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

2011/0242(COD) - 22/10/2013 - Final act

PURPOSE : to establish common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances.

LEGISLATIVE ACT : Regulation (EU) No 1051/2013 of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances

BACKGROUND : 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, of parts thereof, or of one or more Member States, by allowing for the temporary reintroduction of internal border control **in exceptional circumstances**, but without jeopardising the principle of the free movement of persons.

However, the scope and duration of any temporary reintroduction of such measures should be restricted to the bare minimum needed to respond to a serious threat to public policy or internal security.

CONTENT : this Regulation amends Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

The main points of the new Regulation may be summarised as follows:

Specific measures in case of serious deficiencies relating to external border control: a new Chapter IVa has been added to the Regulation and provides that:

- where serious deficiencies in the carrying out of external border control are identified in an evaluation report established in accordance with **Regulation 1053/2013 on the establishment of an evaluation mechanism to verify the application of the Schengen acquis,** and with a view to ensuring compliance with the recommendations made by the Council following the evaluation of, the Commission may recommend that the evaluated Member State take certain specific measures, such as initiation of the deployment of European Border Guard teams, submitting strategic plans, or, as a last resort and taking into account the seriousness of the situation, closing a specific border crossing-point;

- where an evaluation report has concluded that the evaluated Member State is seriously neglecting its obligations and must therefore report on the implementation of the relevant action plan within three months, and where, following that three-month period, the Commission finds that the situation persists, it may trigger the application of the temporary border controls procedure provided for in the Regulation.

General framework for the temporary reintroduction of border control at internal borders: where in the area without border control at internal borders there is a serious threat to public policy or internal security in a Member State, that **Member State may exceptionally reintroduce border control at internal borders at all or specific parts of its internal borders 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. 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.

The temporary reintroduction of border controls should be seen as **a last resort** and presupposes the existence of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. The initial period may be extended if the threat persists.

Duration of temporary reintroduction of border controls: the total period, during which border control is reintroduced at internal borders, **shall not exceed six months.** In cases of exceptional circumstances where the overall functioning of the area without internal border controls is put at risk, this total period may be extended to the maximum length of **two years**.

Provisions applicable to the reintroduction of internal border controls: the Regulation contains provisions setting out:

- criteria for the temporary reintroduction of border control at internal borders based on an assessment of the threat and its impact on internal security as well as the proportionality of the measure in relation to that threat;

- the procedure applicable for the reintroduction of controls (particularly the time-limits applicable before the planned reintroduction, the information to be transmitted to Member States, the Commission and the European Parliament);

- the procedure for mutual cooperation between Member States in order to ensure the **proportionality of measures** in relation to the events which gave rise to the reintroduction of border controls;

- a specific procedure for cases where a serious threat to public policy or internal security in a Member State requires immediate action: the Member State concerned may, on an exceptional basis, immediately reintroduce border control at internal borders, for a limited period of up to ten days which may be extended. The total period during which border control is reintroduced at internal borders shall not exceed two months;

- a specific procedure where exceptional circumstances put **the overall functioning of the area without internal border control at risk:** in such cases, where there is risk as a result of persistent serious deficiencies relating to external border control (evaluated by the Schengen mechanism), and insofar as those circumstances constitute a serious threat to public policy or internal security within the Schengen area, border control at internal borders may be reintroduced **for a period of up to six months**, which may be prolonged no more than three times;

- **exceptional measures as a last resort**: in such a case the Council may recommend the temporary reintroduction of border control at one or more internal borders or at parts thereof. This reintroduction must be justified and may be extended. The European Parliament must be informed of such a reintroduction of internal border controls.

Guidelines: the Commission may draw up guidelines on the reintroduction of border control at internal borders, both in cases which require such a measure as a temporary reaction and in cases where immediate action is needed. These guidelines should provide clear indicators to facilitate the assessment of what circumstances may constitute serious threats to public policy and to internal security. 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 to internal security.

Evaluation mechanism: the implementation of the Regulation by each Member State shall be evaluated through an evaluation mechanism, the rules on which are specified in Council Regulation (EU) No 1053 /2013. In accordance with this evaluation mechanism, the Member States and the Commission jointly conduct regular, objective and impartial evaluations in order to verify the correct application of the Regulation and the Commission coordinates the evaluations in close cooperation with the Member States. Under this mechanism, every Member State is evaluated at least every five years by a small team consisting of Commission representatives and of experts designated by the Member States. Evaluations may consist of announced or unannounced on-site visits at external or internal borders.

The European Parliament and the Council shall be informed at all stages of the evaluation and be transmitted all the relevant documents, in accordance with the rules on classified documents. **The European Parliament shall also be immediately and fully informed of any proposal to amend or to replace the rules laid down in Council Regulation on the evaluation mechanism.**

Informing the European Parliament and the Council: the Commission and Member State(s) concerned shall inform the European Parliament and the Council as soon as possible of any reasons that might trigger the application of provisions on the temporary reintroduction of border control at internal borders, and the criteria applicable.

Report: the Commission shall present to the European Parliament and to the Council, at least annually, a report on the functioning of the area without internal border controls, which shall include a list of all decisions to reintroduce border control at internal borders taken during the relevant year.

Declaration: in a joint statement, the European Parliament, the Council and the Commission indicate that the adoption of this Regulation amending the Schengen Borders Code and of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis **address adequately** the call of the European Council in its Conclusions of 24 June 2011 for an enhancement of the cooperation and the mutual trust between the Member States in the Schengen area.

The three institutions state that this new evaluation system is an EU-based mechanism and that it will cover all aspects of the Schengen acquis and that **any future proposal from the Commission for amending this evaluation system would be submitted to the consultation of the European Parliament in order to take into consideration its opinion**, to the fullest extent possible, before the adoption of a final text.

ENTRY INTO FORCE : 26.11.2013.