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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border control at internal borders - Outcome of the European Parliament's first reading, (Brussels, 3 to 4 April 2019)

I. INTRODUCTION

The rapporteur, Tanja FAJON (S&D, SI), presented a report on the proposal for a Regulation, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. The report contained the amendments to the proposal as adopted on 29 November 2018. No other amendments were tabled.

II. VOTE

When it voted on 4 April 2019, the plenary adopted the report on the proposal for a Regulation.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Temporary reintroduction of border control at internal borders *I**

European Parliament legislative resolution of 4 April 2019 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the rules applicable to the temporary reintroduction of border control at internal borders (COM(2017)0571 – C8-0326/2017 – 2017/0245(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0571),
 - having regard to Article 294(2) and Article 77(2)(e) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0326/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the contributions submitted by the Czech Chamber of Deputies, the Czech Senate, the Greek Parliament, the Spanish Parliament, the French Senate and the Portuguese Parliament on the draft legislative act,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0356/2018),
1. Adopts its position at first reading hereinafter set out²;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

² This position corresponds to the amendments adopted on 29 November 2018 (Texts adopted, P8_TA(2018)0472).

Amendment 1

Proposal for a regulation

Recital -1 (new)

Text proposed by the Commission

Amendment

(-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 Union. The normal functioning and strengthening of such an area, which is based on trust and solidarity, should be a common objective of the Union and the Member States which have agreed to take part in it. At the same time, it is necessary to have a common response to situations seriously affecting the public policy or internal security of that area, or parts thereof, by allowing for the temporary reintroduction of border control at internal borders in exceptional circumstances and as a last resort, while strengthening cooperation between the Member States concerned.

Amendment 2

Proposal for a regulation

Recital 1

Text proposed by the Commission

Amendment

(1) In an area where persons may move freely, the reintroduction of border control at internal borders should remain an exception. **The** reintroduction of internal border control should be **decided** only as a measure of last resort, for a limited period of time and to the extent that controls are necessary and proportionate to the identified serious threats to public policy or internal security.

(1) In an area where persons may move freely, the reintroduction of border control at internal borders should remain an exception. **As the free movement of persons is affected by the temporary** reintroduction of internal border control, **it** should be **reintroduced** only as a measure of last resort, for a limited period of time and to the extent that controls are necessary and proportionate to the identified serious threats to public policy or internal security. **Any such measure should be withdrawn**

as soon as the underlying grounds for it cease to exist.

Amendment 3

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Migration and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security.

Amendment 4

Proposal for a regulation Recital 2

Text proposed by the Commission

Amendment

(2) The identified serious threats can be addressed by different measures, depending on their nature and scale. The Member States have at their disposal ***also*** police powers, as referred to in Article 23 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)⁸, which, subject to some conditions, can be used in ***the*** border areas. The Commission Recommendation on proportionate police checks and police cooperation in the Schengen area⁹ provides guidelines to the Member States to that end.

(2) The identified serious threats can be addressed by different measures depending on their nature and scale. ***While it remains clear that police powers are different in their nature and purpose from border control,*** the Member States have at their disposal ***those*** police powers, as referred to in Article 23 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)⁸ which, subject to some conditions, can be used in border areas. The Commission Recommendation on proportionate police checks and police cooperation in the Schengen area⁹ provides guidelines to the Member States to that end.

⁸ OJ L 77, 23.3.2016, p. 1.

⁹ C(2017) 3349 final of 12.05.2017.

⁸ OJ L 77, 23.3.2016, p. 1.

⁹ C(2017) 3349 final of 12.05.2017.

Amendment 5

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Before resorting to the reintroduction of border control at internal borders, Member States should give precedence to alternative measures. In particular, the Member State concerned should, where necessary and justified, consider using more effectively or intensifying police checks within its territory, including in border areas and main transport routes, on the basis of a risk assessment, while ensuring that those police checks do not have border control as an objective. Modern technologies are instrumental in addressing threats to public policy or internal security. Member States should assess whether the situation could be adequately addressed by way of increased cross-border cooperation, both from an operational point of view and from that of information exchange between police and intelligence services.

Amendment 6

Proposal for a regulation Recital 4

Text proposed by the Commission

Amendment

(4) However, experience has shown that certain serious threats to public policy or

(4) However, experience has shown that ***there is rarely a need to reintroduce***

internal security, *such as cross-border terrorist threats or specific cases of secondary movements of irregular migrants within the Union that justified the reintroduction of border controls, may persist well beyond the above periods*. It is therefore *needed and justified* to adjust the time limits applicable to the temporary reintroduction of border control *to the current needs*, while ensuring that this measure is not abused and remains an exception, to be used only as a last resort. *To that end, the general deadline applicable under Article 25 of the Schengen Borders Code should be extended to one year.*

border control at internal borders for periods of longer than two months. In exceptional circumstances only, certain serious threats to public policy or internal security might persist beyond the maximum periods of six months currently authorised for the reintroduction of border control at internal borders. It is therefore *necessary* to adjust the time limits applicable to the temporary reintroduction of border control, while ensuring that this measure is not abused and remains an exception, to be used only as a last resort.

Amendment 7

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(4 a) Any derogation from the fundamental principle of free movement of persons should 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 interests of society.

Amendment 8

Proposal for a regulation Recital 5

Text proposed by the Commission

Amendment

(5) In order to guarantee that these internal border controls remain an exception, Member States should submit a

(5) In order to guarantee that these internal border controls *are a measure of last resort and* remain an exception,

risk assessment concerning the intended **reintroduction** of border control **or prolongation thereof**. The risk assessment should, in particular, assess for how long the identified threat is expected to persist and which sections of the internal borders are affected, demonstrate that the prolongation of border controls is a last resort **measure** and explain how border control would help in addressing the identified threat. ***In case of internal border control going beyond six months***, the risk assessment should also demonstrate retrospectively the efficiency of the reintroduced border control in addressing the identified threat and explain in detail how each neighbouring Member State affected by such prolongation was consulted and involved in determining the least burdensome operational arrangements.

Member States should submit a risk assessment concerning the intended **prolongation** of border control **beyond two months**. The risk assessment should, in particular, assess for how long the identified threat is expected to persist and which sections of the internal borders are affected, demonstrate that the prolongation of border controls is a **measure of last resort**, ***in particular by showing that any alternative measures have proven or are deemed insufficient***, and explain how border control would help in addressing the identified threat. The risk assessment should also demonstrate retrospectively the efficiency **and effectiveness** of the reintroduced border control in addressing the identified threat and explain in detail how each neighbouring Member State affected by such prolongation was consulted and involved in determining the least burdensome operational arrangements. ***The Member States should retain the possibility to classify, where necessary, all or parts of the information provided.***

Amendment 9

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Whenever the reintroduction of internal border control is proposed for specific planned events of an exceptional nature and duration, such as sporting activities, the duration of such control should be very precise, circumscribed and linked to the actual duration of the event.

Amendment 10

Proposal for a regulation
Recital 6

Text proposed by the Commission

(6) The quality of the risk assessment submitted by the Member State will be very important for the assessment of the necessity and proportionality of the intended reintroduction or prolongation of border control. The European Border and Coast Guard Agency **and** Europol should be involved in that assessment.

Amendment

(6) The quality of the risk assessment submitted by the Member State will be very important for the assessment of the necessity and proportionality of the intended reintroduction or prolongation of border control. The European Border and Coast Guard Agency, Europol, ***the European Asylum Support Office, the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice and the European Union Agency for Fundamental Rights*** should be involved in that assessment.

Amendment 11

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) ***The power of the Commission to issue an opinion under Article 27(4) of the Schengen Borders Code should be modified to reflect the new obligations on the Member States related to the risk assessment, including the cooperation with Member States concerned. When border control at internal borders is carried out for more than six months, the Commission should be obliged to issue an opinion.*** Also the consultation procedure as provided for in Article 27(5) of the Schengen Borders Code should be modified in order to reflect the role of the Agencies (***European Border and Coast Guard Agency and Europol***) and focus on the practical implementation of different aspects of cooperation between the

Amendment

(7) The consultation procedure as provided for in Article 27(5) of the Schengen Borders Code should be modified in order to reflect the role of the ***Union*** Agencies and focus on the practical implementation of different aspects of cooperation between the Member States.

Member States, *including the coordination, where appropriate, of different measures on both sides of the border.*

Amendment 12

Proposal for a regulation Recital 8

Text proposed by the Commission

(8) In order to make the revised rules better adapted to the challenges related to persistent serious threats to public policy or internal security, a specific possibility should be provided to prolong internal border controls beyond ***one year***. Such prolongation should accompany commensurate exceptional national measures also taken within the territory to address the threat, such as a state of emergency. In any case, such a possibility should not lead to the further prolongation of temporary internal border controls beyond ***two years***.

Amendment

(8) In order to make the revised rules better adapted to the challenges related to persistent serious threats to public policy or internal security, a specific possibility should be provided to prolong internal border controls beyond ***six months on an exceptional basis***. Such prolongation should accompany commensurate exceptional national measures also taken within the territory to address the threat, such as a state of emergency. In any case, such a possibility should not lead to the further prolongation of temporary internal border controls beyond ***one year***.

Amendment 13

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The necessity and proportionality of reintroducing internal border control should be balanced against the threat to public policy or internal security triggering the need for such reintroduction, as should alternative measures which could be taken at national or Union level, or both, and the impact of such control on the free

*movement of persons within the area
without internal border control.*

Amendment 14

Proposal for a regulation Recital 9

Text proposed by the Commission

Amendment

(9) The reference to Article 29 in Article 25(4) should be modified with a view of clarifying the relation between the time periods applicable under Article 29 and Article 25 of the Schengen Borders Code.

deleted

Amendment 15

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

(10) The possibility to carry out temporary internal border controls in response to a specific threat to public policy or internal security which persists beyond *a year* should be subject to a specific procedure.

(10) The possibility to carry out temporary internal border controls in response to a specific threat to public policy or internal security which persists beyond *six months* should be subject to a specific procedure *requiring a Council recommendation*.

Amendment 16

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) To that end, the Commission should issue an opinion on the necessity and proportionality of such prolongation ***and, where appropriate, on the cooperation with the neighbouring*** Member States.

Amendment

(11) To that end, the Commission should issue an opinion on the necessity and proportionality of such prolongation. ***The European Parliament should immediately be informed about the proposed prolongation. The Member States affected should have the possibility to make observations to the Commission before it issues its opinion.***

Amendment 17

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) The Council, taking account of the Commission's opinion, may recommend such extraordinary further prolongation and where appropriate ***determine*** the conditions for cooperation between the Member States concerned, with a view to ensuring that it is an exceptional measure, in place only for as long as necessary and justified, and consistent with the measures also taken at the national level within the territory to address the same specific threat to public policy or internal security. The Council recommendation should be a prerequisite for any further prolongation beyond the period of ***one year and hence be of the same nature as the one already provided for in Article 29.***

Amendment

(13) The Council, taking account of the Commission's opinion, may recommend such extraordinary further prolongation and where appropriate ***lay down*** the conditions for cooperation between the Member States concerned, with a view to ensuring that it is an exceptional measure, in place only for as long as necessary and justified, and consistent with the measures also taken at the national level within the territory to address the same specific threat to public policy or internal security. The Council recommendation should be a prerequisite for any further prolongation beyond the period of ***six months. The Council recommendation should be immediately forwarded to the European Parliament.***

Amendment 18

Proposal for a regulation

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Measures taken under the specific procedure where exceptional circumstances put the overall functioning of the area without internal border control at risk should not be prolonged by virtue of, or combined with, measures taken under another procedure for the reintroduction or prolongation of internal border control as provided for in Regulation (EU) 2016/399.

Amendment 19

**Proposal for a regulation
Recital 13 b (new)**

Text proposed by the Commission

Amendment

(13b) Where it considers that a Member State has failed to fulfil its obligations under the Treaties, the Commission should, as the guardian of the Treaties that oversees the application of Union law, take appropriate measures in accordance with Article 258 of the Treaty on the Functioning of the European Union, including by bringing the matter before the Court of Justice of the European Union.

Amendment 20

**Proposal for a regulation
Article 1 – paragraph 1 – point 1
Regulation (EU) 2016/399**

Article 25 – paragraph 1

Text proposed by the Commission

1. Where, in the area without internal border control, 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 for a limited period ***of up to 30 days, or for the foreseeable duration of the serious threat if its duration exceeds 30 days, but not exceeding six months***. 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.

Amendment

1. Where, in the area without internal border control, 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 for a limited period ***as a measure of last resort***. 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.

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 25 – paragraph 2

Text proposed by the Commission

2. ***Border control at internal borders shall only be reintroduced as a last resort, and in accordance with Articles 27, 27a, 28 and 29. The criteria referred to, respectively, in Articles 26 and 30 shall be taken into account in each case where a decision on reintroduction of border control at internal borders is considered pursuant, respectively, to Article 27, 27a, 28 or 29.***

Amendment

deleted

Amendments 22 and 52

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 25 – paragraph 3

Text proposed by the Commission

Amendment

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 of this Article, that Member State may prolong border control at its internal borders, taking account of the criteria referred to in Article 26 and in accordance with Article 27, on the same grounds as those referred to in paragraph 1 of this Article and, taking into account any new elements, for renewable periods corresponding to the foreseeable duration of the serious threat and not exceeding six months.* ***deleted***

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EU) 2016/399

Article 25 – paragraph 4

Text proposed by the Commission

Amendment

The total period during which border control is reintroduced at internal borders, including any prolongation provided for under paragraph 3 of this Article, shall not exceed one year. ***deleted***

In the exceptional cases referred to in Article 27a, the total period may be further extended by a maximum length of two years in accordance with that Article.

Where there are exceptional circumstances as referred to in Article 29, the total period may be extended by a maximum length of two years, in accordance with paragraph 1 of that Article.

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 1 a (new)

Regulation (EU) 2016/399

Article 26

Present text

Article 26

Criteria for the temporary reintroduction of border control at internal borders

Where a Member State decides, as a last resort, on the temporary reintroduction of border control **at one** or more of its internal borders or at parts thereof, or decides to prolong such reintroduction, **in accordance with Article 25 or Article 28(1)**, 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 Member State shall,** in particular, **take the following** into account:

Amendment

(1 a) Article 26 is replaced by the following:

"Article 26

Criteria for the temporary reintroduction of border control at internal borders

Before a Member State decides, as a **measure of** last resort, on the temporary reintroduction of border control **at one** or more of its internal borders or at parts thereof, or decides to prolong such **a temporary** reintroduction, it shall assess:

(a) whether the temporary reintroduction of border control at internal borders can be considered likely to **sufficiently** remedy the threat to public policy or internal

security;

(b) whether measures other than the temporary reintroduction of border control at internal borders, such as enhanced cross-border police cooperation or intensified police checks, are likely to sufficiently remedy the threat to public policy or internal security;

(c) the proportionality of the temporary reintroduction of border control at internal borders in relation to the threat to public policy or internal security, in particular by taking into account:

(a) the likely impact of any threats to its public policy or internal security, including following terrorist incidents or threats and including those posed by organised crime;

(b) the likely impact of ***such a measure on*** free movement of persons within the area without internal border control.

(i) the likely impact of any threats to its public policy or internal security, including following terrorist incidents or threats and including those posed by organised crime;
and

(ii) the likely impact of the ***temporary reintroduction of border control at internal borders*** on the free movement of persons within the area without internal border control.

Where a Member State assesses under point (a) of the first subparagraph that the temporary reintroduction of internal border control is not likely to sufficiently remedy the threat to public policy or internal security, it shall not reintroduce internal border control.

Where a Member State assesses under point (b) of the first subparagraph that measures other than the temporary reintroduction of internal border control are likely to sufficiently remedy the threat to public policy or internal security, it shall not reintroduce or prolong internal border control and shall take those other measures.

Where a Member State assesses under point (c) of the first subparagraph that the proposed reintroduction of internal border control is not proportionate to the threat, it shall not reintroduce or prolong internal border control."

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point -i (new)

Regulation (EU) 2016/399

Article 27 – title

Present text

Procedure for the temporary reintroduction of border control at internal borders ***under Article 25***

Amendment

(-i) the title is replaced by the following:

"Procedure for the temporary reintroduction of border control at internal borders ***in the event of a foreseeable serious threat to public policy or internal security***";

Justification

The title of the Article 27 should be in line with the content of the article. This is not to confuse measures adopted under article 28 (measures requiring immediate action) and under 29 (exceptional circumstances putting the overall functioning of the area without internal borders at risk).

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point -i a (new)

Regulation (EU) 2016/399

Article 27 – paragraph -1 (new)

Text proposed by the Commission

Amendment

(-ia) in Article 27, a following new paragraph is inserted before paragraph 1:

"-1. Where, in the area without internal border control, there is a serious threat to public policy or internal security in a Member State, that Member State may, as a measure of last resort and in accordance with the criteria laid down in Article 26, reintroduce border control at all or specific parts of its internal borders for a limited period of up to 30 days or, if the serious threat persists beyond 30 days, for the foreseeable duration of the serious threat but, in any event, for no longer than two months."

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point -i b (new)

Regulation (EU) 2016/399

Article 27 – paragraph 1 – introductory part

Present text

1. ***Where a Member State plans to reintroduce border control at internal borders under Article 25, it*** shall notify the other Member States and the Commission 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 become known less than four weeks before the planned reintroduction. To that end, the Member State shall supply the following information:

Amendment

(-ib) in paragraph 1, the introductory part is replaced by the following:

"1. For the purposes of paragraph -1, the Member State concerned shall notify the other Member States and the Commission 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 become known less than four weeks before the planned reintroduction. To that end, the Member State shall supply the following information:"

Amendments 28 and 57

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point i

Regulation (EU) 2016/399

Article 27 – paragraph 1 – point aa

Text proposed by the Commission

Amendment

(i) In paragraph 1, a new letter (aa) is added as follows: **deleted**

(aa) a risk assessment assessing how long the identified threat is expected to persist and which sections of the internal borders are affected, demonstrating that the prolongation of border control is a last resort measure and explaining how border control would help address the identified threat. Where border control has already been reintroduced for more than six months, the risk assessment shall also explain how the previous reintroduction of border control has contributed to remedying the identified threat.

The risk assessment shall also contain a detailed report of the coordination which took place between the Member State concerned and the Member State or Member States with which it shares internal borders at which border control has been performed.

The Commission shall share the risk assessment with the European Border and Coast Guard Agency and Europol, as appropriate.

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point i a (new)

Text proposed by the Commission

Amendment

(i a) In paragraph 1, the following point (ab) is inserted:

"(ab) any measures other than the proposed reintroduction, taken or envisaged by the Member State, to address the threat to public policy or internal security as well as the evidence-based reason as to why alternative measures, such as enhanced cross-border police cooperation and police checks, were deemed insufficient;"

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point ii

Regulation (EU) 2016/399

Article 27 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) where appropriate, the measures to be taken by the other Member States as agreed prior to the temporary reintroduction of border control at internal borders ***concerned***.

(e) where appropriate, the measures to be taken by the other Member States as agreed prior to the temporary reintroduction of border control at ***the relevant*** internal borders."

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iii

Regulation (EU) 2016/399

Article 27 – paragraph 1 – last sentence

Text proposed by the Commission

Where necessary, the Commission may request additional information from the Member State(s) concerned, including on the cooperation with the Member States affected by the planned prolongation of border control at internal borders as well as **additional** information needed to assess whether this is a last resort measure.

Amendment

If necessary, the Commission may request additional information from the Member State(s) concerned, including on the cooperation with the Member States affected by the planned **reintroduction or** prolongation of border control at internal borders as well as **further** information needed to assess whether this is a last resort measure.

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iii a (new)

Regulation (EU) 2016/399

Article 27 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(iii a) the following paragraph 1a is inserted:

"1a. If the serious threat to public policy or internal security in the Member State concerned persists beyond two months, that Member State may prolong border control at its internal borders, taking into account the criteria laid down in Article 26, on the same grounds as those referred to in paragraph -1 of this Article and, taking into account any new elements, for a period which shall correspond to the foreseeable duration of the serious threat and shall not, in any event, exceed four

months. The Member State concerned shall notify the other Member States and the Commission within the time period referred to in paragraph 1."

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iii b (new)

Regulation (EU) 2016/399

Article 27 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(iii b) the following paragraph 1b is inserted:

"1b. For the purposes of paragraph 1a, in addition to the information provided under paragraph 1, the Member State concerned shall provide a risk assessment which shall:

(i) assess how long the identified threat is expected to persist and which section of its internal borders is affected;

(ii) outline the alternative actions or measures previously introduced to address the identified threat;

(iii) explain why the alternative actions or measures referred to in point (ii) did not sufficiently remedy the identified threat;

(iv) demonstrate that the prolongation of border control is a last resort; and

(v) explain how border control would better help address the identified threat.

The risk assessment referred to in the first subparagraph shall also contain a detailed report of the cooperation which took place between the Member State concerned and the Member State or Member States directly affected by the

reintroduction of border control, including those Member States with which the Member State concerned shares internal borders at which border control is performed.

The Commission shall share the risk assessment with the Agency and Europol and may request, where appropriate, their views thereon.

The Commission is empowered to adopt delegated acts in accordance with Article 37 supplementing this Regulation by adopting the methodology for the risk assessment.";

Amendment 34

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iii c (new)

Regulation (EU) 2016/399

Article 27 – paragraph 2

Present text

2. The information referred to in *paragraph 1* shall be submitted to the European Parliament and to the Council at the same time as it is notified to the other Member States and to the Commission pursuant to *that paragraph*.

Amendment

(iii c) paragraph 2 is replaced by the following:

2. The information referred to in *paragraphs 1 and 1b* shall be submitted to the European Parliament and to the Council at the same time as it is notified to the other Member States and to the Commission pursuant to *those paragraphs*.

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iii d (new)

Present text

3. Member States ***making*** a notification ***under paragraph 1*** may, where necessary and in accordance with national law, ***decide to classify*** parts of the information. Such classification 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.

Amendment

(iii d) paragraph 3 is replaced by the following:

"3. Member States ***submitting*** a notification may ***classify***, where necessary and in accordance with national law, ***all or*** parts of the information ***referred to in paragraphs 1 and 1b***. 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 control at internal borders and*** 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.";

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iv

Regulation (EU) 2016/399

Article 27 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Following notification by a Member State under ***paragraph 1*** and with a view to

Amendment

Following notification by a Member State under ***paragraphs 1 and 1a*** and with a

consultation provided for in paragraph 5, the Commission or any other Member State may, without prejudice to Article 72 TFEU, issue an opinion.

view to consultation provided for in paragraph 5, the Commission or any other Member State may, without prejudice to Article 72 TFEU, issue an opinion.

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iv

Regulation (EU) 2016/399

Article 27 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Where the Commission has concerns as regards the necessity or proportionality of the planned reintroduction of border control at internal borders or where it considers that a consultation on some **aspects** of the notification would be appropriate, it shall issue an opinion to that effect.

Amendment

Where, ***based on the information contained in the notification or on 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 where it considers that a consultation on some ***aspect*** of the notification would be appropriate, it shall issue an opinion to that effect ***without delay***.

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point iv

Regulation (EU) 2016/399

Article 27 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Where border control at internal borders has already been reintroduced for six

Amendment

deleted

months, the Commission shall issue an opinion.

Amendment 39

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point v

Regulation (EU) 2016/399

Article 27 – paragraph 5

Text proposed by the Commission

The information referred to in **paragraph 1** and any Commission or Member State opinion referred to in paragraph 4 shall be the subject of a consultation **led by the Commission. Where appropriate**, the consultation shall include joint meetings between the Member State planning to reintroduce border control at internal borders, the other Member States, especially those directly affected by such measures and the **relevant Agencies. The proportionality of the intended measures, the identified threat to public policy or internal security as well as the ways of ensuring implementation of the** mutual cooperation between the Member States **shall be examined. The Member State planning to reintroduce or prolong** border control **at internal borders shall take the utmost account of the results of such consultation when carrying out** border controls.

Amendment

The information referred to in **paragraphs 1 and 1b** and any Commission or Member State opinion referred to in paragraph 4 shall be the subject of a consultation. The consultation shall include:

(i) joint meetings between the Member State planning to reintroduce border control at internal borders, the other Member States, especially those directly affected by such measures, and the **Commission, which shall be held 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, including any possible alternative measures, and the threat to public policy or internal security;

(ii) where appropriate, unannounced on-site visits by the Commission to the relevant internal borders and, where appropriate, with the support of experts from Member States and from the Agency, Europol or any other relevant Union body, office or agency, to assess the effectiveness of border controls at those internal borders and the compliance with this Regulation; the reports of such unannounced on-site visits shall be transmitted to the European Parliament.

Amendment 40

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Article 27a – title

Text proposed by the Commission

Specific procedure where the serious threat to public policy or internal security exceeds *one year*.

Amendment

Specific procedure where the serious threat to public policy or internal security exceeds *six months*.

Amendment 41

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Article 27a – paragraph 1

Text proposed by the Commission

1. In exceptional ***cases***, where the Member State is confronted with the same serious threat to public policy or internal security beyond the period referred to in Article **25(4) *first sentence***, and where commensurate exceptional national measures are also taken within the territory to address this threat, the border control as temporarily reintroduced to respond to that threat may be further prolonged in accordance with this Article.

Amendment

1. In exceptional ***circumstances***, where the Member State is confronted with the same serious threat to public policy or internal security beyond the period referred to in Article **27(1a)**, and where commensurate exceptional national measures are also taken within the territory to address this threat, the border control as temporarily reintroduced to respond to that threat may be further prolonged in accordance with this Article.

Amendment 42

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Article 27a – paragraph 2

Text proposed by the Commission

2. At the latest ***six*** weeks before the expiry of the period referred to in Article **25(4) *first sentence***, the Member State shall notify the other Member States and the Commission that it seeks a further prolongation in accordance with the specific procedure laid down in this Article. ***The*** notification shall contain the information required ***in*** Article **27(1)(a) to (e)**. Article **27 paragraphs 2 and 3** shall apply.

Amendment

2. At the latest ***three*** weeks before the expiry of the period referred to in Article **27(1a)**, the Member State shall notify the other Member States and the Commission that it seeks a further prolongation in accordance with the specific procedure laid down in this Article. ***This*** notification shall contain ***all*** the information required ***under*** Article **27(1) and (1b)**. Article **27(2) and (3)** shall apply.

Amendment 43

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Text proposed by the Commission

3. The Commission shall issue an opinion.

Amendment

3. The Commission shall issue an opinion ***on whether the proposed prolongation fulfils the requirements set out in paragraphs 1 and 2 and on the necessity and the proportionality of the proposed prolongation. The Member States affected may make observations to the Commission before it issues that opinion.***

Amendment 44

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) 2016/399

Text proposed by the Commission

4. ***The Council, taking due account of*** the opinion of the Commission, ***may*** recommend that the Member State ***decide to*** further prolong border control at internal borders for a ***period of up to six months. That period may be prolonged, no more than three times, for a further*** period of up to six months. In its recommendation, the Council shall ***at least*** indicate the information referred to in Article 27(1) ***(a) to (e). Where appropriate, it shall determine*** the conditions for cooperation between the Member States concerned.

Amendment

4. ***Once it has taken*** the opinion of the Commission ***into account, the Council may, as a last resort,*** recommend that the Member State ***concerned*** further prolong border control at ***its*** internal borders for a period of up to six months. In its recommendation, the Council shall indicate the information referred to in Article 27(1) ***and (1b) and*** it shall ***lay down*** the conditions for cooperation between the Member States concerned.

Amendments 45 and 66

Proposal for a regulation

Article 1 – paragraph 1 – point 3 a (new)

Regulation (EU) 2016/399

Article 28 – paragraph 4

Present text

4. *Without prejudice to Article 25(4)*, the total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 of this Article and any prolongations under paragraph 3 of this Article, shall not exceed two months.

Amendment

(3a) in Article 28, paragraph 4 is replaced by the following:

"4. The total period during which border control is reintroduced at internal borders, on the basis of the initial period under paragraph 1 of this Article and any prolongations under paragraph 3 of this Article, shall not exceed two months.";

Justification

Consequential amendment due to proposed changes in other articles.

Amendment 46

Proposal for a regulation

Article 1 – paragraph 1 – point 3 b (new)

Regulation (EU) 2016/399

Article 28a (new)

Text proposed by the Commission

Amendment

(3b) a new Article 28a is inserted:

“Article 28a

Calculation of the period during which border control is reintroduced or prolonged due to a foreseen threat to

public policy or internal security, where the serious threat to public policy or internal security exceeds six months and in cases requiring immediate action

Any reintroduction or prolongation of border controls at internal borders made before ... [the date of entry into force of this Regulation] shall be included in the calculation of the periods referred to in Articles 27, 27a and 28.”;

Amendment 67

Proposal for a regulation

Article 1 – paragraph 1 – point 3 c (new)

Regulation (EU) 2016/399

Article 29 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(3c) in Article 29(1), the following subparagraph is added:

“The criteria referred to in Article 30 shall be taken into account in each case where a decision on the temporary reintroduction or prolongation of border control at internal borders is considered pursuant to this Article.”

Amendment 47

Proposal for a regulation

Article 1 – paragraph 1 – point 3 d (new)

Regulation (EU) 2016/399

Article 29 – paragraph 5

Present text

5. 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 25, 27 and 28.

Amendment

(3d) in Article 29, paragraph 5 is replaced by the following:

"5. 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 27, 27a and 28. However, the total period during which border control at internal borders is reintroduced or prolonged under this Article shall not be prolonged by virtue of, or combined with, measures taken under Article 27, 27a or 28."

Amendment 69

**Proposal for a regulation
Article 1 a (new)**

Text proposed by the Commission

Amendment

Article 1a

This Regulation shall apply to notifications made by Member States pursuant to Article 27 of the Schengen Borders Code from ... [the date of entry into force of this Regulation].

Any period of ongoing notification for reintroduction or prolongation of border control at internal borders which will have passed before ... [the entry into force of this Regulation] shall be taken into account in the calculation of the periods referred to in Articles 25(4) and 28(4).
