



European
Commission

THE UPDATED SCHENGEN RULES

September 2017



The Commission is proposing targeted **updates to the Schengen Borders Code** concerning the rules for temporary reintroduction of internal border controls under Article 25. The updates will adjust the rules to the current need to respond to evolving and persistent serious threats to public policy or internal security. At the same time, **stronger procedural safeguards will be introduced** to ensure that internal border controls remain an exception – a measure of last resort – and are used only if necessary and proportionate to address the threat and with a limited impact on free movement.

ARTICLES 25 - 35 : Temporary Reintroductions of Internal Border Controls by Member States

The Schengen Borders Code (Regulation 2016/399) provides Member States with the possibility to temporarily reintroduce controls at internal borders under strict conditions. The Commission is proposing to make targeted updates for the rules in cases of foreseeable events and identified threats, by prolonging a maximum time limit from **6 months to 1 year** for the reintroduction of border controls. In parallel, the Commission is adding **stronger procedural guarantees** to ensure that these controls are introduced only as a last resort measure and that concerned Member States are fully involved. The Commission is also proposing to introduce **a new special procedure** for cases where the same serious threat to public policy or internal security persists beyond one year.

- ✓ Stronger procedural guarantees
- ✓ New special procedure for persistent serious threats
- ✓ 1 year initial maximum time limit
- ✓ 2 years in case of persistent serious threats

THE UPDATED RULES EXPLAINED

ARTICLE 25 – Temporary Reintroduction of Border Controls for Foreseeable Circumstances

Article 25 can be used for foreseeable circumstances where there is **a serious threat to public policy or internal security**. Such a threat can be caused for example by cross-border terrorism or irregular secondary movements that justify reintroduction of border controls.

Time limits - the current 6 months are extended up to 1 year:

- Controls for foreseeable circumstances may last for an initial period of **30 days** or for the foreseeable duration of the serious threat if longer.
- The controls can be renewed for additional periods of up to 30 days, up to a maximum of 6 months with the possibility to prolong controls up to a maximum period of **1 year in total**.
- In cases where the controls last for more than 6 months, Member States will have the obligation to demonstrate retrospectively in the **risk assessment** not only the efficiency of the reintroduced border control in addressing the identified threat, but also to provide a detailed explanation of how the neighbouring Member States affected by such prolongation were consulted and involved in determining the least burdensome operational arrangements.
- The Commission may in each case issue an opinion on the reintroduction of internal border controls. In cases where the controls last for more than 6 months or where the Commission has concerns about the necessity or proportionality of the controls, **the Commission has an obligation to issue an opinion**.

NEW ADDITIONAL PROCEDURAL SAFEGUARDS

The updated rules for the reintroduction of temporary border controls at the internal borders are accompanied by **stronger safeguards and new reporting requirements**.

New requirements to notify the planned reintroduction in advance:

The reintroduction of temporary border controls must be notified to the Commission and other Member States. The notification should include information on measures to be taken by the neighbouring Member States, to be agreed upon prior to the temporary reintroduction of border controls at the concerned internal borders.

A new obligation to provide a detailed risk assessment

- The risk assessment must:

- demonstrate that the reintroduction of border controls is **a measure of last resort**;
- assess the expected **length** of the threat to internal security or public order;
- identify which **borders** are **affected** and why;
- explain how internal border control could **address the threat**.

The European **Border and Coast Guard Agency** and **Europol** will be involved in the evaluation of the risk assessment.

A NEW ARTICLE 27A - Specific procedure where the serious threat to public policy or internal security exceeds one year

Exceptionally, where the Member State is confronted with the same serious threat to the public policy or internal security beyond 1 year and **where commensurate national measures are taken within the territory to address this threat** (for example the introduction of a state of emergency), the internal temporary border controls may be further prolonged for a **maximum length of 2 years**. This additional prolongation will be subject to a **new special procedure** involving a Recommendation of the Council, based on an opinion by the Commission.

Procedure step by step:

- **Notification by Member State:** The Member State in question notifies the Commission and the other Member States at least 6 weeks in advance.
- **Opinion issued by the Commission.**
- **Recommendation by the Council:** taking due account of the opinion of the Commission, the Council may recommend a further prolongation of internal border controls for a period of up to 6 months. The Council recommendation is a prerequisite for further prolongations.
- **Further prolongation up to 2 years:** The 6 month period may be prolonged no more than 3 times for further periods of up to 6 months with a maximum cap of 2 years. This can take place only on the basis of a Council recommendation. Where appropriate, the Council can determine conditions for cooperation between the Member States concerned.

ARTICLES 26 AND ARTICLES 28 TO 35 REMAIN UNCHANGED

ARTICLE 28 – Temporary controls when immediate action is required

The rules for temporary reintroductions of internal border controls for cases requiring immediate action under Article 28 remain unchanged.

- The reintroduction is for an initial period of 10 days.
- This can be renewed for additional periods of 20 days, up to a maximum of 2 months in total.

ARTICLE 29 - Temporary controls in case of serious deficiencies in the management of the external borders

Article 29 of the Schengen Borders Code will continue to offer the only possibility to prolong border controls at internal borders in case of serious deficiencies in the management of the external borders by a Member State as demonstrated by a Schengen Evaluation.