

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

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This Communication discusses the mechanism to be introduced in order to respond to exceptional circumstances putting the overall functioning of Schengen cooperation at risk, without jeopardising the principle of free movement of persons, as requested by the European Council of 23-24 June 2011. The Communication and the [legislative proposal](#) from the Commission respond to the call from the Justice and Home Affairs Council in June for enhanced political guidance on Schengen cooperation and to the European Parliament's [resolution](#) in July 2011 which required that any new mechanism should focus on enhancing the freedom of movement and reinforcing EU governance of the Schengen area.

It begins by discussing the importance of free movement within the Schengen area and the fact that the EU has already put in place tools to support Member States to help them meet their obligations and to react to critical circumstances which might put Schengen at risk. It notes, for example, that Member States can seek financial and practical support from the Commission and Frontex can organise joint operations or deploy Rapid Border Intervention Teams. An Annex to the Communication sets out the EU measures intended to assist Member States in managing their external borders. Member States can also address other Member States, Europol or the European Asylum Support Office (EASO) for further assistance

Recognising, however, that these tools cannot alone ensure that the Schengen rules are applied in a consistent manner by each Member State, and that the current mechanism, relying on an inter-governmental system of peer review, is not strong enough to effectively remedy all weaknesses, the Commission proposed a [Union-led approach in 2010](#). However, where measures taken at the Union or national level do not improve the situation, it might be necessary to **reintroduce border control at internal borders** with the failing Member State, where the situation is such as to constitute a serious threat to public policy or to internal security at the Union or national level. Such an action would only be taken as a measure of last resort, and only to the extent and for the duration necessary to mitigate in a proportionate manner the adverse consequences of the exceptional circumstances. The inclusion of such a possibility in the Schengen governance system would also serve as a preventive measure, with deterrent effect.

For that reason, the Commission is amending its 2010 proposal to address this situation.

Proposed reinforced EU-based approach for exceptional re-introduction of internal border controls: a serious threat to public policy or to internal security will remain the only grounds for the reintroduction of internal border controls. The strict criteria for the exceptional derogation from the area without internal borders are not being loosened and will be applied to every scenario in which such a measure is contemplated. The document summarises the main types of situation that may arise.

Foreseeable events with a largely localised short-term impact: where the event giving rise to a need to reintroduce internal border controls is foreseeable, the Member State would give notice at least six weeks in advance with all relevant information relating to the reasons for doing so. Experience shows that this type of scenario corresponds to the situations most likely to give rise to decisions on the reintroduction of internal border controls, for example in relation to major sporting events, political demonstrations, high-profile political meetings and so forth.

Urgent unforeseen, short-term events: some events giving rise to a need to take drastic short-term measures to safeguard security or other critical public interests, including the possible reintroduction of internal border controls for a limited period, are by their nature unforeseeable. This could be the case, for example, in the event of terrorist attacks or other major criminal incidents, where there is a need to take all possible measures to ensure the prompt apprehension of the perpetrators.

A persistent deficiency in managing a section of the Union's external border: in certain circumstances, it may be necessary to mitigate the adverse impact of the failure by a Member State to control its section of the external borders by resorting to the temporary reintroduction of some internal border controls. The Member State concerned would be required to draw up an action plan aimed at fulfilling these recommendations, and its implementation would be monitored by the Commission.

Events with a potentially wide impact in the short or longer-term: situations might arise where a large number of third country nationals cross the external border of one or more Member States. This might result in unexpected and significant secondary movements of third country nationals found to be staying irregularly in the territory of other Member States. Insofar as the circumstances would be such as to constitute a serious threat to public policy or to internal security at the Union or national level, the temporary reintroduction of some internal border controls might be considered as a last resort.

The main rule under the reinforced EU-based approach would be that any decision on the reintroduction of internal border controls would be taken by the Commission as an implementing act involving the Member States accordingly. The European Parliament would be duly informed of such measures. The decision would determine the scope and duration of the reintroduction of controls, and would be for renewable periods of up to 30 days, with a maximum duration of six months. Exceptionally, this six month limit would not apply to situations where the reintroduction of internal border controls results from an adverse finding under the Schengen evaluation mechanism on account of a Member State's persistent failure to adequately protect its section of the external border.

In urgent situations, however, Member States could still take unilateral action to reintroduce internal border controls, but only for a limited period (five days), any extension of which would need to be decided under the new EU procedure for implementing acts.

When deciding on the temporary reintroduction of border control an assessment must be made of the necessity of resorting to such a measure in order to mitigate the threat to public policy or internal security at the Union or national level giving rise to the request or initiative for the reintroduction of border control at internal borders, as well as an assessment of the proportionality of the measure to that threat. In making such an assessment, the following considerations must 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 threats posed by organised crime or terrorist activities;
- 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 or Europol, and the extent to which such measures are likely to adequately remedy the threats to public policy or internal security at the Union or national level;
- the current and likely future 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.
- The reintroduction of internal border controls is clearly a **measure of last resort** which could only be contemplated where all other measures have proved incapable of effectively mitigating the serious threat identified.

It should be emphasised that, where internal border controls are introduced, **all procedural safeguards** enjoyed by a Union citizen and their family members remain in place. Third country nationals legally staying within the Schengen area will also be able to continue to travel on the basis of their travel document and, where necessary, their valid visa or residence permits.

EU oversight: a reinforced Schengen evaluation mechanism, combined with an EU-based mechanism for responding to exceptional threats, are legislative tools which will improve the effectiveness of the Schengen area as well as the transparency of its operation. Besides these legislative instruments, regular reporting to the European Parliament on the outcome of the different monitoring visits in the context of the operation of the Schengen Evaluation Mechanism, and immediate information provided to the European Parliament concerning any step taken that might lead to the possible re-introduction of border control, will improve accountability and democratic control. In addition, the Commission will present a biannual overview to the EU institutions on the functioning of Schengen.