

(English version)

**Question for written answer E-002510/24
to the Commission
Joachim Streit (Renew)
(13 November 2024)**

Subject: Illegal border crossings within the EU in light of the new Schengen Borders Code

Germany informed the EU authorities about the introduction of controls at the internal borders on 16 September 2024. The official reasons for this measure are: Security risks related to irregular migration, threats to public order, smuggling activities, Russia's war of aggression against Ukraine and the security situation in the Middle East.

According to the German police, at least 32 instances of illegal border crossings from Luxembourg to Germany were detected within the first two weeks of border checks.

According to the recently reformed Schengen Borders Code, specifically its Article 23a, Member States shall transfer third-country nationals that are found in the border area to be staying illegally to the Member State from which they entered directly. However, it appears that the Luxembourg authorities refuse to take back those third-country nationals. According to the Luxembourg Minister for the Interior, there is no specific bilateral agreement between Luxembourg and Germany in this regard.

1. Is it the case that Germany, in the light of the new Schengen Borders Code, in particular Article 23a(1)(b) and (2) thereof, cannot lawfully return persons who have attempted to enter Germany illegally to the Member State from which they travelled?
2. Can the Commission clarify whether there are legal conditions for the return of irregular migrants to Luxembourg under the Schengen Borders Code?

Submitted: 13.11.2024

**Answer given by Mr Brunner on behalf of the European Commission
(24 January 2025)**

Article 23a of the Schengen Borders Code ⁽¹⁾, as provided by Regulation 2024/1717 ⁽²⁾, provides for a procedure under which the competent authorities of a Member State may, where the conditions laid down in that article are met, transfer a third-country national who is apprehended in the internal border areas during checks involving the competent authorities of both Member States within a bilateral cooperation framework.

In addition to this transfer procedure, Member States may apply pre-existing bilateral readmission agreements or arrangements between themselves, within the meaning of Article 6(3) of the Return Directive, to transfer irregularly staying third-country nationals to another Member State ⁽³⁾. Without prejudice to this provision, Article 6 of the Return Directive applies towards irregularly staying third-country nationals.

Applicants for international protection can be transferred to the Member State responsible for examining their application for international protection under the Dublin Regulation ⁽⁴⁾.

⁽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. OJ L 77, p. 1-52.

⁽²⁾ Regulation (EU) 2024/1717 of the European Parliament and of the Council of 13 June 2024 amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders. OJ L, p.14-15.

⁽³⁾ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. OJ L 348, p. 98-107.

⁽⁴⁾ 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 (recast), OJ L 180, 29.6.2013, p. 31-59.