



Bruxelles, le 18 mai 2022  
(OR. fr, en)

9223/22

LIMITE

JAI 673  
FRONT 200  
MIGR 146  
COVID-19 100  
SAN 271  
TRANS 297  
CODEC 722  
COMIX 243

**NOTE**

---

Origine: la présidence

Destinataire: délégations

---

N° doc. préc.: 8631/22

---

Objet: Proposition de règlement du Parlement européen et du Conseil amendant le règlement (UE) 2016/399 concernant un code de l'Union relatif au régime de franchissement des frontières par les personnes  
- Compromis partiel de la présidence

---

Les délégations trouveront ci-joint le compromis révisé de la présidence portant sur les articles 25 à 28, 31, 33, 39 et 42b du code frontières Schengen.

Les amendements apportés au texte original apparaissent en **gras souligné** ou ~~barrés~~. En outre, les changements par rapport à la dernière version apparaissent en grisé.

2021/0428 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across 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 Article 77(2)(b) and (e) and Article 79(2)(c) 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:

[...]

- (28) In exceptional cases, addressing threats to the Schengen area may require the adoption, by the Member States, of measures at the internal borders. Member States remain competent to determine the need for the temporary reintroduction or prolongation of border controls. Under the existing rules, the reintroduction of controls at internal borders is provided for in circumstances where a serious threat to internal security or public policy manifests itself in a single Member State for a limited period of time. In particular, terrorism and organised crime, large-scale public health emergencies or large-scale or high profile international events such as sporting, trade or political events can amount to a serious threat to public policy or internal security.
- (29) Furthermore, a serious threat to public policy or internal security can also result from large-scale unauthorised movements of **third-country nationals** ~~irregular migrants~~ between the Member States where this creates a situation putting a **substantial** strain on the overall resources and capacities of the responsible national services, where the other means provided for under this Regulation are not sufficient to address these inflows and movements. In this context, Member States should be able to rely on objective and quantified reports on unauthorised movements whenever available, in particular, when produced on a regular basis by the competent Union agencies in line with their respective mandates. It should be possible for a Member State to use the information provided by the

agencies to demonstrate the exceptional character of the identified threat caused by unauthorised movement in the risk assessment, in order to justify the reintroduction of internal border controls on this ground.

- (30) While action at Union level is provided for in circumstances where the nature of a threat derives from persistent serious deficiencies at the external borders, there is no Union-wide mechanism that would apply to situations where, within the Schengen area, a serious threat to internal security or public policy area is affecting **several** ~~a majority of~~ Member States, putting at risk the well-functioning of the Schengen area. The gap should be filled by putting in place a new Schengen area safeguard mechanism permitting coordinated solutions to protect the interests of persons entitled to benefit from the area without controls at internal borders, by maximising the effectiveness of the measures taken while minimising their negative side-effects.
- (31) The new Schengen area safeguard mechanism should allow the Council to adopt, upon a proposal by the Commission, a decision authorising the reintroduction or prolongation of internal border controls, where this is justified by a particular threat, identified on the basis of notifications received from individual Member States, or other available information, in particular a risk assessment, in case of prolongation of internal border controls beyond six months. Given the politically sensitive nature of such a decision which regulates the possibility for Member States to reintroduce or prolong internal border control in particular circumstances, implementing powers to adopt a decision should be conferred on the Council, acting on a proposal from the Commission.
- (32) In determining whether a reintroduction or prolongation of internal border controls by the Member States is justified, the Council should take into account whether any other measures that could ensure a high level of security within the territory, such as reinforced checks in the internal border areas by the competent authorities, are available. In the event that a prolongation of the controls is not considered justified, the Commission should, instead, recommend the use of other measures deemed more appropriate to address the identified threat.
- (33) The establishment of the new Schengen area safeguard mechanism should not affect the right of Member States to have prior recourse to unilateral measures in accordance with the Regulation, where the situation so requires. However, once adopted, the Union measure should become the single basis for a coordinated response to the threat identified.
- (34) In order to ensure compliance with the principle of proportionality, the decision of the Council should be adopted for a limited period of time of up to six months that may be prolonged subject to regular review upon a proposal from the Commission, as long as the threat is found to persist. The initial decision should include an assessment of the expected impact of the measures adopted, including its adverse side-effects, with a view to determining if controls at internal borders are justified or whether less restrictive measures could be applied in their place in an effective manner. Subsequent decisions should take account of the evolution of the identified threat. The Member States should immediately notify the Commission and the Member States of the reintroduction of internal border controls in accordance with the decision of the Council.

- (35) Reintroduction of internal border controls should also remain possible where serious deficiencies in the management of the external borders persist, putting at risk the overall functioning of the area without internal border control. Periods where the border controls were introduced by Member States because the urgency of the situation required it or where the Council takes a decision to recommend the reintroduction because a threat affects **several** ~~a significant number of~~ Member States, should not be included in the two years' period applicable to reintroductions based on serious deficiencies at the external borders.
- (36) The reintroduction of border controls at internal borders, whether on the basis of unilateral decisions of the Member States or at a Union level, has serious implications for the functioning of the Schengen area. In order to ensure that any decision to reintroduce border controls is only taken where necessary, as a measure of last resort, the decision on temporary reintroduction or prolongation of border controls should be based on common criteria, putting an emphasis on necessity and proportionality. The proportionality principle requires that the reintroduction of internal border controls be subject to safeguards that increase over time.
- (37) In the first instance, Member States should assess the appropriateness of internal border controls having regard to the nature of the serious threat identified. In this context, the Member States should pay particular attention to and assess the likely impact of internal border controls on the movement of persons within the area without internal border controls and the functioning of the cross-border regions. This assessment should be part of the notification that Member States are required to transmit to the Commission. In case of prolongation of internal border controls for foreseeable events beyond an initial period of six months, the Member State should also assess the appropriateness of alternative measures to pursue the same objectives as internal border controls, such as proportionate checks as carried out **in the context of checks within the territory** ~~exercise of police or other public powers~~ or through forms of police cooperation as provided for under Union law, **including** ~~and~~ the possibility to use the transfer procedure, **or common measures regarding temporary travel restrictions**.
- (38) In order to limit harmful consequences resulting from the reintroduction of internal border controls, any decision to reintroduce internal border controls should be accompanied by mitigating measures if needed. Such measures should include measures to assure a smooth operation of transit of goods and transport personnel and seafarers by the establishment of 'green lanes'. In addition, and to take account of the need to ensure the movement of persons whose activities may be essential for preserving the supply chain or the provision of essential services, Member States should also apply the existing guidelines on cross-border workers<sup>1</sup>. Against this background, the rules for the reintroduction of border controls at internal borders should take account of the guidelines and recommendations adopted throughout the COVID-19 pandemic as a solid safety net for the Single Market, for the purpose of assuring that they are applied by the Member States, where appropriate, as mitigating measures during reintroduced internal border controls. Measures should in particular be identified with a view to ensuring the uninterrupted functioning of the Single Market and safeguarding the interests of cross-border regions and of 'twin cities' including for instance authorisations or derogations for the inhabitants of cross-border regions.

---

<sup>1</sup> 2020/C 102 I/03.

- (39) The notification to be provided by the Member States should be decisive when assessing compliance with the criteria and conditions for a temporary reintroduction of internal border controls. In order to ensure a comparable set of information, the Commission should adopt a template for the notification of reintroduction of border controls at internal borders in an implementing act. Member States should be entitled to classify all or parts of the information provided in the notification, without prejudice to the functioning of appropriate and secure ~~police-cooperation~~ channels.
- (40) In order to ensure that internal border controls are ~~truly~~ a last resort measure applied only for as long as necessary and in order to allow for assessing the necessity and proportionality of internal border controls to address foreseeable threats, Member States should prepare a risk assessment to be submitted to the Commission when internal border controls are prolonged beyond an initial six months in response to foreseeable threats. The Member States must in particular, explain, the scale and evolution of the identified serious threat, including how long the identified serious threat is expected to persist and which sections of the internal borders may be affected, as well as their coordination measures with the other Member States that are impacted or likely to be impacted by such measures.
- (41) The Commission should be entitled to request additional information based on the notification received, including on the risk assessment or cooperation and coordination measures with the Member States affected by the planned prolongation of border control at internal borders. Where the notification does not comply with the minimum requirements, the Commission should discuss the notification with the Member State concerned and request additional information or **request this Member State a resubmission to complete its initial** ~~of the~~ notification.
- (42) In order to ensure a sufficient degree of transparency of the actions affecting travel without internal border controls, the Member States should also inform the European Parliament and the Council about the main elements concerning the planned reintroduction of border controls. In justified cases, Member States may also classify such information. Every year, pursuant to Article 33 of the Schengen Borders Code, the Commission should present to the European Parliament and to the Council a report on the functioning of the area without internal border control ('State of Schengen report') which should pay particular attention to the situation as regards the unauthorised movements of third country nationals, building on the available information from the relevant Agencies and data analysis from relevant information systems. It should also assess the necessity and proportionality of the reintroductions of border controls in the period covered by that Report. The State of Schengen report shall also cover the reporting obligations resulting from Article 20 of the Schengen Evaluation Mechanism<sup>2</sup>.

---

<sup>2</sup> 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 repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

- (43) The mechanism for the temporary reintroduction of border controls at internal borders in urgent situations or to address foreseeable threats should provide for a possibility, for the Commission, to organise consultations between Member States, including at the request of any Member State. Relevant Union Agencies should be involved in this process in order to share their expertise, where appropriate. Such consultations should look into the modalities of carrying out internal border controls and their time-line, possible mitigating measures as well as the possibilities of applying alternative measures ~~instead~~. Where the Commission or a Member State has issued an opinion expressing concerns regarding the reintroduction of border controls, such consultations should be mandatory.
- (44) The Commission and Member States should retain the possibility to express any concern as regards the necessity and proportionality of a decision of a Member State to reintroduce internal border controls for reason of urgency or to address a foreseeable threat. In case controls at internal borders are reintroduced and prolonged for foreseeable threats for combined periods exceeding ~~eighteen~~ **twelve** months, it should be a requirement for the Commission to issue an opinion assessing the necessity and proportionality of such internal border controls. Where a Member State considers that there ~~are~~ **is a major** exceptional situations justifying the continued need for internal border controls for a period exceeding two years, **additional safeguards should be set in terms of risk assessment and, where appropriate, the notification should include a presentation of the means, actions, conditions and timeline considered with a view to lifting the internal border controls.** ~~The Commission should issue a new follow-up opinion. Where this opinion expresses concerns on the necessity and the proportionality of the prolongation, the Commission should adopt, without undue delay, a recommendation to be addressed to the Member State concerned, identifying means, actions, conditions and a timeline with a view to lifting the internal border controls.~~ Such an opinion is without prejudice to the enforcement measures, including infringement actions, which the Commission may take at any time against any Member State for failure to comply with its obligations under Union law. Where an opinion is issued, the Commission should launch consultations with the Member States concerned.
- (45) In order to enable the *post factum* analysis of the decision on the temporary reintroduction of border controls at the internal borders, Member States should remain obliged to submit a report on the reintroduction of border control at internal borders to the European Parliament, the Council and the Commission once they lift the controls. Where the controls are kept in place for prolonged periods of time, such a report should also be submitted after twelve months, and every year thereafter if exceptionally controls are maintained and for as long as the controls are maintained. The report should outline, in particular, the initial and follow-up assessment of the necessity of internal border controls and the respect of the criteria for reintroduction of ~~border~~-controls at internal borders. The Commission should adopt in an implementing act a template and make it available online.
- (46) When implementing this Regulation, Member States shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

- (47) The competent authorities shall use their powers to carry out checks within the territory and apply relevant procedures in full respect of the rules on data protection under Union law. Regulation (EU) 2016/679 of the European Parliament and of the Council or Directive (EU) 2016/680 of the European Parliament and of the Council apply to the processing of personal data by competent national authorities for the purposes of this Regulation, in their respective field of application.
- (48) The objective of this Regulation is to strengthen the functioning of the Schengen area. This objective cannot be achieved by Member States acting alone. Therefore, 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.
- (49) 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.
- (50) 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/EC<sup>3</sup>; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (51) 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*<sup>4</sup>, which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC<sup>5</sup>.

---

<sup>3</sup> 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.

<sup>4</sup> OJ L 176, 10.7.1999, p. 36.

<sup>5</sup> 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.

- (52) 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 *acquis*<sup>6</sup> which fall within the area referred to in Article 1, point A of Decision 1999/437/EC<sup>7</sup> read in conjunction with Article 3 of Council Decision 2008/146/EC.<sup>8</sup>
- (53) 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 *acquis*<sup>9</sup> 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<sup>10</sup>.
- (54) This Regulation is without prejudice to the application of Directive 2004/38/EC<sup>11</sup>.
- (55) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (56) Regulation (EU) No 2016/399 and Directive 2008/115/EC should therefore be amended accordingly,

---

<sup>6</sup> OJ L 53, 27.2.2008, p. 52.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> OJ L 160, 18.6.2011, p. 21.

<sup>10</sup> 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.

<sup>11</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158 30.4.2004, p. 77).

[...]

(8) Article 25 is replaced by the following:

“Article 25

*General framework for the temporary reintroduction or prolongation of border controls at internal borders*

1. Where, in the area without internal border controls, 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.

A serious threat to public policy or internal security may be considered to arise from, in particular:

- (a) activities relating to terrorism or organised crime;
  - (b) large scale public health emergencies;
  - (c) an **exceptional** situation characterised by large scale unauthorised movements of third-country nationals between the Member States, ~~putting at risk the overall functioning of the area without internal border controls~~ **putting a substantial strain on the overall resources and capacities of the responsible national services as evidenced by information analysis and all available data, including from EU agencies which is liable to put at risk the overall functioning of the area without internal border controls;**
  - (d) large scale or high profile international events ~~such as sporting, trade or political events.~~
2. In all cases, border controls at internal borders shall **only** be reintroduced as a measure of last resort. The scope and duration of the temporary reintroduction of border controls shall not exceed what is strictly necessary to respond to the serious threat identified.  
  
Border controls may only be introduced pursuant to Articles 25a and 28 where a Member State has established that such a measure is necessary and proportionate, taking into account the criteria referred to in Article 26(1), and, in case such controls are prolonged, also the criteria referred to in Article 26(2). Border controls may also be reintroduced in accordance with Article 29, taking into account the criteria referred to in Article 30.
  3. Where the same threat ~~continues to persist~~, border controls at internal borders may be prolonged in accordance with Articles 25a, 28 or 29.

The same threat shall be considered to exist where the justification advanced by the Member State for prolonging border controls is based on the determination of the continuation of the same threat that had justified the initial reintroduction of the border controls.”

- (9) A new Article 25a is inserted after Article 25:

“Article 25a

*Procedure for cases requiring action due to unforeseeable or foreseeable events*

1. Where a serious threat to public policy or internal security in a Member State is unforeseeable and requires immediate action, the Member State may, on an exceptional basis, immediately reintroduce border controls at internal borders.
2. The Member State shall, at the same time as reintroducing border controls under paragraph 1, notify the Commission and the other Member States of the reintroduction of border controls, in accordance with Article 27(1).
3. For the purposes of paragraph 1, border controls at internal borders may be immediately reintroduced for a limited period of up to one month. If the serious threat to public policy or internal security persists beyond that period, the Member State may prolong the border control at internal borders for further periods, leading to a maximum duration not exceeding three months.
4. Where a serious threat to public policy or internal security is foreseeable in a Member State, the Member State shall notify the Commission and the other Member States ~~and the Commission~~ in accordance with Article 27(1), at the latest four weeks before the planned reintroduction of border controls, or **as soon as possible** ~~within a shorter period~~ where the circumstances giving rise to the need to reintroduce border controls at internal borders become known less than four weeks before the planned reintroduction.
5. ~~For the purposes of~~ **Where** paragraph 4 **applies**, and without prejudice to Article 27a(4), border control at internal borders may be reintroduced for a period of up to six months. Where the serious threat to public policy or internal security persists beyond that period, the Member State may prolong the border control at internal borders for renewable periods of up to six months.

Any prolongation shall be notified to the Commission and the other Member States in accordance with Article 27 and within the time limits referred to in paragraph 4. Subject to Article 27a(5), the maximum duration of border control at internal borders shall not exceed two years.

6. The period referred to in paragraph 5 shall not include periods referred to in paragraph 3.”

(10) Article 26 is replaced by the following:

“Article 26

*Criteria for the temporary reintroduction and prolongation of border control at internal borders*

1. To establish whether the reintroduction of border control at internal borders is necessary and proportionate in accordance with Article 25(2), a Member State shall in particular **assess** ~~consider~~:
  - (a) the appropriateness of the measure of reintroducing border controls at internal border, having regard to the nature of the serious threat identified and in particular, whether the reintroduction of border controls at internal borders is likely to adequately remedy the threat to public policy, or internal security;
  - (b) the likely impact of such a measure on:
    - **the** movement of persons within the area without internal border controls and
    - the functioning of the cross-border regions, taking into account the strong social and economic ties between them.
2. Where a Member State decides to prolong the border control at internal borders pursuant to Article 25a(5), it shall also assess in detail whether the objectives pursued by such prolongation could be attained by:
  - a) the use of alternative measures such as proportionate checks carried out in the context of the lawful **checks within the territory** ~~exercise of powers~~ as referred to in Article 23 point (a);
  - ~~b) the use of the procedure as referred to in Article 23a;~~
  - ~~e)b) forms of~~ **forms of** police cooperation as provided for under Union law, **including the procedure referred to in Article 23a**, ~~including on matters such as joint patrols, joint operations, joint investigation teams, cross-border hot pursuits, or cross-border surveillance;~~
  - ~~d)c) common measures regarding temporary restrictions on travel to the Member States as referred to in Article 21a(2).~~
3. Where border controls at internal borders have been reintroduced or prolonged, the Member States concerned shall, ~~where necessary~~, ensure that they are accompanied by appropriate measures that mitigate the impacts resulting from the reintroduction of border controls on persons and the transport of goods, giving particular consideration to the **strong social and economic ties between** cross-border regions, **and to persons undertaking essential travel.**”

(11) Article 27 is replaced by the following:

“Article 27

*Notification of temporary reintroduction of internal border controls and risk assessment*

1. Notifications by Member States of the reintroduction or prolongation of internal border controls shall contain the following information:
  - (a) the reasons for the reintroduction or prolongation, 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 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 or prolongation;
  - (e) the **assessment of** ~~considerations as to~~ the necessity and proportionality referred to in Article 26(1) and, in the case of a prolongation, in Article 26(2);
  - (f) where appropriate, the measures to be taken by the other Member States.

A notification may be submitted jointly by two or more Member States.

**Member States** ~~The notification shall be submit provided the notification using in accordance with a template to be established by the Commission by an implementing act and to be made available online by the Commission. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).”~~

2. Where border controls have been in place for six months in accordance with Article 25a(5), any subsequent notification for the prolongation of such controls shall include a risk assessment. The risk assessment shall present the scale and anticipated evolution of the identified serious threat, in particular how long the identified serious threat is expected to persist and which sections of the internal borders may be affected, as well as information regarding coordination measures with the other Member States impacted or likely to be impacted by such measures.
3. Where **Member States** reintroduce or prolong border controls ~~large scale unauthorised movements~~ **because of a situation** referred to in Article 25(1) point (cb), the **risk assessment required by paragraph 1(e) of this Article** shall also provide **a risk assessment and** information on the scale and trends of such unauthorised movements, including any information obtained from the relevant EU agencies in line with their respective mandates and data analysis from relevant information systems.
4. The Member State concerned shall upon request by the Commission provide any further information, including on the coordination measures with the Member States affected by the planned prolongation of border control at internal borders as well as further information needed to assess the possible use of measures referred to in Article 23 and 23a.

5. Member States submitting a notification under paragraphs 1 or 2 may, where necessary and in accordance with national law, decide to classify all or parts of the notified information.

Such classification shall not preclude access to information, through appropriate and secure ~~police-cooperation~~ channels, by the other Member States affected by the temporary reintroduction of border controls at internal borders.”

6. **The Commission shall adopt an implementing act to establish the template referred to in the third subparagraph of paragraph 1. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).**”

(12) The following Article 27a is inserted:

“Article 27a

*Consultation with the Member States and opinion of the Commission*

1. Following receipt of notifications, submitted under Article 27(1), the Commission may, **on its own initiative, or shall, at the request of a Member State directly affected,** establish a consultation process, ~~where appropriate,~~ including joint meetings between the Member State that is planning to reintroduce or prolong border control at internal borders, and the other Member States, especially those directly affected by such measures and the relevant Union agencies.

The **objective of the** consultation **is to examine** ~~shall concern~~ in particular the identified threat to public policy or internal security, the relevance **and proportionality** of the intended reintroduction of border controls taking into account the appropriateness of alternative measures, as well as the ways of ensuring implementation of the mutual cooperation between the Member States in relation to the reintroduced border controls.

The Member State planning to reintroduce or prolong border control at internal borders shall take ~~into utmost account of~~ **into utmost** account of the results of such consultation when carrying out border control at the internal border.

2. Following the receipt of notifications, submitted in relation to the reintroduction or prolongation of border controls at internal borders, the Commission **shall,** or any other Member State may, without prejudice to Article 72 TFEU, issue an opinion, if, based on the information contained in the notification and risk assessment, where appropriate, or any additional information, they have concerns as regards the necessity or proportionality of the planned reintroduction or prolongation of border control at internal borders.
3. Following receipt of notifications submitted in relation to a prolongation of border control at the internal border under Article 25a(4) which leads to the continuation of border controls at internal borders for ~~twelve~~ **eighteen** months in total, the Commission shall issue an opinion on necessity and proportionality of such internal border controls. **The opinion of the Commission shall contain recommendations, where appropriate, on the improvement of the cooperation between Member States in order to limit the impact of the internal border controls and contribute to the reduction of the persisting threat.**

4. Where an opinion referred to in paragraphs 2 or 3 is issued, the Commission ~~may~~ **shall** establish a consultation process in order to discuss the opinion with the Member States. ~~Where the Commission or a Member State issues an opinion expressing concerns on the necessity or proportionality of reintroduced internal border controls the Commission shall launch such a process.~~
5. Where a Member State considers that there ~~is~~ **are a major** exceptional situations **in respect to a persisting threat** justifying the continued need for internal border controls, in excess of the maximum period referred to in Article **25a(5)**, it shall notify the Commission **and the other Member States of its intention to prolong its internal border controls, at the latest four weeks before the planned reintroduction, for an additional period of up to 6 months** in accordance with Article 27(2).

The new notification, **taking into account the opinion of the Commission issued pursuant to paragraph 3, shall include a risk assessment** from the Member State shall:

- ~~substantiate~~ **ing** the continued threat to public policy or internal security, ~~taking into account the opinion of the Commission given pursuant to paragraph 3;~~
- **substantiating that alternative measures to remedy the threat are deemed or have been found to be ineffective at the time of the notification;**
- **presenting the mitigating measures considered to accompany the controls;**
- **including, where appropriate, a presentation of the means, actions, conditions and timeline considered with a view to lifting the internal border controls.**

**Within three months after this notification,** the Commission shall issue a **new follow-up opinion. Where this opinion expresses concerns on the necessity and the proportionality of the prolongation, the Commission shall adopt, without undue delay, a recommendation to be addressed to the Member State concerned, identifying means, actions, conditions and a timeline with a view to lifting the internal border controls.**

(13) Article 28 is replaced by the following:

“Article 28

*Specific mechanism where the serious threat to public policy or internal security puts at risk the overall functioning of the area without internal border controls*

1. Where the Commission establishes that the same serious threat to internal security or public policy affects a majority of **several** Member States, putting at risk the overall functioning of the area without internal border **controls**, it may make a proposal to the Council to adopt an implementing decision authorising the reintroduction of border controls by Member States, **including any appropriate mitigating measures to be established at national and EU level**, where the available measures referred to in Articles **21a**, 23 and 23a are not sufficient to address the threat. **The Member States may request the Commission to submit such a proposal to the Council.**
2. The decision shall cover a period of up to six months and may be renewed, upon proposal from the Commission, for further periods of up to six months as long as the threat persists, taking into account the review referred to in paragraph 5.
3. Where Member States reintroduce or prolong border controls because of the threat referred to in paragraph 1, those controls shall, as of the entry into force of the Council decision, be based on that decision.
4. ~~The decision of the Council referred to in paragraph 1 shall also refer to any appropriate mitigating measures that shall be established at national and Union level in order to minimise the impacts caused by the reintroduction of border controls.~~
5. The Commission shall **regularly** review the evolution of the identified threat as well as the impact of the measures adopted in accordance with the Council decision referred to in paragraph 1, with a view to **assessing** whether the measures remain justified.
6. Member States shall immediately notify the Commission and the other Member States in the Council of a reintroduction of border controls in accordance with the decision referred to in paragraph 1.
7. The Commission may issue a recommendation indicating other measures, as referred to in Articles 23 and 23a, that could complement internal border controls or be more suitable to address the identified threat to internal security or public policy as referred to in paragraph 1. **The Commission shall take this into account in the review referred to in paragraph 5”.**

(14) Article 31 is amended as follows:

- a) Article 31 becomes paragraph 1;
- b) the following paragraphs **2 and 3 are** added:
  2. Where a Member State notifies the Commission and the other Member States of the reintroduction of border controls in accordance with Article 27(1), it shall at the same time inform the European Parliament and the Council of the following:
    - a) ~~the details of the internal borders where border control is to be reintroduced~~ **the scope of the proposed reintroduction, specifying at which part(s) of the internal borders control is to be reintroduced;**
    - b) the reasons for the ~~proposed~~ reintroduction;
    - 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 State.
  3. Member States shall not be required to provide all the information referred to in the paragraph 2 in cases justified on public security grounds **or confidentiality of ongoing investigations.**

The provision of information may be subject to classification of information by Member States pursuant to Article 27(**5**).

The classification of information 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.”

(15) Article 33 is replaced by the following:

*“Article 33*

*Report on the reintroduction of border control at internal borders*

1. Within four weeks of the lifting of border control at internal borders, Member States which have carried out border controls at internal borders shall present a report to the European Parliament, the Council and the Commission on the reintroduction and, where applicable, the prolongation of border control at internal borders.
2. Without prejudice to the first paragraph 1, where border controls are prolonged as referred to in Article 25a(5), the Member State concerned shall submit a report at the expiry of twelve months and every twelve months thereafter if border control is exceptionally maintained.

3. The report shall outline, in particular, the initial and follow-up assessment of the necessity of border controls and the respect of the criteria referred to in Articles 26, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting impact on the movement of persons in particular in the cross-border regions, 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.
4. The Commission shall adopt a uniform format for such report **to be established by an implementing act** and make it available online. **That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38(2).**
5. 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.
6. 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 controls entitled ('State of Schengen report'). The report shall include a list of all decisions to reintroduce border controls at internal borders taken during the relevant year. It shall also include an assessment of the necessity and proportionality of the reintroductions **and prolongations** of border controls in the period covered by that report **as well as** information on the trends within the Schengen area **without internal border control** as regards the unauthorised movements of third country nationals, taking into account available information from the relevant Union agencies **and** data analysis from relevant information systems. ~~and an assessment of the necessity and proportionality of the reintroductions of border controls in the period covered by that report.~~

(16) In Article 39(1), the following point (h) is added:

“h) ~~Member States shall notify to the Commission the local administrative areas considered as the cross-border regions and any relevant changes thereto.~~”

(17) The following Article 42b is added:

*“Article 42b  
Notification of cross-border regions*

By ~~six~~ **six** months of the entry into force of this Regulation at the latest, Member States **with common internal borders** shall **in close cooperation determine** ~~notify the Commission the~~ areas of their territory considered as the cross-border regions, **taking into account the strong social and economic ties between them, and notify the Commission thereof.**

Member States shall also inform the Commission of any relevant changes thereto.”