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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 compromise text, taking into account the outcome of the informal trilogue which took place on 20 February 2013 and other informal meetings with the European Parliament and the Commission, as well as the meeting of JHA Counsellors on 15 May 2013 and the outcome of the contacts, at a high-level, of the Legal Services of the three institutions, following a suggestion from the high-level trilogue which took place on 18 December 2012.

Changes to the version (6161/6/12) that was agreed at COREPER on 17 December 2012 are indicated as follows: additions in **bold**; deletions in ~~striketrough~~¹.

¹ For the sake of clarity ~~striketrough~~ was not used in Article 37A(2) to (5).

General scrutiny reservations are pending from AT, DE, ES and SI. Parliamentary reservations are pending from FR and NL. Reservations on specific provisions are mentioned in footnotes.

COREPER is invited to request delegations to consider lifting their reservations and endorse the text as a basis for further negotiations with EP, notably the high-level trilogue expected on 29 May 2013.

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 EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77 (1) and (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The creation of an area in which the free movement of persons across internal borders is ensured is one of the main achievements of the European Union. In such an area without controls at internal borders, it is necessary to have a common response to situations seriously affecting the public policy or internal security of this area, or parts thereof, or of one or more Member States by allowing for the reintroduction of border control at internal borders in exceptional circumstances, but without jeopardising the principle of the free movement of persons. Given the impact that such measures of last resort may have on all persons having the right to move within this area without internal border controls, the conditions and procedures for doing so should be laid down, so as to ensure that any such measure is exceptional and that the principle of proportionality is respected. The scope and duration of any temporary reintroduction of border control at internal borders should be restricted to the bare minimum needed to respond to that threat.

- (2) Free movement within the area without internal border controls is a key Union achievement. As free movement is affected by the temporary reintroduction of border control at internal borders, any decision to do so should be taken in accordance with commonly agreed criteria and be duly notified to the Commission or be recommended by a Union institution. In any case, reintroduction of border control at internal borders should remain an exception² and should only take place as a measure of last resort, for a strictly limited scope and period of time, based on specific objective criteria and on an assessment of its necessity which should be monitored at Union level. In cases where the serious threat to public policy or internal security requires immediate action, a Member State should be able to reintroduce border control at its internal borders for a period not exceeding ten days, any prolongation of which needs to be monitored at Union level.
- (3) When decisions on the reintroduction of border control at internal borders are taken, the necessity and proportionality of the measure should be considered compared to the threat to public policy or internal security triggering the need to reintroduce border control at internal borders, as should alternative measures which could be taken at national and/or Union level, as well as the impact of such a measure on free movement within the area without internal borders.
- (3a) In accordance with the case law of the Court of justice, a derogation from the fundamental principle of free movement of persons must be interpreted strictly and the concept of public policy presupposes the existence of a genuine, present and sufficiently serious threat affecting one of the fundamental interest of society.
- (4) Reintroduction of border control at internal borders might exceptionally be necessary in case of a serious threat to public policy or to internal security at the level of the area without internal border controls or at national level, in particular following terrorist incidents or threats as well as threats posed by organised crime.

² Based on existing recital (16) of the Schengen Borders Code (Regulation (EC) No 562/2006).

(4a)³ 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.

(5)⁴ **Migration and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a serious threat to public policy or to internal security.**

(5a) [ex-8] Where serious deficiencies in the carrying out of external border control are identified in an evaluation report and with a view to ensuring compliance with the recommendations adopted in accordance with Regulation No (XXX) on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, implementing powers should be conferred on the Commission to recommend the evaluated Member State to take certain specific measures such as the deployment of European Border Guard teams, the submission of strategic plans or, as a last resort in view of the seriousness of the situation, the closing of a specific border crossing-point.⁵ These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁶. In view of the terms of Article 2(2)(b)(iii) of that Regulation, the examination procedure is applicable.

³ DE entered a reservation on recital (4a).

⁴ DE and LV entered a reservation on recital (5).

⁵ EL entered a reservation on this sentence.

⁶ OJ L 55 of 28.2.2011, p. 13.

- (6) The temporary reintroduction of ~~certain~~ controls at **certain** internal borders under a specific Union-level procedure could also be a response, in exceptional circumstances and as a measure of last resort where the overall functioning of the area without internal border controls is put at risk as a result of persistent ~~to~~ serious deficiencies related to external borders identified in the context of a rigorous evaluation process in accordance with Articles 13 and 13AA of Regulation No (XXX), in so far as these circumstances would be such as to constitute a serious threat to public policy or to internal security within the area without internal border controls or parts thereof. Such a specific procedure for reintroducing temporarily certain controls at internal borders could also be triggered, under the same conditions, as a result of the evaluated Member State seriously neglecting its obligations.
- In view of the politically sensitive nature of such measures which touch on national executive and enforcement powers regarding the control at internal borders, implementing powers to adopt recommendations under this specific Union-level procedure should be conferred on the Council, acting on a proposal from the Commission.
- (7) Before any such recommendation is adopted on the temporary reintroduction of certain controls at internal borders, the possibility of resorting to measures aimed at addressing the underlying situation, including assistance by Union bodies such as Frontex or Europol, and technical or financial support measures at the national and/or Union level, should be fully explored in a timely manner. In the case of a serious deficiency being detected, the Commission may provide financial support measures to help the Member State concerned. Moreover, any Commission and Council recommendation should be based on substantiated information.
- (8) *[moved to (5a)]*
- (9) On duly justified grounds of urgency, the Commission should be conferred implementing powers to adopt immediately necessary recommendations on the prolongation for up to 14 days of temporary internal border controls already reintroduced under the specific Union-level procedure.

- (9a) The evaluation reports and the recommendations referred to in Articles 13 and 13AA of the Council Regulation n° XXX/2013 of XX 2013 on the establishment of an evaluation mechanism to verify the application of the Schengen *acquis* should form the basis for the triggering of the specific measures in case of serious deficiencies related to the external border control and of the specific procedure in case of exceptional circumstances putting the overall functioning of the area without internal border controls at risk provided for in this Regulation. The Member States and the Commission ~~are jointly~~ **conduct regular, objective and impartial evaluations in order to verify the correct application of this Regulation and the Commission coordinates the evaluations in close cooperation with the Member States. This** ~~is responsible for implementation of the above-mentioned~~ evaluation mechanism, ~~which~~ consists of the following elements: multiannual and annual programmes, announced and unannounced visits on the spot carried out by a small team consisting of Commission representatives and of experts designated by Member States, reports on the outcome of the evaluation adopted by the Commission ~~in accordance with the examination procedure and~~ recommendations for remedial actions adopted by the Council on a proposal from the Commission, appropriate follow-up, monitoring and reporting.
- (10) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in adoption of this Regulation and is therefore not bound by it or subject to application thereof. Given that this Regulation builds upon the Schengen *acquis*, under Title V of Part Three of the Treaty on the Functioning of the European Union, Denmark shall, in accordance with Article 4 of that Protocol, decide within six months after adoption of this Regulation whether it will implement it in its national law.
- (11) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which the United Kingdom is not participating, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*⁷. The United Kingdom is therefore not taking part in adoption of this Regulation and is not bound by it or subject to application thereof.

⁷ OJ L 131, 1.6.2000, p. 43.

- (12) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which Ireland is not participating, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*⁸. Ireland is therefore not taking part in adoption of this Regulation and is not bound by it or subject to application thereof.
- (13) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*⁹.
- (14) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*¹⁰.
- (15) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹¹.
- (16) As regards Cyprus, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 3(2) of the 2003 Act of Accession.

⁸ OJ L 64, 7.3.2002, p. 20.

⁹ OJ L 176, 10.7.1999, p. 36.

¹⁰ OJ L 53, 27.2.2008, p. 52.

¹¹ OJ L 160 of 18.6.2011, p. 19.

- (17) As regards Bulgaria and Romania, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 4(2) of the 2005 Act of Accession.
- (18) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the freedom of movement and of residence. This Regulation must be implemented according to those rights and principles.

HAVE ADOPTED THIS REGULATION:

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 deficiencies related to the external border control

Article 19A

Measures at the external borders and Frontex support

1. ¹²Where serious deficiencies in the carrying out of external border control are identified in an evaluation report established in accordance with Article 13 of the Regulation on the establishment of an evaluation ~~mechanism and monitoring~~ to verify the application of the Schengen acquis, and with a view to ensuring compliance with the recommendations referred to in Article 13AA 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:
 - initiation of the deployment of European Border Guard teams in accordance with the provisions of the Frontex Regulation;
 - submission of its strategic plans based on risk assessment, including information on the deployment of personnel and equipment, for opinion to Frontex.

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

¹² Text based on Article 14(1) of the Schengen evaluation proposal (14358/11).

2. ¹³The 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 deficiencies identified.

It shall also inform the European Parliament and the Council.

3. ¹⁴Where, in an evaluation report as referred to in paragraph 1, it has been 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 all the conditions for doing so are fulfilled. "

(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 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.

¹³ Text based on Article 14(2) of the Schengen evaluation proposal (14358/11).

¹⁴ Text based on Article 15 of the Schengen evaluation proposal (14358/11).

2. Border control at internal borders may only be reintroduced as a last resort, and in accordance with Articles 24, 25 and 26 of this Regulation. The criteria listed, respectively, in Articles 23A and 26A shall be taken into account in each case where a decision on the reintroduction of border control at internal borders is ~~contemplated~~ **considered** pursuant, respectively, to Article 24 or 25 or Article 26.
3. If the serious threat to public policy or internal security 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, taking account of the criteria listed in Article 23A and in accordance with the procedure provided for in Article 24, 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, this total period may be extended to the maximum length of two years referred to in Article 26(1).

Article 23A

Criteria for the temporary reintroduction of border control at internal borders

1. When a Member State, in cases referred to in Articles 23 and 25(1), decides, as a last resort, the temporary reintroduction of border control at one or more internal borders or parts thereof or decides to prolong the temporary reintroduction of border control, it shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security, and shall assess the proportionality of the measure in relation to that threat. 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 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.

(paragraphs (c) and (d) were 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 border control at internal borders under Article 23(1), 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 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 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 reintroduction;
 - (e) where appropriate, the measures to be taken by the other Member States.

Such a notification may 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 parts of the information.

Classification shall not preclude information from being made available by the Commission to the European Parliament. Information and documents transmitted to the European Parliament under this Article 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.

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

2. The information referred to in paragraph 1 shall be submitted at the same time to the European Parliament and to the Council.
3. ¹⁵Following 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.
If, based on the information contained in the notification or any additional information it has received, the Commission has concerns as regards the necessity or proportionality of the planned reintroduction of border control at internal borders, or if it considers that a consultation on some aspect of the notification would be appropriate, it shall issue such an opinion.
- 4.¹⁶ 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, shall be the subject of consultations, including, where appropriate, joint meetings, between the Member State planning to reintroduce border control, the other Member States, especially those directly affected by a reintroduction of border control, 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.

¹⁵ Text similar to that of Article 24(2) of the current version of the Schengen Borders Code.

¹⁶ DE entered a reservation on this paragraph.

5. ¹⁷The consultation referred to in paragraph 4 shall take place at least ten¹⁸ days before the date planned for the reintroduction of border control.

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 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 Member State may decide to prolong 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 without delay after the prolongation decision has been notified to the Commission and the Member States.

¹⁷ Text identical to that of Article 24(4) of the current version of the Schengen Borders Code.

¹⁸ "Fifteen" in the current version of the Schengen Borders Code.

- 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.
- 3b. The Commission shall inform the European Parliament without delay of the notifications made under this Article.

Article 26¹⁹

Specific procedure in case of exceptional circumstances putting the overall functioning of the area without internal border controls at risk

1. 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 Article 19A, and insofar as these circumstances constitute a serious threat to public policy or internal security within the area without internal border controls or parts thereof, 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 still exist. No more than three such prolongations will be possible.
2. 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 Article 19A(1), are incapable of effectively mitigating the serious threat identified, recommend for one or more specific Member States to decide to reintroduce border control at all or specific parts of its internal borders. The Council's recommendation shall be based on a proposal from the Commission. The Member States may request the Commission to submit such a proposal to the Council for a recommendation.

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

¹⁹ DE and HU entered a reservation on this Article.

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

Before a Member State reintroduces border control at all or specific parts of its internal borders under **this paragraph**~~Article 26(2)~~, it shall notify the other Member States and the Commission and the European Parliament accordingly.

3. **In the event that the recommendation referred to in paragraph 2 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.

(deleted)

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, do not become known until less than 10 days before the end of the preceding reintroduction period, the Commission may adopt immediately any necessary recommendations. At the latest 14 days after its adoption, the Commission shall submit to the Council a proposal for a recommendation in accordance with paragraph 2.
- 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."

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

"Article 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, as a last resort, the Council recommends in accordance with Article 26(2) the temporary reintroduction of border control at one or more internal borders or parts thereof, the Council shall 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. This assessment shall be based on the detailed information submitted by the Member State(s) concerned and by the Commission 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) 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 within the area without internal border controls;
 - (b) the current and likely future impact of any serious deficiencies related to external border control 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 deficiencies constitute **serious** threats to public policy or internal security within the area without internal border controls;
 - (c) the likely impact of such a measure on free movement within the area without internal border controls.

2. Before adopting a proposal for a Council recommendation, in accordance with Article 26(2), the Commission may:
 - (a) request Member States, Frontex, Europol or 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 body, in order to obtain or verify information relevant for a recommendation 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

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) Articles 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 initial assessment and the respect of the criteria referred to in Articles 23A, 25 and 26A, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting impact on free movement, the effectiveness of the reintroduction of border control at internal borders, including an ex-post assessment of the proportionality of the reintroduction of border control.²⁰

²⁰ DE entered a reservation on this paragraph.

The Commission may issue an opinion on that ex-post assessment of the temporary reintroduction of border control at one or more internal borders or at parts thereof.

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. The report shall include a list of all decisions to reintroduce border control at internal borders taken during the relevant year.

Article 30
Informing the public

The Commission and the Member State concerned shall inform the public in a coordinated manner 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. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) 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."

(4a) A new Article 37A is introduced:

"Article 37A²¹

Evaluation mechanism

1. In accordance with the Treaties and without prejudice to their provisions on infringement procedures, the implementation by each Member State of this Regulation shall be evaluated through ~~an~~ the evaluation mechanism ~~to verify the application of the Schengen *acquis* established by Regulation No XXX/2013.~~
2. **The rules on the evaluation mechanism are specified in Council Regulation 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 this 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 and internal borders.

In accordance with the evaluation mechanism referred to in this paragraph, the Commission is responsible for adopting the multiannual and annual evaluation programmes and the evaluation reports.

²¹ DK entered a reservation on this Article.

3. **In case of possible deficiencies recommendations for remedial actions may be addressed to the Member States concerned.**

Where serious deficiencies in the carrying out of external border control are identified in an evaluation report adopted by the Commission in accordance with Article 13 of the Council Regulation No XXX/2013, Article 19A and 26 of this Regulation shall apply.

4. **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.**
5. **The European Parliament shall be immediately and fully informed of any proposal to amend or to replace the rules laid down in Council Regulation No XXX/2013."**

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