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Subject: 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

Delegations will find in the annex the 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, adopted by the Council at its 3462nd meeting held on 12 May 2016.

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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) ¹ and in particular Article 29 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The EU is facing an unprecedented migratory and refugee crisis following a sharp increase of mixed migratory flows since 2015. This has led to severe difficulties in ensuring efficient external border control in accordance with the Schengen acquis and in the reception and processing of migrants arriving. Wider structural deficiencies in the way the Union's external borders are protected have also become evident in this crisis.
- (2) The Hellenic Republic is, mainly due to its geographical situation, particularly affected by these developments and has faced a dramatic increase in the number of migrants arriving on the Aegean islands.

¹ OJ L 77, 23.03.2016, p. 1.

- (3) In accordance with Council Regulation (EU) No 1053/2013² and the annual evaluation programme for 2015³, an unannounced on-site visit was carried out from 10 to 13 November 2015 to evaluate the implementation of the Schengen acquis in the field of the management of the external border by the Hellenic Republic at its land border (Orestiada, Fylakio, Kastanies, Nea Vyssa) and sea border (Chios and Samos Islands) with Turkey.
- (4) On 2 February 2016 the Commission adopted an implementing decision establishing a report of the evaluation of the Hellenic Republic on the implementation of the Schengen acquis in the field of the management of the external border⁴ concluding that there are serious deficiencies in the carrying out of external border control that must be overcome and dealt with by the Hellenic authorities.
- (5) On 12 February 2016 the Council adopted recommendations on addressing the serious deficiencies identified during the evaluation and indicated the priorities for implementing them. Appropriate measures should be taken by the Hellenic authorities to ensure that at all its external borders, external border control is carried out and brought in line with the Schengen Acquis in order not to jeopardize the functioning of the Schengen area.
- (6) On 24 February 2016 the Commission adopted recommendations on specific measures to be taken by the Hellenic Republic following the evaluation report of 2 February 2016 to ensure compliance with the recommendations of the Council of 12 February 2016.

² 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).

³ Commission Implementing Decision C(2014) 8377 of 14 November 2014 establishing the annual evaluation programme of unannounced on-site visits for 2015 in accordance with Article 6 of Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

⁴ C(2016) 450 of 2 February 2016.

- (7) On 12 March 2016 the Hellenic Republic notified its Action Plan to remedy the deficiencies identified in the evaluation report and subject to the Council Recommendations. The Commission presented on 12 April 2016 its assessment of the adequacy of the Action Plan to the Council. While the Commission concluded that significant progress has been made by Greece, further improvements to the Action Plan are needed in order to adequately and comprehensively address the deficiencies identified in the Evaluation Report. It requested Greece to provide additional elements and clarifications on its Action Plan by 26 April.
- (8) On 26 April 2016 the Hellenic Republic provided the Commission with the requested additional elements and clarifications on its Action Plan. On 29 April 2016, the Hellenic Republic transmitted to the Commission the Report on the implementation of the Action Plan in accordance with Article 16(4) of Regulation (EU) No 1053/2013.
- (9) Between 10 and 16 April 2016, in accordance with Regulation (EU) 1053/2013 and the annual evaluation programme for 2016, an announced on-site visit was carried out in the Hellenic Republic ⁵.
- (10) The record number of migrants arriving in the European Union since 2015 and the deficiencies at parts of the Union's external border identified during the November 2015 evaluation have resulted in important secondary movements, causing a serious threat to public policy or internal security in several Member States.
- (11) Currently five Schengen States (Austria, Germany, Denmark, Sweden and Norway) carry out border controls at internal borders in response to a serious threat to public policy or internal security that was caused by secondary movements of irregular migrants triggered by serious deficiencies in external border controls. These reintroductions of controls at internal borders provide an adequate response to the identified threat to the internal security and public policy in compliance with the Schengen Borders Code, and these measures are necessary and are considered proportionate.

⁵ C(2015) 8537 of 9 December 2015.

On 23 October 2015, the Commission issued an Opinion on the necessity and proportionality of the controls at internal borders reintroduced by Germany and Austria ⁶ concluding that the reintroduction of controls, as well as the prolongations thereof, was in compliance with the Schengen Borders Code.

- (12) In its Communication 'Back to Schengen – a Roadmap' ⁷, the Commission referred to the need, if the migratory pressures and the serious deficiencies in external border control were to persist beyond 12 May 2016, to present a proposal under Article 29(2) of the Schengen Borders Code to the Council recommending a coherent Union approach to internal border controls until the structural deficiencies in external border control are mitigated or remedied. The Communication sets out the steps that need to be taken in order to return to a normally functioning Schengen area at the latest by the end of 2016.
- (13) The Hellenic Republic has made significant progress in addressing many of the deficiencies in its external border management identified during the November 2015 evaluation. Moreover, the initial implementation of the EU-Turkey Statement of 18 March 2016 ⁸, together with the on-going operations by Frontex and NATO, have led to a sharp decrease in the number of irregular migrants and asylum seekers crossing from Turkey into the Hellenic Republic. This substantial reduction in the flow of irregular migrants and asylum seekers to the Hellenic Republic, together with the support provided by EU Agencies and other Member States in the hotspots, has enabled the Hellenic Republic to significantly improve the registration of newly arriving irregular migrants and asylum seekers. The sustainability of the substantial reduction of the migratory flow needs to be confirmed.

⁶ C(2015) 7100 of 23 October 2015.

⁷ C(2016) 120 final.

⁸ SN 38/16 of 18.03.2016.

- (14) Despite this significant progress, not all of the serious deficiencies identified could be adequately and comprehensively addressed within the three months' time limit laid down in Article 21(3) of Regulation (EU) 2016/399. Some of the serious deficiencies in external border control persist, and they put at risk the overall functioning of the area without internal border control. In particular, structural deficiencies in external border control related to the overall border management system, border surveillance and situational awareness, have not been remedied yet. Moreover, a number of persons who stay irregularly on the territory of the Hellenic Republic have not been registered and may seek to move irregularly to other Member States. This risk of secondary movements is particularly high for those irregular migrants who are not accommodated in adequate reception facilities. Finally, while the Council recommended that the Hellenic Republic should take appropriate measures to ensure that at all its external borders, external border control is carried out and brought in line with the Schengen Acquis, border surveillance at the border with the former Yugoslav Republic of Macedonia is currently not fully compliant with the Schengen Borders Code. This adds to the risk of secondary movements of migrants to other Member States.
- (15) Consequently, some of the serious deficiencies in external border controls that triggered secondary movements of irregular migrants and prompted several Member States to temporarily reintroduce internal border controls for reasons related to public policy or internal security persist, putting at risk the overall functioning of the area without internal border control. This persistent risk of secondary movements requires a coherent, coordinated and sustainable approach of temporary internal border control.
- (16) As all other measures have been ineffective in mitigating the serious threat identified, it follows that the conditions for applying Article 29 of the Schengen Borders Code as a last resort are fulfilled.

- (17) Therefore, a recommendation to carry out internal border control under Article 29 of the Schengen Borders Code should be addressed, based on the information available, to those Member States that are currently carrying out internal border control in response to a serious threat to public policy or internal security that was caused by secondary movements of irregular migrants, namely Germany, Denmark, Austria and Sweden and the associated country Norway. These Member States should be permitted to carry out such controls as these controls adequately address the serious threat to public policy and internal security related to the secondary movements of irregular migrants. The internal borders currently affected by the checks correspond to the identified migratory routes and threats, with focus on specific land border sections or specific ports.
- (18) The Member States that decide to carry out internal border control following the present Recommendation should notify the other Member States, the European Parliament and the Commission accordingly.
- (19) The controls under Article 29 of the Schengen Borders Code should be carried out only to the necessary extent, limited in their intensity of the controls to the absolute minimum necessary and impeding as less as possible the crossing of the respective internal borders for the general public. For this purpose, only targeted controls should be carried out. The necessity of these controls, together with the border sections affected, should be re-evaluated regularly in cooperation with the Member States concerned.
- (20) Border control should take place only as long as required to address the threat to public policy and internal security. Several legislative initiatives and actions undertaken by the Union in order to reinforce its external border management (European Coast and Border Guard, return to a full application of EU asylum law provisions by the Hellenic Republic, stepping up of the implementation of the emergency relocation scheme, the EU-Turkey Statement) should also be in place and fully operational without delay and thus further contribute to a substantial reduction in the secondary movements of irregular migrants.

- (21) The Council takes note that the Commission will monitor the application of this recommendation and, where necessary and proportionate, propose adaptations to reflect changes in the specific circumstances that have led to the adoption of this recommendation, in accordance with the provisions of Article 29 of the Schengen Borders Code.
- (22) The Commission has also announced that it will report to the European Parliament and the Council after four months as from the date of the adoption of this recommendation on its application, or earlier if possible, and on that occasion may propose amendments to this recommendation in light of the experience acquired and the circumstances,

HEREBY RECOMMENDS:

1. Austria, Germany, Denmark, Sweden and Norway to maintain proportionate temporary border controls for a maximum period of six months, starting from the day of the adoption of this Implementing Decision, at the following internal borders

- Austria at the Austrian-Hungarian land border and Austrian-Slovenian land border;
- Germany at the German-Austrian land border;
- Denmark in the Danish ports with ferry connections to Germany and at the Danish-German land border;
- Sweden in the Swedish harbours in the Police Region South and West and at the Öresund bridge;
- Norway in the Norwegian ports with ferry connections to Denmark, Germany and Sweden.

Before introducing such controls, the Member State concerned should exchange views with the relevant neighbouring Member State(s) with a view to ensuring that internal border controls are only carried out at those parts of the internal border where it is considered necessary and proportionate, in accordance with the Schengen Borders Code.

2. The Member States concerned should notify the other Member States, the European Parliament and the Commission accordingly.

3. Border controls should be targeted and limited in scope, frequency, location and time, to what is strictly necessary to respond to the serious threat and to safeguard public policy and internal security. The Member State that carries out internal border control pursuant to the present Implementing Decision should regularly review the necessity, frequency, location and time of controls, adjust the controls to the level of the threat addressed, phasing them out wherever appropriate, and report to the Commission every two months.

Done at Brussels,

*For the Council
The President*
