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to: Working Party for Schengen Matters (Acquis) – Mixed Committee  
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Subject: 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  
- Draft compromise text

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Delegations will find below a draft compromise text, taking into account the discussions during the previous half-year<sup>1</sup> and the outcome of the meeting of the Working Party for Schengen Matters (Acquis) – Mixed Committee (EU-Iceland/Norway/Switzerland/Liechtenstein) held on 17 and 18 January 2012.

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<sup>1</sup> This proposal was addressed at the Working Party for Schengen Matters (Acquis) – Mixed Committee (EU-Iceland/Norway/Switzerland/Liechtenstein) at its meetings on 30 September 2011, 28 October 2011, 8 November 2011 and 18 November 2011 as well as in COREPER/Mixed Committee on 2 and 12 December 2012 and the Council (Justice and Home Affairs)/Mixed Committee on 13 December 2011.

Additions to the initial Commission proposal (14359/11) are indicated in **bold**; deletions in ~~striketrough~~.

The recitals of the Proposal will be dealt with in a latter stage.

General scrutiny reservations have been entered by AT, CZ, DE, HU, IS, IT, LU, SI and SK.

Parliamentary reservations are pending from FR and NL.

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**

*Article 1*

Regulation (EC) No 562/2006 is hereby amended as follows:

(0) **The following Chapter V is added to Title II (External Borders):**

**"CHAPTER V**

*Specific measures in case of serious difficulties or deficiencies  
related to the external border control*

*Article 19A*

*Measures at the external borders and Frontex support*

1. <sup>2</sup>Where serious **difficulties or** deficiencies in the carrying out of external border control **[or return procedures]** are identified in **an the** evaluation report **established in accordance with Article 13 of the Regulation on the establishment of an evaluation and monitoring to verify the application of the Schengen acquis,** and with a view to ensuring compliance with the recommendations referred to in Article 13(5) of **that Regulation,** the Commission may **recommend to** the evaluated Member State to take certain specific measures, which may include one or more of the following:

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<sup>2</sup> Text based on Article 14(1) of the Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis (14359/11). Modifications to the original text of that Commission proposal are **highlighted**. The wording of such modifications reflects the outcome of the discussions on the referred Amended proposal which took place in the Working Party (see 5754/12).

- initiation of the deployment of European Border Guard teams in accordance with the provisions of the Frontex Regulation;
- submission of its strategic decisions **based** on risk assessment and plans for the deployment of equipment for **opinion** to Frontex;
- closing of a specific border crossing point for a limited period of time until the difficulties or weaknesses are remedied.

This implementing act shall be adopted in accordance with the examination procedure referred to in Article **33A(2)**.

2. <sup>3</sup>The Commission shall inform the committee established in accordance with Article 33A on a regular basis on the progress in the implementation of the measures referred to in paragraph 1 and on its impact on the **difficulties or deficiencies identified**.

**It shall also inform, as appropriate, the European Parliament and the Council.**

3. <sup>4</sup>**Where, in an evaluation report as referred to in paragraph 1, the Commission had concluded that the evaluated Member State was seriously neglecting its obligations and therefore had to report on the implementation of the relevant action plan within three months in accordance with Article 13(6a) of the Regulation on the establishment of an evaluation and monitoring to verify the application of the Schengen acquis, and if, following that three months period referred to in paragraph 1, the Commission finds that the situation persists, it may trigger the application of the procedure provided for in Articles ~~23, 23a and 26~~ where the conditions for doing so are fulfilled ~~of the Schengen Borders Code~~ apply.**

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<sup>3</sup> Text based on Article 14(2) of the Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis (14359/11). Modifications to the original text of that Commission proposal are **highlighted**. The wording of such modifications reflects the outcome of the discussions on the referred Amended proposal which took place in the Working Party (see 5754/12).

<sup>4</sup> Text based on Article 15(2) of the Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis (14359/11). Modifications to the original text of that Commission proposal are **highlighted**. The wording of such modifications reflects the outcome of the discussions on the referred Amended proposal which took place in the Working Party (see 5754/12).

**[4. This Article shall be without prejudice to the measures that may be adopted by the Council under Article 78(3) TFEU in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries.]"**

(1) Articles 23 to 26, in Title III (Internal Borders), are replaced by the following:

*"Article 23*

*General framework for the temporary reintroduction of border control at internal borders*

1. Where in the area without border control at internal borders there is a serious threat to public policy or internal security ~~at the Union or national level~~ **in a Member State, that Member State may exceptionally reintroduce** border control at internal borders ~~may exceptionally be reintroduced~~ at all or specific parts of ~~its 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. 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.
2. Border control at internal borders may only be reintroduced in accordance with ~~the~~ ~~procedures foreseen in~~ Articles 24, 25 and 26 of this Regulation. The criteria listed in Article 23A must be taken into account in each case where a decision on the reintroduction of border control at internal borders is contemplated.
3. If the serious threat to public policy or internal security ~~at the Union or national level~~ **in the Member State concerned** persists beyond the period provided for in paragraph 1, **that Member State may prolong** border control at ~~its~~ internal borders ~~may~~, taking account of the criteria listed in Article 23A, ~~be prolonged~~ on the same grounds as those referred to in paragraph 1 and, taking into account any new elements, for renewable periods of up to 30 days.

4. The total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 and prolongations under paragraph 3, shall not exceed six months. In cases of **exceptional circumstances as referred to in Article 26** ~~persistent serious deficiencies related to external border control or return procedures identified in accordance with Article 15 of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, the Commission can decide to extend this~~ **total period may be extended to the maximum length referred to in that Article.**

#### *Article 23A*

##### *Criteria for the temporary reintroduction of border control at internal borders*

1. When, **as a last resort, a Member State, in cases referred to in Articles 23 and 25(1) deciding, or the Commission, in cases referred to in Article 26, recommends** ~~on~~ the temporary reintroduction of border control at one or more internal borders or parts thereof, **the Member State or the Commission,** ~~or the Member State concerned in cases referred to in Article 25 paragraph 1,~~ shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security ~~at the Union or national level,~~ and shall assess the proportionality of the measure **in relation** to that threat. This assessment shall be based on the detailed information submitted by the Member State(s) concerned and any other relevant information, including any information obtained pursuant to paragraph 2. In making such an assessment, the following considerations shall in particular be taken into account:
- (a) **in cases referred to in Articles 23 and 25:**
- (i) the likely impact of any threats to public policy or internal security, ~~at the Union or national level~~ **in the Member State concerned,** including following terrorist incidents or threats as well as threats posed by organised crime;
  - (ii) **the likely impact of such a measure on free movement within the area without internal border controls.**

- (b) **in the cases referred to in Article 26:**
- (i) 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 ~~at the Union or national level~~ **within the area without internal border controls;**
  - (e) (ii) the current and likely future impact of any serious **difficulties or** 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;
  - (iii) **the likely impact of any threats to public policy or internal security within the area without internal border controls;**
  - (iv) the likely impact of such a measure on free movement within the area without internal border controls.

2. Before ~~taking a decision~~ **adopting a recommendation, in accordance with Article 26**, the Commission may:

- (a) request Member States, Frontex, Europol, Eurojust, ~~the Fundamental Rights Agency or any other Union bodies~~ to provide it with further information,
- (b) carry out inspection visits, with the support of experts from Member States and of Frontex, Europol and any other relevant European body, in order to obtain or verify information relevant for a **recommendation decision** to temporarily reintroduce border control at internal borders.

*Article 24*

*Procedure for the temporary reintroduction of border control at internal borders **under Article 23(1)***

1. Where a Member State **is planning to reintroduce** ~~considers that~~ border control at internal borders ~~should be reintroduced~~ under Article 23(1), it shall ~~submit a request to~~ **notify the other Member States and** the Commission **accordingly** at the latest ~~six~~**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 ~~six~~**four** weeks before the planned reintroduction, and shall supply the following information:
  - (a) 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~~ **in the Member State**;
  - (b) the scope of the proposed reintroduction, specifying at which part or parts of the internal borders border control is to be reintroduced;
  - (c) the names of the authorised crossing-points;
  - (d) the date and duration of the proposed reintroduction;
  - (e) where appropriate, the measures to be taken by the other Member States.

Such a **notification request** ~~may~~ **could** also be submitted jointly by two or more Member States.

**If necessary, the Commission may request additional information from the Member State concerned.**



2. The information referred to in paragraph 1 shall ~~also~~ be submitted **at the same time** to ~~the Member States and the European Parliament~~ **and to the Council** ~~at the same time as the request is made.~~
3. <sup>5</sup>Following **the notification from the Member State concerned, and with a view to the consultation provided for in paragraph 4**, the Commission **or any of the other Member States** may issue an opinion without prejudice to Article **72 TFEU** a request by a Member State pursuant to paragraph 1, or on its own initiative based on the information specified in sections (a) to (e) of that paragraph, the Commission shall decide on the reintroduction of border control at internal borders. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33a(2).
4. <sup>6</sup>The **information referred to in paragraph 1, as well as the opinion that the Commission or any of the other Member States** may provide in accordance with paragraph **3 2**, shall be the subject of consultations between the Member State planning to reintroduce border control, the other Member States and the Commission, with a view to organising, where appropriate, mutual cooperation between the Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border control and the threats to public policy or internal security ~~Commission shall decide on the prolongation of border control at internal borders. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33a(2).~~

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<sup>5</sup> Text similar to that of Article 24(2) of the current version of the Schengen Borders Code. Modifications to that version are **highlighted**.

<sup>6</sup> Text similar to that of Article 24(3) of the current version of the Schengen Borders Code. The modifications to that version are **highlighted**.

5. <sup>7</sup>The consultation referred to in paragraph 4 shall take place at least **ten**<sup>8</sup> days before the date planned for the reintroduction of border control. ~~On duly justified grounds of urgency, related to situations where the circumstances giving rise to the need to prolong border control at internal borders, in accordance with paragraph 4, do not become known until less than 10 days before the planned prolongation, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 33a (3)~~

*Article 25*

*Specific procedure for cases requiring immediate action*

1. 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 ~~five~~ **ten** days.
2. The Member State reintroducing border control at internal borders shall at the same time notify the other Member States and the Commission accordingly, and shall supply the information referred to in Article 24(1) and the reasons that justify the use of this procedure. The Commission may consult the other Member States immediately upon receipt of the notification.

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<sup>7</sup> Text identical to that of Article 24(4) of the current version of the Schengen Borders Code. The modifications to that version are **highlighted**.

<sup>8</sup> "Fifteen" in the current version of the Schengen Borders Code.

3. If the serious threat to public policy or internal national security persists beyond the period provided for in paragraph 1, the ~~Commission~~ **the Member State may** ~~shall~~ decide to ~~on the prolongation~~ of the border control at internal borders **for renewable periods of up to 20 days. In doing so, the Member State concerned shall take into account the criteria listed in Article 23A, including an updated assessment of the necessity and the proportionality of the measure, and take into account any new elements.** ~~Given the need to take immediate action after the expiry of the period provided for in paragraph 1, which constitutes an imperative ground of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 33a (3).~~
- 3a. Without prejudice to Article 23(4), the total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 and prolongations under paragraph 3, shall not exceed two months.**

#### *Article 26*

*Specific procedure in ~~for~~ cases of exceptional circumstances putting the overall functioning of the area without internal border controls at risk ~~persistent serious deficiencies~~*

1. In cases of **exceptional circumstances putting the overall functioning of the area without internal border controls at risk** ~~where the Commission finds that there are persistent serious deficiencies related to external border control or return procedures identified in accordance with Article 15 of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and insofar as these **circumstances** deficiencies constitute a serious threat to public policy or internal security at the Union or national level~~ **within the area without internal border controls**, border control at internal borders may be reintroduced **in accordance with paragraph 2** 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** ~~the serious circumstances~~ **deficiencies still exist** ~~are not remedied~~. No more than three such prolongations will be possible.

**Examples of such exceptional circumstances are critical situations where a Member State is no longer able to comply with its obligations under the Schengen acquis or where the Commission finds that there are persistent serious difficulties or deficiencies related to external border control [or return procedures] as referred to in Article 19A.**

2. ~~The Commission shall decide on~~ **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 Article 19A(1), are incapable of effectively mitigating the serious threat identified, recommend one or more specific Member States to the reintroduction of border control at the relevant internal borders.**

**In its recommendation, the Commission shall at least indicate the elements referred to in points (a) to (e) of Article 24(1).**

~~This~~ **se** implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33A(2).

**The Commission may recommend a prolongation in accordance with the same conditions and procedures.**

3. ~~The Commission shall decide on the prolongation of border control at internal borders. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33a(2).~~

- [4. On duly justified grounds of urgency, related to situations where the circumstances giving rise to the need to prolong border control at internal borders, in accordance with paragraph 2 3, do not become known until less than 10 days before the ~~planned prolongation~~ **end of the preceding reintroduction period**, the Commission shall adopt immediately **any necessary recommendations** ~~applicable implementing acts~~ in accordance with the procedure referred to in Article 33a (3).]

**4a. This Article shall be without prejudice to measures that may be adopted by the Member States in the event of a serious threat to public policy or internal security under Articles 23 to 25.**

**[4b. This Article shall be without prejudice to the measures that may be adopted by the Council under Article 78(3) TFEU in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries.]"**

(2) Article 27 is replaced by the following:

*"Article 27*

*Informing the **European Parliament and the Council** ~~legislators~~*

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 Articles **19A and 23** to 26."

(3) Article 29 and 30 are replaced by the following:

*"Article 29*

*Report on the reintroduction of border control at internal borders*

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.

*Article 30*  
*Informing the public*

The **Member State concerned or, as the case may be, 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."

(4) A new Article 33A is introduced:

*"Article 33A*  
*Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply."

*Article 2*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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