



2017/0245(COD)

12.4.2018

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DRAFT REPORT

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 borders (COM(2017)0571 – C8-0326/2017 – 2017/0245(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Tanja Fajon

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT 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 border control at internal borders (COM(2017)0571 – C8-0326/2017 – 2017/0245(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0571),
 - having regard to Article 294(2) and Article 77(2)(e) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0326/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the contributions submitted by the Czech Chamber of Deputies, the Czech Senate, the Greek Parliament, the Spanish parliament and the Portuguese Parliament on the draft legislative act,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) 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. In an area without internal border control, it is necessary to have a common response to situations seriously affecting the public policy or internal security of that area, or parts thereof, or of one or more Member States, by allowing for the temporary reintroduction of border control at internal borders in exceptional circumstances, but without jeopardising the principle of the free movement of persons.

Or. en

Amendment 2

Proposal for a regulation Recital 1

Text proposed by the Commission

Amendment

(1) In an area where persons may move freely, the reintroduction of border control at internal borders should remain an exception. **The** reintroduction of internal border control should be decided only as a measure of last resort, for a limited period of time and to the extent that controls are necessary and proportionate to the identified serious threats to public policy or internal security.

(1) In an area where persons may move freely, the reintroduction of border control at internal borders should remain an exception. **Border control should not be carried out or formalities imposed solely because an internal border is crossed. As the free movement of persons is affected by the temporary** reintroduction of internal border control, **such a measure** should be decided only as a measure of last resort, for a limited period of time and to the extent that controls are necessary and proportionate to the identified serious threats to public policy or internal security.

Amendment 3

Proposal for a regulation

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) 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 internal security.

Or. en

Amendment 4

Proposal for a regulation

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Before the temporary reintroduction of border control at the internal borders, alternative actions and measures to remedy the identified threat should be given precedence. In particular, the Member State concerned should, where necessary and justified, consider using more effectively or intensifying police checks within its territory, including in border areas, carrying out police checks on main transport routes, including in border areas, adapting police checks in border areas on the basis of a risk assessment, while ensuring that those police checks do not have border control as an objective, make use of available technologies and enhanced cross-border police cooperation.

Or. en

Amendment 5

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) However, experience has shown that certain serious threats to public policy or internal security, ***such as cross-border terrorist threats or specific cases of secondary movements of irregular migrants within the Union that justified the reintroduction of border controls***, may persist well beyond the *above* periods. It is therefore ***needed and justified*** to adjust the time limits applicable to the temporary reintroduction of border control ***to the current needs***, while ensuring that this measure is not abused and remains an exception, to be used only as a last resort. ***To that end, the general deadline applicable under Article 25 of the Schengen Borders Code should be extended to one year.***

Amendment

(4) However, experience has shown that ***there is rarely a need for border control at internal borders to be reintroduced for periods longer than two months. In exceptional circumstances***, certain serious threats to public policy or internal security may persist well beyond the ***currently authorised maximum*** periods ***of six months***. It is therefore ***necessary*** to adjust the time limits applicable to the temporary reintroduction of border control, while ensuring that this measure is not abused and remains an exception, to be used only as a last resort.

Or. en

Justification

Serious threat to public policy or internal security is not defined concept in EU law, therefore specifically mentioning those threats in relation to secondary movement is not helpful for several reasons. This might create the illusion that two threats are equally justified or grave, whereas nothing proves that is the case, while on the other hand other Member States might use this provision to justify certain practice which go against the spirit of the Schengen Borders Code.

Amendment 6

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) In order to guarantee that these

Amendment

(5) In order to guarantee that these

internal border controls remain an exception, Member States should submit a risk assessment concerning the intended **reintroduction** of border control **or prolongation thereof**. The risk assessment should, in particular, assess for how long the identified threat is expected to persist and which sections of the internal borders are affected, demonstrate that the prolongation of border controls is a last resort measure and explain how border control would help in addressing the identified threat. **In case of internal border control going beyond six months**, the risk assessment should also demonstrate retrospectively the efficiency of the reintroduced border control in addressing the identified threat and explain in detail how each neighbouring Member State affected by such prolongation was consulted and involved in determining the least burdensome operational arrangements.

internal border controls remain an exception, Member States should submit a risk assessment concerning the intended **prolongation** of border control **beyond two months**. The risk assessment should, in particular, assess for how long the identified threat is expected to persist and which sections of the internal borders are affected, demonstrate that the prolongation of border controls is a last resort measure and explain how border control would help in addressing the identified threat. The risk assessment should also demonstrate retrospectively the efficiency of the reintroduced border control in addressing the identified threat and explain in detail how each neighbouring Member State affected by such prolongation was consulted and involved in determining the least burdensome operational arrangements.

Or. en

Amendment 7

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) The power of the Commission to issue an opinion under Article 27(4) of the Schengen Borders Code should be modified to reflect the new obligations on the Member States related to the risk assessment, including the cooperation with Member States concerned. When border control at internal borders is carried out for more than six months, the Commission should be obliged to issue an opinion. Also the consultation procedure as provided for in Article 27(5) of the Schengen Borders Code should be modified in order to reflect the role of the

Amendment

deleted

Agencies (European Border and Coast Guard Agency and Europol) and focus on the practical implementation of different aspects of cooperation between the Member States, including the coordination, where appropriate, of different measures on both sides of the border.

Or. en

Justification

The rapporteur does not propose to change this provision in the Regulation, hence this recital should be deleted as it is no longer necessary.

Amendment 8

Proposal for a regulation Recital 8

Text proposed by the Commission

(8) In order to make the revised rules better adapted to the challenges related to persistent serious threats to public policy or internal security, a specific possibility should be provided to prolong internal border controls beyond *one year*. Such prolongation should accompany commensurate exceptional national measures also taken within the territory to address the threat, such as a state of emergency. In any case, such a possibility should not lead to the further prolongation of temporary internal border controls beyond *two years*.

Amendment

(8) In order to make the revised rules better adapted to the challenges related to persistent serious threats to public policy or internal security, a specific possibility should be provided to prolong internal border controls beyond *six months*. Such prolongation should accompany commensurate exceptional national measures also taken within the territory to address the threat, such as a state of emergency. In any case, such a possibility should not lead to the further prolongation of temporary internal border controls beyond *one year*.

Or. en

Amendment 9

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8 a) A derogation from the fundamental principle of free movement of persons should be interpreted strictly and the concept of public policy presupposes the existence of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

Or. en

Justification

In accordance with Recital 27 of the SBC (Regulation (EU) 399/2016), when reintroducing internal border controls due to serious threat to public policy or internal security it is important that the measure corresponds to a genuine, present and sufficiently serious threat.

Amendment 10

Proposal for a regulation

Recital 9

Text proposed by the Commission

Amendment

(9) The reference to Article 29 in Article 25(4) should be modified with a view of clarifying the relation between the time periods applicable under Article 29 and Article 25 of the Schengen Borders Code.

deleted

Or. en

Justification

The rapporteur proposes to amend Article 29 making this recital unnecessary.

Amendment 11

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) The possibility to carry out temporary internal border controls in response to a specific threat to public policy or internal security which persists beyond *a year* should be subject to a specific procedure.

Amendment

(10) The possibility to carry out temporary internal border controls in response to a specific threat to public policy or internal security which persists beyond *six months* should be subject to a specific procedure.

Or. en

Amendment 12

**Proposal for a regulation
Recital 11**

Text proposed by the Commission

(11) To that end, the Commission should issue an opinion on the necessity and proportionality of such prolongation *and, where appropriate, on the cooperation with the neighbouring Member States.*

Amendment

(11) To that end, the Commission should issue an opinion on the necessity and proportionality of such prolongation.

Or. en

Amendment 13

**Proposal for a regulation
Recital 13**

Text proposed by the Commission

(13) The Council, taking account of the Commission's opinion, may recommend such extraordinary further prolongation and where appropriate determine the conditions for cooperation between the Member States concerned, with a view to ensuring that it is an exceptional measure, in place only for as long as necessary and justified, and consistent with the measures also taken at the national level within the

Amendment

(13) The Council, taking account of the Commission's opinion, may recommend such extraordinary further prolongation and where appropriate determine the conditions for cooperation between the Member States concerned, with a view to ensuring that it is an exceptional measure, in place only for as long as necessary and justified, and consistent with the measures also taken at the national level within the

territory to address the same specific threat to public policy or internal security. The Council recommendation should be a prerequisite for any further prolongation beyond the period of *one year and hence be of the same nature as the one already provided for in Article 29.*

territory to address the same specific threat to public policy or internal security. The Council recommendation should be a prerequisite for any further prolongation beyond the period of *six months.*

Or. en

Amendment 14

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Measures taken under the specific procedure where exceptional circumstances put the overall functioning of the area without internal border control at risk should not be prolonged, or combined with, measures taken under another procedure for the reintroduction or prolongation of internal border control provided for under Regulation (EU) 2016/399. It should be possible to trigger a new application of the rules and thus a new calculation of the duration of the period of border control only as a result of a new threat to public policy or internal security.

Or. en

Amendment 15

Proposal for a regulation Recital 13 b (new)

Text proposed by the Commission

Amendment

(13 b) In accordance with Article 258 of the Treaty on the Functioning of the European Union, the Commission should,

as the guardian of the Treaties overseeing the application of Union law and of measures adopted by institutions pursuant to them, take appropriate measures, including by bringing the matter before the Court of Justice of the European Union, where the Commission considers that a Member State has failed to fulfil an obligation under the Treaties.

Or. en

Justification

As the guardian of the Treaties the Commission has an obligation to monitor the application of Union law. It is important to recall that should a Member State not comply with the rules, the Commission is legally obliged to considering taking legal actions against that Member States, including by launching an infringement procedures against that Member State.

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 25 – paragraph 1

Text proposed by the Commission

1. 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 exceptionally reintroduce border control at all or specific parts of its internal borders for a limited period *of up to 30 days, or for the foreseeable duration of the serious threat if its duration exceeds 30 days, but not exceeding six months*. 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.

Amendment

1. 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 exceptionally reintroduce border control at all or specific parts of its internal borders for a limited period. 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.

Or. en

Justification

Unlike at present, the structure of the articles should follow a certain rationale of complete and separate parts with logical components. The actual content of Article 25 should be brought more in line with the title “general framework” and should set out the main horizontal principles governing temporary reintroduction of border controls at internal boarder for foreseeable events. It should not set out part of the procedure to be followed.

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 25 – paragraph 2

Text proposed by the Commission

Amendment

2. *Border control at internal borders shall only be reintroduced as a last resort, and in accordance with Articles 27, 27a, 28 and 29. The criteria referred to, respectively, in Articles 26 and 30 shall be taken into account in each case where a decision on reintroduction of border control at internal borders is considered pursuant, respectively, to Article 27, 27a, 28 or 29.* ***deleted***

Or. en

Justification

The procedures for the temporary introduction of border controls for foreseeable events are moved to Article 27.

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 25 – paragraph 3

Text proposed by the Commission

Amendment

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 of this Article, that Member State may prolong border control at its internal borders, taking account of the criteria referred to in Article 26 and in accordance with Article 27, on the same grounds as those referred to in paragraph 1 of this Article and, taking into account any new elements, for renewable periods corresponding to the foreseeable duration of the serious threat and not exceeding six months.* **deleted**

Or. en

Justification

The procedures for the temporary introduction of border controls for foreseeable events are moved to Article 27.

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 25 – paragraph 4

Text proposed by the Commission

Amendment

4. *The total period during which border control is reintroduced at internal borders, including any prolongation provided for under paragraph 3 of this Article, shall not exceed one year.* **deleted**

In the exceptional cases referred to in Article 27a, the total period may be further extended by a maximum length of two years in accordance with that Article.

Where there are exceptional circumstances as referred to in Article 29,

the total period may be extended by a maximum length of two years, in accordance with paragraph 1 of that Article.

Or. en

Justification

The procedures for the temporary introduction of border controls for foreseeable events are moved to Article 27 and 27a.

Amendment 20

Proposal for a regulation

Article 1 – paragraph 1 – point 1 a (new)

Regulation (EU) 2016/399

Article 26

Present text

Where a Member State decides, as a last resort, on the temporary reintroduction of border control at one or more of its internal borders or at parts thereof, or decides to prolong such reintroduction, *in accordance with Article 25 or Article 28(1)*, 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 Member State shall*, in particular, *take the following* into account:

Amendment

(1 a) Article 26 is replaced by the following:

Before a Member State decides, as a *measure of* last resort, on the temporary reintroduction of border control at one or more of its internal borders or at parts thereof, or decides to prolong such *a temporary* reintroduction, it shall:

(a) assess whether the temporary reintroduction of border control at internal borders can be considered likely to *sufficiently* remedy the threat to public policy or internal security;

(b) assess whether measures other than the temporary reintroduction of border control at internal borders are likely to sufficiently remedy the threat to public

(a) the likely impact of any threats to its public policy or internal security, including following terrorist incidents or threats and including those posed by organised crime;

(b) the likely impact of *such a measure on* free movement of persons within the area without internal border control.

policy or internal security;

(c) assess the proportionality of the *temporary reintroduction of border control at internal borders* in relation to that threat, in particular *by taking* into account:

(i) the likely impact of any threats to its public policy or internal security, including following terrorist incidents or threats and including those posed by organised crime;

(ii) the likely impact of *the temporary reintroduction of border control at internal borders on the* free movement of persons within the area without internal border control.

Where a Member State assesses under point (a) of the first subparagraph that the temporary reintroduction of internal border control is not likely to sufficiently remedy the threat to public policy or internal security, it shall not reintroduce internal border control

Where a Member State assesses under point (b) of the first subparagraph that measures other than the temporary reintroduction of internal border control are likely to sufficiently remedy the threat to public policy or internal security, it shall not reintroduce or prolong border control and shall take those other measures.

Where a Member State assesses under point (c) of the first subparagraph that the proposed reintroduction of internal border control is not proportionate to the threat, it shall not reintroduce or prolong the internal border control.";

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1522053548833&uri=CELEX:02016R0399-20170407>)

Justification

Article 26 setting out criteria for the assessment of the temporary reintroduction of internal border controls should be appropriately expanded in order to ensure that the reintroduction of border control is in fact a last resort measure, including by meeting the necessity and proportionality tests.

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point -i (new)

Regulation (EU) 2016/399

Article 27 – title

Present text

Procedure for the temporary reintroduction of border control at internal borders *under Article 25*

Amendment

(-i) The title is replaced by the following:

"Procedure for the temporary reintroduction of border control at internal borders *in the event of a foreseeable serious threat to public policy or internal security*";

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1522053548833&uri=CELEX:02016R0399-20170407>)

Justification

The title of the Article 27 should be in line with the content of the article. This is not to confuse measures adopted under article 28 (measures requiring immediate action) and under 29 (exceptional circumstances putting the overall functioning of the area without internal borders at risk).

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point -i a (new)

Regulation (EU) 2016/399

Article 27 – paragraph -1

(-ia) A new paragraph -1 is inserted as follows:

"-1. Where there is a serious threat to public policy or internal security in a Member State and it plans to reintroduce border control at its internal borders, that Member State may, as a measure of last resort and in accordance with the criteria laid down in Article 26, 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.

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519392180316&uri=CELEX:02016R0399-20170407>)

Justification

This paragraph (former article 25(1) provide for the procedure for initial period of border controls of maximum 2 months.

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point -i b (new)

Regulation (EU) 2016/399

Article 27 – paragraph 1 – introductory part

Present text

1. Where a Member State plans to reintroduce border control at internal borders under Article 25, it shall notify the other Member States and the Commission at the latest four weeks before the planned reintroduction, or within a shorter period

Amendment

(-ib) In paragraph 1, the introductory part is replaced by the following:

"1. For the purposes of paragraph -1, the Member State concerned shall notify the other Member States and the Commission at the latest four weeks before the planned reintroduction, or within a shorter period where the circumstances

where the circumstances giving rise to the need to reintroduce border control at internal borders become known less than four weeks before the planned reintroduction. To that end, the Member State shall supply the following information:

giving rise to the need to reintroduce border control at internal borders become known less than four weeks before the planned reintroduction. To that end, the Member State shall supply the following information:

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519392180316&uri=CELEX:02016R0399-20170407>)

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point i

Regulation (EU) 2016/399

Article 27 – paragraph 1 – point aa

Text proposed by the Commission

Amendment

(i) In paragraph 1, a new letter (aa) is added as follows:

deleted

(aa) a risk assessment assessing how long the identified threat is expected to persist and which sections of the internal borders are affected, demonstrating that the prolongation of border control is a last resort measure and explaining how border control would help address the identified threat. Where border control has already been reintroduced for more than six months, the risk assessment shall also explain how the previous reintroduction of border control has contributed to remedying the identified threat.

The risk assessment shall also contain a detailed report of the coordination which took place between the Member State concerned and the Member State or Member States with which it shares internal borders at which border control has been performed.

The Commission shall share the risk assessment with the European Border and Coast Guard Agency and Europol, as appropriate.

Or. en

Justification

This part of the Commission proposal is moved to paragraph 1a.

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point i a (new)

Regulation (EU) 2016/399

Article 27 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ia) In paragraph 1, the following point (ab) is inserted :

(ab) any measures other than the proposed reintroduction of border controls at internal borders which the Member State concerned has taken or has considered taking to address that threat to public policy or internal security; "

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519392180316&uri=CELEX:02016R0399-20170407>)

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point ii

Regulation (EU) 2016/399

Article 27 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) where appropriate, the measures to be

(e) where appropriate, the measures to be

taken by the other Member States as agreed prior to the temporary reintroduction of border control at internal borders *concerned*.

taken by the other Member States as agreed prior to the temporary reintroduction of border control at *the relevant* internal borders."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519392180316&uri=CELEX:02016R0399-20170407>)

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iii a (new)

Regulation (EU) 2016/399

Article 27 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(iiiia) The following paragraph 1a is inserted:

"1a. If the serious threat to public policy or internal security in the Member State concerned persists beyond two months, that Member State may prolong border control at its internal borders, taking into account the criteria laid down in Article 26, on the same grounds as those referred to in paragraph -1 of this Article and, taking into account any new elements, for a period which shall correspond to the foreseeable duration of the serious threat and shall not, in any event, exceed four months. The Member State concerned shall notify the other Member States and the Commission within the time period referred to in paragraph 1. To that end, in addition to the information provided under paragraph 1, the Member State concerned shall provide a risk assessment which shall:

(i) assess how long the identified threat is expected to persist and which section of its internal borders are affected;

(ii) *outline the alternative actions or measures previously introduced to address the identified threat;*

(iii) *explain why those alternative measures did not sufficiently remedy that threat;*

(iv) *demonstrate that the prolongation of border control is a last resort, and*

(v) *explain how border control would better help address the identified threat.*

The risk assessment referred to in the first subparagraph 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, including those Member States with which the Member State concerned shares internal borders at which border control is performed.

The Commission shall share the risk assessment with the Agency or Europol and may request, where appropriate, their views thereon."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519392180316&uri=CELEX:02016R0399-20170407>)

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iii b (new)

Regulation (EU) 2016/399

Article 27 – paragraph 2

Present text

Amendment

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

(iiib) Paragraph 2 is replaced by the following:

2. The information referred to in *paragraphs 1 and 1a* shall be submitted to the European Parliament and to the

the same time as it is notified to the other Member States and to the Commission pursuant to *that paragraph*.

Council at the same time as it is notified to the other Member States and to the Commission pursuant to *those paragraphs*.

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519392180316&uri=CELEX:02016R0399-20170407>)

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iii c (new)

Regulation (EU) 2016/399

Article 27 – paragraph 3

Present text

3. Member States *making a notification under paragraph 1* may, where necessary and in accordance with national law, *decide to classify* parts of the information. Such classification shall not preclude information from being made available by the Commission to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament under this Article shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.

Amendment

(iii) Paragraph 3 is replaced by the following:

"3. Member States may *classify*, where necessary and in accordance with national law, parts of the information *referred to in paragraphs 1 and 1a*. Such classification shall not preclude information from being made available by the Commission to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament under this Article shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission."

Or. en

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519392180316&uri=CELEX:02016R0399-20170407>)

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iv

Regulation (EU) 2016/399

Article 27 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Following notification by a Member State under **paragraph 1** and with a view to consultation provided for in paragraph 5, the Commission or any other Member State may, without prejudice to Article 72 TFEU, issue an opinion.

Amendment

Following notification by a Member State under **paragraphs 1 and 1a** and with a view to consultation provided for in paragraph 5, the Commission or any other Member State may, without prejudice to Article 72 TFEU, issue an opinion.

Or. en

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iv

Regulation (EU) 2016/399

Article 27 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Where 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 aspects of the notification would be appropriate, it shall issue an opinion to that effect.

Amendment

If, 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 ***if*** it considers that a consultation on some aspect of the notification would be appropriate, it shall issue an opinion to that effect.

Or. en

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iv

Text proposed by the Commission

Amendment

Where border control at internal borders has already been reintroduced for six months, the Commission shall issue an opinion. ***deleted***

Or. en

Justification

Due to the shorten procedure of border controls under paragraph under Article 27, the prolongation beyond 6 months require formal Council procedure as proposed in Article 27a.

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point v

Regulation (EU) 2016/399

Article 27 – paragraph 5

Text proposed by the Commission

Amendment

The information referred to in ***paragraph 1*** and any Commission or Member State opinion referred to in paragraph 4 shall be the subject of a consultation ***led by the Commission. Where appropriate, 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 ***relevant Agencies***. The proportionality of the ***intended*** measures, ***the identified threat to public policy or internal security as well as the ways of ensuring implementation of the mutual cooperation between the Member States shall be examined. The Member State planning to reintroduce or prolong border control at internal borders shall take the utmost account of the results of such consultation when carrying out border***

The information referred to in ***paragraphs 1 and 1a*** and any Commission or Member State opinion referred to in paragraph 4 shall be the subject of a consultation. The consultation shall include:

controls.

(i) 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 and the threat to public policy or internal security;***

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

Or. en

Amendment 34

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point v a (new)

Regulation (EU) 2016/399

Article 27 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(va) ***The following paragraph 5a is inserted:***

5a. The consultation referred to in paragraph 5 shall take place at least ten days before the date planned for the reintroduction of border control.

Or. en

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Article 27a – title

Text proposed by the Commission

Specific procedure where the serious threat to public policy or internal security exceeds **one year**

Amendment

Specific procedure where the serious threat to public policy or internal security exceeds **six months**

Or. en

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Article 27a – paragraph 1

Text proposed by the Commission

1. In exceptional **cases**, where the Member State is confronted with the same serious threat to public policy or internal security beyond the period referred to in Article **25(4) first sentence**, and where commensurate exceptional national measures are also taken within the territory to address this threat, the border control as temporarily reintroduced to respond to that threat may be further prolonged in accordance with this Article.

Amendment

1. In exceptional **circumstances**, where the Member State is confronted with the same serious threat to public policy or internal security beyond the period referred to in Article **27(1a)**, and where commensurate exceptional national measures are also taken within the territory to address this threat, the border control as temporarily reintroduced to respond to that threat may be further prolonged in accordance with this Article.

Or. en

Justification

Consequential amendments due to proposed changes in other articles.

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Article 27a – paragraph 2

Text proposed by the Commission

2. At the latest six weeks before the expiry of the period referred to in Article **25(4) first sentence**, the Member State shall notify the other Member States and the Commission that it seeks a further prolongation in accordance with the specific procedure laid down in this Article. **The** notification shall contain the information required **in** Article **27(1)(a) to (e)**. Article 27 paragraphs 2 and 3 shall apply.

Amendment

2. At the latest six weeks before the expiry of the period referred to in Article **27(1a)**, the Member State shall notify the other Member States and the Commission that it seeks a further prolongation in accordance with the specific procedure laid down in this Article. **This** notification shall contain **all** the information required **under** Article **27(1) and (1a)**. Article 27(2) and (3) shall apply.

Or. en

Justification

Consequential amendments due to proposed changes in other articles.

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Article 27a – paragraph 3

Text proposed by the Commission

3. The Commission shall issue an opinion.

Amendment

3. The Commission shall issue an opinion **on whether the proposed prolongation fulfils the requirements set out in paragraphs 1 and 2 and on the necessity and the proportionality of the**

proposed prolongation.

Or. en

Amendment 39

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Article 27a – paragraph 4

Text proposed by the Commission

4. *The Council, taking due account of the opinion of the Commission, may recommend that the Member State decide to further prolong border control at internal borders for a period of up to six months. That period may be prolonged, no more than three times, for a further period of up to six months. In its recommendation, the Council shall at least indicate the information referred to in Article 27(1) (a) to (e). Where appropriate, it shall determine the conditions for cooperation between the Member States concerned.*

Amendment

4. *Once it has taken the opinion of the Commission into account, the Council may, as a last resort, recommend that the Member State concerned further prolong border control at its internal borders for a period of up to six months. In its recommendation, the Council shall indicate the information referred to in Article 27(1) and (1a) and it shall lay down the conditions for cooperation between the Member States concerned.*

Or. en

Amendment 40

Proposal for a regulation

Article 1 – paragraph 1 – point 3 a (new)

Regulation (EU) 2016/399

Article 28 – paragraph 4

Present text

4. *Without prejudice to Article 25(4), the total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 of this Article and any prolongations under*

Amendment

(3a) In Article 28, paragraph 4 is replaced by the following:

"4. The total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 of this Article and any prolongations under paragraph 3 of this

paragraph 3 of this Article, shall not exceed two months.

Article, shall not exceed two months."

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1522053548833&uri=CELEX:02016R0399-20170407>)

Justification

Consequential amendment due to proposed changes in other articles.

Amendment 41

Proposal for a regulation

Article 1 – paragraph 1 – point 3 b (new)

Regulation (EU) 2016/399

Article 28 a (new)

Text proposed by the Commission

Amendment

(3b) Article 28a is inserted:

Article 28 a

Calculation of the period during which border control is reintroduced or prolonged due to a foreseen threat to public policy or internal security, where the serious threat to public policy or internal security exceeds six months and in cases requiring immediate action

Any reintroduction or prolongation of border controls at internal borders made before [the date of entry into force of this Regulation] shall be taken into account for the purpose of calculation of the periods referred to in Articles 27, 27a and 28.

Or. en

Justification

Existing and uninterrupted border controls at internal borders which have been reintroduced by different Member States since September 2015 and have exceeded the allowed maximum

periods according to the current Schengen Border Code rules, shall be taken into account for the purpose of new calculation of periods, and should be discontinued if conditions are no longer met.

Amendment 42

Proposal for a regulation

Article 1 – paragraph 1 – point 3 c (new)

Regulation (EU) 2016/399

Article 29 – paragraph 5

Present text

5. 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 25, 27 and 28.

Amendment

(3c) In Article 29, paragraph 5 is replaced by the following:

"5. 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 27, 27a and 28. ***The total period during which border control at internal borders is reintroduced or prolonged under this Article shall not be prolonged by virtue of, or combined with, measures taken under Articles 27, 27a or 28.***

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1522053548833&uri=CELEX:02016R0399-20170407>)

Justification

No possible misunderstanding should continue to persist in the regulation as to the fact that the procedure established under Article 29 applies in very specific circumstances, which are clearly distinct from the grounds considered in Articles 27, 27a and 28. Therefore, it should not be possible to invoke Articles 27, 27a and 28 to arbitrarily prolong border controls reintroduced under Article 29 once all possibilities provided for by the latter provisions are exhausted.

EXPLANATORY STATEMENT

The Schengen Area is one of the greatest achievements of European integration where not just people move freely, but also goods and services and which has brought significant benefits to the European citizens and the economy. European citizens can travel easily across 26 countries for pleasure, work, and study, to exchange cultural and social ties and share ideas. With Schengen once divided and war-torn European continent has been again united.

However free movement area has never been more fragile than it is today due to challenges the Union has faced in recent years, however none so big a family of 28 could not face if united. Despite the huge lack of mutual trust, regretfully, several Member States have reintroduced internal border controls in recent years putting at risk the future process of political integration of the Union as well as our economies.

The suspension of Schengen and re-establishment of permanent border controls would severely hamper the four fundamental freedoms and would have a dire negative economic impact. Estimates show that the costs of non-Schengen would – depending on region, sector and alternative trade channels – be between €5 billion and €18 billion per year. This is simply a price no EU Member State alone, not the EU can afford. Schengen simply must be preserved!

Against all hopes of the Commission for the temporary border controls reintroduced since September 2015 to be eventually abolished, they are still persisting today. Looking for a way out an impossible situation the Commission proposed on 27 September 2017 to amend the Schengen Borders Code as regards the internal border controls. According to the new rules Member States could reintroduce internal border controls where there is a serious threat to public policy or internal security in a Member State, for a period of possibly even up to five years.

As the current rules only allow Member States to reintroduce internal border controls for a maximum period of two years, it is evident that this proposal of the Commission was made to legalise existing practices of Member States which are not anymore in line with the current provisions of the Schengen Borders Code.

Although EU Co-legislators agreed that “*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 internal security*”, current controls have largely been justified based on the risk of secondary movement following the irregular cross-border movements since 2015, which is very concerning.

Undoubtedly there is a strong case to be made that irregular migration into the Union - and the knock-on effects on the Schengen area without internal border controls - is the result of a failed Common European Asylum System for dealing with those seeking international protection and a failure to reform that system.

The current practice of some Member States maintaining their internal border controls, in the view of the Rapporteur, may be therefore disproportionate, unjustified and inadvertent and may even amount to abuse.

The Rapporteur also regrets that no impact assessment has been produced to accompany the changes to this proposal. As part of better law-making legislative acts should be preceded by an impact assessment and, given the difficulties experienced in maintaining the current rules, such an assessment would have been very welcomed.

The Rapporteur therefore strongly rejects the attempts of the Commission to legalise currently illegal practice of Member States as regards internal border controls. The main objective of any changes to the Schengen Borders Code, concerning the rules on the reintroduction of internal border controls, should be to render the legal framework clearer. Those should ensure that the use of internal border controls responds to actual needs, are proportionate and limited in time, while guaranteeing Member States the flexibility they need to face genuine threats. The new rules should not provide incentives for the introduction of internal border controls without a clear and objective need, nor for periods longer than necessary.

The Rapporteur would like to clarify and streamline the applicable rules to ensure improved transparency and make possible misuses of those rules more obvious. In that respect, clear-cut rules should better enable the Commission to exercise its powers as “guardian of the Treaty”, in particular when considering possible infringement procedures against Member States not complying with their obligations.

Suggested amendments

The existing structure of chapter II of the Schengen Borders Code does not allow for a straightforward reading of the applicable rules. The Rapporteur proposes revisiting the current layout to ensure coherence, clarity and better implementation of the rules in practice.

Unlike at present, the structure of the articles should follow a certain rationale of complete and separate parts with logical components. The actual content of Article 25 should be brought more in line with the title “general framework” and should set out the main horizontal principles governing temporary reintroduction of border controls at internal boarder for foreseeable events.

The content of Article 26 setting out criteria for the assessment of the temporary reintroduction of internal border controls should be appropriately expanded in order to ensure that the Member States must demonstrate that the reintroduction of border control is in fact a last resort measure.

Articles governing the procedures for the temporary introduction of border controls for foreseeable events should follow, laying down specific rules and safeguards for the initial introduction of controls and their prolongations.

In that spirit, Article 27 should provide for the procedure of initial reintroduction of border controls of up to 2 months, with a possibility of a prolongation of up to an additional four months. Article 27a should set out the procedure and additional safeguards for further prolongation of border controls for a maximum period of up to six months. The Rapporteur believes that the total maximum period of border controls for foreseeable events under both articles should not exceed one year.

In the opinion of the Rapporteur, extending those periods for the reintroduction of internal border control - as proposed by the Commission - would not encourage Member States to

limit the envisaged measures to what is strictly necessary and proportionate to the threat.

Furthermore, the Rapporteur proposes the introduction of a sliding scale of obligations with additional procedural safeguards each time the border controls are prolonged. The requirements for the first-time prolongation beyond the initial two months - similarly to what the Commission proposed - should include an obligation for Member States to provide a detailed risk assessment, and an enhanced involvement of the Member States affected by the possible reintroduction of internal border controls.

For the subsequent prolongation of border controls beyond six months, no prolongation should be possible without a formal Council procedure “authorising” the extension. It is the view of the Rapporteur that prolonged controls at internal borders might have heavy repercussions on the right to free movement set out in the Treaties, therefore the EU has an overriding interest in being involved in any “limitations” of that right by individual Member States. In addition, unannounced checks, should be at the disposal of the Commission in order to verify the application of the rules in practice, in particular in cases of prolongation of controls for longer periods.

No possible misunderstanding should continue to persist in the regulation as to the fact that the procedure established under Article 29 applies in very specific circumstances, which are clearly distinct from the grounds considered in Articles 25, 27 and 28. Therefore, it should not be possible to invoke Articles 25, 27 and 28 to arbitrarily prolong border controls reintroduced under Article 29 once all possibilities provided for by the latter provisions are exhausted.

For the purpose of transparency and accountability the public should be more aware of what is happening. While respecting the requirements of confidentiality linked to public policy or internal security, more opportunities should be provided to have open discussions, at national or European level, on the implications of controls at internal borders within the Schengen area. These considerations are directly linked to the analysis of the role that the European Parliament could play in the process.

The Rapporteur also considers that improved information to and involvement of the European Parliament are highly desirable, including by ensuring that it receives all documents relevant for democratic scrutiny of the decisions impacting on the area without internal border controls. In that regard, the Parliament could also use hearings and/or a structured dialogue with the EU Institutions and the Member States concerned in order to achieve that goal.