

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure lapsed or withdrawn
Temporary reintroduction of border control at internal borders Amending Regulation (EU) 2016/399 <a href="#">2015/0006(COD)</a>	
Subject 7.10.02 Schengen area, Schengen acquis 7.10.04 External borders crossing and controls, visas	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 <a href="#">Civil Liberties, Justice and Home Affairs</a>	Shadow rapporteur	
		 <a href="#">BAY Nicolas</a> NI <a href="#">FERRARA Laura</a>	
	Former committee responsible		
	 <a href="#">Civil Liberties, Justice and Home Affairs</a>		
Council of the European Union			
European Commission	Commission DG <a href="#">Migration and Home Affairs</a>	Commissioner AVRAMOPOULOS Dimitris	

Key events			
27/09/2017	Legislative proposal published	<a href="#">COM(2017)0571</a>	Summary
26/10/2017	Committee referral announced in Parliament, 1st reading		
22/10/2018	Vote in committee, 1st reading		
22/10/2018	Rejection by committee to open interinstitutional negotiations with report adopted in committee		
29/10/2018	Committee report tabled for plenary, 1st reading	<a href="#">A8-0356/2018</a>	Summary
29/11/2018	Results of vote in Parliament		
29/11/2018	Decision by Parliament, 1st reading	<a href="#">T8-0472/2018</a>	Summary
29/11/2018	Matter referred back to the committee responsible		

04/04/2019	Decision by Parliament, 1st reading	<a href="#">T8-0356/2019</a>	Summary
24/09/2019	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
09/10/2019	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
14/12/2021	Proposal withdrawn by Commission		

### Technical information

Procedure reference	2017/0245(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation (EU) 2016/399 <a href="#">2015/0006(COD)</a>
Legal basis	Rules of Procedure EP 61; Treaty on the Functioning of the EU TFEU 077-p2
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/8/11152

### Documentation gateway

Legislative proposal	<a href="#">COM(2017)0571</a>	27/09/2017	EC	Summary
Committee draft report	<a href="#">PE618.307</a>	12/04/2018	EP	
Amendments tabled in committee	<a href="#">PE622.093</a>	17/05/2018	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A8-0356/2018</a>	29/10/2018	EP	Summary
Text adopted by Parliament, partial vote at 1st reading/single reading	<a href="#">T8-0472/2018</a>	29/11/2018	EP	Summary
Text adopted by Parliament, 1st reading/single reading	<a href="#">T8-0356/2019</a>	04/04/2019	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2019)443</a>	12/06/2019	EC	

## Temporary reintroduction of border control at internal borders

**PURPOSE:** to update the Schengen Borders Code to adapt the rules for the reintroduction of temporary internal border controls to the current needs to respond to evolving and persistent serious threats to public policy or internal security.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** The European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** due to the secondary movements of irregular migrants and the increase of cross-border terrorist threats posing a serious threat to the internal security of a number of Schengen States, some Member States have been compelled to extend the temporary reintroduction of internal border controls.

Based on the current [Schengen rules](#), border controls at internal borders are possible for longer than six months when there are serious deficiencies in the external border management of a Member State, as demonstrated during a Schengen Evaluation.

In situations where the serious threat to public policy or internal security is not related to deficiencies in the management of the external borders as demonstrated during a Schengen Evaluation, the reintroduction of border control at internal borders is subject to the conditions and time limits set out in the Schengen Borders Code.

While the current rules for the temporary reintroduction of internal border controls have proved sufficient in the vast majority of cases, the maximum periods laid down in the legislation may not be sufficient when Member States face serious and persistent threats to public order or internal security.

This is why the Commission considers it necessary to adapt the maximum periods for the temporary reintroduction of border checks to current needs, while ensuring that the use of this measure remains exceptional and is decided only as a last resort.

CONTENT: the proposal seeks to update the Schengen Borders Code to prolong the time limits for internal border controls. Stronger procedural safeguards are also being introduced to ensure that border controls at internal borders remain an exception - a measure of last resort - and are used only if necessary and proportionate, limiting the impact on free movement.

The Commission proposes:

- to increase up to one year (instead of six months) the maximum time limit for temporary reintroduction of border control at internal borders for the foreseeable duration of the serious threat and to increase from up to 30 days to up to six months the limit for the length of prolongation periods;
- to introduce better procedural safeguards in order to ensure that the decision on temporary border control at internal borders or their prolongation is based on a proper risk assessment and is taken in cooperation with the other Member States concerned. Member States will prepare and submit a risk assessment assessing how long the identified threat is expected to persist and which sections of the internal borders are affected and how border control contributed to address the identified threat;
- to introduce a better follow up to the opinion of the Commission expressing concerns on the necessity or proportionality of border controls being exercised for longer than six months and the consultation procedure involving the Commission, Member States and, as now proposed, relevant Agencies;
- a new possibility is introduced to extend internal border controls by a maximum period of two years where the serious threat to internal security or public policy persists beyond the one-year deadline, provided that it can be attributed to the same grounds (e.g. threat related to the operation of a cross-border terrorist network) and that commensurate exceptional national measures are taken within the territory to address the threat (such as the state of emergency). Such prolongation would require a Recommendation of the Council, which would need to take into account the opinion given by the Commission, and would be strictly limited to 6 month periods with the possibility to prolong no more than three times up to a maximum period of two years.

## Temporary reintroduction of border control at internal borders

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Tanja FAJON (S&D, SI) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border control at internal border.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

General framework and criteria: Members recalled that the creation of an area in which the free movement of persons across internal borders is ensured is one of the main achievements of the Union. The normal functioning and strengthening of such an area, which is based on trust and solidarity, should be a common objective of the Union and the Member States which have agreed to take part in it. At the same time, it is necessary to have a common response to situations seriously affecting the public policy or internal security of that area, or parts thereof, by allowing for the temporary reintroduction of border control at internal borders in exceptional circumstances and as a last resort.

Before reintroducing control at its internal borders, a Member State shall assess:

- whether this measure is likely to sufficiently remedy the threat to public policy or internal security;
- whether measures other than the temporary reintroduction of border control at internal borders, such as enhanced cross-border police cooperation or intensified police checks, are likely to sufficiently remedy the threat to public policy or internal security;
- the proportionality of the temporary reintroduction of border control at internal borders in relation to the threat to public policy or internal security.

Any measure reintroducing controls at the internal borders of a Member State shall be withdrawn as soon as the underlying grounds for it cease to exist.

Possible serious threat to public policy or internal security: where, in the area without internal border control, there is a serious threat to public policy or internal security in a Member State, that Member State may, as a measure of last resort, reintroduce border control at all or specific parts of its internal borders for a limited period of up to 30 days or, if the serious threat persists beyond 30 days, for the foreseeable duration of the serious threat but, in any event, for no longer than two months, with a possibility of a prolongation of up to an additional four months.

In order to ensure that such internal border control is a measure of last resort and exceptional, Member States shall submit a risk assessment concerning its envisaged extension beyond two months.

The risk assessment shall: (i) assess how long the identified threat is expected to persist and which section of its internal borders is affected; (ii) demonstrate that the prolongation of border control is a last resort; and (iii) explain how border control would better help address the identified threat.

Where, based on the information contained in the notification or on any additional information it has received, the Commission has concerns as regards the necessity or proportionality of the planned reintroduction of border control at internal borders, or where it considers that a consultation on some aspect of the notification would be appropriate, it shall issue an opinion to that effect without delay.

The information and any Commission or Member State opinions shall be the subject of a consultation. The consultation shall include:

- joint meetings between the Member State planning to reintroduce border control at internal borders, the other Member States, especially those directly affected by such measures, and the Commission, which shall be held with a view to organising, where appropriate, mutual cooperation between the Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border control, including any possible alternative measures, and the threat to public policy or internal security;

- where appropriate, unannounced on-site visits by the Commission to the relevant internal borders and, where appropriate, with the support of experts from Member States and from the Agency, Europol or any other relevant Union body, office or agency, to assess the effectiveness of border controls at those internal borders and the compliance with this Regulation; the reports of such unannounced on-site visits shall be transmitted to the European Parliament.

Specific procedure: the Regulation shall also specifically provide for the possibility to prolong internal border controls beyond six months, on an exceptional basis. A subsequent prolongation of controls beyond six months would require an opinion from the European Commission and a Council recommendation. In any event, such a possibility shall not lead to a further extension of temporary border control beyond one year.

The European Parliament shall immediately be informed about the proposed prolongation. The Member States affected shall have the possibility to make observations to the Commission before it issues its opinion.

## Temporary reintroduction of border control at internal borders

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The European Parliament adopted by 319 votes to 241, with 78 abstentions, amendments to the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border control at internal border.

The matter was referred back to the committee responsible for interinstitutional negotiations.

The main amendments adopted in plenary concern the following points:

Last resort measure: Parliament recalled that the creation of an area in which the free movement of persons across internal borders is ensured is one of the main achievements of the Union. The normal functioning and strengthening of such an area, which is based on trust and solidarity, should be a common objective of the Union and the Member States which have agreed to take part in it. At the same time, it is necessary to have a common response to situations seriously affecting the public policy or internal security of that area, or parts thereof, by allowing for the temporary reintroduction of border control at internal borders in exceptional circumstances and as a last resort, while strengthening cooperation between the Member States concerned.

Criteria: before reintroducing control at its internal borders, a Member State shall assess:

- whether this measure is likely to sufficiently remedy the threat to public policy or internal security;
- whether measures other than the temporary reintroduction of border control at internal borders, such as enhanced cross-border police cooperation or intensified police checks, are likely to sufficiently remedy the threat to public policy or internal security;
- the proportionality of the temporary reintroduction of border control at internal borders in relation to the threat to public policy or internal security.

Where a Member State assesses that the proposed reintroduction of internal border control is not proportionate to the threat, it shall not reintroduce or prolong internal border control. Any measure reintroducing controls at the internal borders of a Member State shall be withdrawn as soon as the underlying grounds for it cease to exist.

Possible serious threat to public policy or internal security: where, in the area without internal border control, there is a serious threat to public policy or internal security in a Member State, that Member State may, as a measure of last resort, reintroduce border control at all or specific parts of its internal borders for a limited period of up to 30 days or, if the serious threat persists beyond 30 days, for the foreseeable duration of the serious threat but, in any event, for no longer than two months, with a possibility of a prolongation of up to an additional four months.

Whenever the reintroduction of internal border control is proposed for specific planned events of an exceptional nature and duration, such as sporting activities, the duration of such control should be very precise, circumscribed and linked to the actual duration of the event.

Risk assessment: in order to ensure that such internal border control is a measure of last resort and exceptional, Member States shall submit a risk assessment concerning its envisaged extension beyond two months.

The risk assessment shall: (i) assess how long the identified threat is expected to persist and which section of its internal borders is affected; (ii) demonstrate that the prolongation of border control is a last resort; and (iii) explain how border control would better help address the identified threat.

The risk assessment shall also contain a detailed report of the cooperation which took place between the Member State concerned and the Member State or Member States directly affected by the reintroduction of border control. The Commission shall share the risk assessment with the Agency and Europol and may request, where appropriate, their views thereon.

Consultation: where, based on the information contained in the notification or on any additional information it has received, the Commission has concerns as regards the necessity or proportionality of the planned reintroduction of border control at internal borders, or where it considers that a consultation on some aspect of the notification would be appropriate, it shall issue an opinion to that effect without delay.

The information and any Commission or Member State opinions shall be the subject of a consultation. The consultation shall include:

- joint meetings between the Member State planning to reintroduce border control at internal borders, the other Member States, especially those directly affected by such measures, and the Commission, which shall be held with a view to organising, where appropriate, mutual cooperation between the Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border control, including any possible alternative measures, and the threat to public policy or internal security;
- where appropriate, unannounced on-site visits by the Commission to the relevant internal borders and, where appropriate, with the support of experts from Member States and from the Agency, Europol or any other relevant Union body, office or agency, to assess the effectiveness of border controls at those internal borders and the compliance with this Regulation; the reports of such unannounced on-site visits shall be transmitted to the European Parliament.

Specific procedure in the event of a long-term threat: the Regulation shall also specifically provide for the possibility to prolong internal border controls beyond six months, on an exceptional basis. A subsequent prolongation of controls beyond six months would require an opinion from

the European Commission and a Council recommendation. In any event, such a possibility shall not lead to a further extension of temporary border control beyond one year.

The European Parliament shall immediately be informed about the proposed prolongation. The Member States affected shall have the possibility to make observations to the Commission before it issues its opinion.

## Temporary reintroduction of border control at internal borders

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The European Parliament adopted by 339 votes to 205, with 62 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of internal border control, thus closing its first reading.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

A measure of last resort with enhanced cooperation

Parliament recalled that the creation of an area in which the free movement of persons across internal borders is ensured is one of the main achievements of the Union. The normal functioning and strengthening of such an area, which is based on trust and solidarity, should be a common objective of the Union and the Member States which have agreed to take part in it.

At the same time, it stressed that it is necessary to have a common response to situations seriously affecting the public policy or internal security of that area, or parts thereof, by allowing for the temporary reintroduction of border control at internal borders in exceptional circumstances and as a last resort, while strengthening cooperation between the Member States concerned.

Criteria for the temporary reintroduction of internal border controls

Before reintroducing control at its internal borders, a Member State shall assess:

- whether this measure is likely to sufficiently remedy the threat to public policy or internal security;

whether measures other than the temporary reintroduction of border control at internal borders, such as enhanced cross-border police cooperation or intensified police checks, are likely to sufficiently remedy the threat to public policy or internal security;

- the proportionality of the temporary reintroduction of border control at internal borders in relation to the threat to public policy or internal security.

Where a Member State assesses that the proposed reintroduction of internal border control is not proportionate to the threat, it shall not reintroduce or prolong internal border control. Any measure reintroducing controls at the internal borders of a Member State shall be withdrawn as soon as the underlying grounds for it cease to exist.

Possible serious threat to public policy or internal security

Where, in the area without internal border control, there is a serious threat to public policy or internal security in a Member State, that Member State may, as a measure of last resort, reintroduce border control at all or specific parts of its internal borders for a limited period of up to 30 days or, if the serious threat persists beyond 30 days, for the foreseeable duration of the serious threat but, in any event, for no longer than two months, with a possibility of a prolongation of up to an additional four months.

Whenever the reintroduction of internal border control is proposed for specific planned events of an exceptional nature and duration, such as sporting activities, the duration of such control should be very precise, circumscribed and linked to the actual duration of the event.

Risk assessment

In order to ensure that such internal border control is a measure of last resort and exceptional, Member States shall submit a risk assessment concerning its envisaged extension beyond two months.

The risk assessment shall: (i) assess how long the identified threat is expected to persist and which section of its internal borders is affected; (ii) demonstrate that the prolongation of border control is a last resort; and (iii) explain how border control would better help address the identified threat.

The risk assessment shall also contain a detailed report of the cooperation which took place between the Member State concerned and the Member State or Member States directly affected by the reintroduction of border control. The Commission shall share the risk assessment with the Agency and Europol and may request, where appropriate, their views thereon.

Consultation

Where, based on the information contained in the notification or on any additional information it has received, the Commission has concerns as regards the necessity or proportionality of the planned reintroduction of border control at internal borders, or where it considers that a consultation on some aspect of the notification would be appropriate, it shall issue an opinion to that effect without delay.

The information and any Commission or Member State opinions shall be the subject of a consultation. The consultation shall include:

- joint meetings between the Member State planning to reintroduce border control at internal borders, the other Member States, especially those directly affected by such measures, and the Commission, which shall be held with a view to organising, where appropriate, mutual cooperation between the Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border control, including any possible alternative measures, and the threat to public policy or internal security;

- where appropriate, unannounced on-site visits by the Commission to the relevant internal borders and, where appropriate, with the support of experts from Member States and from the Agency, Europol or any other relevant Union body, office or agency, to assess the effectiveness of border controls at those internal borders and the compliance with this Regulation; the reports of such unannounced on-site visits shall be transmitted to the European Parliament.

#### Specific procedure in the event of a long-term threat

The Regulation shall also specifically provide for the possibility to prolong internal border controls beyond six months, on an exceptional basis. A subsequent prolongation of controls beyond six months would require an opinion from the European Commission and a Council recommendation. In any event, such a possibility shall not lead to a further extension of temporary border control beyond one year.

The European Parliament shall immediately be informed about the proposed prolongation. The Member States affected shall have the possibility to make observations to the Commission before it issues its opinion.