

EN

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Answer given by Mr Brunner
on behalf of the European Commission
(6.1.2025)

1. Decisions and policies to regularise illegally staying third-country nationals, including the granting of residence permits, fall under the responsibility of Member States. The Commission has no competence on this matter. That said, Member States need to ensure that these decisions do not put at risk the integrity of the EU common area without internal border controls and to duly consider potential migratory and security implications. More generally, the EU is supporting Member States in reducing irregular migration, by strengthening cooperation with third countries concerned and preventing irregular arrivals, by stepping up counter-smuggling efforts and by enhancing returns of those who have no right to stay.

2. The freedom to travel freely within the Schengen area for up to three months in any six-month period extends both to EU citizens and third-country nationals who hold valid residence permits or long-stay visa. The absence of internal frontiers is expressly prescribed by Article 3(2) of the Treaty on the EU, as is the absence of internal border controls in Article 67(2) of the Treaty on the Functioning of the EU (TFEU). Article 22 of the Schengen Borders Code¹ implements those principles by providing that internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out. Article 6 of this Code provides the conditions for entry into the Schengen area and rules on border checks and surveillance to ensure that these rules are complied with. The right to free movement under Article 20(2) TFEU, which encompasses the right to enter and reside freely within the territories of the Member States subject to the conditions laid down in the Treaty and secondary legislation giving effect to that right², applies only to the citizens of the EU.

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.

² Most importantly, 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, OJ L 158, 30.4.2004, p. 77.