Basic information

2011/0242(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Border control: common rules on temporary reintroduction of border control at internal borders in exceptional circumstances Amending Regulation (EC) No 562/2006, Schengen Borders Code 2004/0127(COD) **Subject** 7.10.02 Schengen area, Schengen acquis 7.10.04 External borders crossing and controls, visas 7.30.05.01 Europol, CEPOL 7.30.09 Public security	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	WEBER Renate (ALDE)	11/10/2011
	Shadow rapporteur COELHO Carlos (PPE) ENCIU Ioan (S&D) ŽDANOKA Tatjana (Verts/ALE) ERNST Cornelia (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	The committee decided not to give an opinion.	
DEVE Development	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3244	2013-06-06
Justice and Home Affairs (JHA)	3172	2012-06-08
Justice and Home Affairs (JHA)	3111	2011-09-22
Justice and Home Affairs (JHA)	3151	2012-03-08
Justice and Home Affairs (JHA)	3260	2013-10-07

European Commission	

Commission DG	Commissioner
Migration and Home Affairs	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
16/09/2011	Legislative proposal published	COM(2011)0560	Summary
22/09/2011	Debate in Council		Summary
27/09/2011	Committee referral announced in Parliament, 1st reading		
08/03/2012	Resolution/conclusions adopted by Council		Summary
08/06/2012	Debate in Council		Summary
11/06/2012	Vote in committee, 1st reading		
14/06/2012	Committee report tabled for plenary, 1st reading	A7-0200/2012	Summary
11/06/2013	Debate in Parliament		
12/06/2013	Decision by Parliament, 1st reading	T7-0259/2013	Summary
12/06/2013	Results of vote in Parliament		
07/10/2013	Act adopted by Council after Parliament's 1st reading		
22/10/2013	Final act signed		
22/10/2013	End of procedure in Parliament		
06/11/2013	Final act published in Official Journal		

Technical information

Procedure reference	2011/0242(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 562/2006, Schengen Borders Code 2004/0127(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 077-p1 Treaty on the Functioning of the European Union TFEU 077-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/06877

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE480.591	17/02/2012	
Amendments tabled in committee		PE485.851	12/03/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0200/2012	14/06/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0259/2013	12/06/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00030/2013/LEX	23/10/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0560	16/09/2011	Summary
Document attached to the procedure	COM(2011)0561	16/09/2011	Summary
Commission response to text adopted in plenary	SP(2013)520	16/07/2013	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	RO_CHAMBER	COM(2011)0560	11/11/2011	
Contribution	LT_PARLIAMENT	COM(2011)0560	14/11/2011	
Contribution	RO_CHAMBER	COM(2011)0561	24/11/2011	
Contribution	IT_SENATE	COM(2011)0560	20/12/2011	
Contribution	CZ_SENATE	COM(2011)0560	27/12/2011	
Contribution	IT_CHAMBER	COM(2011)0560	09/01/2012	
Contribution	IT_CHAMBER	COM(2011)0561	09/01/2012	
Contribution	CZ_SENATE	COM(2011)0561	12/01/2012	
Contribution	PL_SENATE	COM(2011)0560	13/01/2012	

Additional information

Source	Document	Date

National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act
Corrigendum to final act 32013R1051R(01) OJ L 191 17.07.2015, p. 0008 Regulation 2013/1051 OJ L 295 06.11.2013, p. 0001 Summary

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

2011/0242(COD) - 12/06/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 506 votes to 121 with 55 abstentions, a legislative resolution on the proposal for a regulation 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.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council. They amend the Commission proposal as follows:

Specific measures in case of serious deficiencies: Parliament inserted a new Chapter V into the proposal. As a result, the text provides that:

- where serious deficiencies in the carrying out of external border control are identified in an evaluation report established in accordance with the Regulation 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 in accordance with the provisions of the Frontex Regulation;
- the Commission shall inform the committee established by the Regulation on a regular basis of progress in the implementation of the measures and of the impact on the deficiencies identified. It shall also inform the European Parliament and the Council;
- where, in an evaluation report it has been concluded that the Member State evaluated was seriously neglecting its obligations and therefore had to report on the implementation of the relevant action plan within three months, and if, following that three months 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 interest of society.

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**.

Procedure for the temporary reintroduction of border control at internal borders: where a Member State is planning to reintroduce border control at internal borders, it shall notify the other Member States and the Commission accordingly 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 do not become known until less than four weeks before the planned reintroduction, and shall **supply certain prescribed information**, parts of which may be **classified** by the Member States concerned. However, the text specifies that **classification shall not preclude information being made available by the Commission to the European Parliament**. Information and documents so transmitted to the European Parliament shall be treated in compliance with rules concerning the forwarding and handling of classified information, which are applicable between the European Parliament and the Commission.

The Commission and other Member States will scrutinize the proportionality of the planned measures.

Specific procedure for cases requiring immediate action: where a serious threat to public policy or internal security in a Member State demands immediate action to be taken, the Member State concerned may exceptionally and immediately reintroduce border control at internal borders, for a limited period of no more than **ten days**, which may be prolonged for renewable periods of up to **20 days** under duly justified circumstances. The total period during which border control is reintroduced at internal borders **shall not exceed two months**.

Specific procedure in case of exceptional circumstances putting the overall functioning of the area without internal border controls at risk: in exceptional circumstances where the overall functioning of the area without internal border controls is put at risk as a result of persistent serious deficiencies related to external border control as referred to in **Chapter V** (see above), border control at internal borders may be for a period of no more than six months. This period can be prolonged by a further period of no more than **six months** if such circumstances still exist. **No more than three such prolongations** will be possible.

The text goes on to state that the Council may, as a last resort and as a measure to protect the common interests within the area without internal border controls, where all other measures, in particular those referred to in Chapter V, are incapable of effectively mitigating the serious threat identified, recommend one or more specific Member States reintroduce border control at all or specific parts of its internal borders.

In the event that the recommendation is not implemented by a Member State, that Member State shall without delay inform the Commission in writing of its reasons. In such a case, the Commission shall present a report to the European Parliament and the Council assessing the reasons provided by the said Member State and the consequences for protecting the common interests of the area without internal border controls.

The text sets out the **criteria for the temporary reintroduction of border control at internal borders in case of exceptional circumstances** putting the overall functioning of the area without internal border control at risk. In particular the Council must assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security within the area without internal border controls, and shall assess the proportionality of the measure in relation to that threat.

There is an obligation to inform the European Parliament of all measures taken.

Guidelines: a **new recital** states that based on the experience gathered with respect to the functioning of the area without internal border controls and in order to help ensuring a consistent implementation of the Schengen acquis, 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 XXX/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.

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 be immediately and fully informed of any proposal to amend or to replace the rules laid down in Council Regulation (EU) No XXX/2013.

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 which 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.

Joint declaration: lastly, in a joint statement, the European Parliament, the Council and the Commission.

The European Parliament, the Council and the Commission indicate that the adoption of the Regulation amending the Schengen Borders Code in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances and of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis are an adequate response to 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 and for
- an effective and reliable monitoring and evaluation system in order to ensure the enforcement of common rules and the strengthening, adaptation and extension of the criteria based on the EU acquis.

The joint statement recalls that Europe's external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and practical cooperation.

The three EU institutions understand 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.

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.

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

2011/0242(COD) - 16/09/2011 - Document attached to the procedure

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'sresolutionin 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.

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

2011/0242(COD) - 22/09/2011

The committee had a **first exchange of views** on the Schengen governance package. The Council preparatory bodies were instructed to start the technical work on the different proposals as soon as possible.

The package as presented by the Commission consists of a communication concerning Schengen governance as well as the two legislative proposals accompanying it, which are:

- an amended proposal for a regulation on a revised Schengen evaluation mechanism;
- an amendment to the Schengen Borders Code as regards the rules for the temporary reintroduction of border controls at internal borders in exceptional circumstances.

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,** andnotify 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.

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

2011/0242(COD) - 08/03/2012

The Council adopted conclusions regarding guidelines for the strengthening of political governance in the Schengen cooperation.

These conclusions follow up a discussion at the JHA Council in December 2011 in which support for strengthening the political guidance on developments in the Schengen area was expressed.

The conclusions may be summarised as follows:

- the evaluation reports have shown serious shortcomings, including special measures to be implemented, without prejudice to the applicable procedures for EU agencies and the competencies of each Member State;
- the fulfilment of agreed action plans aimed at tackling shortcomings and their implementation should also be discussed. Such political and strategic discussions should take place once during each Presidency and, where appropriate, be based on the reports from the Commission;
- the Council welcomes the Commission's intention to present regular reports to the European Parliament and to the Council on the functioning of the Schengen cooperation and the application of the Schengen acquis at least once every year. The first report should – together with specific suggestions from Member States or relevant EU agencies – form the **basis for a political and strategic discussion** in the Mixed Committee at Ministerial level in June 2012;
- the Commission is also invited, where relevant, to address in its reports how Schengen related shortcomings could be remedied, and, where appropriate, to give an indication of possible solutions at the practical and operational level or submit new initiatives, including legislative proposals to address these shortcomings.

The Council welcomes the intention of the Commission to present the first report in May 2012. The reports should be brief, concise and provide an overview of the main trends and recent developments regarding Schengen cooperation, including **analysis of causes**. In addition, identified weaknesses and/or threats that could affect the functioning of the Schengen area in the short term should be presented in order for the Council to consider preventive actions.

The overview should highlight matters which the Commission considers most relevant for the political and strategic discussion, such as:

- implementation of the relevant Schengen acquis and of key policy guidelines set out by the European Council or the Council as well as action plans adopted by the Council such as the Schengen related aspects of the 29 measures for reinforcing the protection of the external borders and combating illegal immigration, and Schengen cooperation in the fight against serious and organised crime;
- possible conclusions to be drawn from the functioning and the development of relevant ongoing and future IT projects and tools;

- selected findings from evaluation reports and key recommendations adopted in the context of the Schengen evaluation mechanism on selected issues such as controls at the external borders, visa processing at consular posts, data protection and the required functioning of the institutions involved in the application of the Schengen acquis, in particular when the reports point at serious shortcomings;
- application of the Schengen acquis at internal borders, especially in cases of temporary introduction of controls at internal borders;
- challenges linked to current and possible foreseen migration flows and external borders particular prone to pressure from illegal migration flows as well as proposals for possible ways for their prevention and deterrence;
- challenges in the Schengen relevant cooperation with key countries of origin and transit;
- any planned and existing visa facilitation and liberalisation and their consequences.

The Council invites the European Parliament also to make full use of the Commission reports as it deems appropriate, taking into consideration the sensitivity of the information contained in the reports.

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

2011/0242(COD) - 08/06/2012

The Council took note of the **state-of-play** of negotiations on the various outstanding legislative proposals concerning the Common European Asylum System (CEAS).

The situation on the four outstanding dossiers can be described as follows:

– On the reception conditions directives, negotiations between the Council and the European Parliament are ongoing. It is the goal of the Presidency to obtain political agreement by the end of June. A revised proposal was tabled by the Commission on 1 June 2011.

– Negotiations between the Council and the European Parliament are also expected to be finalised by the end of June on the Dublin Regulation, which establishes the procedures for determining the member state responsible for examining an application for international protection. The Council has introduced a mechanism for early warning, preparedness and crisis management.

This mechanism is aimed at evaluating the practical functioning of national asylum systems, assisting member states in need and preventing asylum crises. The mechanism would concentrate on adopting measures to prevent asylum crises from developing rather than addressing the consequences of such crises once they had occurred.

As a complement to the mechanism for early warning, preparedness and crisis management in the amended Dublin Regulation, the Council adopted in March 2012 conclusions on a common framework for genuine and practical solidarity towards member states facing particular pressures on their asylum systems, including through mixed migration flows. **These conclusions are intended to constitute a toolbox for EU-wide solidarity towards those member states most affected by such pressures and/or encountering problems in their asylum systems**.

– On the asylum procedures directives, the Presidency has received a mandate to start negotiations with the European Parliament as soon as possible. A revised proposal of the directive was tabled by the Commission on 1 June 2011.

– **Regarding the Eurodac regulation**, the Commission last week tabled its **new proposal for a revised Eurodac Regulation** (see summary dated 30/05/2012) **which allows law enforcement authorities to access this central EU-wide fingerprint database**, subject to strict conditions on data protection, for the purposes of fighting terrorism and organised crime. After examination in the Council preparatory bodies, negotiations with the European Parliament should start as soon as possible.

On the basis of the mandates obtained from the Permanent Representatives Committee on 21 March 2012 and 4 April 2012 respectively, the Presidency has initiated negotiations with the European Parliament on the recast for Reception Conditions Directive and on the recast for the Dublin Regulation.

On both files a series of four trilogues have been agreed between the Presidency, the European Parliament and the Commission. Furthermore, **it has been agreed to work towards a political agreement on both files by the end of the Danish Presidency**.

The Permanent Representatives Committee has recently initiated discussion on the recast for the Asylum Procedures Directive. On the basis of these discussions, the Presidency hope to be able to initiate negotiations with the European Parliament and **thus paving the way forward for the incoming Cypriot Presidency to finalize negotiations in 2012**.

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

2011/0242(COD) - 14/06/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Renate WEBER (ALDE, RO) on the proposal for a regulation 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.

The parliamentary committee recommends that the European Parliament's position adopted at first reading under the ordinary legislative procedure should be to amend the Commission's proposal as follows:

Migration should not be considered as a serious threat: Members consider 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 to internal security.**

The reintroduction of border controls based on guidelines laid down by the Commission: Members stipulate that full free movement within the area without internal border controls should be guaranteed and the reintroduction by Member States of border control at internal borders on **political grounds should be avoided**. In this regard, the Commission should 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 ensure coherent implementation of the Schengen rules and provide clear indicators to facilitate the assessment of threats to public policy and to internal security..

The reintroduction of border controls as a measure of last resort: Members underline that any temporary reintroduction of internal border controls should be in the framework of a **rigorous evaluation process** and should only be **a measure of last resort**, such as in the case of a serious and **imminent** threat to public policy or to internal security. In this context, they ask that the establishment of a European mechanism for the reintroduction of temporary and exceptional border control at internal borders is based on an analysis from the evaluation mechanism to verify application of the Schengen *acquis* in the Member State in question.

Under this mechanism, a procedure with the three following stages would apply:

1. the Commission should transmit to the European Parliament and to the Council a recommendation assessing the necessity for the reintroduction of border control at internal borders as a measure of last resort;
2. the European Parliament and the Council should present their opinions within one month of receipt of the Commission's recommendation;
3. the Commission should then be able to decide on the reintroduction of border control at internal borders by way of implementing acts, in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

Information and mutual cooperation: where a Member State considers that border control at internal borders should be reintroduced, it shall notify the **other Member States** and the Commission accordingly at the latest six weeks before the planned reintroduction. The information shall be submitted to the **European Parliament at the same time**. If necessary, the Commission may request additional information from the Member State(s) concerned.

The opinion that the Commission prepares shall be the subject of consultation between the Member State planning to reintroduce border control at internal borders, the Member States that might be affected by the reintroduction of border controls, and the Commission, with a view to ensuring mutual cooperation between Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border controls.

Duration of the application of a border control reintroduction measure: any measure to reintroduce border controls at internal borders evaluated and decided in accordance with the procedure, is only applicable for six months. This period may be extended for a further peiod of six months if the serious deficiencies are not remedied, with a maximum of three such prolongations.

Duration of application of an exceptional reintroduction measure where there is an immediate threat: when there is an imminent threat to public order or the internam security of a Member State requires **immediate action**, the Member State concerned may, exceptionally and immediately, reintroduce border controls at internal border for a period not exceeding **10 days** (and not 5 as proposed by the Commission). This period may be extended in duly justified circumstances. This measure should be notified to the European Parliament, as well as be the subject of notifications and consultations between Member States, and should be assessed in terms of proportionality. In any event, any reintroduction of border controls (all exceptions included) **should not exceed two months**.

Report: Members call for the Commission to present to the European Parliament and to the Council, at least annually, a report on the functioning of the Schengen area. That report should provide the basis for an annual debate in the European Parliament and in the Council and should contribute to the strengthening of political guidance and cooperation in the Schengen area. The report shall include a list of all decisions to reintroduce border control at internal borders taken during the relevant year. The representatives of the Member States which have reintroduced internal border controls shall be invited to the Commission's presentation of the report.