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From: Presidency
To: Permanent Representatives Committee

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

Introductory remarks

On 27 September 2017, the Commission tabled a Communication on preserving and strengthening Schengen, accompanied by: i) a proposal for amending the Schengen Borders Code (SBC), so as to adapt its rules relating to the reintroduction and prolongation of temporary internal border controls, with a view to responding to the evolving threats for public policy or internal security in Member States; ii) a Recommendation on the implementation of the current SBC provisions on internal border controls, intended to serve as a guidance until the relevant amendments to the SBC become applicable.

Since then, the aforementioned legislative proposal has been comprehensively negotiated at technical level in numerous meetings of the Working Party on Frontiers and the JHA Counsellors. In this context, various compromise suggestions have been tested by the previous and the current Presidency, aiming at bridging the divergent views of groups of delegations on certain important issues of the proposal. The overall objective has been to provide measures that can improve flexibility to address emerging different security threats, while submitting appropriate guarantees for the last-resort character of such measures and, consequently, preserving and enhancing trust among the Schengen States.

Main elements of the draft compromise

The main parameters of the draft compromise, besides a restructuring of the relevant Articles in order to increase their readability, are the following:

- Article 25 SBC provides for a general framework of the temporary reintroduction or prolongation of the internal border controls. In this context, it is provided that the total period of such controls for the same reason shall not exceed one year. Moreover, the relationship with Article 29 SBC is clarified;
- Article 27 SBC sets out the procedure for the reintroduction or prolongation(s) of the internal border controls, including further elaboration on the criteria for such controls laid out in Article 26 SBC, with the necessary safeguards that should be met in order to ensure the proportionality and necessity of these measures. This Article focuses, inter alia, on the risk assessment and consultations mechanisms, which are envisaged to serve decisively as trust-building elements in the application of the internal border controls;
- Article 27a contained in the Commission proposal, whereby a prolongation of the internal border controls beyond one year was provided subject to a Recommendation by the Council, was deleted as part of the current compromise package;
- Article 1a deals with possible cases where, upon the entry into force of the future Regulation, there will be on going internal border controls.

Conclusion

In the light of the results of the aforementioned negotiations at technical level, the Presidency believes that the overall compromise on the draft Regulation, as set out in the Annex to this Note, is a balanced one and can receive a sufficient degree of support by delegations. It therefore, invites the Committee to confirm this support and give a mandate for negotiations with the European Parliament on this basis.

New changes vis-à-vis the most recent draft compromise suggestions that were tested with delegations are highlighted in **bold/italics/underline** and **~~bold/italics/strikethrough~~**. The rest of the changes vis-à-vis the Commission proposal are indicated in underlined/italics and ~~underlined/italics/strikethrough~~.

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

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 point (e) of Article 77(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,

Whereas:

- (1) In an area where persons ***and goods*** 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.
- (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)¹, 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 area² provides guidelines to the Member States to that end.

¹ OJ L 77, 23.3.2016, p.1.

² C(2017) 3349 final of 12.05.2017.

- (2a) Before the temporary reintroduction of border control at the internal borders, alternative actions and measures to remedy the identified threat should be given the precedence. In particular, the Member State concerned should, where needed and justified, consider: intensifying police checks within its territory, including in border areas, police checks on main transport routes, including in border areas, adapting the police checks in border areas on the basis of risk assessment **or other relevant information**, while ensuring that those police checks do not have border control as an objective and in particular, that they are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders. The Member States should also consider further use of available technologies and enhanced cross-border police cooperation.
- (3) In accordance with the provisions of Title III, Chapter II of the Schengen Borders Code, internal border control can be temporarily reintroduced as a last resort measure in case of a serious threat to public policy or internal security for a limited period of up to six months - for foreseeable events (Article 25), and for a limited period of up to two months - for cases requiring immediate action (Article 28). These time frames proved to be sufficient to tackle the serious threats related to the most frequent foreseeable events such as international sport or high level political events.
- (4) However, experience has shown that certain serious threats to public policy or 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 actual 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.
- (5) In order to guarantee that these internal border controls remain an exception, Member States should submit a risk assessment concerning the intended reintroduction of border control or prolongation thereof. The obligation to submit a risk assessment should be proportionate to the length of the intended border controls and may be triggered by the concerns of the Commission and the directly affected Member States. 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 substantiate 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 substantiate how the previous reintroduction or prolongation of border control has contributed to the decision-making process in temporary prolonging the internal border controls in view of remedying the identified threat. It should contain a detailed report of the cooperation which took place between the Member State concerned and the any directly affected Member State or Member States with which it shares internal borders at which border control has been performed demonstrate retrospectively the efficiency of the reintroduced border control in addressing the identified threat and explain in detail how each neighbouring Member State directly affected by such prolongation was consulted and involved in determining the least burdensome operational arrangements.

- (6) The Member State concerned should submit a risk assessment in accordance with the specific procedure introduced this Regulation. 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~~ could be involved by the Commission in that assessment, where appropriate.
- (7) The power of the Commission or any Member States 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, whereas the Member States which could substantiate that they are directly affected by such controls should be entitled to issue an opinion.
- (7a) 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 (in particular, the European Border and Coast Guard Agency and Europol) and focus on the practical implementation of different aspects of cooperation between the Member States, including the coordination, where appropriate, of different measures on both sides of the border.
- ~~(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.~~
- (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.
- ~~(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.~~
- ~~(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.~~
- ~~(12) In view of the nature of such measures, which touch on national executive and enforcement powers regarding serious threats to public policy or internal security, implementing powers to adopt recommendations under this specific procedure should exceptionally be conferred on the Council.~~

~~(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.~~

(14) Since the objective of this Regulation, namely allowing the prolongation in exceptional cases of reintroduced border controls at specific section(s) of the internal borders for the time period necessary for a Member State to adequately respond to a persistent threat of a cross-border nature, is to complement the current rules on temporary reintroduction of border controls at internal borders, it cannot be achieved by Member States acting alone; an amendment of the common rules established at Union level is necessary. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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 those objectives.

(15) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is 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.

(16) This Regulation constitutes a development of the provisions of the Schengen acquis, in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC¹; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(17) This Regulation constitutes a development of the provisions of the Schengen acquis, in which Ireland does not take part, in accordance with Council Decision 2002/192/EC²; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

¹ 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 (OJ L 131, 1.6.2000, p. 43).

² 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 (OJ L 64, 7.3.2002, p. 20).

- (18) 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 acquis¹, which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC.²
- (19) As regards Switzerland, this Regulation constitutes a development of the 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 acquis³ which fall within the area referred to in Article 1, point A of Decision 1999/437/EC⁴ read in conjunction with Article 3 of Council Decision 2008/146/EC.⁵

¹ OJ L 176, 10.7.1999, p. 36.

² Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).

³ OJ L 53, 27.2.2008, p. 52.

⁴ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).

⁵ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, 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 (OJ L 53, 27.2.2008, p. 1).

- (20) As regards Liechtenstein, this Regulation constitutes a development of the 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 acquis¹ 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/EU².
- (20a) 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.
- (20b) 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.
- (20c) 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.
- (21) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (22) Regulation (EU) No 2016/399 should therefore be amended accordingly,

¹ OJ L 160, 18.6.2011, p. 21.

² Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 2016/399 is amended as follows:

(1) Article 25 is replaced by the following:

General framework for the temporary reintroduction or prolongation of border control at internal borders in case of foreseeable events

"1. Where, in the area without internal border control, a Member State establishes that there is a serious threat to public policy or internal security ~~in for its territory 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.

2. Border control at internal borders shall only be reintroduced or prolonged as a last resort, and in accordance with Articles ~~27, and 27a, and 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 or prolongation of border control at internal borders is considered pursuant, ~~respectively~~, to Article ~~27, and 27a, or 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, ~~which shall correspond to the foreseeable duration of the serious threat and not exceeding six months~~. ~~Such a prolongation may take place provided that alternative actions and measures to remedy the threat have been exhausted without effective results.~~¹

4. The total period during which border control is reintroduced at internal borders, including any prolongation provided for under ~~this~~ paragraph 3 of this Article, shall not exceed one year.²

¹ Moved to Article 27(1a).

² Moved to Article 27(1b).

4. In the exceptional cases circumstances referred to in Article 27a, or Article 29, the total period may be further extended by a maximum length of two years in accordance with these at Articles.¹

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."

5. Without prejudice to Article 28,~~T~~The total period during which border control is reintroduced at the internal borders, for the same reasons including any prolongation, shall not exceed ~~three~~ two years one year.

6. This Article is without prejudice to measures that may be adopted ~~under~~ in accordance with Article 29 in the event of exceptional circumstances where the overall functioning of the area without internal border control is at risk.

The total period during which border control is reintroduced at the internal borders under this Article shall not be prolonged or combined with measures adopted for the same reasons under Article 29.

(2) Article 27 replaced by the following:

*"Procedure for the temporary reintroduction or prolongation of border control at internal borders
~~under Article 25~~ in cases of foreseeable events*

"-1. Where, in the area without internal border control, a Member State establishes that there is a serious threat to public policy or internal security ~~in~~ for its territory ~~a Member State~~, that Member State may exceptionally reintroduce and ~~possibly~~ where necessary, prolong ~~under paragraph 1a of this Article~~ border control at all or specific parts of its internal borders for the foreseeable duration of the serious threat, but not exceeding six months.

1. Where a Member State plans to reintroduce or prolong border control at internal borders, under the criteria set out in Article 26 ~~under Article 25~~, it shall notify the other Member States and the Commission at the latest four weeks before the planned reintroduction or prolongation, 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:

¹ Moved to Article 27(1d).

(a) the reasons for the proposed intended reintroduction or prolongation, in particular the reasons why alternative measures are deemed or have been found by the Member State concerned to be insufficiently effective, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security, as well as the reasons why alternative measures are deemed or have been found by the Member State concerned to be ineffective.;

~~"(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 cooperation 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."~~¹

(b) the scope of the proposed reintroduction or prolongation, specifying at which part or parts of the internal borders border control is to be reintroduced, or prolonged;

(c) the names of the authorised crossing-points;

(d) the date and duration of the planned reintroduction;

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

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

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

¹ Moved to Article 27(1c).

1a. If the serious threat to public policy or internal security ~~is~~ for the Member State concerned persists beyond the period provided for in paragraph -1 of this Article, that Member State may prolong ~~or where necessary further prolong~~ border control at its internal borders, ~~taking account in accordance with~~ of the criteria referred to in Article 26 and in accordance with ~~this Article 27~~, on the same ~~grounds-reasons~~ as those referred to in paragraph 1 of this Article and, taking into account any new elements, for renewable periods, ~~which shall correspond~~ing to the foreseeable duration of the serious threat and not exceeding six months. ~~Such a prolongation may take place provided that alternative actions and measures to remedy the threat are deemed or have been found by the Member State concerned to be ineffective or insufficiently ineffective or have been taken exhausted without effective results. not to be insufficiently effective~~¹

1b. The total period during which border control is reintroduced at internal borders, including any prolongation provided for under this paragraph 3 of this Article as well as in cases requiring immediate action in accordance with Article 28, shall not exceed one year.²

1c. (aa) ~~Without prejudice to paragraph 4, in case of reintroduction or prolongation of border control beyond two months, the Member State concerned shall submit 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 at internal borders is a last resort measure and explaining substantiating how border control this would help address the identified threat. Where border control has already been reintroduced for more than six months, including any prolongations, the risk assessment shall also explain substantiate the role how of the previous reintroduction or prolongation of border control has contributed to in remedying the identified threat. and The risk assement shall also contain a detailed report of the cooperation 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 risk assessment shall also contain a detailed report of the coordination cooperation 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 risk assessment shall be submitted to the Commission and Member States no later than two months from the initial reintroduction of the border control. or along with the notification of the reintroduction or prolongation of internal border controls.~~

¹ Moved from Article 25(3).

² **This provision is redundant because of Art. 25(5).**

With regard to the first six month period of internal border controls, the obligation for the Member State concerned to submit a risk assessment, as referred to in this paragraph, is triggered if either the Commission or a directly affected Member State issues a substantiated opinion. The Member State concerned shall submit a risk assessment after the initial two months of internal border controls, if either the Commission or a directly affected Member State issues a substantiated opinion, as referred to in paragraph 4. Such an opinion shall be on the necessity and proportionality of the reintroduction or prolongation. The directly affected Member States may also issue such an opinion on the impact of such reintroduction or prolongation on them. In such a case, the risk assessment shall be submitted within two weeks from the issue of such an opinion.

The Commission shall share the risk assessment with may request the views of the European Border and Coast Guard Agency and or Europol for fact finding purposes with regards to the risk assessment, as where appropriate.

¹In order to implement the criteria set out in Article 26, the Member State concerned shall assess the duration the identified threat is expected to persist and which sections of the internal borders are affected, demonstrating that the border control at internal borders is a last resort measure and substantiating how this would help address the identified threat.

Along with the notification of reintroduction or prolongation of internal border controls for a total duration not exceeding two months, the Member State concerned may submit a risk assessment.

For a reintroduction or prolongation of internal border controls beyond two months but not exceeding six months the Member State concerned, may submit a risk assessment. It shall submit a risk assessment if either the Commission or a directly affected Member State issues a substantiated opinion, as referred to in paragraph 4. In such a case, the risk assessment shall be submitted within two weeks from the issue of such an opinion.²

Where border control has already been reintroduced for more than six months, including any prolongations, the Member State concerned shall submit a risk assessment or update, where appropriate, the content of a previous one. This risk assessment shall also substantiate the role of the previous reintroduction or prolongation of border control in remedying the identified threat. It shall contain a detailed report of the cooperation 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.

¹ In order to facilitate the reading of this simplified text of Art. 27(1c), there is a deviation of the general marking rules: the totally new wording is the only one marked in bold, whereas the wording that was retained from the previous version of this provision is not in bold and has kept its previous marking (underline/italics).

² Moved from paragraph 4.

The risk assessment referred to in this paragraph shall be submitted to the Commission and the other Member States. The Commission may request the views of the European Border and Coast Guard Agency or Europol for fact finding purposes with regards to the risk assessment, as where appropriate.

~~*Id 4. In the exceptional cases circumstances referred to in Article 27a, or Article 29, the total period may be further extended by a maximum length of two one years in accordance with these at Articles 27a.¹*~~

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 ~~submitting~~ *making* a notification under paragraph 1 and a risk assessment under paragraph 1c may, where necessary and in accordance with national law, decide to classify them or parts thereof of the information.

~~*Such classification shall not preclude affected the other Member States from accessing this classified information through appropriate and secure channels of police cooperation, nor preclude such 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 the dissemination of the risk assessment under paragraph 1c where appropriate~~ and with a view to the consultation provided for in paragraph 5, the Commission or a directly affected Member State may, without prejudice to Article 72 TFEU, issue a substantiated opinion.

Where the Commission has concerns as regards the necessity or proportionality of the planned reintroduction or prolongation 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. The directly affected Member States may also issue an opinion on the impact of the reintroduction or prolongation of the internal border controls on them, as well as, if appropriate, on their necessity and proportionality.

Where border control at internal borders has already been reintroduced or prolonged for more than six months, the Commission shall issue an opinion.

¹ Moved from Article 25(4).

With regard to the first six months of internal border controls the obligation for the Member State concerned to submit a risk assessment, as referred to in paragraph 1c, is generated if either the Commission or any other Member State issue a substantiated opinion. The risk assessment shall be submitted within two weeks from the issue of such an opinion.

5. The information referred to in paragraph 1, 1a and 1c 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 or prolong 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~~ into account of the results of such consultation when carrying out border controls or inform the Commission and the consulted Member States, about the occurred constraints that prevented it from following these results.

6. The consultation referred to in paragraph 5 shall take place at least ten days before the date planned for the reintroduction or prolongation of border control."

~~(3) A new Article 27a is added:~~

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

~~"1. In exceptional cases 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(1ab) 25(13) first last sentence, and where commensurate appropriate exceptional national measures are have also been taken within the territory according to the national legislation to address this threat, the border control as temporarily reintroduced to respond to that threat may be further prolonged in accordance with this Article for the foreseeable duration of the serious threat, but not exceeding six months.~~

~~2. At the latest six eight weeks before the expiry of the period referred to in Article 27(1ab) 25(13) first last sentence, the Member State concerned shall notify the other Member States and the Commission that it seeks intends to a further prolongation the border control at internal borders 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) and paragraph (1c). Article 27 paragraphs 2 and 3 shall apply.~~

~~3. The Commission shall and the any affected Member State(s) may issue a substantiated opinion on the necessity and proportionality of the planned prolongation, as well as on the fulfillment of the conditions, of such prolongation. Directly affected Member States may also issue such an opinion, including the impact of this prolongation on them. The opinion shall be submitted not later than three six weeks before the planned further prolongation takes place to the Member State concerned as well as to the Council.~~

If neither the Commission nor the directly affected Member State(s) express concerns in the opinions regarding the necessity and proportionality, the border controls referred to in paragraph 1 may be further prolonged in accordance with the notification.

-3a If the Commission or any of the directly affected Member State(s) have expressed concerns in their opinion regarding the necessity and proportionality, the procedure for consultation as referred to in Article 27(5) shall apply as appropriate. This consultation shall be concluded within two at the latest four weeks from the issue of the opinion before the expiry of the period referred to in Article 27(1ab).

If all the concerns, regarding the necessity and proportionality, from the Commission or the directly affected Member State(s) are withdrawn, the border controls referred to in paragraph 1 may be further prolonged in accordance with the notification.

3a. If the Commission or the directly affected Member State(s) have expressed maintain their concerns in their opinion regarding the necessity and proportionality, after the consultation, the Member State concerned shall may submit without delay its intention to prolong the border controls to the Council, or invite, within a week three days from the end of the consultation, experts from other Member States and the Commission and the relevant Agencies, in order to carry out a preserving mutual trust fact finding mission on its territory, including the border sections concerned in accordance with the criteria set out in Article 26. The Commission or directly affected Member States may address the Member State concerned with a request to hold such a mission.

Along with such invitation, tThe Member State concerned shall provide, along with the invitation, the draft programme of the mission, as well as the required security clearance of the experts, in case of its decision to give access to classified information, justifying the need for prolongation of the internal border controls.

The directly affected Member States may indicate to the Commission without delay their readiness to expand the scope of the mission to their part of the border sections concerned.

3aa If a Member State decides to designate an expert for such a mission it shall reply to the invitation notify the Commission and carry out the designation within one week three days from the invitation. The designation shall be done on the basis of the experts' experience[†] and security clearance with a view to assessing the proportionality and necessity of the intended prolongation of border controls.

[†] — In this context a Recital is suggested to be added: *The experts participating in the fact-finding mission should have at least the necessary training as evaluators to carry out Schengen evaluation missions, in accordance with Regulation (EU) 1053/2013.*

The overall number of members of the team shall be at least three but not exceed nine seven five experts including one representative from the Commission. If experts designated by Member States exceeds this maximum number, tThe Commission, after consulting the Member State concerned and the directly affected Member States, shall recommend the composition of the team on the basis of a geographical balance and the competences of the experts, and finalise the programme of the fact finding mission.¹

The representative of the Commission shall coordinate the work of the experts and shall be responsible for the preparation of the report in accordance with paragraph 3c.

The travel costs related to the participation of the experts of the team shall be incurred by the sending party, whereas the accomodation and other relevant expenses of the mission shall be covered by the Member State concerned. The Commission shall reimburse the Member States for these costs.

Representatives from the Commission and EU Agencies as well as experts from affected Member State(s) by the planned further prolongation may be invited as observers.

3b. The preserving mutual trust fact finding mission shall take place not later than the date of planned further prolongation of internal border controls. The composition of the team shall not exceed ten experts. The Member State concerned shall provide the experts with the necessary information about the serious threat to public policy or internal security and detailed statistics on the measures taken so far as well as on the cooperation with directly affected Member State(s).

3c. By the end of the preserving mutual trust mission, the experts a report shall be produced a report with its outcome focusing on the found facts linked to the necessity and proportionality of the planned further prolongation of the internal border control. The conclusion of the report, as regards the abovementioned principles, shall be agreed by consensus among the members of the team.

4. The report shall be discussed at the Council together with the opinions from the Commission and the directly affected Member State(s).

If the report concludes that the principles of necessity and proportionality are met and this conelusion was confirmed in the discussion at Council, the border controls referred to in paragraph 1 may be further prolonged in accordance with the notification.

¹ In this context a Recital is suggested to be added: *The Commission, following the first three fact finding missions under this Regulation should consider the setting up of a pool of experienced experts, with adequate training opportunities, for the sake of future missions.*

5. The Member State concerned may further prolong the internal border controls, in accordance with its notification, unless as a result of the discussion, the Council recommends that the Member State concerned decide to modify the relevant measures and to adapt the level of the internal border controls, taking due account of the opinion of the Commission or of the directly affected Member States, as well as of the report of the fact-finding expert mission. In its recommendation, the Council shall determine the conditions for cooperation between the Member State concerned and the directly affected Member States.

At the request of the Member State concerned under 3a, or if there is no consensus in the mission's report or if the report concludes that the principles of proportionality or necessity are not fully respected, the Council, taking due account of the opinion of the Commission and of the directly affected Member State(s), may recommend that the Member State decide to further prolong border control at internal borders or usage of alternative to the border controls measures for a period of up to six months. That period may be prolonged, no more than three times once, 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) and 1e. Where appropriate, it shall determine the conditions for cooperation between the Member States concerned."

The discussion at the Council that could allow such a recommendation shall take place without delay and no later than two months after the expiry of the one-year period of border controls at internal borders, provided for under Article 27(1)(b).

6. If, upon the expiry of the one-year period of border controls at internal borders provided for under Art. 27(1)(b), the Council has not adopted a recommendation or if has not confirmed the conclusions of the report that the conditions of proportionality or necessity were met, the border controls referred to in paragraph 1 may be exceptionally further prolonged until the Council recommendation is made but not later than two months. This period should be deducted when calculating the period of internal border controls under the notification.

5. 6 7 In exceptional circumstances, where the Member State is confronted with the same serious threat to public policy or internal security based on the same reasons beyond the intended period referred to in paragraph 1, the procedure described in paragraphs 1-4 6 of this Article shall be repeated once.

The total period during which border control is reintroduced further prolonged at internal borders, including any prolongation provided for under this Article, shall not exceed one year.

(4) Article 28 is replaced by the following:

"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 27(1), ~~with the exception of paragraph (aa) thereof.~~ This information shall include~~ing~~ 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 of this Article, 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 26, 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 27(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 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.*

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

(5) In Article 29 at the end of paragraph 1 the following wording 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.

(6) In Article 29, paragraph 5, the following subparagraph is added at the end:

The total period during which border control is reintroduced at the internal borders under this Article shall not be prolonged or combined with measures adopted for the same reasons under Articles 27, ~~27a~~ and 28.

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 on going notification for reintroduction or prolongation of border control at internal borders ~~made~~ which will have passed before the entry into force of this Regulation shall be taken into account for the purpose of calculation of the periods referred to in Articles 25(5), 27(1b) ~~and 27a(1e5)~~ and 28(4).

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 Brussels,

*For the European Parliament
The President*

*For the Council
The President*
