

I

(Legislative acts)

REGULATIONS

**REGULATION (EU) No 1051/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 October 2013**

**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 ⁽¹⁾,

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 Union. In an area without internal border control, it is necessary to have a common response to situations seriously affecting the public policy or internal security of that area, of parts thereof, or of one or more Member States, by allowing for the temporary reintroduction of internal border control 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 the area without internal border control, the conditions and procedures for reintroducing such measures should be laid down, in order to ensure that they are exceptional and that the principle of proportionality is respected. The scope and duration of any temporary reintroduction of

such measures should be restricted to the bare minimum needed to respond to a serious threat to public policy or internal security.

(2) Free movement of persons within the area without internal border control is a key Union achievement. As free movement of persons is affected by the temporary reintroduction of internal border control, any decision to reintroduce such control should be taken in accordance with commonly agreed criteria and should be duly notified to the Commission or be recommended by a Union institution. In any case, the reintroduction of internal border control should remain an exception and should only be effected 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. Where a 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 that period needs to be monitored at Union level.

(3) 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.

(4) The reintroduction of internal border control might exceptionally be necessary in the case of a serious threat to public policy or to internal security at the level of the area without internal border control or at national level, in particular following terrorist incidents or threats, or because of threats posed by organised crime.

⁽¹⁾ Position of the European Parliament of 12 June 2013 (not yet published in the Official Journal) and Decision of the Council of 7 October 2013.

- (5) 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.
- (6) In accordance with the case-law of the Court of Justice of the European Union, 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 interests of society.
- (7) Based on the experience gathered with respect to the functioning of the area without internal border control and in order to help ensure the consistent implementation of the Schengen *acquis*, the Commission may draw up guidelines on the reintroduction of internal border control in cases which require such a measure on a temporary basis and in cases where immediate action is needed. Those guidelines should provide clear indicators to facilitate the assessment of the circumstances that could constitute serious threats to public policy or internal security.
- (8) Where serious deficiencies in the carrying out of external border control are identified in an evaluation report drawn up pursuant to Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* ⁽¹⁾ and with a view to ensuring compliance with the recommendations adopted pursuant to that Regulation, implementing powers should be conferred on the Commission to recommend that the evaluated Member State take specific measures, such as deploying European border guard teams, submitting strategic plans or, as a last resort and taking into account the seriousness of the situation, closing a specific border crossing-point. Those 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 powers ⁽²⁾. In view of the terms of Article 2(2)(b)(iii) of that Regulation, the examination procedure is applicable.
- (9) The temporary reintroduction of border control at certain internal borders under a specific Union-level procedure could also be justified in the case of exceptional circumstances and as a measure of last resort where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control identified in the context of a rigorous evaluation process in accordance with Articles 14 and 15 of Regulation (EU) No 1053/2013, where those circumstances would constitute a serious threat to public policy or internal security in that area or in parts thereof. Such a specific procedure for the temporary reintroduction of border control at certain internal borders could also be triggered, under the same conditions, as a result of the serious negligence by the evaluated Member State of its obligations. In view of the politically sensitive nature of such measures which touch on national executive and enforcement powers regarding internal border control, implementing powers to adopt recommendations under that specific Union-level procedure should be conferred on the Council, acting on a proposal from the Commission.
- (10) Before any recommendation on the temporary reintroduction of border control at certain internal borders is adopted, the possibility of resorting to measures aiming to address the underlying situation, including assistance by Union bodies, offices or agencies, such as the European Agency for the Management of Operational Cooperation at the External Borders ('Frontex'), established by Council Regulation (EC) No 2007/2004 ⁽³⁾, or the European Police Office ('Europol'), established by Council Decision 2009/371/JHA ⁽⁴⁾, and technical or financial support measures at national level, Union level, or both, should be fully explored in a timely manner. Where a serious deficiency is 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.
- (11) The Commission should have the possibility to adopt immediately applicable implementing acts where, in duly justified cases relating to the need to prolong border control at internal borders, imperative grounds of urgency so require.
- (12) The evaluation reports and the recommendations referred to in Articles 14 and 15 of Regulation (EU) No 1053/2013 should form the basis for the triggering of the specific measures in the case of serious deficiencies relating to external border control and of the specific procedure in case of exceptional circumstances putting the overall functioning of the area without internal border control at risk provided for in this Regulation. 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. The evaluation mechanism consists of the following elements: multi-annual and annual evaluation programmes, announced

⁽¹⁾ See page 27 of this Official Journal.

⁽²⁾ OJ L 55, 28.2.2011, p. 13.

⁽³⁾ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

⁽⁴⁾ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

and unannounced on-site visits carried out by a small team of Commission representatives and of experts designated by Member States, reports on the outcome of the evaluations adopted by the Commission and recommendations for remedial action adopted by the Council on a proposal from the Commission, appropriate follow-up, monitoring and reporting.

- (13) Since the objective of this Regulation, namely to provide for common rules on the temporary reintroduction of internal border control in exceptional circumstances, can only be achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is therefore not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (15) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which the United Kingdom does not take part, 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*⁽¹⁾. The United Kingdom is therefore not taking part in adoption of this Regulation and is not bound by it or subject to its application.
- (16) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which Ireland does not take part, 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*⁽²⁾. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (17) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the

Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*⁽³⁾ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC⁽⁴⁾ on certain arrangements for the application of that Agreement.

- (18) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of 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*⁽⁵⁾ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁽⁶⁾.
- (19) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of 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*⁽⁷⁾ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁽⁸⁾.
- (20) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession.
- (21) As regards Bulgaria and Romania, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession.
- (22) As regards Croatia, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(2) of the 2011 Act of Accession.

⁽¹⁾ OJ L 131, 1.6.2000, p. 43.

⁽²⁾ OJ L 64, 7.3.2002, p. 20.

⁽³⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁵⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁶⁾ OJ L 53, 27.2.2008, p. 1.

⁽⁷⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁸⁾ OJ L 160, 18.6.2011, p. 19.

- (23) 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 of persons and of residence. This Regulation must be implemented according to those rights and principles.
- (24) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁽¹⁾ should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

- (1) in Title II, the following Chapter is added:

‘CHAPTER IVa

Specific measures in the case of serious deficiencies relating to external border control

Article 19a

Measures at external borders and support by the Agency

1. Where serious deficiencies in the carrying out of external border control are identified in an evaluation report drawn up pursuant to Article 14 of Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* (*), and with a view to ensuring compliance with the recommendations referred to in Article 15 of that Regulation, the Commission may recommend, by means of an implementing act, that the evaluated Member State take certain specific measures, which may include one or both of the following:

- (a) initiating the deployment of European border guard teams in accordance with Regulation (EC) No 2007/2004;
- (b) submitting its strategic plans, based on a risk assessment, including information on the deployment of personnel and equipment, to the Agency for its opinion thereon.

⁽¹⁾ OJ L 105, 13.4.2006, p. 1.

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

2. The Commission shall inform the committee established pursuant to Article 33a(1) on a regular basis of the progress in the implementation of the measures referred to in paragraph 1 of this Article and on its impact on the deficiencies identified.

It shall also inform the European Parliament and the Council.

3. Where an evaluation report as referred to in paragraph 1 has concluded that the evaluated Member State is seriously neglecting its obligations and must therefore report on the implementation of the relevant action plan within three months in accordance with Article 16(4) of Regulation (EU) No 1053/2013, and where, following that three-month period, the Commission finds that the situation persists, it may trigger the application of the procedure provided for in Article 26 of this Regulation where all the conditions for doing so are fulfilled.

(*) OJ L 295, 6.11.2013, p. 27’;

- (2) Articles 23 to 27 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 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. The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat.

2. Border control at internal borders shall only be reintroduced as a last resort, and in accordance with Articles 24, 25 and 26. The criteria referred to, 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 considered pursuant, respectively, to Article 24, 25 or 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 of this Article, that Member State may prolong border control at its internal borders, taking account of the criteria referred to in Article 23a and in accordance with Article 24, on the same grounds as those referred to in paragraph 1 of this Article 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, including any prolongation provided for under paragraph 3 of this Article, shall not exceed six months. Where there are exceptional circumstances as referred to in Article 26, that total period may be extended to a maximum length of two years, in accordance with paragraph 1 of that Article.

Article 23a

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 23 or Article 25(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:

- (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.

Article 24

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

1. Where a Member State plans to reintroduce border control at internal borders under Article 23(1), 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:

- (a) the reasons for the proposed reintroduction, 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, 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.

A notification under the first subparagraph may also be submitted jointly by two or more Member States.

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

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.

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.

4. Following notification by a Member State under paragraph 1 of this Article and with a view to consultation provided for in paragraph 5 of this Article, the Commission or any other Member State may, without prejudice to Article 72 of the Treaty on the Functioning of the European Union, issue an opinion.

If, 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 if it considers that a consultation on some aspect of the notification would be appropriate, it shall issue an opinion to that effect.

5. The information referred to in paragraph 1 and any Commission or Member State opinion under paragraph 4 shall be the subject of consultation, including, where appropriate, 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, 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 threat to public policy or internal security.

6. The consultation referred to in paragraph 5 shall take place at least ten 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 requires immediate action to be taken, the Member State concerned may, on an exceptional basis, immediately reintroduce border control at internal borders, for a limited period of up to ten days.

2. Where a Member State reintroduces border control at internal borders, it 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), including the reasons that justify the use of the procedure set out in this Article. The Commission may consult the other Member States immediately upon receipt of the notification.

3. If the serious threat to public policy or internal 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 referred to in Article 23a, including an updated assessment of the necessity and the proportionality of the measure, and shall take into account any new elements.

In the event of such a prolongation, the provisions of Article 24(4) and (5) shall apply *mutatis mutandis*, and the consultation shall take place without delay after the decision to prolong has been notified to the Commission and to the Member States.

4. 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 any prolongations under paragraph 3, shall not exceed two months.

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

Article 26

Specific procedure where exceptional circumstances put the overall functioning of the area without internal border control at risk

1. In exceptional circumstances where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control as referred to in Article 19a, and insofar as those circumstances constitute a serious threat to public policy or internal security within the area without internal border control or within parts thereof, border control at internal borders may be reintroduced in accordance with paragraph 2 of this Article 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 if the exceptional circumstances persist.

2. The Council may, as a last resort and as a measure to protect the common interests within the area without internal border control, where all other measures, in particular those referred to in Article 19a(1), are ineffective in mitigating the serious threat identified, recommend that one or more Member States decide to reintroduce border control at all or at specific parts of their 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 information referred to in points (a) to (e) of Article 24(1).

The Council may recommend a prolongation in accordance with the conditions and procedure set out in this Article.

Before a Member State reintroduces border control at all or at specific parts of its internal borders under this paragraph, it shall notify the other Member States, the European Parliament and the Commission 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 to the Council assessing the reasons provided by the Member State concerned and the consequences for protecting the common interests of the area without internal border control.

4. On duly justified grounds of urgency relating to situations where the circumstances giving rise to the need to prolong border control at internal borders in accordance with paragraph 2 become known less than 10 days before the end of the preceding reintroduction period, the Commission may adopt any necessary recommendations by means of immediately applicable implementing acts in accordance with the procedure referred to in Article 33a(3). Within 14 days of the adoption of such recommendations, the Commission shall submit to the Council a proposal for a recommendation in accordance with paragraph 2.

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 23, 24 and 25.

Article 26a

Criteria for the temporary reintroduction of border control at internal borders where exceptional circumstances put the overall functioning of the area without internal border control at risk

1. Where, 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 at parts thereof, it 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 control, and shall assess the proportionality of the measure in relation to that threat. That 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 of this Article. 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 national or Union level, or both, including assistance by Union bodies, offices or agencies, such as the Agency, the European Asylum Support Office, established by

Regulation (EU) No 439/2010 of the European Parliament and of the Council (*) or the European Police Office ("Europol"), established by Council Decision 2009/371/JHA (**), and the extent to which such measures are likely to adequately remedy the threat to public policy or internal security within the area without internal border control;

(b) the current and likely future impact of any serious deficiencies relating to external border control identified in the context of the evaluations carried out pursuant to Regulation (EU) No 1053/2013 and the extent to which such serious deficiencies constitute a serious threat to public policy or internal security within the area without internal border control;

(c) the likely impact of the reintroduction of border control on the free movement of persons within the area without internal border control.

2. Before adopting a proposal for a Council recommendation, in accordance with Article 26(2), the Commission may:

(a) request Member States, the Agency, Europol or other Union bodies, offices or agencies to provide it with further information;

(b) carry out on-site visits, with the support of experts from Member States and of the Agency, Europol or any other relevant Union body, office or agency, in order to obtain or verify information relevant for that recommendation.

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.

(*) OJ L 132, 29.5.2010, p. 11.

(**) OJ L 121, 15.5.2009, p. 37.;

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

'Article 29

Report on the reintroduction of border control at internal borders

Within four weeks of 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 the free movement of persons, 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.

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 control. 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) the following article is inserted:

'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 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 powers (*).

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.

(*) OJ L 55, 28.2.2011, p. 13.;

(5) the following article is inserted:

'Article 37a

Evaluation mechanism

1. In accordance with the Treaty on the Functioning of the European Union and the Treaty on European Union and without prejudice to their provisions on infringement procedures, the implementation by each Member State of this Regulation shall be evaluated through an evaluation mechanism.

2. The rules on the evaluation mechanism are specified in Regulation (EU) No 1053/2013. In accordance with that evaluation mechanism, the Member States and the Commission are, jointly, to conduct regular, objective and impartial evaluations in order to verify the correct application of this Regulation and the Commission is to coordinate the evaluations in close cooperation with the Member States. Under that 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 or internal borders.

In accordance with that evaluation mechanism, the Commission is responsible for adopting the multiannual and annual evaluation programmes and the evaluation reports.

3. In the case of possible deficiencies recommendations for remedial action 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 14 of Regulation (EU) No 1053/2013, Articles 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 Regulation (EU) No 1053/2013.;

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 Strasbourg, 22 October 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
V. LEŠKEVIČIUS

Statement from the European Parliament, the Council and the Commission

The European Parliament, the Council and the Commission welcome the adoption of the Regulation amending the Schengen Borders Code in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances and of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis. They believe that these new mechanisms address adequately the call of the European Council in its Conclusions of 24 June 2011 for an enhancement of the cooperation and the mutual trust between the Member States in the Schengen area and for an effective and reliable monitoring and evaluation system in order to ensure the enforcement of common rules and the strengthening, adaptation and extension of the criteria based on the EU acquis, while recalling that Europe's external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and practical cooperation.

They state that this amendment to the Schengen Borders Code will reinforce the coordination and cooperation at the level of the Union by providing on the one hand for criteria for any reintroduction of border controls by Member States and on the other hand for an EU-based mechanism to respond to truly critical situations where the overall functioning of the area without internal border controls is put at risk.

They underline that this new evaluation system is an EU-based mechanism and that it will cover all aspects of the Schengen acquis and involve experts from the Member States, the Commission and relevant EU agencies.

They understand that any future proposal from the Commission for amending this evaluation system would be submitted to the consultation of the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before the adoption of a final text.
