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

Despite [repeated warnings](https://picum.org/blog/joint-civil-society-statement-schengen-borders-code/) from Civil Society Organisations, EU lawmakers have reached an agreement on the Schengen Borders Code reform which will be voted on in a Plenary session this 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 Plenary vote 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**,](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/temporary-reintroduction-border-control_en) 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](https://fra.europa.eu/en/news/2023/black-people-eu-face-ever-more-racism) 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]](#footnote-0) and contradicts the spirit of the [EU Action Plan Against Racism](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en%20Show%20less). 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**](https://www.borderviolence.eu/italian-court-ruling-on-chain-pushback/), [**Slovenia**](https://www.borderviolence.eu/press-release-court-find-slovenian-state-guilty-of-chain-pushback-to-bosnia-herzegovina/) and [**Austria**](https://medium.com/are-you-syrious/ays-daily-digest-5-7-21-court-confirmed-the-systemic-chain-pushbacks-b8e0749604ad), 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](https://www.statewatch.org/news/2021/january/when-informal-means-illegal-italian-interior-ministry-guilty-of-pushbacks-to-slovenia/) and again [in 2023](https://en.asgi.it/court-of-rome-rules-ministry-of-interior-must-compensate-for-readmission-damage-along-balkan-route/) 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 assessment and effective remedy. At the Adriatic border, [Italy was sanctioned by the ECtHR in 2014](https://www.asylumlawdatabase.eu/en/content/ecthr-sharifi-and-others-v-italy-and-greece-application-no-1664309) 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](https://www.asgi.it/wp-content/uploads/2022/03/1428th-meeting-March-2022-DH-Rule-9.2-Communication-from-NGOs-Association-for-Juridical-Studies-on-Immigration-ASGI-Ambasciata-dei-Diritti-di-Ancona-Lungo-la-Rotta-balcanica-No-Name-Kitchen-and-Associa.pdf) and a recent [ruling by the Court of Rome](https://en.asgi.it/illegitimacy-of-informal-pushbacks-at-adriatic-ports-and-humanitarian-visa/) 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](https://asylumineurope.org/reports/country/france/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/) 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](https://www.asgi.it/discriminazioni/segnalazione-comitato-onu-contrastare-profilazione-razziale/) (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](https://www.asgi.it/discriminazioni/il-cerd-accoglie-le-osservazioni-di-asgi-in-materia-di-profilazione-razziale/) 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](https://ecre.org/wp-content/uploads/2021/03/ECRE-Policy-Note-32-Crisis-February-2021.pdf) 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](https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border) in 2020, the numerous deaths recorded at the [Spanish](https://www.theguardian.com/world/2022/jun/25/eighteen-killed-as-throng-of-migrants-storms-spains-melilla-border-from-morocco), [Polish](https://ecre.org/eu-eastern-borders-more-deaths-at-poland-belarus-border-as-reports-of-pushbacks-detention-and-crack-down-on-solidarity-continue-council-of-europe-concerned-over-pushbacks-and-criminalisation-in-lat/), [Latvian](https://www.euronews.com/2023/03/06/people-die-in-silence-europes-migrant-hotspot-you-probably-dont-know-about) and [Lithuanian borders](https://www.lrt.lt/en/news-in-english/19/2162001/no-water-i-think-i-ll-die-i-love-you-story-of-migrant-who-died-on-lithuania-belarus-border), and the closure of all entry points into [Finland in 2023](https://www.aljazeera.com/news/2024/1/11/finland-extends-border-closure-with-russia-until-february-11) .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](https://www.ecchr.eu/en/case/nd-and-nt-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](https://borderviolence.eu/reports/eu-member-states-use-of-new-technologies-in-enforced-disappearances/). In fact, the Border Violence Monitoring Network (BVMN) has recorded [38 testimonies](https://borderviolence.eu/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 the Plenary vote. 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:**

Abolish Frontex

Accem

Access Now

ActionAid International

African Children and Youth Development Network (ACYDN)

AlgoRace

AMANE

Amnesty International

Amnesty Luxembourg

ARACEM

Are You Syrious (AYS)

ASGI

Asociacion Geum Dodou

Asociación Pro Derechos Humanos de Andalucía - APDHA

Asociación Por Ti Mujer

Asociación Rumiñahui

Asociación Salud Y Familia

Association des Travailleurs Maghrébins de France -ATMF

Association pour la promotion des droits humains APDH

Association Marocaine des Droits Humains

Be Aware and Share (BAAS)

Better Days Greece

Blindspots e.V.

Boat Refugee Foundation

borderline-europe - Menschenrechte ohne Grenzen e.V.

Center for Legal Aid, Voice in Bulgaria

Centre for Peace Studies

CNCD-11.11.11

Collective Aid

Comunità Papa Giovanni XXIII

Convenzione per i diritti nel Mediterraneo ETS

CONVIVE- Fundación Cepaim

Convivir sin Racismo

CSC ACV Brussels

Cultural Center Danilo Kiš

Danes je nov dan / Today is a new day

Danish Refugee Council

Digital Society, Switzerland

Diotima Centre for Gender Rights & Equality

Dråpen i Havet / Stagona

Draseis sth geitonia

E.L. Foundation

ECCHR - European Centre for Constitutional and Human Rights

ECHO100PLUS

EmpowerVan!

Entreculturas

Epicenter.works

Equal Legal Aid

Equinox Initiative for Racial Justice

Equipo Decenio Afrodescendiente- España

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)

Fenix Humanitarian Legal Aid

forRefugees

From the Sea to the City - FSTC

Fundación Alboan

Greek Council for Refugees (GCR)

Greek Forum of Migrants

Greek Forum of Refugees

Gruppo Melitea

Habibi Works (Soup and Socks e.V.)

Hermes Center

HIAS Europe

Homo Digitalis

Hope and Humanity Poland

Humanitas - Centre for Global Learning and Cooperation

HumanRights360

I Have Rights

IDAY Liberia Coalition Inc

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

Komitee für Grundrechte und Demokratie e.V.

La Cimade

La Coordinadora de Organizaciones para el Desarrollo

Legal Centre Lesvos

Lighthouse Relief

Ligue des Droits Humains

Mec de la Rue

Migreurop

Mobile Info Team

Network for Children’s Rights

Northern Lights Aid

NOVACT

No Name Kitchen

Oxfam

PICUM (Platform for International Cooperation on Undocumented Migrants)

POPH

Privacy International

Project Play

PRO ASYL

Quaker Council for European Affairs

Red Umbrella Sweden

Refugees in Libya

Refugee Legal Support (RLS)

Refugee Literacy Project

Refugees International

Revibra Europe

S.P.E.A.K.

Safe Place Greece

Salud por Derecho

Salvamento Marítimo Humanitario

Samos Volunteers

Sea-Eye e.V.

Sea-Watch e.V.

Second Tree

Seebrücke Schweiz

Seios Grupe

Slovene Philanthropy

Society Kljuc - Centre for Fight against Trafficking in Human Beings

SOLIDAR

Statewatch

Stichting LOS

TAMPEP - European Network for the Promotion of Rights and Health among Migrant Sex Workers

The Human Rights Legal Project

Yoga and Sport with Refugees

Zeitschrift Bürgerrechte & Polizei/ CILIP (Germany)

1. *See* [*Wa Baile v Switzerland*](https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-14292%22%5D%7D) *and* [*Basu v Germany*](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-13839%22%5D%7D) *.* [↑](#footnote-ref-0)