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signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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PARLIAMENT AND THE COUNCIL on preserving and strengthening  
Schengen

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND THE COUNCIL**

**on preserving and strengthening Schengen**

## 1. Introduction

*The Schengen area is the largest free travel area in the world. It allows more than 400 million EU citizens, as well as visitors, to move freely and goods and services to flow unhindered. Schengen is one of the major achievements of European integration and the Commission is fully committed to safeguard and preserve the free movement it ensures of persons.*

*The absence of internal border control constitutes the very essence of Schengen. In an area without controls at internal borders, cross-border threats affecting public policy or internal security of that area are a matter of common interest. The absence of internal border controls in the Schengen area has always been accompanied by measures in the areas of external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters and drugs policies. In an area where persons may move freely, the reintroduction of border control at internal borders is the 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.*

*Since its conception, the Schengen area has been confronted with different types of challenges and threats. The strength of Schengen also comes from its capacity to learn and adapt; the Schengen Borders Code has been amended on several previous occasions to ensure it remains fit for purpose.*

*The pressure from the mass irregular migration influx and the multiplication of terrorist attacks in various Member States exposed shortcomings in the Schengen architecture that required further action. The Commission took key steps to remedy them, such as the Back to Schengen Roadmap. In the field of border management and border security of the European common external borders, this meant a swift move towards a joint responsibility and action management and included notably the establishment of the new European Border and Coast Guard Agency and the introduction of systematic checks against relevant databases on all persons crossing the external borders. Real progress has been made in fighting terrorism by working towards an effective and genuine Security Union. The revised Schengen evaluation mechanism implemented since 2014 has also become an important way to identify shortcomings, including in the Schengen architecture.*

*It is now timely to assess the results yielded by the measures taken by the European Union to remedy the challenges faced by the Schengen area over the past two years. The Commission Communication the Delivery of the European Agenda on Migration<sup>1</sup> adopted on 27 September, on the one hand, takes stock of the main achievements and shortcomings in the implementation of the European Agenda on Migration and on the other hand identifies key priority actions to be taken towards a more efficient, fair and stable European policy on asylum and migration. The present Communication draws the conclusions from the implementation of the Back to Schengen Roadmap and proposes next steps for strengthening Schengen, including the adoption of a Recommendation on better application of the current rules and a proposal to update the Schengen Borders Code in light of the current challenges Europe is facing.*

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<sup>1</sup> COM(2017)558.

*Moreover, a strengthened Schengen is also one that contributes to enhanced security cooperation and mutual trust amongst the widest circle of Member States. As called for by President Juncker in his State of the Union Address 2017, if we want to strengthen the protection of our external borders, then we need to open the Schengen area of free movement to Bulgaria and Romania immediately, followed swiftly by Croatia once it has met all the criteria.*

## **2. State of play of the Schengen area**

In an area without internal border control, the temporary reintroduction of internal border control may only be decided in exceptional circumstances to provide a response to situations seriously affecting the public policy or internal security of that area, of parts thereof, or of one or more Member States. Overall, the use of temporary reintroduction of border control shows that the Member States apply this measure in a responsible manner. The costs of a non-Schengen simulation clearly demonstrate that this is always a costly decision for the economy<sup>2</sup>.

### ***Mass influx and secondary migratory movements coming via the Eastern Mediterranean route***

2015 witnessed unprecedented flows of migrants arriving in the European Union resulting in secondary movements of non-registered irregular migrants. This situation led several of the exposed Member States to reintroduce temporary border controls at their internal borders, in line with the Schengen rules. The persistence of the threats to public policy or internal security in several Member States resulting from the secondary movements of irregular migrants led the Commission to trigger for the very first time the specific procedure of Article 29 of the Schengen Borders Code. This was one of the steps foreseen by the Commission in its roadmap back to a normally functioning Schengen area in its Communication of 4 March 2016<sup>3</sup>. The procedure of Article 29 may be used in exceptional circumstances where the deficiencies in the management of the external borders, detected during a Schengen evaluation, put the functioning of the entire Schengen area at risk. On 12 May 2016, the Council recommended<sup>4</sup>, on the basis of a Commission proposal<sup>5</sup>, that the five Member States most affected by the secondary movements coming from Greece reintroduce border controls at specific sections of their internal borders. Despite the gradual improvements of the situation, the pressure on the five Member States concerned continued and justified

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<sup>2</sup>According to the Commission analysis of direct economic cost of non-Schengen i.e. the situation where the border controls have been reintroduced for a longer period of time delays at the borders would have a substantial impact on cross-border transport (notably through road), tourism, public administrations and cross-border workers and travellers. For those categories, the direct costs are estimated to range between €5 and €8 billion per year (or 0.06%-0.13% of GDP), depending on the time spent due to delays. The medium-term indirect costs of non-Schengen may be considerably higher than those direct estimates, as the impacts on intra-community trade, investment and mobility would be unprecedented if rolling-back Schengen puts at risk the economic integration.

<sup>3</sup> Communication from the Commission to the European Parliament, the European Council and the Council "Back to Schengen – A Roadmap", COM(2016) 120 final.

<sup>4</sup> Council Implementing Decision (EU) 2016/894 of 12 May 2016 setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk (OJ L 151, 8.6.2016, p. 8).

<sup>5</sup> Commission proposal of 4 May 2016 for a Council Implementing Decision setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk, COM(2016) 275 final.

subsequent prolongations of the internal border controls<sup>6</sup>. On 11 May 2017, the Council authorised<sup>7</sup> these five Member States for the third and last time under this procedure to extend these controls until 11 November 2017.

These internal border controls have been accompanied by strict conditions: border controls were reintroduced only at the specific internal border sections affected by the secondary movements coming from Greece. Secondly, the five Schengen States concerned were obliged to provide monthly reports to the Commission on the border controls performed and their outcome. These reports have allowed the Commission to closely monitor the situation in order to verify that those controls remained within the limits set by the Council. With each consecutive prolongation of the initial recommendation of 12 May 2016, the Council recalled the rule that border controls can only be used as a last resort measure and that Member States should instead favour the use of alternative measures such as intensified police checks in the border area in order to address the serious threats to public policy or internal security.

The latest reports from the Schengen States under the third and last prolongation confirm the steady trend that the overall situation has greatly improved since the beginning of the migration crisis. Today the numbers of daily arrivals in the Greek islands have decreased significantly<sup>8</sup> and the subsequent secondary movements from Greece to other Member States are limited. This is notably reflected by the downward trend observed in asylum applications received at the internal borders of the Member States concerned as well as in the low numbers of refusals of entry in these Member States.

This is the result of the combined efforts of, the Commission, the Member States, the agencies and other players, such as IOM or UNCHR, involved in managing the challenges.

### ***The increased terrorist threats***

Terrorist attacks carried out in seven Member States<sup>9</sup> over the past two years have put yet another strain on the Schengen area. Specifically, France has faced multiple terrorist attacks on its soil since January 2015<sup>10</sup>. The increased threat and several terrorist attacks, combined with the organisation of several international events, have led France to introduce and carry out border controls at all its internal borders since November 2015, in line with the relevant provisions of the Schengen Borders Code. Steps have been taken to address this challenge both at EU and national level, but the terrorist threat persists.

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<sup>6</sup> Council recommendations (EU) 2016/1989 of 11 November 2016 and (EU) 2017/246 of 7 February 2017 for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.

<sup>7</sup> Council recommendation (EU) 2017/818 of 11 May 2017 for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.

<sup>8</sup> The number of irregular crossings stands at 78 per day on average between 21 March 2016 and 17 September 2017.

<sup>9</sup> Belgium, Denmark, Finland, France, Germany, Spain, Sweden and the United Kingdom.

<sup>10</sup> In January and November 2015 in Paris, in June 2015 in Saint-Quentin-Fallavier, in August 2015 on board of a Thalys train, in January 2016 in Valence, in June 2016 in Magnanville, in July 2016 in Nice, in July 2016 in Saint-Étienne-du-Rouvray, in February 2017 in Paris (machete attack in front of Louvre), in April 2017 again in Paris (attack at the Champs-Élysées).

### 3. **Actions taken to reinforce Schengen**

While the Schengen area faced these critical and unprecedented challenges, the EU and its Member States have worked together to take action to reinforce the external borders and ensure security and public order to secure the Schengen area of free movement. The ultimate objective remains to go back to a normally functioning Schengen area without controls at internal borders. Within the framework of the Security Union, a series of actions that contribute to security within the Schengen area are also being implemented. This comprehensive approach is instrumental to address current and future threats and challenges, in all their forms, that could put at risk the functioning of the Schengen area.

#### a) **Measures taken at the external border**

##### *Reinforced external border management with the tools of the new European Border and Coast Guard Regulation*

The new European Border and Coast Guard<sup>11</sup> has reinforced capacities in terms of monitoring migratory flows towards and within the European Union and in terms of risk analysis. The new legal framework brought new resources and tools making EU external border management more resilient to new challenges. This is notably the case with the **mandatory vulnerability assessments** and their follow up recommendations. These evidence-based vulnerability assessments are result-oriented as they may lead to operational recommendations addressed to the Member States concerned setting concrete measures to eliminate identified vulnerabilities within a defined timeframe. They also help Member States and the Commission to better target the relevant EU funds, notably the Internal Security Fund, and any request for additional emergency funding. The full implementation of those recommendations by the Member States concerned is therefore key in safeguarding the proper functioning of the Schengen area.

The establishment of the **Rapid Reaction Pool and of the Rapid Reaction Equipment Pool** (Rapid Reaction Pools) guarantees the availability within 10 working days of human resources and equipment for operational support upon request to any Member State confronted with a situation at the external borders requiring urgent actions. The European Border and Coast Guard Agency's strengthened mandate also includes the possibility to intervene in urgent situations either at the request of a Member State or on the basis of a Council decision when a Member State is unable or unwilling to act.

The Agency also has a reinforced mandate in assisting and developing further the operational cooperation among the Member States in the field of **return**. The three new pools of forced-return monitors, forced-return escorts and return specialists are operational and can now be mobilised by forming European Return Intervention Teams, providing operational support to increase the capacities of Member States.

As regards **situational monitoring and risk analysis**, the Agency is now able to prepare risk analysis covering aspects relevant for a European Integrated Border Management, including risks that may affect the functioning or security of the Schengen area of free movement and its external borders.

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<sup>11</sup> Regulation (EU) 2016/1624 of the European Parliament and the Council of 14 September 2016 on the European Border and Coast Guard, OJ L 251, 16.9.2016, p. 1.

All these new operational tools contribute to reducing the risk of mass irregular arrivals and also secondary movements within the Schengen area, thus confirming progressively the need to phase out the current temporary internal border controls.

### *Hotspots*

As part of the immediate action to assist frontline Member States which are facing disproportionate migratory pressures at the EU's external borders, the European Commission developed the hotspot approach.

The European Asylum Support Office (EASO), the European Border and Coast Guard Agency (Frontex), the Police Cooperation Agency (Europol) and the Judicial Cooperation Agency (Eurojust) work on the ground with the authorities of the frontline Member State to help to fulfil their obligations under EU law and swiftly identify, register and fingerprint incoming irregular migrants. The hotspot approach also contributes to the implementation of the temporary relocation schemes. Italy and Greece are the two Member States where this hotspot approach is currently being implemented. Other Member States can also benefit from the hotspot approach upon request. Based on the lessons learned from the implementation of the hotspots approach so far, the Commission will present later in autumn guidelines on the preparations and setting up of hotspots in Member States.

### *Reinforced controls at the external borders in response to the terrorist threats*

To reinforce the external borders following an explicit call from the Council<sup>12</sup>, aiming in particular at better identifying and apprehending 'foreign terrorist fighters, the Commission proposed an amendment to the Schengen Borders Code introducing **systematic checks against relevant databases** for *all* persons crossing the external borders<sup>13</sup>. Since the entry into force of this new legislation on 7 April 2017, the same rules of consulting relevant databases apply to all travellers, including EU citizens and persons enjoying the right of free movement under Union law, subject to some possible derogation in justified cases<sup>14</sup>. The new rules enhanced the use of databases such as the Schengen Information System or Interpol's Databases<sup>15</sup>.

As a consequence of the introduction of systematic checks, the overall number of hits in the Schengen Information System has, according to information provided by the Member States, increased and travelling to and back from war zones has now clearly become more difficult.

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<sup>12</sup> In particular call of the Council of 20 November 2015 to amend the Schengen Borders Code further to the terrorist attacks in Paris on 13 November 2015.

<sup>13</sup> Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders, OJ L 74, 18.3.2017, p. 1–7.

<sup>14</sup> The possibility to derogate from the systematic checks at land and sea borders applies with regard to EU citizens when these systematic checks disproportionately impact on the traffic flows and following a risk assessment guaranteeing that security will not be hampered by non-systematic, targeted consultation of the relevant databases. At airports, such derogation is possible in principle during a period of 6 months (until 7 October 2017). After that date the Commission may authorise derogations at the airports facing infrastructural challenges during an additional period of 18 months.

<sup>15</sup> With the compulsory use of the Lost and Stolen Travel Documents database.

With all the above-mentioned actions, measures and initiatives taken at the external border, the EU is now better equipped to prevent and manage potential crisis situations, and thus to guarantee a higher level of security for its citizens.

### ***Stronger and smarter information systems for borders and security***

The Schengen Information System (SIS) is the largest information exchange system that supports external border control and law enforcement cooperation in the Schengen area. In December 2016, the Commission submitted three proposals to further strengthen the operational effectiveness and efficiency of SIS and enhance the overall security in Europe. The proposals introduce technical and operational improvements to the SIS, to ensure continued effective information sharing between law enforcement officers and border guards across Europe. The measures particularly focus on providing better tools to help tackle terrorism and improving the effective return of third-country nationals who do not have the right to be in the Schengen area.

Another important improvement is the deployment of the Automated Fingerprint Identification System (AFIS) in the SIS, which will help to identify people entering the Schengen area more reliably. The project is currently ongoing (no legislative changes are needed for the implementation) and the AFIS will go live February 2018.

Further proposals for improvements to the security and border management were also put forward by the Commission in 2016, with Commission proposals for two new large-scale IT systems, the Entry/Exit System and the European Travel Information and Authorisation System (ETIAS).

The Entry/Exit System aims to modernise external border management by improving the quality and efficiency of controls as well as the detection of document and identity fraud. The system will apply to all third-country nationals who are admitted for a short stay into the Schengen area at the moment they cross the external European borders. The Entry/Exit System will facilitate the border crossing of bona fide travellers, detect over-stayers and identify undocumented persons in the Schengen area. The ancillary objective of the Entry/Exit System is to reinforce internal security and the fight against terrorism and serious crime. A political agreement on the establishment of the Entry/Exit System was reached between Council and European Parliament in July 2017.

The European Travel Information and Authorisation System will require nationals of visa-free countries to obtain a travel authorisation prior to their arrival in the Schengen Area. This would help to identify persons who may pose an irregular migration or security risk before they arrive at the border and significantly enhance the security of the external borders. Travellers would have a reliable early indication of entry into the Schengen area which will thus substantially reduce the number of refusals of entry.

The Commission plans to present as soon as possible a proposal to further enhance the interoperability between the above systems, as well as with Eurodac, Visa Information System, European Criminal Record Information System and Europol data. This proposal will have the objective of ensuring that end-users have fast and seamless access to all information that they need to perform their tasks, with a special focus on access by law-enforcement authorities to non-law enforcement information systems, as well as to providing a solution to detect and combat identity fraud.

**b) Measures taken within the Schengen area**

***The use of proportionate police checks and cross border police cooperation to increase security within the Schengen area***

Reintroducing internal border controls to remedy serious threats to internal security or public policy should not come as a first solution, as stressed in Article 25 of the Schengen Borders Code, even less so now that key steps have been taken to strengthen the external borders. In its Recommendation of 12 May 2017<sup>16</sup>, the Commission expressed its views on how Member States can use police powers under national law and carry out **police checks** in the entire territory, if needed and justified, including in the **border area**.

The Recommendation encouraged Member States to use powers concerning police checks within the territory and cross-border police cooperation in a more effective way. Member States have also been encouraged to assess whether enhanced police checks would not allow achieving the same results as temporary internal border controls, before introducing or prolonging such controls. In this respect, the Recommendation built upon the Recommendations under Article 29 of the Schengen Borders Code<sup>17</sup> in which the Member States have been explicitly requested to first explore possibilities under police checks before deciding on the subsequent prolongation of internal border controls.

The Member States positively welcomed the Recommendation, stressing however the scale and intensity of current challenges. A number of Member States stated that the use of police checks and cross-border operational cooperation cannot substitute the reintroduction of internal border control in the short term, but only complement it. To respond to these concerns and to assist Member States in implementing the Recommendation on time, the Commission is working closely with Member States' authorities<sup>18</sup> to discuss the challenges related to the implementation of the Recommendation in practice, including by providing financial support and exchanging best practice.

The Commission, together with the Council, will continue working towards improving the cooperation between the Member States in this area with a view to create an environment where effective police checks would be implemented in the first place rather than internal border controls when needed to address serious threats to public policy or internal security.

***Other measures to strengthen cross border police and law enforcement cooperation***

The Commission has also taken steps to further strengthen police cooperation as a key tool for common response to cross-border threats affecting the public policy or internal security of that area, working towards an effective and genuine Security Union.

Effective information sharing is a key element in the fight against criminal threats. Information exchange has increased significantly and Member States use databases, such as

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<sup>16</sup> Commission recommendation of 12 May 2017 on proportionate police checks and police cooperation in the Schengen area, C(2017) 3349 final.

<sup>17</sup> Commission proposal of 25 October 2016 for a Council Implementing Decision setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk, COM(2016) 711 final.

<sup>18</sup> Council standing Committee on operational cooperation on internal security (COSI) held an orientation debate on 20 June 2017 and a follow-up discussion on 10 July 2017.

the Schengen Information System, much more often. The EU Directive on Passenger Name Record data was adopted in 2016, essential for identifying high risk travellers previously unknown to law enforcement authorities. By collecting, sharing and analysing passenger data, law enforcement will be able to better address cross-border crime. The Europol Regulation strengthening Europol's mandate entered into force in May 2017, providing the agency with the tools to become more effective, efficient and accountable. The Agency was also reinforced with more resources.

Based on this, operational cooperation was also further enhanced. The objective of the so-called EU Policy Cycle is to ensure effective cooperation between Member States' law enforcement agencies, EU Institutions and EU Agencies that should lead to coherent and robust operational action targeting the most pressing criminal threats facing the EU. The new priorities for the years 2018-2021 have been recently adopted. They will be implemented from 2018 onwards through annual operational action plans.

To help improve cross-border law enforcement cooperation, the Commission organised two workshops this year dedicated to the practice of "cross-border hot pursuits"<sup>19</sup> and to the use of cross-border cooperation tools in countries where internal border control have been reintroduced. The Commission plans to take certain findings of these two workshops forward with a number of further dedicated support actions.

### ***Strong quality control of the Schengen area with the new Schengen evaluation mechanism***

While additional measures and initiatives have been implemented to further protect and preserve our area of free movement, the close monitoring of Member States' obligations and responsibilities according to the Schengen rules continues. This is done via the evaluation and monitoring mechanism to verify the application of the Schengen acquis, as revised by Regulation (EU) No 1053/2013. Each year, five to six Member States are evaluated on their application of the Schengen acquis in the field of management of the external border, visa policy, the Schengen Information System, data protection, police cooperation and return. These on-site evaluations take place on the basis of a multiannual programme for the period 2014-2019, allowing the evaluation of all Schengen States by the end of the cycle.

The Schengen evaluation mechanism, in force since November 2014, sets clearer procedural rules for reports, recommendations and follow-up of identified deficiencies (including a close monitoring and follow-up of the implementation of the recommendations), as well as unannounced visits. On-site visits, conducted by evaluation teams, consisting of Commission and Member States' experts and an observer from the relevant agencies, result in concise evaluation reports with findings qualified as "compliant", "compliant but improvement necessary" or "non-compliant" with the provisions of the Schengen acquis as well as recommendations to remedy the deficiencies identified. The provision by the evaluated Member State of an action plan to remedy the deficiencies identified in an evaluation report and of follow-up reports ensures close monitoring of the implementation of the recommendations. Moreover, depending on the seriousness of the deficiencies identified, revisits can be organised.

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<sup>19</sup> These are pursuits (typically by car) of suspects, which start in the internal border areas by law enforcement officers of one Member State and continue into the territory of a neighbouring Member State.

Since the Schengen evaluation mechanism reform, the on-site teams observed in most cases overall compliance with the essential provisions of the Schengen legal framework. Nonetheless, several specific and some cross-cutting shortcomings were noticed in all policy fields, which needed to be remedied in order to ensure high uniform standards in the application of the Schengen acquis in practice and to maintain a high level of mutual trust between those Member States that form part of the area without border control at internal borders.

The mechanism has led to substantial improvements in the implementation of the Schengen acquis in the Member States and has already proven its added value in ensuring the efficient functioning of the Schengen area: the coordinated introduction of border controls at selected internal border sections pursuant to Article 29 of the Schengen Borders Code was the result of the unannounced Schengen evaluation visit carried out in Greece at the end of 2015. This mechanism allowed to identify and to remedy swiftly serious deficiencies in the external border management in Greece, while the subsequent action plan and monthly follow-up reports submitted by Greece showed the actions taken by Greece to increase the security of Europe's external borders. The 'regular' evaluation of the Greek external border management conducted in 2016 confirmed the progress made by the Greek authorities.

The Schengen Evaluation has also led to concrete improvements in the implementation of the Schengen acquis in the evaluated Member States. Examples include: improvements to the implementation of the Schengen Information System, establishing national integrated border management strategies by the Member States, or increasing the staff levels at specific border crossing points to improve the management of the external border.

All these experiences demonstrate the importance of ensuring the full implementation of the Schengen evaluation mechanism in the entire Schengen area. All Member States should follow up closely on the lessons learned from the Schengen evaluations, and take the appropriate measures to ensure the effective and efficient application of the Schengen acquis in their own countries.

The Schengen quality control mechanism is a constantly developing system. The vulnerability assessments carried out annually by the European Border and Coast Guard Agency now complement the Schengen evaluation mechanism, constituting together a fully-fledged Schengen quality control system. Enhancing synergies and close coordination between vulnerability assessments and Schengen evaluations will bring significant improvements, as Schengen evaluations will in future also be able to draw upon and integrate the main findings of the vulnerability assessments and ensure that the recommendations resulting from both mechanisms will be mutually reinforcing. In this respect, the Commission and the European Border and Coast Guard Agency maintain close contact to ensure the highest degree of security at external borders.

Finally, a stronger link between the Schengen quality control system and the use of EU funding is essential. Already in accordance with Article 12 of Regulation (EU) 514/2014, the Member State concerned shall examine, together with the Commission and the European Border and Coast Guard Agency, how to address within the framework of its national programme under the Internal Security Fund the findings, including any deficiencies, identified under the Schengen evaluations.

### ***A strong and resilient Schengen framework***

The Schengen rules contain a certain degree of flexibility and have thereby allowed to deal with both major and less major crisis situations; the Schengen framework of rules have been successfully used to safeguard the wider functioning of the Schengen system. The past 10 years demonstrate that, in the vast majority of cases, the current provisions of the Schengen Borders Code on the temporary reintroduction of internal border controls, including the time frames set, are sufficient to tackle the identified serious threats. Between 2006 (the date of adoption of the Schengen Borders Code) and 2015, temporary border controls have been reintroduced 36 times and have hardly ever been prolonged, usually carried out only for a few days or weeks. Moreover, the exceptional procedure of Article 29 of the Schengen Borders Code that was used for the first time following the migration crisis has demonstrated that the Schengen legal framework has tools to deal with this challenge.

While the Member States concerned have followed the coordinated approach to reintroduce internal border controls under Article 29, this has been without prejudice to the possibility available to them to temporarily reintroduce internal border controls in the event of another serious threat to public policy or internal security.

The current provisions of the Schengen Borders Code prohibit the prolongation of the reintroduced internal border controls beyond, respectively, two months (Article 28 – in case of events requiring immediate action) and six months (Article 25 – for foreseeable events).

It should also be recalled that the Schengen rules require that internal border control is used only as a last resort measure. Member States should first consider the use of measures alternative to border control, such as police checks, to address the identified threat. Member States are free to decide how to carry out police checks in internal border areas, provided that such checks do not have an effect equivalent to border checks. It is only when alternative measures, such as police checks, are not sufficient to remedy the threat that Member States can opt for temporary internal border controls.

#### **4. Adapting Schengen to the current and future challenges**

The strength of the tools within the Schengen legal framework, as detailed above, has allowed stemming irregular flows of migrants to the EU and secondary movements, which were a cause of great concern for many Member States and citizens.

The threats that Schengen has to face are also constantly evolving. The recent terrorist attacks in several Member States show that building on the progress made, the European Union must also be stronger and properly equipped in fighting terrorism.

To secure the effectiveness of the EU efforts to enhance security and to strengthen the Schengen area, it is crucial to ensure that the Schengen rules are and remain fit for purpose in the light of these new realities and are followed by all Member States concerned.

### ***A proposal for an amendment to the Schengen Borders Code***

The rules governing the temporary reintroduction of border control at internal borders have proven sufficient in the vast majority of cases. However, evolving and new security

challenges have arisen in the past years, as demonstrated by repeated terrorist attacks. The Commission has concluded that there is a need to update these rules.

Member States are responsible for choosing the most appropriate measures to address the identified threats and protect their public policy and internal security. To that end, where the threat still persists despite all efforts, it is justified to adjust the applicable time limitations, while at the same time introducing better procedural safeguards to limit controls at internal borders to what is strictly necessary, so as to preserve the area without controls at internal borders.

To this end, the Commission is tabling today a proposal<sup>20</sup> reviewing the current rules governing the general framework for the temporary reintroduction of border controls at internal borders under Articles 25 and 27 of the Schengen Borders Code.

The proposal modifies the general deadlines for temporary reintroduction of border control at internal borders in case of foreseeable events. However, as the scope and duration of the temporary reintroduction of border control at internal borders should not exceed what is strictly necessary to respond to the serious threat, the Commission oversees the actual length of such controls and may issue an opinion in this respect. In case of concerns related to the necessity or proportionality of the reintroduced border controls, or when border control at internal borders is carried out for more than six months, the Commission will always issue an opinion.

Any reintroduction or prolongation of border controls will be subject to a detailed risk assessment which shall also contain a detailed report of the coordination which will have taken place with Member States concerned. The Commission will share the risk assessment as appropriate with the Agencies having the expertise to assess the information submitted by the Member States, namely the European Border and Coast Guard Agency and Europol.

The proposal also introduces a possibility exceptionally to prolong internal border control if the same threats persist beyond one year, but only if the serious threat to public policy or internal security is specific enough and corresponds to commensurate exceptional national measures, such as a state of emergency. Any further prolongation on this basis is capped at two years. In view of the extraordinary nature of such further prolongation, it would require an opinion by the Commission followed by a recommendation of the Council setting, where appropriate, the conditions for cooperation between the Member States concerned, and which would constitute a prerequisite for any prolongation.

The proposal strengthens the principle that reintroducing controls at internal borders must be a last resort measure. The requirement to present a risk assessment demonstrating that the intended reintroduction or prolongation of border controls is a last resort measure should further encourage Member States to consider the use of alternative measures, such as reinforced police measures.

### ***Better implementation of the Schengen Borders Code provisions related to temporary reintroduction of border control at internal borders***

Pending the adoption of the targeted changes to the Schengen Borders Code as detailed above, it cannot be excluded that Schengen Member States will seek to invoke the current rules

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<sup>20</sup> COM(2017) 571.

related to temporary reintroduction of border control at internal borders under the Schengen Borders Code.

On the basis of the existing rules and in light of the spirit of the proposed changes, the Commission considers that further guidance is needed to ensure that, if a Member State invokes the existing rules, this is done in a way to safeguard better the common interest. In particular, the Member State concerned should prioritise the use of alternative measures and, where the reintroduction of temporary internal border control is necessary in line with Article 26 of the Schengen Borders Code, take measures limiting as much as possible the impact on free movement and cooperate closely with its neighbours. For example, this cooperation should include a constant review and adaptation of the border controls to the evolving needs and impact on the ground. To that end, the Commission has adopted today a Recommendation on the implementation of the provisions of the Schengen Borders Code on temporary reintroduction of border control at internal borders in the Schengen area<sup>21</sup>.

### ***Enlarging Schengen to those countries that are ready and committed***

As Member States are confronted with increased threats, it is by being united and standing together that the EU and its Member States can ensure a stronger Schengen area.

Following the positive evaluations carried out in 2009 and 2010 which demonstrated that both Romania and Bulgaria fulfil the conditions necessary to join Schengen, the Commission has been advocating the full accession of these two Member States to the Schengen area.

It is now high time that Bulgaria and Romania become full Schengen members. The Commission considers that the Council should now take the decision opening the way for lifting controls at the internal borders between these two Member States and their EU neighbours. Allowing Bulgaria and Romania to join Schengen will further contribute to the mutual trust between all Member States. As stated by President Juncker in his State of the Union speech of 13 September 2017, "We have common borders but Member States that by geography are the first in line cannot be left alone to protect them. Common borders and common protection must go hand in hand". Furthermore, a swift decision on the full application of the Schengen acquis to Romania and Bulgaria would allow the inclusion of Bulgaria and Romania to fully contribute to the Schengen Information System.

With regard to the accession of Croatia, a Schengen evaluation verifying that the necessary conditions for the application of all relevant parts of the Schengen acquis has taken place throughout 2016 for most of the areas of the Schengen rules. For some areas, it has been concluded that Croatia meets the necessary conditions for joining the Schengen area while for others, further improvements are required. The evaluation of the Schengen Information System still needs to be completed by October 2017, and a re-visit in the field of external borders will take place in November 2017. After that, if all conditions are met, the accession of Croatia to the Schengen area will be decided upon by the Council on a proposal from the Commission. Croatia should also become a full Schengen member once it meets all the criteria.

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<sup>21</sup> C(2017) 6560.

As regards Cyprus, as soon as it notifies, a Schengen evaluation will take place in all relevant areas.

## **5. Conclusions for the next steps to strengthen the Schengen area**

The Back to Schengen Roadmap of 4 March 2016 set out the measures necessary to lay the foundations for a return to a normally functioning Schengen area. Since then, much has been achieved in addressing the identified challenges and ensuring a coordinated approach, in line with the rules of the Schengen system.

Schengen continues to face evolving and new challenges. Therefore we need to ensure that the current Schengen rules are applied and its tools are used in full while improving those rules which have proved to be insufficiently adapted.

At the same time we now need to integrate fully Bulgaria and Romania into Schengen because it is only by being united and standing together that we can ensure a stronger Schengen area.

The Commission invites:

1. the Council to endorse the approach of the Commission Recommendation on the implementation of the provisions of the Schengen Borders Code on temporary reintroduction of border control at internal borders in the Schengen area;
2. the European Parliament and the Council to swiftly agree on updating the provisions of the Schengen Border Code as proposed by the Commission;
3. the Council now to take the decision enabling the full application of the Schengen acquis in Bulgaria and Romania and abolition of checks on persons at internal land, sea and air borders.