

# CJEU Rules on Reintroduction of Internal Border Checks for Longer than Six Months

## News

Anna Pingen

The CJEU, sitting as the Grand Chamber, rendered a [judgement](#) on 26 April 2022 regarding the temporary reintroduction of internal borders because of serious threats to public policy/internal security, including a time limit for the reintroduction. The judges only partially followed the [opinion](#) of Advocate General (AG) Saugmandsgaard Øe (→ [related link](#)).

### Background of the case:

In the wake of the migration crisis, Austria reintroduced controls at the borders it shares with Hungary and Slovenia. They were reintroduced several times from the middle of September 2015 on for successive six-month periods each. NW was ordered to pay a fine of €36 in Austria for having crossed the Slovenian-Austrian border in August 2019 without being in possession of a valid travel document. He was controlled again when he attempted to enter Austria by car from Slovenia in November 2019. The defendant challenged these two controls as well as the imposed fine before the Landesverwaltungsgericht Steiermark (Regional Administrative Court, Styria, Austria). The referring court questioned whether the checks to which NW was subject and the penalty that was imposed upon him were compatible with EU law.

### Decision of the CJEU:

The CJEU first proceeded to stress that the Schengen Borders Code permits a Member State to reintroduce border controls temporarily at its borders with other Member States if there is a serious threat to its public policy or internal security. However, such a measure cannot exceed a maximum total duration of six months. A Member State can only reintroduce such measures afresh, immediately after the six-month period has ended, if it is faced with a new serious threat affecting its public policy or internal security. The new threat must be distinct from the threat initially identified, as the EU legislature considered a period of six months to be sufficient for the Member State to adopt measures disabling such a threat. This marks a clear difference to the AG's Opinion, who stated that the Member States' powers and responsibilities in the area of public policy and internal security could not be framed by absolute periods.

In the present case, the CJEU concluded that Austria did not demonstrate the existence of a new threat, with the result that the two border control measures to which NW had been subjected were incompatible with the Schengen Borders Code. In accordance with the AG's Opinion, the CJEU also stated that a person cannot be obliged, on pain of a penalty, to present a passport or identity card upon entry from another Member State if the reintroduction of border controls is contrary to the Schengen Borders Code.

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