

COMMISSION RECOMMENDATION (EU) 2017/1804**of 3 October 2017****on the implementation of the provisions of the Schengen Borders Code on temporary reintroduction of border control at internal borders in the Schengen area**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) In an area without internal border control, the temporary reintroduction of internal border control may only be decided in exceptional circumstances to provide a response to situations seriously affecting the public policy or internal security of that area, of parts thereof, or of one or more Member States. Given the impact that such reintroduction may have on all persons and goods having the right to move freely within the area without internal border control, it may only be a last resort measure subjected to strict conditions as to the scope and duration of any temporary reintroduction.
- (2) The current provisions of the Schengen Borders Code provide for the possibility to rapidly reintroduce temporary internal border control where a serious threat to public policy or internal security requires immediate action in a Member State, for a period of maximum 2 months (Article 28). The Code also provides for the reintroduction of border controls for serious threats to public policy or internal security in case of foreseeable events, for a period of maximum 6 months (Article 25). The combined implementation of Articles 28 and 25 of the Schengen Borders Code allows maintaining border control for a total period of up to eight months. Moreover, a new threat to public policy or internal security triggers a new application of the rules (and thus a new calculation of the duration of the period of controls).
- (3) Article 29 of the Schengen Borders Code contains an exceptional procedure allowing reintroduced internal border controls for a period going up to 2 years 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 detected during a Schengen evaluation. With the adoption of the Regulation (EU) 2016/1624 of the European Parliament and of the Council⁽¹⁾, this procedure can also be used in case a Member State does not take the necessary action further to a vulnerability assessment or does not cooperate with the Agency, where the situation at the external borders requires urgent action.
- (4) While in the vast majority of cases the time limits currently in force have proved to be sufficient, recent times showed that certain serious threats to public policy or internal security, such as terrorist threats or important uncontrolled secondary movements within the Union, may persist well beyond the above periods.
- (5) A proposal for an amendment to the relevant provisions of the Schengen Borders Code to address such persistent threats in the future has been adopted by the Commission. The proposal modifies the time limits as set out in Article 25 of the Schengen Borders Code in case of foreseeable events and as such recognises that prolonging the reintroduced border controls at internal borders beyond the current time limits may be justified up to a maximum period of two years. Moreover, the proposal also provides for a possibility to further prolong border controls at internal borders where the specific threat to internal security or public policy persists even beyond that time limit.
- (6) These new deadlines are accompanied by additional procedural requirements for the Member States to be fulfilled prior to the reintroduction or prolongation of internal border controls. In particular, Member States are required to support their notifications with a risk assessment demonstrating that the intended reintroduction or prolongation of internal border control is a last resort measure and explaining how internal border control would help addressing the identified threat. Furthermore, the Commission is now required to issue an opinion

⁽¹⁾ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

whenever internal border control exceeds six months. The provisions concerning the 'consultation procedure' following the opinion of the Commission are also modified to reflect the new role for the European Border and Coast Guard and Europol and to ensure that the results of such consultation, in particular as regards the involvement of the neighbouring Member States, are duly taken into account. All these changes are intended to ensure that reintroduction of internal border control is used only where and for as long as necessary and justified.

- (7) The proposed changes to the Schengen Borders Code build on the current provisions. While awaiting the adoption of the amendment of the Schengen Borders Code as detailed above, it is essential that all Member States intending to reintroduce temporary border control at internal borders implement to the full extent the requirements of the existing provisions in the Schengen Borders Code which already now require Member States intending to use this measure to consider first alternative measures to border controls and to cooperate with the neighbouring Member States.
- (8) Pursuant to Article 26 of the Schengen Borders Code, prior to a decision to reintroduce or to prolong temporary border controls at internal borders, the Member State concerned should assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security and the proportionality of the measure in relation to that threat, taking into account, among others, the likely impact of such a measure on free movement of persons within the area without internal border control. Targeted controls, based on constantly updated risk analysis and intelligence would therefore help optimising the benefit of the controls and limit their negative effects on free movement.
- (9) The Member States affected by the reintroduced controls at the relevant border sections should be admitted to regularly express their views on their necessity, with a view to organising mutual cooperation between all Member States involved and to examining, on a regular basis, 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. The Member State having decided to reintroduce such controls should take these views into account when examining and reviewing the necessity of such checks, with the objective of constantly adapting them to the circumstances.
- (10) Under Article 27(1)(e) of the Schengen Borders Code, the Member State reintroducing or prolonging internal border controls should provide, among others, information on the measures to be taken by the other Member States in the context of the planned border controls. Furthermore, under Article 27(5) of the Schengen Borders Code, joint meetings between the Member State planning to reintroduce border control at internal borders, the other Member States, especially those directly affected by the such measures, and the Commission may take place with a view to organising, where appropriate, mutual cooperation between the Member States. Such contacts with the neighbouring Member States should be used to limit the impact on free movement.
- (11) As the temporary reintroduction of border control at internal borders may only be used in exceptional circumstances and as a last resort measure, the Member States should first examine whether other measures alternative to border control could not be used to effectively remedy the identified threat and decide to reintroduce border controls at the internal borders concerned only as a measure of last resort, when such less restrictive measures for cross-border traffic cannot sufficiently address the threats identified. The Member States concerned should inform of the outcome of this reflection and the reasons for opting for border controls in their notification pursuant to Article 27(1) of the Schengen Borders Code.
- (12) In this respect, the Member States should make all necessary efforts to further and fully implement the Recommendation of the Commission of 12 May 2017 (C(2017) 3349 final) on proportionate police checks and police cooperation in the Schengen area.
- (13) This Recommendation should be implemented in full respect of fundamental rights.
- (14) This Recommendation should be addressed to all Schengen States bound by Title III of Regulation (EU) 2016/399 of the European Parliament and of the Council ⁽¹⁾,

⁽¹⁾ 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) (OJ L 77, 23.3.2016, p. 1).

HAS ADOPTED THIS RECOMMENDATION:

LIMITING THE IMPACT ON FREE MOVEMENT

In order to strike the right balance between the need to protect public policy or internal security in Member States and the benefits of the area without controls at internal borders, the Member States intending to reintroduce temporary internal border control should carefully take into account and regularly evaluate the following aspects when assessing pursuant to Article 26 of the Schengen Borders Code the need and proportionality of any temporary reintroduction of controls at internal borders pursuant to Articles 25 and 28 of the Schengen Borders Code:

- (a) the likely impact of such reintroduction on the free movement of persons within the area without internal border control;
- (b) the likely impact of such reintroduction on the internal market.

To this end, the Member States intending to reintroduce temporary internal border control should inform in the notification pursuant to Article 27(1) of the Schengen Borders Code of the outcome of their assessment of the impact of the planned reintroduction or prolongation of border controls at internal borders on free movement and the internal market.

The Member States intending to reintroduce temporary internal border control should refrain from any measures which would not be justified by the identified serious threat to public policy or internal security. For instance, they should limit the border sections where internal border control is temporarily reintroduced to what is strictly necessary to address the threat identified.

SHARED RESPONSIBILITY AND COOPERATION

In view of this objective of limiting the impact on free movement, the Member States intending to reintroduce temporary internal border control should:

- (a) consult well in advance the Member States affected by the intended reintroduction;
- (b) maintain a close and constant cooperation, allowing for a constant review and adaptation of the controls so as to reflect the evolving needs and impact on the ground;
- (c) stand ready to assist each other with a view to the effective implementation of border controls, where needed and justified.

USE OF ALTERNATIVE MEASURES

In order to ensure that temporary reintroduction of border control at internal borders is a last resort measure, used only when the identified serious threat to public policy or internal security cannot be addressed appropriately by other means, the Member States should implement fully the Recommendation of the Commission of 12 May 2017 (C(2017) 3349 final) on proportionate police checks and police cooperation in the Schengen area.

Done at Brussels, 3 October 2017.

For the Commission
Dimitris AVRAMOPOULOS
Member of the Commission
