



85 Civil Society Organisations Call on MEPs to Uphold Fundamental Rights and Reject the Harmful Schengen Borders Code Recast

Despite [repeated warnings](#) from Civil Society Organisations, EU lawmakers have reached an agreement on the Schengen Borders Code reform which will be voted on in the LIBE Committee next week. The legislative file that has emerged from negotiations between the Belgian Presidency of the Council of the EU, the European Parliament and Commission will have devastating consequences for people in migration and racialised communities.

We call on MEPs in the LIBE Committee to reject the Schengen Borders Code reform and give a clear signal against legislation that undermines fundamental rights.

The vote will include several concerning amendments that, taken together, will create a dangerous new system for ‘managing migration’ at Schengen borders, contribute to shrinking civic space, in particular increasing criminalisation of movement and solidarity:

- While the revision of the Schengen Borders’ Code is hailed as the solution to stop the constant reintroduction of [temporary internal border controls](#), the proposal generalises **police checks with the explicit aim to prevent irregular migration**. Stopping individuals who are suspected of being undocumented relies heavily on racial profiling. [Research from the EU Fundamental Rights Agency](#) has shown that racialised communities are subject to discriminatory and arbitrary checks, regardless of citizenship or residence status. In fact, over half of people of African descent surveyed felt that their most recent police stop was a result of racial profiling. This practice is in clear violation of EU and international anti-discrimination law,¹ and contradicts the spirit of the [EU Action Plan Against Racism](#). While the recitals of the reform state that all actions should be carried out in full respect of the principle of non-discrimination, there is no indication of how this will be monitored or ensured, or how Member States will be sanctioned if they do act in violation.
- **Article 23a allows for internal pushbacks between Member States as safeguards to mitigate its consequences on fundamental rights introduced by the Parliament are removed.** This article provides for the immediate “transfer” (removal) of third country nationals apprehended “in border areas” to the country that they crossed from. Whilst there are provisions that state the individual can appeal this “transfer” decision, the appeal will not have a suspensive effect, meaning the person will be returned regardless. There are no exemptions to this procedure for unaccompanied children, families with children, or individuals in a state of vulnerability. Whilst it is written that asylum seekers will not be subject to such internal readmission procedures, how this exemption will be respected in practice remains to be seen. Such “transfers” would violate well-established jurisprudence by courts in **Italy, Slovenia** and **Austria**, which have all ruled against chain pushbacks between Member States.
 - **Case Study: Italy**

Summary returns or readmission practices at the Italian borders have been taking place for years and vividly exemplify the implications on the human rights of people on the move. In fact, [in January 2021](#) and again [in 2023](#) the Civil Court in Rome ruled that numerous cases of readmissions to Slovenia from Trieste and Gorizia implemented under a 1996 Readmission Agreement were in fact unlawful as they violated the right to *non-refoulement*, the right to apply for asylum, and the procedural rights to individual

¹ See [Wa Baile v Switzerland](#) and [Basu v Germany](#).



assessment and effective remedy. At the Adriatic border, [Italy was sanctioned by the ECtHR in 2014](#) for a readmission to Greece in which the Court found a violation of the prohibition of collective expulsion and of ill-treatment. [Communications sent to the Committee of Ministers under the supervision procedure for the supervision of the execution of judgement relating to Sharifi case](#) and a recent [ruling by the Court of Rome](#) on the readmission of an Afghan unaccompanied minor to Greece show how violations continue. At the Italo-French border, [the CJEU and Council of State found](#) that returns between the two countries were in direct contradiction to guarantees laid out in the Returns Directive.

On the other hand, practices of racial profiling are already significantly widespread at Italian internal borders. [As pointed out by ASGI in its submission to CERD](#) (Committee for the Elimination of Racial Discrimination), the Ventimiglia train station, a major transit point for people moving to France, is characterised by police checks that almost exclusively and systematically target people of African descent. Consequently, the [Committee has made specific recommendations](#) to the Italian government to tackle profiling, highlighting the complete lack of appropriate mechanisms within the national system to combat it.

- **The concept of ‘instrumentalisation’** is carried over from the New Pact’s [Crisis Regulation](#) despite being removed from the Parliament’s initial position on the Schengen Borders Code reform. In practice, this means that Member States could derogate at will from fundamental rights frameworks whenever a third country or non-state actor is accused of ‘instrumentalising migrants’ to destabilise the EU or its Member States. We have seen this play out in the attacks against people crossing borders by [Greek authorities](#) in 2020, the numerous deaths recorded at the [Spanish, Polish, Latvian](#) and [Lithuanian borders](#), and the closure of all entry points into [Finland in 2023](#). The Schengen Borders Code reform takes this a step further by including a disturbing Council amendment which allows for Member States to take “any necessary measures” to preserve “security, law and order” if a large number of individuals attempt to enter a country irregularly “en masse and using force”. This is transposed improperly from the [N.D. and N.T. v. Spain](#) case and could have devastating consequences; in effect the text allows for unlimited derogations from the EU asylum and fundamental rights acquis.
- The reform also repeatedly refers to the **increased usage of surveillance and monitoring technologies at both internal and external borders**. Technologies such as drones, motion sensors, thermal imaging cameras, and others ease the identification of people crossing borders prior to arrival and have been shown to [facilitate pushbacks](#). In fact, the Border Violence Monitoring Network (BVMN) has recorded [38 testimonies](#), impacting over 1,000 people, where the respondent reported to have heard or seen a drone prior to their pushback. The use of technologies to track and monitor the movement of people could therefore enhance the ease with which they are readmitted between Schengen Member States.

We, the undersigned, call on MEPs to reject the Schengen Borders Code reform at both the LIBE and Plenary votes. This file expands the harmful concept of ‘instrumentalisation’, legalises internal pushbacks, risks widespread racial profiling, and enhances the use of border surveillance technologies that have been proven to facilitate fundamental rights violations.

The Parliament position on the file sought to remove the most problematic aspects and include safeguards for the rights of people in migration and racialised communities. That position has since been abandoned, and the one that has replaced it is untenable when it comes to the protection of fundamental rights.



Signatories:

Access Now
ActionAid International
AlgoRace
AMANE
Amnesty International
Amnesty Luxembourg
Are You Syrious (AYS)
ASGI
Asociacion Geum Dodou
Asociación Rumiñahui
Be Aware and Share (BAAS)
Better Days Greece
Blindspots e.V.
Center for Legal Aid, Voice in Bulgaria
Collective Aid
Comunità Papa Giovanni XXIII
CONVIVE- Fundación Cepaim
Cultural Center Danilo Kiš
Danes je nov dan / Today is a new day
Digital Society, Switzerland
Diotima Centre for Gender Rights & Equality
Draseis sth geitonia
ECHO100PLUS
Entreculturas
Epicenter.works
Equal Legal Aid
Equinox Initiative for Racial Justice
EuroMed Rights
Europe Cares e.V. / Paréa Lesvos
European Center for Non-Profit Law
European Civic Forum
European Digital Rights (EDRi)
European Network Against Racism (ENAR)
European Sex Workers Rights Alliance (ESWA)
forRefugees
Fundación Alboan
Greek Council for Refugees (GCR)
Greek Forum of Migrants
Habibi Works (Soup and Socks e.V.)
Hermes Center
HIAS Europe
Homo Digitalis
Hope and Humanity Poland
HumanRights360
I Have Rights
Infokolpa
Institute Circle



Inter Alia
InterEuropean Humanitarian Aid Association Germany e.V. (IHA)
International Rescue Committee (IRC)
Irida Women's Center
Iridia. Centro por la Defensa de Derechos Humanos
Jesuit Refugee Service Greece
KAST (Khora Asylum Support Team)
KOK - German Network against Trafficking in Human Beings
La Coordinadora de Organizaciones para el Desarrollo
Legal Centre Lesbos
Lighthouse Relief
Ligue des Droits Humains
Mec de la Rue
Mobile Info Team
Network for Children's Rights
Northern Lights Aid
NOVACT
Oxfam
PICUM (Platform for International Cooperation on Undocumented Migrants)
POPH
Privacy International
Project Play
Refugee Legal Support (RLS)
Refugee Literacy Project
Refugees International
Safe Place Greece
Salud por Derecho
Samos Volunteers
Sea-Watch e.V.
Second Tree
Seebrücke Schweiz
Slovene Philanthropy
Society Kljuc - Centre for Fight against Trafficking in Human Beings
Statewatch
Stichting LOS
Yoga and Sport with Refugees
Zeitschrift Bürgerrechte & Polizei/ CILIP (Germany)