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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council
No. prev. doc.:	5465/1/17 REV 1; 5642/17; 5660/17
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. In accordance with Article 29 (2) of the Schengen Borders Code ¹, the Council on 12 May 2016 adopted a Council Implementing Decision ((EU) 2016/894) setting out a Recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.
2. On 11 November 2016, the Council adopted the Implementing Decision ((EU) 2016/1989) setting out a Recommendation for *prolonging* temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.
3. On 30 January 2017, the Commission submitted a second 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 (5465/1/17 REV 1).

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 30 January 2017 and introduced some minor changes to the text.

5. The Permanent Representatives Committee on 1 February 2017 examined the proposal on the basis of document 5642/17, and approved it with a view to its adoption by the Council as an A-point on 7 February 2017. The text for final adoption is set out in 5660/17.

6. On that basis, the Council is invited to adopt the draft Council Implementing Decision set out in document 5660/17.

It is noted that Greece, Hungary, Slovenia and Slovakia have expressed their intention to vote against. It is also noted that Bulgaria, Cyprus and Poland have expressed their intention to abstain.

Greece, Slovenia and Hungary have submitted the attached statements, announced at the Permanent Representatives Committee on 1 February 2017, for inclusion in the minutes of the Council.

Statement by Greece

Greece regrets that the adoption of the Commission's proposal for Council Implementing Decision setting out a recommendation for prolonging temporary internal border control in exceptional circumstances, for a temporary period of another three months, is based, among others, on the assumption that *“an important number of irregular migrants still remains in Greece and, based on trends observed in the past, the Member States most affected by the secondary movements of irregular migrants coming from Greece, remain exposed to the risk related to their irregular movements”*.

Greece underlines that there is no concrete evidence for secondary movements from its territory to other EU Member States. 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 in close cooperation with FRONTEX to prevent and deter any attempt of absconding from the mainland to the north, including to the former Yugoslav Republic of Macedonia. The situation is monitored constantly and assessed as sustainable.

Additionally, Greece managed to implement fully, timely and effectively in the framework of its action plan almost all the recommendations that have been set by Commission² and Council³ as cited in recital (5). Consequently, Greece recalls that Article 29 of the SBC may be triggered as a last resort and only when the conditions of article 21(3) are met and the Commission finds that the overall functioning of the Schengen area is put at risk as a result of persistent serious deficiencies, relating to external border control.

² Commission implementing decision of 24.2.2016 setting out a recommendation on specific measures to be taken by the Hellenic Republic following the evaluation report of 2 February 2016.

³ 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, 12 February, 2016 (5809/16 SCH-EVAL 17 FRONT 51 COMIX 81)

Moreover, the asylum applications may not be considered as a relevant factor to the prolongation of the temporary internal border controls and Greece cannot see the reasoning behind the Commission's assertion that the five Member States implementing internal border controls should be reporting on the number of asylum applications received by Schengen States in recital (14).

Greece considers that the prolongation of the internal borders control within the Schengen area cannot be justified under the legal basis of Article 29 of the Schengen code and it moreover lacks of proportionality.

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

Declaration of the Republic of Slovenia

The Republic of Slovenia does not support the Commission's proposal for prolonging the border control on the internal land border between Slovenia and Austria for another 3 months.

The European Commission justifies the permission to prolong temporary border controls for the same Member States and at the same sections of the borders with the need to adequately address the serious threat to public policy and internal security related to the secondary movements of irregular migrants. Additionally, measures needed in the implementation of the European Border and Coast Guard regulation and the number of asylum seekers in Greece were cited as reasons for the Commission's proposal.

Slovenia can not support the further prolongation of border controls, especially as regards the border between Slovenia and Austria, since the relevant facts no longer support the need for continued border control on the internal land borders. The European Border and Coast Guard has been established and is performing tasks as envisaged by the new legal framework and the EU-Turkey Statement is being implemented. Greece has made substantial progress and is managing illegal migration considerably better than in the past, which is proven by the significant decrease in the numbers of illegal migrants travelling through the Western Balkans route.

Objectively, threats to the Schengen area can be justified by official statistical data on illegal border crossings, which have serious implications for internal security of a particular state. The total number of persons received from the Austrian authorities in 2016, which stood at 76 persons, cannot be said to constitute a foundation to substantiate such a threat.

The Republic of Slovenia has been fully implementing the Schengen legal order and will continue to do so in the future. Slovenia is convinced that the current circumstances no longer justify the radical interference in fundamental values of the Schengen order in the form of internal border controls and therefore opposes the adoption of this recommendation.

Statement by Hungary

Recognizing that the migratory pressure at the Central-Mediterranean route is the biggest challenge for the European Union yet, Hungary recalls the Malta Declaration by the Members of the European Council on the external aspects of migration adopted on 3 February 2017 stating that on the Eastern Mediterranean route, while pressure remain, arrivals in the last four months of 2016 were down 98% year-on-year. Hungary is of the view that the proposal on the 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 envisaging measures in relation to the practically closed Western Balkan route, and therefore it creates unnecessary difficulties and causes high economic burden and costs for EU citizens and economic operators in the region. Therefore, Hungary is not in a position to support the adoption of the proposal.

Hungary would like to recall that the reports of the 5 Member States concerned, about the results of the border control at internal borders were not previously available for other Member States. In addition, the proposal of the Commission does not contain any figures from these reports. The given facts and data do not justify either the necessity or the proportionality of the proposed measures and the maintenance of temporary border controls at the specified internal border sections.

The prolongation of internal border controls at certain internal border sections cannot be deemed as either temporary, nor an exceptional or proportionate measure and may lead to the slow disintegration of the Schengen area. In Hungary's view, the proposal is neither legitimate nor legally justified. Furthermore; it only causes unnecessary difficulties for persons enjoying the Union right of the freedom of movement.