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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council
No. prev. doc.:	13699/16; 13937/16
Subject:	Draft 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

1. Following the Schengen evaluation of Greece in 2015, the Council adopted a Council Implementing Decision setting out a Recommendation on addressing the serious deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of management of the external borders by Greece on 12 February 2016 (5985/16).
2. On 12 May 2016, the Council adopted 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 (8835/16).
3. In accordance with Article 29 (2) of the Schengen Borders Code ¹, the Commission submitted, on 26 October 2016, a proposal 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 (13699/16).

¹ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders ("SBC").

4. JHA Counsellors, including the Mixed Committee partners Norway, Iceland, Switzerland and Liechtenstein, discussed the proposal on 28 October 2016.
5. The Permanent Representatives Committee on 4 November 2016 examined the proposal on the basis of document 13937/16, and approved it with a view to its adoption by the Council as an A-point on 11 November 2016. The text for final adoption is set out in 13979/16.
6. On that basis, the Council is invited to adopt the draft Council Implementing Decision set out in document 13979/16.

It is noted that Greece and Hungary have expressed their intention to vote against, and have submitted the attached statements, announced at the Permanent Representatives Committee on 4 November 2016, for inclusion in the minutes of the Council.

It is also noted that Bulgaria and Cyprus have expressed their intention to abstain.

Statement by Greece

Greece regrets that the adoption of the Commission's proposal 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, is based, among others, on the assumption that "a significant number of irregular migrants (about 60 000) stranded in Greece [who] may reasonably be expected to seek to move irregularly to the other Member States".

Greece recalls its Follow-up report (12 August 2016) on the implementation of the Action plan on addressing the deficiencies identified in the field of management of its external borders following the evaluation of November 2015, where it presented its well-founded position that no risk of secondary movements from its territory to other EU Member States - such that can pose a threat to the internal security and public order in accordance with the Schengen Borders Code- can be substantiated.

Since the November 2015 evaluation, all border controls and patrols at all BCPs of Greece have been further tightened. Among others, in the framework of the National Operation 'SARISA', Greece has taken all necessary measures to prevent and deter any attempt of absconding from the mainland to the north, including to the former Yugoslav Republic of Macedonia. Furthermore, Greece has requested the deployment of Frontex Guest Officers at the land borders between Greece and Albania and Greece and the former Yugoslav Republic of Macedonia.

Greece believes that the "factual indicators" referred to in recital no.13 of this proposal cannot be adequately substantiated. The repeated mention of what is "justified to expect" (recital no.6); what "appears justified" (recital no.12); as well as of those "who may reasonably be expected to seek to move irregularly to other Member states" (explanatory memorandum, p.3) proves that the proposal is based on speculations and lacks the necessary reasoning for prolonging temporary border controls in accordance to article 29 of the SBC.

Greece further recalls that the information provided by the five Schengen States (Austria, Germany, Denmark, Sweden and Norway) on the internal border controls has been scant and not sufficiently detailed, which is reflected in the 28 September 2016 Commission report on the implementation of the 12 May 2016 Council Recommendation. It, therefore, does not provide solid ground for prolonging temporary border controls.

Greece reiterates that adequate response on behalf of Member States to EASO and FRONTEX calls for experts is key to the success of the implementation of the EU-Turkey Statement.

In addition, the assumptions on the cumulated number of asylum applications received by Schengen States is irrelevant to the subject matter and it does not justify the need for the prolongation of the temporary internal border controls.

Consequently, Greece cannot agree to the proposal for this Council Implementing Decision.

Statement by Hungary

Since the beginning of the migration crisis Hungary is of the opinion that the protection of the external borders is the key in stemming the *influx of irregular* migrants. We have to ensure that the external borders are crossed only in accordance with rules and regulations.

Hungary is convinced that the draft decision setting out a Recommendation for prolonging temporary internal border control gives an inadequate response to real problems and could lead to the collapse of the Schengen Area.

The draft decision itself highlights that information provided by the 5 Member States show a progressive stabilisation of the situation. The facts and data listed in the draft decision and the figures presented in the report of the European Commission on 28 September 2016 do not justify either the necessity or the proportionality of the maintenance of temporary border controls at the specified internal border sections. Neither the draft decision nor the report of the Commission present any objective evidence with regard to the entry points of the asylum seekers into the territory of the 5 Member States concerned.

The "Back to Schengen Roadmap" does not provide the legal condition for maintaining the temporary border control at internal borders; however, Hungary agrees with the full implementation of the process of getting "back to Schengen".

Internal border control should be 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, without hampering free movement unduly within the Schengen Area. The relevant Member States should be consulted regularly with a view to ensure that internal border controls are only carried out at those parts of the internal border where it is considered necessary and proportionate and the implementation should be monitored closely by the Commission and the relevant Member States.

Based on the aforementioned circumstances Hungary cannot support the adoption of the draft decision.