



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 June 2012

**Interinstitutional File:
2011/0242 (COD)**

**6161/4/12
REV 4**

**SCHENGEN 9
FRONT 15
SCH-EVAL 17
COMIX 83
CODEC 292**

NOTE

from: Presidency

to: Council/Mixed Committee at Ministerial level

No. prev. doc.: 10319/1/12 REV 1 SCHENGEN 39 SCH-EVAL 71 FRONT 81 COMIX 326
CODEC 1415

Subject: 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
- Revised draft compromise text

Delegations will find below a revised draft compromise text, taking into account the discussions at COREPER on 30 May 2012.

The recitals of the Proposal will be dealt with in a latter stage.

The text is subject to general scrutiny reservations and parliamentary scrutiny reservations by some delegations and reservations or comments on specific issues by certain delegations.

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

Article 1

Regulation (EC) No 562/2006 is hereby amended as follows:

(0) The following Chapter V is added to Title II (External Borders):

"CHAPTER V

***Specific measures in case of serious deficiencies
related to the external border control***

Article 19A

Measures at the external borders and Frontex support

1. ¹Where serious deficiencies in the carrying out of external border control are identified in an evaluation report established in accordance with Article 13 of the Regulation on the establishment of an evaluation and monitoring to verify the application of the Schengen acquis, and with a view to ensuring compliance with the recommendations referred to in Article 13(5) of that Regulation, the Commission may recommend to the evaluated Member State to take certain specific measures, which may include one or more of the following:

¹ Text based on Article 14(1) of the Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis (14358/11).

- initiation of the deployment of European Border Guard teams in accordance with the provisions of the Frontex Regulation;
- submission of its strategic plans based on risk assessment, including information on the deployment of personnel and equipment, for opinion to Frontex.

This implementing act shall be adopted in accordance with the examination procedure referred to in Article 33 A(2).

2. ²The Commission shall inform the committee established in accordance with Article 33A on a regular basis on the progress in the implementation of the measures referred to in paragraph 1 and on its impact on the deficiencies identified.
It shall also inform, as appropriate, the European Parliament and the Council.
3. ³Where, in an evaluation report as referred to in paragraph 1, it has been concluded that the evaluated Member State was seriously neglecting its obligations and therefore had to report on the implementation of the relevant action plan within three months in accordance with Article 13A(4) of the Regulation on the establishment of an evaluation and monitoring to verify the application of the Schengen acquis, and if, following that three months period, the Commission finds that the situation persists, it may trigger the application of the procedure provided for in Article 26 where all the conditions for doing so are fulfilled.
4. This Article shall be without prejudice to the measures that may be adopted by the Council under Article 78(3) TFEU in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries.”

² Text based on Article 14(2) of the Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis (14358/11).

³ Text based on Article 15 of the Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis (14358/11).

- (1) Articles 23 to 26, in Title III (Internal Borders), are replaced by the following:

"Article 23

General framework for the temporary reintroduction of border control at internal borders

1. 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.
2. Border control at internal borders may only be reintroduced in accordance with Articles 24, 25 and 26 of this Regulation. The criteria listed, respectively, in Articles 23A and 26A shall be taken into account in each case where a decision on the reintroduction of border control at internal borders is contemplated pursuant, respectively, to Article 24 or 25 or Article 26.
3. If the serious threat to public policy or internal security in the Member State concerned persists beyond the period provided for in paragraph 1, that Member State may prolong border control at its internal borders, taking account of the criteria listed in Article 23A, on the same grounds as those referred to in paragraph 1 and, taking into account any new elements, for renewable periods of up to 30 days.

4. The total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 and prolongations under paragraph 3, shall not exceed six months.

In cases of exceptional circumstances as referred to in Article 26, this total period may be extended to the maximum length of two years referred to in Article 26(1).

Article 23A

Criteria for the temporary reintroduction of border control at internal borders

1. When a Member State, in cases referred to in Articles 23 and 25(1), decides the temporary reintroduction of border control at one or more internal borders or parts thereof or decides to prolong the temporary reintroduction of border control, it shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security, and shall assess the proportionality of the measure in relation to that threat. In making such an assessment, the following considerations shall in particular be taken into account in cases referred to in Articles 23 and 25:
 - (a) the likely impact of any threats to public policy or internal security in the Member State concerned, including following terrorist incidents or threats as well as threats posed by organised crime;
 - (b) the likely impact of such a measure on free movement within the area without internal border controls.

(moved to Article 26A)

Article 24

*Procedure for the temporary reintroduction of border control at internal borders
under Article 23(1)*

1. Where a Member State is planning to reintroduce border control at internal borders under Article 23(1), 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 the following information:
 - (a) the reasons for the proposed reintroduction, including all relevant data detailing the events that constitute a serious threat to public policy or internal security in the Member State;
 - (b) the scope of the proposed reintroduction, specifying at which part or parts of the internal borders border control is to be reintroduced;
 - (c) the names of the authorised crossing-points;
 - (d) the date and duration of the planned reintroduction;
 - (e) where appropriate, the measures to be taken by the other Member States.

Such a notification may also be submitted jointly by two or more Member States. The Member State may, when necessary and in accordance with national law, decide to classify parts of the information.

If necessary, the Commission may request additional information from the Member State concerned.

2. The information referred to in paragraph 1 shall be submitted at the same time to the European Parliament and to the Council.

3. ⁴Following the notification from the Member State concerned, and with a view to the consultation provided for in paragraph 4, the Commission or any of the other Member States may issue an opinion without prejudice to Article 72 TFEU.
4. ⁵The information referred to in paragraph 1, as well as the opinion that the Commission or any of the other Member States may provide in accordance with paragraph 3, shall be the subject of consultations between the Member State planning to reintroduce border control, the other Member States and the Commission, 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 and the threats to public policy or internal security.
5. ⁶The consultation referred to in paragraph 4 shall take place at least ten⁷ days before the date planned for the reintroduction of border control.

Article 25

Specific procedure for cases requiring immediate action

1. 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.

⁴ Text similar to that of Article 24(2) of the current version of the Schengen Borders Code.

⁵ Text similar to that of Article 24(3) of the current version of the Schengen Borders Code.

⁶ Text identical to that of Article 24(4) of the current version of the Schengen Borders Code.

⁷ "Fifteen" in the current version of the Schengen Borders Code.

2. The Member State reintroducing border control at internal borders shall at the same time notify the other Member States and the Commission accordingly, and shall supply the information referred to in Article 24(1) and the reasons that justify the use of this procedure. The Commission may consult the other Member States immediately upon receipt of the notification.

3. If the serious threat to public policy or internal national security persists beyond the period provided for in paragraph 1, the Member State may decide to prolong the border control at internal borders for renewable periods of up to 20 days. In doing so, the Member State concerned shall take into account the criteria listed in Article 23A, including an updated assessment of the necessity and the proportionality of the measure, and take into account any new elements.
In the event of such a prolongation decision being taken, the provisions of Article 24(3) and (4) shall apply *mutatis mutandis*, and the consultation shall take place as soon as possible after the prolongation decision has been notified to the Commission and the Member States.

- 3a. Without prejudice to Article 23(4), the total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 and prolongations under paragraph 3, shall not exceed two months.

Article 26

Specific procedure in case of exceptional circumstances putting the overall functioning of the area without internal border controls at risk

1. 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 Article 19A, and insofar as these circumstances constitute a serious threat to public policy or internal security within the area without internal border controls or parts thereof, border control at internal borders may be reintroduced in accordance with paragraph 2 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.
2. 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 Article 19A(1), are incapable of effectively mitigating the serious threat identified, recommend for one or more specific Member States to decide to reintroduce border control at all or specific parts of its internal borders. The Council's recommendation shall be based on a proposal from the Commission. The Member States may request the Commission to submit such a proposal to the Council for a recommendation.

In its recommendation, the Council shall at least indicate the elements referred to in points (a) to (e) of Article 24(1).

The Council may recommend a prolongation in accordance with the same conditions and procedures.

Before a Member State reintroduces border control at all or specific parts of its internal borders under Article 26(2), it shall notify the other Member States and the Commission and the European Parliament accordingly.

3. (deleted)
4. On duly justified grounds of urgency, related to situations where the circumstances giving rise to the need to prolong border control at internal borders, in accordance with paragraph 2, do not become known until less than 10 days before the end of the preceding reintroduction period, the Commission may adopt immediately any necessary recommendations. At the latest 14 days after its adoption, the Commission shall submit to the Council a proposal for a recommendation in accordance with paragraph 2.
 - 4a. This Article shall be without prejudice to measures that may be adopted by the Member States in the event of a serious threat to public policy or internal security under Articles 23 to 25.
 - 4b. This Article shall be without prejudice to the measures that may be adopted by the Council under Article 78(3) TFEU in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries."

(1a) A new Article 26A is inserted as follows:

"Article 26A

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

1. When, as a last resort, the Council recommends in accordance with Article 26(2) the temporary reintroduction of border control at one or more internal borders or parts thereof, the Council shall 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. This assessment shall be based on the detailed information submitted by the Member State(s) concerned and by the Commission and any other relevant information, including any information obtained pursuant to paragraph 2. In making such an assessment, the following considerations shall in particular be taken into account:
 - (a) the availability of technical or financial support measures which could be or have been resorted to at the national and/or European level, including assistance by Union bodies such as Frontex, the EASO or Europol, and the extent to which such measures are likely to adequately remedy the threats to public policy or internal security within the area without internal border controls;
 - (b) the current and likely future impact of any serious deficiencies related to external border control identified by Schengen evaluations in accordance with the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis; and the extent to which such serious deficiencies constitute threats to public policy or internal security within the area without internal border controls;
 - (c) the likely impact of such a measure on free movement within the area without internal border controls.

2. Before adopting a proposal for a Council recommendation , in accordance with Article 26(2), the Commission may:

- (a) request Member States, Frontex, Europol or other Union bodies to provide it with further information,
- (b) carry out inspection visits, with the support of experts from Member States and of Frontex, Europol and any other relevant Union body, in order to obtain or verify information relevant for a recommendation to temporarily reintroduce border control at internal borders."

(2) Article 27 is replaced by the following:

*"Article 27
Informing the European Parliament and the Council*

The Commission and the 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 Articles 19A and 23 to 26A."

(3) Article 29 and 30 are replaced by the following:

*"Article 29
Report on the reintroduction of border control at internal borders*

At the latest four weeks after the lifting of border control at internal borders, the Member State which has carried out border control at internal borders shall present a report to the European Parliament, the Council and the Commission on the reintroduction of border control at internal borders, outlining, in particular, the operation of the checks and the effectiveness of the reintroduction of border control at internal borders.

Article 30
Informing the public

The Member State concerned shall inform the public on a decision to reintroduce border control at internal borders and indicate in particular the start and end date of such a measure, unless there are overriding security reasons for not doing so."

(4) A new Article 33A is introduced:

"Article 33A
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply."

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
