

# Border control: common rules on temporary reintroduction of border control at internal borders in exceptional circumstances

2011/0242(COD) - 12/06/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 506 votes to 121 with 55 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council. They amend the Commission proposal as follows:

**Specific measures in case of serious deficiencies:** Parliament inserted a new Chapter V into the proposal. As a result, the text provides that:

- where serious deficiencies in the carrying out of external border control are identified in an evaluation report established in accordance with the [Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis](#), and with a view to ensuring compliance with the recommendations made by the Council following the evaluation of, the Commission may recommend that the evaluated Member State take certain specific measures, such as initiation of the deployment of European Border Guard teams in accordance with the provisions of the Frontex Regulation;
- the Commission shall inform the committee established by the Regulation on a regular basis of progress in the implementation of the measures and of the impact on the deficiencies identified. It shall also inform the European Parliament and the Council;
- where, in an evaluation report it has been concluded that the Member State evaluated was seriously neglecting its obligations and therefore had to report on the implementation of the relevant action plan within three months, and if, following that three months period, the Commission finds that the situation persists, it may trigger the application of the temporary border controls procedure provided for in the Regulation.

**General framework for the temporary reintroduction of border control at internal borders:** where in the area without border control at internal borders there is a serious threat to public policy or internal security in a Member State, that **Member State may exceptionally reintroduce border control at internal borders at all or specific parts of its internal borders for a limited period of no more than 30 days** or for the foreseeable duration of the serious threat if its duration exceeds the period of 30 days. The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat.

The temporary reintroduction of border controls should be seen as a **last resort** and presupposes the existence of a genuine, present and sufficiently serious threat affecting one of the fundamental interest of society.

**Duration of temporary reintroduction of border controls:** the total period during which border control is reintroduced at internal borders, shall not exceed **six months**. In cases of exceptional circumstances where the overall functioning of the area without internal border controls is put at risk, this total period may be extended to the maximum length of **two years**.

**Procedure for the temporary reintroduction of border control at internal borders:** where a Member State is planning to reintroduce border control at internal borders, it shall notify the other Member States and the Commission accordingly at the latest **four weeks** before the planned reintroduction, or within a shorter period where the circumstances giving rise to the need to reintroduce border control at internal borders do not become known until less than four weeks before the planned reintroduction, and shall **supply certain prescribed information**, parts of which may be **classified** by the Member States concerned. However, the text specifies that **classification shall not preclude information being made available by the Commission to the European Parliament**. Information and documents so transmitted to the European Parliament shall be treated in compliance with rules concerning the forwarding and handling of classified information, which are applicable between the European Parliament and the Commission.

The Commission and other Member States will scrutinize the proportionality of the planned measures.

**Specific procedure for cases requiring immediate action:** where a serious threat to public policy or internal security in a Member State demands immediate action to be taken, the Member State concerned may exceptionally and immediately reintroduce border control at internal borders, for a limited period of no more than **ten days**, which may be prolonged for renewable periods of up to **20 days** under duly justified circumstances. The total period during which border control is reintroduced at internal borders **shall not exceed two months**.

**Specific procedure in case of exceptional circumstances putting the overall functioning of the area without internal border controls at risk:** in exceptional circumstances where the overall functioning of the area without internal border controls is put at risk as a result of persistent serious deficiencies related to external border control as referred to in **Chapter V** (see above), border control at internal borders may be for a period of no more than six months. This period can be prolonged by a further period of no more than **six months** if such circumstances still exist. **No more than three such prolongations** will be possible.

The text goes on to state that the Council may, as a last resort and as a measure to protect the common interests within the area without internal border controls, where all other measures, in particular those referred to in Chapter V, are incapable of effectively mitigating the serious threat identified, recommend one or more specific Member States reintroduce border control at all or specific parts of its internal borders.

In the event that the recommendation is not implemented by a Member State, that Member State shall without delay inform the Commission in writing of its reasons. In such a case, the Commission shall present a report to the European Parliament and the Council assessing the reasons provided by the said Member State and the consequences for protecting the common interests of the area without internal border controls.

The text sets out the **criteria for the temporary reintroduction of border control at internal borders in case of exceptional circumstances** putting the overall functioning of the area without internal border control at risk. In particular the Council must assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security within the area without internal border controls, and shall assess the proportionality of the measure in relation to that threat.

There is an obligation to inform the European Parliament of all measures taken.

**Guidelines:** a **new recital** states that based on the experience gathered with respect to the functioning of the area without internal border controls and in order to help ensuring a consistent implementation of the Schengen acquis, the Commission may draw up guidelines on the reintroduction of border control at internal borders, both in cases which require such a measure as a temporary reaction and in cases where immediate action is needed. These guidelines should provide clear indicators to facilitate the assessment of what circumstances may constitute serious threats to public policy and to internal security.

**Migration** and the crossing of external borders by a large number of third-country nationals **should not, per se, be considered to be a threat to public policy** or to internal security.

**Evaluation mechanism:** the implementation of the Regulation by each Member State shall be evaluated through an evaluation mechanism, the rules on which are specified in [Council Regulation \(EU\) No XXX/2013](#). In accordance with this evaluation mechanism, the Member States and the Commission jointly conduct regular, objective and impartial evaluations in order to verify the correct application of the Regulation and the Commission coordinates the evaluations in close cooperation with the Member States. Under this mechanism, every Member State is evaluated at least every five years by a small team consisting of Commission representatives and of experts designated by the Member States.

The European Parliament and the Council shall be informed at all stages of the evaluation and be transmitted all the relevant documents, in accordance with the rules on classified documents. The European Parliament shall be immediately and fully informed of any proposal to amend or to replace the rules laid down in Council Regulation (EU) No XXX/2013.

**Informing the European Parliament and the Council:** the Commission and Member State(s) concerned shall inform the European Parliament and the Council as soon as possible of any reasons which might trigger the application of provisions on the temporary reintroduction of border control at internal borders, and the criteria applicable.

**Report:** the Commission shall present to the European Parliament and to the Council, at least annually, a report on the functioning of the area without internal border controls, which shall include a list of all decisions to reintroduce border control at internal borders taken during the relevant year.

**Joint declaration:** lastly, in a joint statement, the European Parliament, the Council and the Commission.

The European Parliament, the Council and the Commission indicate that the adoption of the Regulation amending the Schengen Borders Code in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances and of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis are an adequate response to the call of the European Council in its Conclusions of 24 June 2011 for:

- an enhancement of the cooperation and the mutual trust between the Member States in the Schengen area and for
- an effective and reliable monitoring and evaluation system in order to ensure the enforcement of common rules and the strengthening, adaptation and extension of the criteria based on the EU acquis.

The joint statement recalls that Europe's external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and practical cooperation.

The three EU institutions understand that any future proposal from the Commission for amending this evaluation system would be submitted to the consultation of the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before the adoption of a final text.