond 6 months (until 7/4/2019)	Used derogations at land/sea borders beyond 7/4/2019	Currently have derogations in use at land/sea borders (as of April 2022)[17]
#	13	7	5	7
AT				
BE				
BG				
CY				
EL				
FI				
HR				
HU				
IT				
LV				
SI				
IS				
NO				

Table based on Member State notifications to the Commission

Member States that decide to carry out checks on a targeted basis at specific border crossing points are required to report every 6 months to the Commission and the European Border and Coast Guard Agency (the Agency) on the application of the checks. The following conclusions were drawn from the reports submitted to the Commission by the 13 Member States between 2017 and 2020:

15 Article 8(2d) of the Schengen Borders Code.

16 Second subparagraph of Article 8(2d) of the Schengen Borders Code.

17 Since the Regulation's adoption, Croatia, Finland, Greece, Hungary, Latvia and Norway sent notifications without indicating until when they were valid. During an expert group meeting on 'Management of the External Borders' held on 28 March 2022, the Commission asked these Member States to confirm if their open-ended notifications were still valid. Finland replied that it had not recently used the possibility under Article 8(2a) of the Schengen Borders Code to carry out only targeted (and not systematic) checks at certain border crossing points, but that its open-ended notification remained valid and could still be used. In April 2022, Croatia and Slovenia notified the Commission of their intention to use the possibility offered by Article 8(2a) of the Schengen Borders Code for a period of 5 months. The other Member States had not yet replied to the Commission when this report was drafted.

- Eight Member States reported that the targeted checks were only carried out in case of increased flows of passengers and to ensure timely and smooth crossing of the borders, while guaranteeing an adequate level of security;
- Three Member States stated that there had been no significant decrease in the number of hits in the SIS due to the introduced targeted checks;
- Five Member States reported that the temporary introduction of targeted checks against the databases had not increased the risks related to the public policy, internal security, public health or international relations of any Member State and had not affected the protection of EU`s external borders; and
- Four Member States stated that the scope and duration of targeted checks against the databases had not exceeded what was strictly necessary.

During the COVID-19 pandemic no Member State notified the Commission of their intention to use derogations during this period. By 15 May 2022, seven Member States had notified the Commission of the possibility for a temporary suspension of the reinforcement of checks against relevant databases, in case of need. These Member States will be able to resort to the possibility only when systematic checks create disproportionate impact on the waiting times at a particular border crossing point or on the lives of the local population along the border. Moreover, this derogation only applied to persons enjoying the right of free movement under EU law.

Relaxations (Article 9 of the Schengen Borders Code)

The possibility to apply derogations as described above still has no bearing on the application of Article 9 of the Schengen Borders Code, which allow border checks to be **relaxed** if 'the waiting time at the border crossing point becomes excessive' due to 'exceptional and unforeseen circumstances'. When relaxations occur, controls are conducted on a sample, non-systematic basis and priority is given to controls on entries over those on exits. Although this article was not part of the Regulation, some Member States interpret it as closely linked to the practical implementation of systematic checks, even though the two concern very different scenarios.

During the first 2 years of the Regulation being in force, Member States may not always have made a clear-cut distinction between derogations under Article 8(2a) of the Schengen Borders Code and relaxations under Article 9 of the Schengen Borders Code. This is likely because the baseline scenario for derogations from systematic checks under Article 8(2a) ('disproportionate impact on the flow of traffic') is similar to that for border relaxations under Article 9 ('traffic of such intensity that the waiting time at the border crossing point becomes excessive') of the Schengen Borders Code.

Derogations and Relaxations next steps

While both provisions focus on the practical impact on traffic, Article 9 further states that a) such situation needs to be caused by *exceptional and unforeseeable* events, and b) all resources have been exhausted as regards staff, facilities and organisation. Relaxations are

less prescriptive then derogations and their use is left to the assessment of the border guard in charge of the respective border crossing points without any formal procedure. Only a yearly *ex post* report on the relaxations applied during the year has to be submitted to the Commission.

Derogations under Article 8(2a) of the Schengen Borders Code require submission of a prior risk assessment to the Agency, which needs also to be regularly updated if the derogations continue, immediate notification of the other Member States, the Commission and the Agency, as well as half-year reports to the Commission and the Agency.

According to the information gathered for this report, derogations and relaxations have been used inconsistently among Member States, with a considerable number using border relaxations under Article 9 of the Schengen Borders Code in cases where Article 8(2a) of the Schengen Borders Code with its stricter formal requirements would have been the appropriate tool[18]. For three Member States, the use of relaxations was a deliberate decision, while in four others, it seems to have been the result of lack of clarity on the appropriate instrument to use. At the time the study was conducted, the national provisions of two Member States expressly prohibited the use of derogations (Article 8(2a)) due to the related high administrative burden.

After receiving the first notifications on the use of Article 8(2a), the Commission sent letters to the Schengen States concerned, further clarifying: i) the conditions for the use of derogations; ii) the steps to be followed by the Member State wishing to make use of this instrument; iii) specific issues that the Member State needed to address in the notifications[19].On the requirements to make use of derogations to systematic checks, the study found that in most Member States, counter-terrorism and counter-organised crime authorities were not or only indirectly involved in preparing the risk assessment. Given the very objective of introducing systematic checks, stronger involvement by counter-terrorism and counter-organised crime authorities could enhance the risk assessments' quality.

Member States consistently stressed the need for further clarification on the distinction of these provisions for Member States' national border guard authorities. The planned revision of the *Practical Handbook for Border Guards*[20] will clarify the difference between relaxation and targeted checks, to tackle the inconsistent use of both instruments by Member States and

[18] Since the extended transition period, which allowed derogations at air border crossing points under Article 8 (2d) of the Schengen Borders Code, expired in April 2019, at air border crossing points only relaxations are possible. However, this possible confusion still concerns land and maritime border crossing points.

[19] The Commission sent letters to twelve of the Member States that had made use of the derogations in April 2017. Five Member States replied satisfactorily providing the further clarification required. Follow-up letters were later sent in July 2017 to the seven Member States that had not replied to the first letters. These exchanges were taken into account in the preparation of the revised "Practical Handbook for Border Guards".

[20] With Commission Recommendation C(2019)7131 establishing the "Practical Handbook for Border Guards", the Commission committed itself to ensuring regular updates of the Handbook. This first update will incorporate a number of changes to the Handbook, resulting from recent ECJ jurisprudence, adoption of new legislation and other relevant recent events. It will also be based on meetings of the Expert Group "Management of the External Borders", that took place in Q4 2021 and Q1 2022.

avoid that Member States – incorrectly – use relaxation of border controls instead of derogations. Frontex's development of a template for the risk assessment improved the risk assessment's quality and value as a basis for informed decisions on derogations by the Member States concerned. It now also provides a sound basis for the Agency to identify possible concerns. This further guidance should also mean that data provided by Member States in future will be of better quality and more complete.

Member States also asked for guidance on the assessment of 'excessive waiting time'. Determining what is an 'excessive' waiting time is an assessment which depends on multiple factors and is made by the border guard in command of the border crossing point. As relaxations are an exception from systematic checks and may undermine the objectives of the Schengen Borders Code, harming security in the Schengen area, this assessment should be guided by common criteria. In the forthcoming revision of the *Practical Handbook for Border Guards*, the Commission will recommend practical approaches for complying with the rule foreseen in the Schengen Borders Code that relaxation may only be used if all available resources have been used to the maximum extent possible and if the consequences of an unforeseen event lead to (or are likely to lead to) excessive waiting times.

Furthermore, preventive safeguards to ensure compliance with the respective legal requirements might be useful as well. In this regard, the proportion of Member States not reporting relaxations to the Commission (two thirds during the period covered by the study) suggests that the reporting obligations might not be observed. This also deserves further attention and will be addressed in the forthcoming revision of the *Practical Handbook for Border Guards*.

III. Effectiveness of systematic checks

As prevented threats cannot always be counted and sometimes can only be inferred, putting precise figure on the effect of the introduction of systematic checks on all persons entering and exiting the Schengen area is difficult. The Regulation's effectiveness in preventing threats to the Schengen area's internal security must therefore be assessed based on measurable indicators and expert opinions. According to the border guards consulted in the framework of the external study, the benefits from the introduction of systematic checks at external-Schengen borders as regards crime prevention included:

- Better and more comprehensive intelligence collected on persons involved in organised crime owing to the increased number of Article 36(2) SIS II Decision hits;
- Increased detection and execution of Schengen Information System (SIS) alerts for arrest, extradition and surrender at border crossing points;
- Increased detection of individuals with entry bans related to criminal charges in SIS and/or national databases;
- Increased detection of fraudulent usage of identity documents (lost, stolen or revoked) owing to the increased number of Interpol's Stolen and Lost Travel Documents database (SLTD) hits;
- Improved information sharing between EU Member States on organised crime cases.

Concerning counter-terrorism policies, the benefits included:

- Better and more comprehensive intelligence collected on terrorist fighters and persons involved in terrorist-related activities, owing to the increased number of hits related to alerts under Article 24, Article 26, Article 36(2) and Article 36(3) SIS II Decision;
- Improved use of the Schengen Information System (SIS) on terrorism-related cases;
- Each of these effects of systematic checks could facilitate the work of law enforcement authorities on terrorism-related cases and thus contribute to the prevention of terrorist attacks.

III.1. The Regulation's impact on countering terrorism and organised crime

As a preliminary point, it must be highlighted that no data on the share of alerts/hits concerning persons enjoying free movement under Union law compared to third country nationals is publicly available. The below data refer to all persons crossing the external borders. This lack of separation in the statistics[21] between persons enjoying free movement and third-country nationals makes it obviously difficult to draw reliable conclusions.

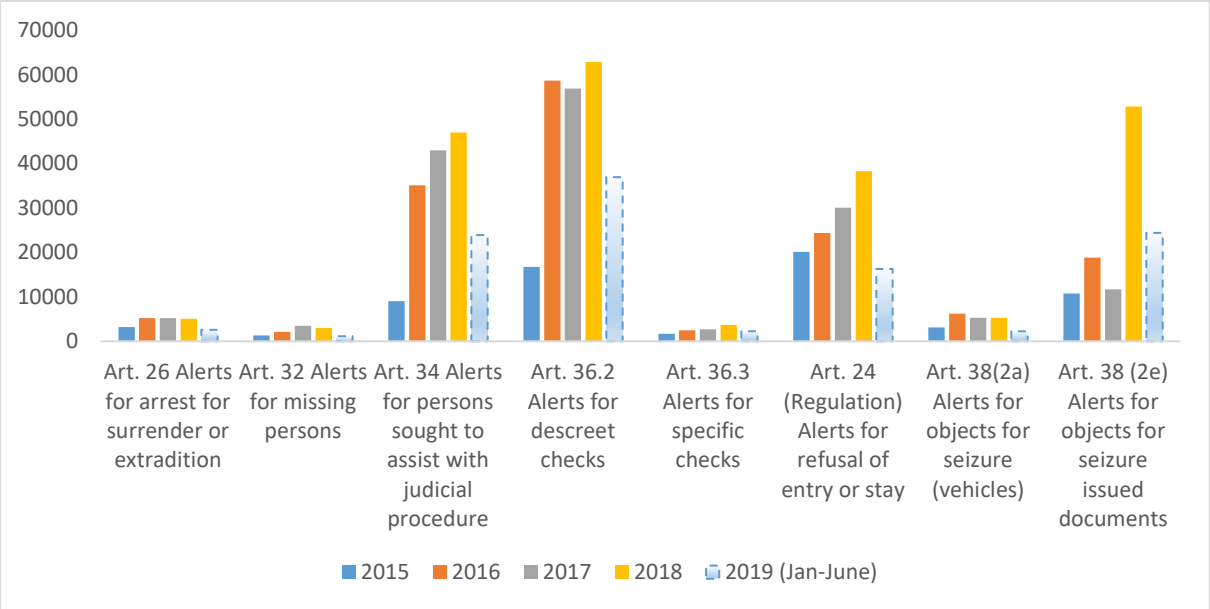
According to the study carried out by the external contractor, between 2016 and 2018, the overall number of alerts concerning persons in the Schengen Information System (SIS) increased by 13%. Most significant (63%) was the increase in alerts regarding discreet and specific checks (Article 36 SIS II Decision[22]). Similarly, the number of hits in SIS increased for the 12 Member States analysed in depth[23] in the external study.

[21] In addition to the data collected in the context of the external study, statistical data on the use of SIS by Member State is collected by eu-LISA on the basis of the provisions of the SIS regulations and related implementing acts. Data on the number of searches and alerts in SIS are collected per Member States and not singled out per 'type of search' or 'location of the hit' (border checks, police checks, etc). Most (but not all) Member States held, to some extent, national statistics with this level of detail at the moment when this report was drafted.

[22] Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) OJ L 205, 7.8.2007, p. 63.

[23] While the external study covered all Member States, it looked more in depth at the situation in twelve of them: Austria, Bulgaria, Croatia, Estonia, Finland, Germany, Latvia, Lithuania, Romania, Slovenia, Spain and Sweden.

Figure 2. Number of overall SIS II hits reported at external border crossings (2015-2019)[24]



Source: figure based on border guard surveys (Data for Austria, Croatia, Estonia, Finland, Germany, Latvia, Lithuania, Romania, Slovenia, Spain, and Sweden); Data for Spain used only data on Madrid Barajas Airport[25].

According to the counter-terrorism officials consulted for the external study, it appears that the Regulation had a positive impact on the fight against terrorism and organised crime, mainly through the general gathering of intelligence facilitated by the greater number of hits, which is directly related to the higher number of checks against databases. Besides the value of the increased number of hits itself, the enhanced effectiveness of border checks strengthened law-enforcement and security services' trust in the systems, encouraging them to enter alerts into the Schengen Information System (SIS) or the Interpol's Stolen and Lost Travel Database (SLTD),.

As the Regulation was adopted to address the threat of terrorism, particularly by terrorist fighters, the changes in terrorism-related hits and alerts is particularly interesting. According to the data carried out in the context of the study, the number of alerts issued at the request of the authorities responsible for national security (terrorism-related) under Article 36(3) SIS II Decision increased from 2016 to 2018 by 46%. According to the data provided by seven

[24] Article 24 of the Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) concerns only third-country nationals, thus the alerts under this Article are never relevant for Union citizens. Moreover, Article 24 may cover alerts not based on security, thus such hits may not all be relevant when it comes to assess the prevention of threats to the internal security of the Schengen area.

[25] The study team requested data on hits in both the Supplementary Information Request at the National Entries (SIRENE) and the border guard survey. In the border guard survey the data requested related only to Articles 26, 32 and 34 of Decision 2007/533 and Article 24 of Regulation (EC) 1987/2006 and Sub-articles 36(2), 36(3), 38(2a) and 38(2e) of the Decision. Data was also requested for the specific sites visited. The data requested from SIRENE went a step further, requesting sub-categories within the specific articles and sub-articles. These categories included FTFs and crimes. The assumption was that SIRENE aggregate and maintain a more detailed database, as they also need to report data to eu-LISA.

national Supplementary Information Request at the National Entries (SIRENE) Bureaux[26], the number of terrorism-related hits under the same article more than doubled over the same period. Apart from the statistics on alerts and hits, according to counter-terrorism officials interviewed in the external study, the Regulation had further perceived positive effects. Among these, the officials mentioned improvements in: (i) monitoring the movement of terrorist fighters and in cooperation among Member States to track these movements; (ii) overall intelligence on terrorism, which facilitates the conduct of risk assessments and the design of responses; (iii) facilitating interventions on terrorist fighters; (iv) the effectiveness of discreet surveillance; and (v) detection capability.

Apart from countering terrorism, the study conducted by the external contractor concluded that the Regulation also contributed to the fight against organised crime, particularly migrant smuggling, human trafficking, drug trafficking, moving of assets across borders, counterfeiting and property crimes, and forging of documents. Similarly to the countering of terrorism, the Regulation particularly improved general intelligence and risk analysis, increasing law enforcement's capability to counter organised crime. The number of hits under the relevant articles increased, particularly under Article 36 ('Alerts on discreet or specific checks'). Furthermore, according to the data collected in the context of the study, the number of hits on alerts for arrest and the number of hits on alerts on third-country nationals for refusal of entry and stay (Article 24 SIS II Regulation[27]) increased by 30% between April 2017 and April 2019 for the 12 Member States further analysed by the external study.

Additionally, the overall number of hits in Interpol's Stolen and Lost Travel Database (SLTD) more than doubled from 2016 to 2018, although the increase varies substantially between Member States.

III.2. The Regulation's economic impact

The Regulation's benefits must be considered together with the costs the different stakeholders incur implementing it.

The external study includes an analysis of the economic costs stakeholders incurred in implementing the Regulation in 2018, the year with the most complete data on the economic key factors. However data limitations significantly impacted the ability to reach clear cut conclusions. In particular:

- The analysis on additional waiting time for passengers, had to be partly based on estimates due to data limitations

[26] Supplementary Information Request at the National Entries (SIRENE). Each EU country operating SIS has set up a national SIRENE bureau, operational 24/7, that is responsible for any supplementary information exchange and coordination of activities connected to SIS alerts.

[27] Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) OJ L 381, 28.12.2006, p. 4.

- When assessing the costs calculated by the study, it also emerged that travellers experience delays for a wide range of reasons, such as regular traffic jams or public transport delays. These are not assessed under the same approach, and such travellers are very likely unable to break down the time delay they experience by its different causes (e.g. checks, traffic, roadworks, weather).
- Due to the unavailability of data, costs for private entities, e.g. investment costs, costs caused by delays and passenger compensation, are not considered.
- Indirect savings might have been made due to the Regulation's impact on terrorism and organised criminal activity, the Regulation's very objective. However precise estimates on such gains areonly available to a very limited extent. Also, the benefits deriving from a foiled terrorist attack are extremely difficult, if not impossible, to quantify and cannot be measured only in economic terms.

For these reasons, it is not possible to strike a clear-cut balance that would determine the Regulation's cost efficiency. In any case, passengers bear by far the greatest part of the costs, through the increase in waiting times which per passenger, however, seem very limited[28].

Furthermore, carrying out such checks also makes passengers feel safer[29] and consequently willing to accept longer waiting times if this reduces the risk of terror attacks. This increase in perceived safety should also be considered an overall positive effect, including a positive multiplier for the economy. Furthermore, checks at borders can be seamless if well organised and waiting times can therefore be negligible.

Although significantly higher increases in waiting times might indeed change passengers' acceptance, the possibility to relax border checks under Article 9 gives the Schengen Borders Code a mechanism to respond to unforeseen excessive waiting times.

On this basis and given the overall benefits of systematic checks for the Schengen area's internal security, particularly the building of comprehensive intelligence on terrorism and organised crime through the increased numbers of alerts and hits in SIS, the costs incurred to implement the Regulation appear proportionate and justified.

IV. External factors affecting systematic checks' efficiency

Significant shortcomings in the Member States' technical ability to check a person's fingerprints against the data in the travel documents undermine the systematic checks'

[28] According to the study carried out by the external contractor, only four Member States provided estimations of the increase of waiting time in minutes. Based on the limited data collected from border guard authorities, the external contractor has defined two extreme scenarios – the optimistic scenario in which the waiting time per passenger increased one minute due to the introduction of systematic checks, and the pessimistic scenario in which the waiting time per passenger increased thirteen minutes due to the introduction of systematic checks. Based on the data provided to the external contractor, the costs per passenger seem to range between EUR 0.08 and EUR 0.16.

[29] Affirmation issued by the United Nations Office on Drugs and Crime (UNODC) during the interviews carried out by the external contractor in the framework of the study.

efficiency. This requires increased attention and action from both the Commission and the Member State authorities.

In cases of doubt as to the authenticity of the travel document or its holder's identity, Member States are required to verify at least one of the biometric identifiers in the storage medium of passports and travel documents issued under Regulation (EC) No 2252/2004[30], i.e. a facial image or fingerprints. 'Where [such verification is] possible', this obligation also applies to travel documents not issued under this Regulation. The most efficient, reliable and affordable biometric identifier to detect persons travelling under an assumed identity are fingerprints, for example, if the imposter resembles the legitimate holder of the presented document closely. Thus, fingerprint checking is even more important as document fraud is becoming increasingly sophisticated and difficult to detect, e.g. through 'morphing'[31].

To counter these increasingly used forgery techniques, the Commission has decided to fund the iMARS (image manipulation attack resolving solutions) research project, which aims at developing tools to detect manipulated face images, in particular morphed face images in the identity document life cycle and verify the authenticity of identity documents, as well as ensuring that European passports including morphed or otherwise manipulated images can no longer be issued within the European Union[32].

While waiting for the deliverables of the iMARS project, doubts about a person's identity can only be clarified by checking fingerprints against the biometric identifiers integrated in the storage medium of passports and travel documents. This is currently[33] done at the external borders by only 13 Member States and can only be performed on holders of passports issued by 15 Member States already using the necessary technology. This constitutes a security gap that should be filled rapidly. This significant underuse of fingerprints directly undermines the systematic checks' objective. Since it is ultimately the travel document and the personal data in it that are checked against databases and not the person entering the Schengen area, without reliable verification of the link between the person and the presented travel document, returning terrorist fighters could, despite being systematically checked, still enter the Schengen area undetected.

V. Conclusions

Terrorism, including the threat of returning terrorist fighters, remains one of the Europe Union's main security concerns. While we cannot ascertain exactly the direct impact the Regulation has had on preventing terrorist attacks or organised criminal activities, the

[30] 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. 1–6)

[31] This technique consists in creating a new face image by digitally merging the facial representations of two different images. There are a number of different morphing techniques, from automatic morphing using applications and software, to manual morphing obtained by using widely accessible photo editing software.

[32] iMARS is a research project funded by the European Commission, started in September 2020 for 48 months. https://imars-project.eu/.

[33] At the moment when this report was drafted,

stakeholders consulted and the statistics available indicate that it has had an overall positive impact on internal security within the Schengen area, particularly through the overall intelligence available to law-enforcement authorities.

The Regulation had a main impact on persons enjoying the right to free movement under EU law, ensuring that security checks will be systematically carried out on all persons. Thus, the Regulation can be seen as filling an important gap in the use of databases on persons with freedom of movement, acknowledging that some terrorist fighters may be benefiting from the right to travel within the Schengen area.

While **the costs of implementing systematic checks on all persons entering and exiting the Schengen area** are not negligible, and specially bore by passengers through the increase of waiting times, they **appear proportional to the Regulation's impact on internal security**, even without considering the potential costs savings related to preventing terrorist attacks and organised crime. Assessing the Regulation's overall impact, the border guard authorities consulted in the framework of the study saw it almost unanimously as adequately responding to current security needs.

However, significant **challenges could be identified during the first years of implementation**. These challenges concern the distinction between derogations under Article 8(2a) of the Schengen Borders Code and relaxations under Article 9 of the Schengen Borders Code, interpretation of the requirements of both provisions and, consequently, their practical application, the quality of the risk assessment required for derogations and the reporting required for relaxations. As both provisions remain applicable to land and maritime border crossing points, further clarification of procedures for the temporary return to targeted checks and stricter enforcement are needed to ensure a coherently high level of security at all external borders. The use of relaxations needs to remain restricted to exceptional and unforeseen circumstances.

When applying derogation from the principle of systematic checks against relevant databases, Member States are strongly encouraged to also involve counter-terrorism and counter-organised crime authorities in the preparation of the risk assessment. The template developed by Frontex to this end aims at addressing the lack of harmonisation in data collection and improving its quality, however it will not reach its aims if not all relevant authorities are actively involved.

A **more proactive approach preventing excessive waiting times due to foreseeable events** would be an important step to remedy the situation at the border crossing points without hampering the Regulation's very objective. Many Member States notified their intention to derogate from the principle of systematic checks against relevant database in view of the summer break and Christmas holidays. Although the use of derogations is a prerogative still available to Member States at land and sea borders, Member States should be rather prepared to increase their staffing and rearrange the infrastructure during these well-known peak periods.

Similarly, a **uniform approach to assessing 'unforeseeable events' and 'excessive' waiting time** would ensure consistency in a critical issue possibly affecting the security of all

Schengen States. The report on the Functioning of the Schengen Evaluation and Monitoring Mechanism[34] overall confirmed the challenges identified above, but also acknowledged that in most cases national authorities had already addressed them or were doing so during the evaluation revisits taking place under the Schengen Evaluation Mechanism.

For the above reasons, when it devised the Strategy on the future of Schengen[35] in June 2021, leading to its proposal to amend the Schengen Borders Code[36] in December 2021, the Commission concluded that there was no need for legislative amendment of the existing Article 8 to address the identified weaknesses. The Commission rather intends to address these issues via 'soft law' means, in particular the upcoming review of the *Practical Handbook for Border Guards*[37] to be used by Member State competent authorities when carrying out the border control of persons.

Moving forward, the Commission will continue monitoring the application of Article 8 as part of the Schengen Evaluation and Monitoring Mechanism.

[34] Report from the Commission to the Council and the European Parliament on the Functioning of the Schengen Evaluation and Monitoring Mechanism pursuant to Article 22 of Council Regulation (EU) No 1053/2013 - COM(2020) 779 final – 25.11.2020.

[35] https://ec.europa.eu/home-affairs/news/towards-stronger-and-more-resilient-schengen-area-2021-05-28_en .

[36] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders – COM/2021/891 final.

[37] C(2019) 7131 final, 8.10.2019.