

Border control: common rules on temporary reintroduction of border control at internal borders in exceptional circumstances

2011/0242(COD) - 16/09/2011 - Legislative proposal

PURPOSE : to establish common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances and amending Regulation (EC) No 562/2006 (Schengen Borders Code).

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

BACKGROUND : the European Council of 23-24 June requested a mechanism to respond to truly critical situations regarding Member States' borders. This requires the amendment of the Schengen Borders Code established by Regulation (EC) No 562/2006 which lays down, on the one hand, the rules on border control at the external borders and, on the other hand, provides for the abolition of border control at internal borders and the possibility for its reintroduction in limited cases. Since the free movement of persons within the area without internal borders is a key Union achievement, the benefits of which are enjoyed by all the persons living in this area, it should require a decision to be taken at the Union level if this free movement is liable to be affected by a unilateral and sometimes opaque national decision.

IMPACT ASSESSMENT : no impact assessment was undertaken.

LEGAL BASIS : Article 77 (1) and (2) of the Treaty on the Functioning of the European Union.

CONTENT : this proposal amends Regulation (EC) No 562/2006, and sets out the general framework for the temporary reintroduction of border control at internal borders as well as the criteria for the temporary reintroduction of border control at internal borders.

The main elements of the proposal are as follows:

General framework for reintroduction of border controls: where there is a serious threat to public policy or internal security at the Union or national level, border control at internal borders may exceptionally be reintroduced at all or specific parts of the internal borders of one or several Member States for a limited period of no more than 30 days or for the foreseeable duration of the serious threat if its duration exceeds the period of 30 days. This period may be extended under certain conditions, but shall not exceed six months. However, in cases of persistent serious deficiencies related to external border control or return procedures, the Commission can decide to extend this period.

Criteria for the temporary reintroduction of border control at internal borders: when making a decision on such a reintroduction, the Commission or the Member State concerned shall assess the extent to which such a measure is likely adequately to remedy the threat to public policy or internal security at the Union or national level, and shall assess the proportionality of the measure to that threat. In making such an assessment, the following considerations shall in particular be taken into account:

- the likely impact of any threats to public policy or internal security at the Union or national level, including following terrorist incidents or threats as well as threats posed by organised crime;

- the availability of technical or financial support measures which could be or have been resorted to at the national and/or European level, including assistance by Union bodies such as Frontex, the EASO or Europol, and the extent to which such measures are likely to adequately remedy the threats to public policy or internal security;
- the impact of any serious deficiencies related to external border control or return procedures identified by Schengen evaluations in accordance with the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis;
- the likely impact of such a measure on free movement within the area without internal border controls.

Before taking a decision, the Commission may request further information from Member States, Frontex, Europol, Eurojust, the Fundamental Rights Agency or any other Union body, and may also carry out inspection visits.

Procedure for the temporary reintroduction of border control at internal borders: the Member State concerned shall submit a request to the Commission **at the latest six weeks before the planned reintroduction**, or within a shorter period where the circumstances giving rise to the need to reintroduce border control at internal borders do not become known until less than six weeks before the planned reintroduction, and shall supply the following information to the Commission, Member States and the European Parliament:

- the reasons for the proposed reintroduction, including all relevant data detailing the events that constitute a serious threat to public policy or internal security at the Union or national level;
- the scope of the proposed reintroduction, specifying at which part of the internal borders border control is to be reintroduced;
- the names of the authorised crossing-points;
- the date and duration of the proposed reintroduction;
- where appropriate, the measures to be taken by the other Member States.

Such a request could also be submitted jointly by two or more Member States.

The Commission shall decide on the reintroduction of border control at internal borders through implementing acts adopted in accordance with the **examination procedure** and will also decide on their prolongation.

Specific procedure for cases requiring immediate action: where a serious threat to public policy or internal security in a Member State demands immediate action, the Member State concerned may exceptionally and immediately reintroduce border control at internal borders, **for a limited period of no more than five days**, and notify the other Member States and the Commission accordingly, supplying the necessary information and the reasons that justify the use of this procedure. If the serious threat to public policy or internal national security persists beyond 5 days, the Commission shall decide on the prolongation of the border control at internal borders.

Specific procedure for cases of persistent serious deficiencies: where the Commission finds that there are persistent serious deficiencies related to external border control or return procedures and insofar as these deficiencies constitute a serious threat to public policy or internal security at the Union or national level, border control at internal borders may be reintroduced for a period of no more than six months, which may be prolonged by a further period of no more than six months if the serious deficiencies are not remedied, up to three such prolongations. The Commission shall decide on the re-introduction of border control at internal borders, as well as any prolongation,

The Commission and the Member State(s) concerned **shall inform the European Parliament and the Council** as soon as possible of any reasons which might trigger the application of these provisions.

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

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

BUDGETARY IMPLICATIONS : the proposal has no implications for the EU budget.