

Bruxelles, le 10 mars 2022
(OR. fr, en)

7062/22

**Dossier interinstitutionnel:
2021/0428(COD)**

LIMITE

**JAI 318
FRONT 107
MIGR 79
COVID-19 65
SAN 149
TRANS 136
CODEC 266
COMIX 125**

NOTE

Origine: la présidence
Destinataire: Groupe Frontières - Comité Mixte (UE-Islande/Norvège et Suisse/Liechtenstein)

Objet: Proposition de règlement du Parlement européen et du Conseil amendant le règlement (UE) 2016/399 concernant un code de l'Union relatif au régime de franchissement des frontières par les personnes
- Compromis partiel de la présidence (deuxième partie)

Les délégations trouveront ci-joint la deuxième partie du compromis de la présidence sur les propositions de révision des articles 25, 25a, 26, 27, 27a, 28, 31, 33, 39 et 42b du code frontières Schengen.

Les amendements apportés au texte original apparaissent en **gras souligné** ou ~~barrés~~.

2021/0428 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

HAVE ADOPTED THIS REGULATION:

(8) Article 25 is replaced by the following:

“Article 25

General framework for the temporary reintroduction or prolongation of border controls at internal borders

1. Where, in the area without internal border controls, there is a serious threat to public policy or internal security in a Member State, that Member State may exceptionally reintroduce border control at all or specific parts of its internal borders.

A serious threat to public policy or internal security may be considered to arise from, in particular:

- (a) activities relating to terrorism or organised crime;
- (b) large scale public health emergencies;
- (c) an **exceptional** situation characterised by large scale unauthorised movements of third-country nationals between the Member States, putting at risk the overall functioning of the area without internal border controls;
- (d) large scale or high profile international events such as sporting, trade or political events.

2. In all cases, border controls at internal borders shall **only** be reintroduced as a measure of last resort. The scope and duration of the temporary reintroduction of border controls shall not exceed what is strictly necessary to respond to the serious threat identified.

Border controls may only be introduced pursuant to Articles 25a and 28 where a Member State has established that such a measure is necessary and proportionate, taking into account the criteria referred to in Article 26(1), and, in case such controls are prolonged, also the criteria referred to in Article 26(2). Border controls may also be reintroduced in accordance with Article 29, taking into account the criteria referred to in Article 30.

3. Where the same threat ~~continues to~~ persists, border controls at internal borders may be prolonged in accordance with Articles 25a, 28 or 29.

The same threat shall be considered to exist where the justification advanced by the Member State for prolonging border controls is based on the determination of the continuation of the same threat that had justified the initial reintroduction of the border controls.”

- (9) A new Article 25a is inserted after Article 25:

“Article 25a

Procedure for cases requiring action due to unforeseeable or foreseeable events

1. Where a serious threat to public policy or internal security in a Member State is unforeseeable and requires immediate action, the Member State may, on an exceptional basis, immediately reintroduce border controls at internal borders.
2. The Member State shall, at the same time as reintroducing border controls under paragraph 1, notify the Commission and the other Member States of the reintroduction of border controls, in accordance with Article 27(1).
3. For the purposes of paragraph 1, border controls at internal borders may be immediately reintroduced for a limited period of up to one month. If the serious threat to public policy or internal security persists beyond that period, the Member State may prolong the border control at internal borders for further periods, leading to a maximum duration not exceeding three months.
4. Where a serious threat to public policy or internal security is foreseeable in a Member State, the Member State shall notify the Commission and the other Member States ~~and the Commission~~ in accordance with Article 27(1), at the latest four weeks before the planned reintroduction of border controls, or **as soon as possible** ~~within a shorter period~~ where the circumstances giving rise to the need to reintroduce border controls at internal borders become known less than four weeks before the planned reintroduction.

5. ~~For the purposes of~~ **Where** paragraph 4 **applies**, and without prejudice to Article 27a(4), border control at internal borders may be reintroduced for a period of up to six months. Where the serious threat to public policy or internal security persists beyond that period, the Member State may prolong the border control at internal borders for renewable periods of up to six months.

Any prolongation shall be notified to the Commission and the other Member States in accordance with Article 27 and within the time limits referred to in paragraph 4. Subject to Article 27a(5), the maximum duration of border control at internal borders shall not exceed two years.

6. The period referred to in paragraph 5 shall not include periods referred to in paragraph 3.”

(10) Article 26 is replaced by the following:

“Article 26

Criteria for the temporary reintroduction and prolongation of border control at internal borders

1. To establish whether the reintroduction of border control at internal borders is necessary and proportionate in accordance with Article 25(2), a Member State shall in particular **assess** ~~consider~~:
 - (a) the appropriateness of the measure of reintroducing border controls at internal border, having regard to the nature of the serious threat identified and in particular, whether the reintroduction of border controls at internal borders is likely to adequately remedy the threat to public policy, or internal security;
 - (b) the likely impact of such a measure on:
 - **the** movement of persons within the area without internal border controls and
 - the functioning of the cross-border regions, taking into account the strong social and economic ties between them.
2. Where a Member State decides to prolong the border control at internal borders pursuant to Article 25a(5), it shall also assess in detail whether the objectives pursued by such prolongation could be attained by:
 - a) the use of alternative measures such as proportionate checks carried out in the context of the lawful **checks within the territory** ~~exercise of powers~~ as referred to in Article 23 point (a);
 - b) the use of the procedure as referred to in Article 23a;

c) ~~forms of police cooperation as provided for under Union law, including on matters such as joint patrols, joint operations, joint investigation teams, cross-border hot pursuits, or cross-border surveillance;~~

d) common measures regarding temporary restrictions on travel to the Member States as referred to in Article 21a(2).

3. Where border controls at internal borders have been reintroduced or prolonged, the Member States concerned shall, where necessary, ensure that they are accompanied by appropriate measures that mitigate the impacts resulting from the reintroduction of border controls on persons and the transport of goods, giving particular consideration to the cross-border regions.”

(11) Article 27 is replaced by the following:

“Article 27

Notification of temporary reintroduction of internal border controls and risk assessment

1. Notifications by Member States of the reintroduction or prolongation of internal border controls shall contain the following information:
 - (a) the reasons for the reintroduction or prolongation, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security;
 - (b) the scope of the proposed reintroduction or prolongation, specifying at which part or parts of the internal borders border control is to be reintroduced, or prolonged;
 - (c) the names of the authorised crossing points;
 - (d) the date and duration of the planned reintroduction or prolongation;
 - (e) the **assessment of** ~~considerations as to~~ the necessity and proportionality referred to in Article 26(1) and, in the case of a prolongation, in Article 26(2);
 - (f) where appropriate, the measures to be taken by the other Member States.

A notification may be submitted jointly by two or more Member States.

Member States ~~The notification shall be submit provided the notification using in accordance with a template to be established by the Commission by an implementing act and to be made available online by the Commission. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).”~~

2. Where border controls have been in place for six months in accordance with Article 25a(5), any subsequent notification for the prolongation of such controls shall include a risk assessment. The risk assessment shall present the scale and anticipated evolution of the identified serious threat, in particular how long the identified serious threat is expected to persist and which sections of the internal borders may be affected, as well as information regarding coordination measures with the other Member States impacted or likely to be impacted by such measures.
3. Where **Member States** reintroduce or prolong border controls ~~large-scale unauthorised movements~~ **because of a situation** referred to in Article 25(1) point (cb), the risk assessment shall also provide information on the scale and trends of such unauthorised movements, including any information obtained from the relevant EU agencies in line with their respective mandates and data analysis from relevant information systems.
4. The Member State concerned shall upon request by the Commission, provide any further information, including on the coordination measures with the Member States affected by the planned prolongation of border control at internal borders as well as further information needed to assess the possible use of measures referred to in Article 23 and 23a.
5. Member States submitting a notification under paragraphs 1 or 2 may, where necessary and in accordance with national law, decide to classify all or parts of the notified information.

Such classification shall not preclude access to information, through appropriate and secure ~~police-cooperation~~ channels, by the other Member States affected by the temporary reintroduction of border controls at internal borders.”

6. **The Commission shall adopt an implementing act to establish the template referred to in the third subparagraph of paragraph 1. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2)."**

(12) The following Article 27a is inserted:

“Article 27a

Consultation with the Member States and opinion of the Commission

1. Following receipt of notifications, submitted under Article 27(1), the Commission may **on its own initiative or at the request of a Member State directly affected** establish a consultation process, ~~where appropriate~~, including joint meetings between the Member State that is planning to reintroduce or prolong border control at internal borders, and the other Member States, especially those directly affected by such measures and the relevant Union agencies.

The consultation shall concern in particular the identified threat to public policy or internal security, the relevance of the intended reintroduction of border controls taking into account the appropriateness of alternative measures, as well as the ways of ensuring implementation of the mutual cooperation between the Member States in relation to the reintroduced border controls.

The Member State planning to reintroduce or prolong border control at internal borders shall take ~~into utmost~~ account of the results of such consultation when carrying out border control at the internal border.

2. Following the receipt of notifications, submitted in relation to the reintroduction or prolongation of border controls at internal borders, the Commission or any other Member State may, without prejudice to Article 72 TFEU, issue an opinion, if, based on the information contained in the notification and risk assessment, where appropriate, or any additional information, they have concerns as regards the necessity or proportionality of the planned reintroduction or prolongation of border control at internal borders.
3. Following receipt of notifications submitted in relation to a prolongation of border control at the internal border under Article 25a(4) which leads to the continuation of border controls at internal borders for eighteen months in total, the Commission shall issue an opinion on necessity and proportionality of such internal border controls.
4. Where an opinion referred to in paragraphs 2 or 3 is issued, the Commission may establish a consultation process in order to discuss the opinion with the Member States. Where the Commission or a Member State issues an opinion expressing concerns on the necessity or proportionality of reintroduced internal border controls the Commission shall launch such a process.
5. Where a Member State considers that there are exceptional situations justifying the continued need for internal border controls in excess of the maximum period referred to in Article **25a(5)**, it shall notify the Commission in accordance with Article 27(2). The new notification from the Member State shall substantiate the continued threat to public policy or internal security, taking into account the opinion of the Commission given pursuant to paragraph 3. The Commission shall issue a follow up opinion.”

(13) Article 28 is replaced by the following:

“Article 28

Specific mechanism where the serious threat to public policy or internal security puts at risk the overall functioning of the area without internal border controls

1. Where the Commission establishes that the same serious threat to internal security or public policy affects ~~a majority of~~ **several** Member States, putting at risk the overall functioning of the area without internal border **controls**, it may make a proposal to the Council to adopt an implementing decision authorising the reintroduction of border controls by Member States where the available measures referred to in Articles **21a**, 23 and 23a are not sufficient to address the threat. **The Member States may request the Commission to submit such a proposal to the Council.**
2. The decision shall cover a period of up to six months and may be renewed, upon proposal from the Commission, for further periods of up to six months as long as the threat persists, taking into account the review referred to in paragraph 5.
3. Where Member States reintroduce or prolong border controls because of the threat referred to in paragraph 1, those controls shall, as of the entry into force of the Council decision, be based on that decision.
4. The decision of the Council referred to in paragraph 1 shall also refer to any appropriate mitigating measures that shall be established at national and Union level in order to minimise the impacts caused by the reintroduction of border controls.
5. The Commission shall **regularly** review the evolution of the identified threat as well as the impact of the measures adopted in accordance with the Council decision referred to in paragraph 1, with a view to **assessing** whether the measures remain justified.
6. Member States shall immediately notify the Commission and the other Member States in the Council of a reintroduction of border controls in accordance with the decision referred to in paragraph 1.
7. The Commission may issue a recommendation indicating other measures as referred to in Articles 23 and 23a that could complement internal border controls or be more suitable to address the identified threat to internal security or public policy as referred to in paragraph 1.”

(14) Article 31 is amended as follows:

a) Article 31 becomes paragraph 1;

b) the following paragraphs **2 and 3 are** added:

- ‘2. Where a Member State notifies the Commission and the other Member States of the reintroduction of border controls in accordance with Article 27(1), it shall at the same time inform the European Parliament and the Council of the following:
- a) ~~the details of the internal borders where border control is to be reintroduced~~ **the scope of the proposed reintroduction, specifying at which part(s) of the internal borders control is to be reintroduced;**
 - b) the reasons for the ~~proposed~~ reintroduction;
 - 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 State.
3. Member States shall not be required to provide all the information referred to in the paragraph 2 in cases justified on public security grounds.

The provision of information may be subject to classification of information by Member States pursuant to Article 27(**5**).

The classification of information shall not preclude information from being made available by the Commission to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament under this Article shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.”

(15) Article 33 is replaced by the following:

“Article 33

Report on the reintroduction of border control at internal borders

1. Within four weeks of the lifting of border control at internal borders, Member States which have carried out border controls at internal borders shall present a report to the European Parliament, the Council and the Commission on the reintroduction and, where applicable, the prolongation of border control at internal borders.

2. Without prejudice to the first paragraph 1, where border controls are prolonged as referred to in Article 25a(5), the Member State concerned shall submit a report at the expiry of twelve months and every twelve months thereafter if border control is exceptionally maintained.
3. The report shall outline, in particular, the initial and follow-up assessment of the necessity of border controls and the respect of the criteria referred to in Articles 26, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting impact on the movement of persons in particular in the cross-border regions, 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.
4. The Commission shall adopt a uniform format for such report **to be established by an implementing act** and make it available online. **That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).**
5. 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.
6. 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 entitled ('State of Schengen report'). The report shall include a list of all decisions to reintroduce border controls at internal borders taken during the relevant year. It shall also include an assessment of the necessity and proportionality of the reintroductions **and prolongations** of border controls in the period covered by that report **as well as** information on the trends within the Schengen area **without internal border control** as regards the unauthorised movements of third country nationals, taking into account available information from the relevant Union agencies **and** data analysis from relevant information systems. ~~and an assessment of the necessity and proportionality of the reintroductions of border controls in the period covered by that report."~~

(16) In Article 39(1), the following point (h) is added:

- "h) ~~Member States shall notify to the Commission the local administrative areas considered as the~~ cross-border regions and any relevant changes thereto."

(17) The following Article 42b is added:

*"Article 42b
Notification of cross-border regions*

By two months of the entry into force of this Regulation at the latest, Member States **with common internal borders** shall **in close cooperation determine** ~~notify the Commission the~~ areas of their territory considered as ~~the~~ cross-border regions **and notify the Commission thereof.**

Member States shall also inform the Commission of any relevant changes thereto."