



Plenary sitting

A8-0356/2018

29.10.2018

*****I**
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.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	32
PROCEDURE – COMMITTEE RESPONSIBLE.....	35
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE.....	36

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 (A8-0356/2018),
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. 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.

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. **As the free movement of persons is affected by the temporary** reintroduction of internal border control, **it** should be **reintroduced** 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. **Any such measure should be withdrawn**

as soon as the underlying grounds for it cease to exist.

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.

Amendment 4

Proposal for a regulation

Recital 2

Text proposed by the Commission

Amendment

(2) The identified serious threats can be addressed by different measures, depending on their nature and scale. The Member States have at their disposal *also* police powers, as referred to in Article 23 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)⁸, which, subject to some conditions, can be used in *the* border areas. The Commission Recommendation on proportionate police checks and police cooperation in the Schengen area⁹ provides guidelines to the Member States to that end.

(2) The identified serious threats can be addressed by different measures depending on their nature and scale. ***While it remains clear that police powers are different in their nature and purpose from border control***, the Member States have at their disposal *those* police powers, as referred to in Article 23 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)⁸ which, subject to some conditions, can be used in border areas. The Commission Recommendation on proportionate police checks and police cooperation in the Schengen area⁹ provides guidelines to the Member States to that end.

⁸ OJ L 77, 23.3.2016, p.1.

⁹ C(2017) 3349 final of 12.05.2017.

⁸ OJ L 77, 23.3.2016, p.1.

⁹ C(2017) 3349 final of 12.05.2017.

Amendment 5

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Before resorting to the reintroduction of border control at internal borders, Member States should give precedence to alternative measures. 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 and main transport routes, on the basis of a risk assessment, while ensuring that those police checks do not have border control as an objective. Modern technologies are instrumental in addressing threats to public policy or internal security. Member States should assess whether the situation could be adequately addressed by way of increased cross-border cooperation, both from an operational point of view and from that of information exchange between police and intelligence services.

Amendment 6

Proposal for a regulation Recital 4

Text proposed by the Commission

Amendment

(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

(4) However, experience has shown that **there is rarely a need to reintroduce border control at internal borders for periods of longer than two months. In exceptional circumstances only,** certain serious threats to public policy or internal security **might persist beyond the maximum periods of six months currently authorised for the reintroduction of border control at internal borders.** It is therefore

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 7

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

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.

Amendment

(4 a) Any 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.

Amendment 8

Proposal for a regulation

Recital 5

Text proposed by the Commission

(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

Amendment

(5) In order to guarantee that these internal border controls *are a measure of last resort and* 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 *measure of last resort, in particular by showing that any alternative measures have proven or are deemed insufficient*, and explain how

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.

border control would help in addressing the identified threat. The risk assessment should also demonstrate retrospectively the efficiency *and effectiveness* 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. ***The Member States should retain the possibility to classify, where necessary, all or parts of the information provided.***

Amendment 9

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) 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.

Amendment 10

Proposal for a regulation Recital 6

Text proposed by the Commission

Amendment

(6) The quality of the risk assessment submitted by the Member State will be very important for the assessment of the necessity and proportionality of the intended reintroduction or prolongation of border control. The European Border and Coast Guard Agency *and* Europol should be involved in that assessment.

(6) The quality of the risk assessment submitted by the Member State will be very important for the assessment of the necessity and proportionality of the intended reintroduction or prolongation of border control. The European Border and Coast Guard Agency, Europol, ***the European Asylum Support Office, the European Agency for the Operational Management of Large-Scale IT Systems***

in the Area of Freedom, Security and Justice and the European Union Agency for Fundamental Rights should be involved in that assessment.

Amendment 11

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 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.**

Amendment 12

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

Amendment

(7) 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 *Union* Agencies and focus on the practical implementation of different aspects of cooperation between the Member States.

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 *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*.

border controls beyond *six months on an exceptional basis*. 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*.

Amendment 13

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The necessity and proportionality of reintroducing internal border control should be balanced against the threat to public policy or internal security triggering the need for such reintroduction, as should alternative measures which could be taken at national or Union level, or both, and the impact of such control on the free movement of persons within the area without internal border control.

Amendment 14

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

Amendment 15

Proposal for a regulation

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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 **requiring a Council recommendation**.

Amendment 16

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

Amendment 17

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 territory to address the same specific threat

Amendment

(13) The Council, taking account of the Commission's opinion, may recommend such extraordinary further prolongation and where appropriate **lay down** 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.*

to public policy or internal security. The Council recommendation should be a prerequisite for any further prolongation beyond the period of *six months. The Council recommendation should be immediately forwarded to the European Parliament.*

Amendment 18

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 by virtue of, or combined with, measures taken under another procedure for the reintroduction or prolongation of internal border control as provided for in Regulation (EU) 2016/399.

Amendment 19

Proposal for a regulation Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) Where it considers that a Member State has failed to fulfil its obligations under the Treaties, the Commission should, as the guardian of the Treaties that oversees the application of Union law, take appropriate measures in accordance with Article 258 of the Treaty on the Functioning of the European Union, including by bringing the matter before the Court of Justice of the European Union.

Amendment 20

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 *as a measure of last resort*. 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 21

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 25 – paragraph 2

Text proposed by the Commission

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.*

Amendment

deleted

Amendment 22

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

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 25 – paragraph 4

Text proposed by the Commission

Amendment

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.

Amendment 24

Proposal for a regulation

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

Regulation (EU) 2016/399

Article 26

Present text

Article 26

Criteria for the temporary reintroduction of border control at internal borders

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:

(a) the likely impact of any threats to its public policy or internal security, including

Amendment

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

"Article 26

Criteria for the temporary reintroduction of border control at internal borders

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 assess:

(a) **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) **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;**

(c) the proportionality of the **temporary reintroduction of border control at internal borders** in relation to **the** threat to **public policy or internal security**, 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;

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

following terrorist incidents or threats and including those posed by organised crime;
and

(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 internal 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 internal border control.";

Amendment 25

Proposal for a regulation

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

Regulation (EU) 2016/399

Article 27 – title

Present text

Amendment

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

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

"Procedure for the temporary reintroduction of border control at internal

Article 25

borders *in the event of a foreseeable serious threat to public policy or internal security*";

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 26

Proposal for a regulation

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

Regulation (EU) 2016/399

Article 27 – paragraph -1 (new)

Text proposed by the Commission

Amendment

(-ia) in Article 27, a following new paragraph is inserted before paragraph 1:

"-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, 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."

Amendment 27

Proposal for a regulation

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

Regulation (EU) 2016/399

Article 27 – paragraph 1 – introductory part

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 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:**

(-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 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:"

Amendment 28

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.

Amendment 29

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

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

"(ab) any measures other than the proposed reintroduction, taken or envisaged by the Member State, to address the threat to public policy or internal security as well as the evidence-based reason as to why alternative measures, such as enhanced cross-border police cooperation and police checks, were deemed insufficient;"

Amendment 30

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

(e) where appropriate, the measures to be taken by the other Member States as agreed prior to the temporary reintroduction of border control at ***the relevant*** internal

concerned.

borders."

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iii

Regulation (EU) 2016/399

Article 27 – paragraph 1 – last sentence

Text proposed by the Commission

Where necessary, the Commission may request additional information from the Member State(s) concerned, including on the cooperation with the Member States affected by the planned prolongation of border control at internal borders as well as *additional* information needed to assess whether this is a last resort measure.

Amendment

If necessary, the Commission may request additional information from the Member State(s) concerned, including on the cooperation with the Member States affected by the planned *reintroduction or* prolongation of border control at internal borders as well as *further* information needed to assess whether this is a last resort measure.

Amendment 32

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

(iii a) 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."

Amendment 33

Proposal for a regulation

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

Regulation (EU) 2016/399

Article 27 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(iii b) the following paragraph 1b is inserted:

"1b. For the purposes of paragraph 1a, 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 is affected;*
- (ii) outline the alternative actions or measures previously introduced to address the identified threat;*
- (iii) explain why the alternative actions or measures referred to in point (ii) did not sufficiently remedy the identified 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 and Europol and may request, where appropriate, their views thereon.

The Commission is empowered to adopt delegated acts in accordance with Article 37 supplementing this Regulation by adopting the methodology for the risk assessment.';

Amendment 34

Proposal for a regulation

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

Regulation (EU) 2016/399

Article 27 – paragraph 2

Present text

2. The information referred to in *paragraph 1* shall be submitted to the European Parliament and to the Council at the same time as it is notified to the other Member States and to the Commission pursuant to *that paragraph*.

Amendment

(iii c) paragraph 2 is replaced by the following:

2. The information referred to in *paragraphs 1 and 1b* shall be submitted to the European Parliament and to the Council at the same time as it is notified to the other Member States and to the Commission pursuant to *those paragraphs*.

Amendment 35

Proposal for a regulation

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

Regulation (EU) 2016/399

Article 27 – paragraph 3

Present text

3. Member States *making* a notification

Amendment

(iii d) paragraph 3 is replaced by the following:

"3. Member States *submitting* a

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.

notification may **classify**, where necessary and in accordance with national law, **all or parts of the information referred to in paragraphs 1 and 1b**. Such classification **shall not preclude access to information, through appropriate and secure police cooperation channels, by the other Member States affected by the temporary reintroduction of border control at internal borders and** 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 36

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.

Amendment 37

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

Amendment

Where, **based on the information**

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.

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*.

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iv

Regulation (EU) 2016/399

Article 27 – paragraph 4 – subparagraph 3

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

Amendment 39

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*

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

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 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, including any possible alternative measures, and the threat to public policy or internal security;**

(ii) *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.*

Amendment 40

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

Amendment

Specific procedure where the serious threat to public policy or internal security

exceeds *one year*.

exceeds *six months*.

Amendment 41

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.

Amendment 42

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 *three* 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 (1b). Article 27(2) and (3) shall apply.

Amendment 43

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. The Member States affected may make observations to the Commission before it issues that opinion.***

Amendment 44

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 (1b) and it shall lay down the conditions for cooperation between the Member States concerned.***

Amendment 45

Proposal for a regulation

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

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

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 Article, shall not exceed two months.";

Justification

Consequential amendment due to proposed changes in other articles.

Amendment 46

Proposal for a regulation

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

Regulation (EU) 2016/399

Article 28a (new)

Text proposed by the Commission

Amendment

(3 b) a new Article 28a is inserted:

“Article 28a

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 included in the calculation of the periods referred to in Articles 27, 27a and 28.”;

Amendment 47

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

(3 c) 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. However, 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 Article 27, 27a or 28."

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. Due to 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.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Temporary reintroduction of border control at internal borders		
References	COM(2017)0571 – C8-0326/2017 – 2017/0245(COD)		
Date submitted to Parliament	27.9.2017		
Committee responsible Date announced in plenary	LIBE 26.10.2017		
Rapporteurs Date appointed	Tanja Fajon 20.11.2017		
Discussed in committee	25.4.2018	21.6.2018	22.10.2018
Date adopted	22.10.2018		
Result of final vote	+: –: 0:	30 13 12	
Members present for the final vote	Asim Ademov, Heinz K. Becker, Monika Beňová, Michał Boni, Caterina Chinnici, Cornelia Ernst, Tanja Fajon, Laura Ferrara, Raymond Finch, Romeo Franz, Nathalie Griesbeck, Jussi Halla-aho, Monika Hohlmeier, Brice Hortefeux, Sophia in 't Veld, Dietmar Köster, Barbara Kudrycka, Juan Fernando López Aguilar, Barbara Matera, Roberta Metsola, Claude Moraes, József Nagy, Judith Sargentini, Giancarlo Scottà, Birgit Sippel, Csaba Sógor, Helga Stevens, Bodil Valero, Marie-Christine Vergiat, Harald Vilimsky, Cecilia Wikström, Kristina Winberg, Tomáš Zdechovský		
Substitutes present for the final vote	Ignazio Corrao, Miriam Dalli, Maria Grapini, Marek Jurek, Gilles Lebreton, Jeroen Lenaers, Innocenzo Leontini, Angelika Mlinar, Nadine Morano, Maite Pagazaurtundúa Ruiz, Emilian Pavel, Christine Revault d'Allonnes Bonnefoy, Barbara Spinelli, Josep-Maria Terricabras		
Substitutes under Rule 200(2) present for the final vote	Françoise Grossetête, Arndt Kohn, Marlene Mizzi, Tonino Picula, Julia Pitera, Dennis Radtke, Martin Schirdewan, Julie Ward		
Date tabled	29.10.2018		

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

30	+
ALDE	Nathalie Griesbeck, Sophia in 't Veld, Angelika Mlinar, Maite Pagazaurtundúa Ruiz, Cecilia Wikström
EFDD	Ignazio Corrao, Laura Ferrara
GUE/NGL	Cornelia Ernst, Martin Schirdewan, Barbara Spinelli, Marie-Christine Vergiat
S&D	Monika Beňová, Caterina Chinnici, Miriam Dalli, Tanja Fajon, Maria Grapini, Arndt Kohn, Dietmar Köster, Juan Fernando López Aguilar, Marlene Mizzi, Claude Moraes, Emilian Pavel, Tonino Picula, Christine Revault d'Allonnes Bonnefoy, Birgit Sippel, Julie Ward
VERTS/ALE	Romeo Franz, Judith Sargentini, Josep-Maria Terricabras, Bodil Valero

13	-
ECR	Jussi Halla-aho, Marek Jurek, Helga Stevens, Kristina Winberg
EFDD	Raymond Finch
ENF	Gilles Lebreton, Giancarlo Scottà, Harald Vilimsky
PPE	Françoise Grossetête, Monika Hohlmeier, Brice Hortefeux, Nadine Morano, Tomáš Zdechovský

12	0
PPE	Asim Ademov, Heinz K. Becker, Michał Boni, Barbara Kudrycka, Jeroen Lenaers, Innocenzo Leontini, Barbara Matera, Roberta Metsola, József Nagy, Julia Pitera, Dennis Radtke, Csaba Sógor

Key to symbols:

+ : in favour

- : against

0 : abstention