

Non-paper from Austria, Denmark, France, Germany and Norway

**Proposal for a targeted amendment to Article 25
of the Schengen Borders Code
concerning the re-establishment of internal border controls**

On 13 November 2015, France reintroduced controls at its internal land borders with Belgium, Luxembourg, Germany, Switzerland, Italy and Spain, in addition to the air borders, on the basis of Article 25 of the Schengen Borders Code (SBC), which authorises the reintroduction of border controls at internal borders in case of a serious threat to public policy or internal security. The controls were extended in time and subsequently renewed in light of a high ongoing terrorist threat level.

On 12 May 2016, Germany, Denmark, Austria, Sweden and Norway also reintroduced internal border controls in order to cope with a massive migratory flow, on the basis of Article 29 SBC establishing a specific procedure where exceptional circumstances put the overall functioning of the area without internal border control at risk. The Council authorised these five Member States for the third and last time on 12 May 2017 to extend these controls until 11 November 2017.

The reintroduction of internal border controls by several Schengen area Member States over the last year or more, due to the terrorist threat or to the scale of migratory flows, underscores the need of strengthening the area's capacity to cope with crisis situations. In their joint declaration of 20 February 2017, the French and German Ministers of the Interior expressed the wish for an amendment to the Schengen Borders Code to be considered.

Specifically, Austria, Denmark, France, Germany and Norway request:

A targeted amendment of Article 25 of the Schengen Borders Code

We call on the Commission to submit draft legislation aimed at amending the provisions of Article 25 of the SBC to allow Member States to reintroduce internal border controls for periods longer than currently provided for, in strict adherence to the principles of proportionality and at the initiative of the Member State concerned.

In its present wording, paragraph 4 of Article 25 limits to six months the duration of reintroduction of controls at internal borders due to a serious threat to public policy or internal security.

This limitation does not match the needs in the context of a long-term terrorist threat. There is a need to allow a Member State to reintroduce controls at its internal borders for a period exceeding six months. The grounds for such controls for periods exceeding six months would continue to involve the particular seriousness of the threat to internal security and the long-term nature of that threat.

The current procedure (notification by the Member State to EU institutions and Member States) should be maintained.

The communication of a risk analysis, which is currently provided for in article 29, could also be applied under the Article 25 procedure when the border control reintroduction exceeds 6 months amending the provisions of Article 27.

Article 25 could be amended as follows:

*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 **3 months** or for the foreseeable duration of the serious threat if its duration exceeds **3 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.*

2. Border control at internal borders shall only be reintroduced as a last resort, and in accordance with Articles 27, 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 the reintroduction of border control at internal borders is considered pursuant, respectively, to Article 27, 28 or 29.

*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 of up to **3 months**.*

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

Article 27 could be amended as follows:

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:

- 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.

A Member State that prolongs the duration of reintroduction of control at internal borders beyond six months, including any prolongation provided for under paragraph 3 of the Article 25, shall communicate a risk analysis setting out the grounds for that prolongation to the Commission, , updating it every six months. The Member State concerned may decide to classify all or part of that risk analysis.

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 and with a 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.

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.