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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
- Revised draft compromise text

Delegations will find below a revised draft compromise text, taking into account the discussions during the previous half-year¹ 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 and on 14 and 15 February 2012.

¹ 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.

In order to take into consideration both aspects reflected in point 22 of the conclusions of the European Council of 23/24 June 2011, the Presidency suggests the harmonisation of the terms *shortcomings*, *weaknesses*, *difficulties* and *deficiencies*. To this end, they are replaced systematically by "difficulties or deficiencies", both in the present instrument and in 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 (see 5754/1/12 REV 1).

Additions to the initial Commission proposal (14359/11) are indicated in **bold**; deletions in ~~striketrough~~. Changes to the previous version (6161/12) are **highlighted**.

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

General scrutiny reservations have been entered by AT, BE, CZ, DE, EL, HU, IS, IT, LU, LV, MT, PT, SI, SK and COM. Parliamentary reservations are pending from FR, MT and NL.

At the meeting of the Working Party for Schengen Matters (Acquis) on 2 April 2012 the Presidency would like to have a discussion in order to reach a compromise on the following issue: Comitology.

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. ²Where 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:

² 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 printed in *italics*. The wording of such modifications reflects the outcome of the discussions on the referred Amended proposal which took place in the Working Party (see 5754/1/12 REV 1).

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

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

2. ³The 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. ⁴Where, 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 13A(4) 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, the Commission finds that the situation persists, it may trigger the application of the procedure provided for in Article 26 where the conditions for doing so are fulfilled.

³ 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 (14358/11). Modifications to the original text of that Commission proposal are printed in *italics*.

⁴ Text based on Article 15 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 (14358/11).

[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 23⁵

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 Articles 23A **and 26A** 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.

⁵ AT entered a reservation on this Article.

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) decides** ~~deciding on,~~ ~~or the Commission, in cases referred to in Article 26,~~ ~~recommends~~ 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, it~~ 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 **in cases referred to in Articles 23 and 25:**
- (a) 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;
 - (~~b~~) the likely impact of such a measure on free movement within the area without internal border controls.

(moved to Article 26A)

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 **planned** ~~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.

The Member State may, when necessary and in accordance with national law, decide to classify some of the information.

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. ⁶Following 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. ⁷The 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, 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).~~
5. ⁸The consultation referred to in paragraph 4 shall take place at least ten⁹ 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)~~

⁶ Text similar to that of Article 24(2) of the current version of the Schengen Borders Code.

⁷ Text similar to that of Article 24(3) of the current version of the Schengen Borders Code.

⁸ Text identical to that of Article 24(4) of the current version of the Schengen Borders Code.

⁹ "Fifteen" in the current version of the Schengen Borders Code.

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.
3. If the serious threat to public policy or internal national security persists beyond the period provided for in paragraph 1, the ~~Commission~~ **Member State may shall** decide **to prolong** ~~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.**
In the event of such a prolongation decision being taken, the provisions of Article 24(3) and (4) shall apply mutatis mutandis, and the consultation shall take place as soon as possible after the prolongation decision has been notified to the Commission and the Member States. ~~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 26¹⁰

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 ~~where~~ the Commission finds that there are ~~putting~~ the overall functioning of the area without internal border controls **is put at risk as a result of persistent serious difficulties or deficiencies related to external border control as referred to in Article 19A**, ~~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 circumstances the serious 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.~~¹¹
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 reintroduce ~~the reintroduction of~~ border control at **all or specific parts of the relevant** internal borders.

¹⁰ EL, ES and PL entered a reservation on this Article.

¹¹ This wording could be taken in a recital.

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

That ~~these~~ 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 ~~23~~, 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.]"**

(1a) A new Article 26A is inserted as follows:

¹²Article 26A

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

1. When ~~deciding on~~, as a last resort, the Commission recommends the temporary reintroduction of border control at one or more internal borders or parts thereof, 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~~ **within the area without internal border controls**, 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~~b~~) 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**;
 - (b~~e~~) 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; **and the extent to which such serious difficulties or deficiencies constitute threats to public policy or internal security within the area without internal border controls**;

¹² New Article based on Article 23A of the initial COM proposal as set out 14359/11. Changes to that Article are indicated in **bold** and ~~strikethrough~~.

(cd) the likely impact of such a measure on free movement within the area without internal border controls.

2. Before ~~taking~~ **adopting** a ~~decision~~ **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 ~~Union~~ **European** body, in order to obtain or verify information relevant for a **recommendation decision** to temporarily reintroduce border control at internal borders."

(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 26A**."

- (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
