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**SCH-EVAL 133**  
**FRONT 191**  
**COMIX 312**

**'A' ITEM NOTE**

From:	General Secretariat of the Council
To:	Council
No. prev. doc.:	8749/17; 8753/17
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 <sup>1</sup>, 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 and again on 7 February 2017, the Council adopted an 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 ((EU) 2016/1989 and (EU) 2017/246 respectively).

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<sup>1</sup> 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").

3. On 3 May 2017, the Commission submitted a third and last 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 (8709/17).
4. JHA Counsellors, including the Mixed Committee partners Norway, Iceland, Switzerland and Liechtenstein, discussed the proposal on 5 May 2017 and introduced some minor changes to the text.
5. The Permanent Representatives Committee on 10 May 2017 examined the proposal on the basis of document 8749/17, and approved it with a view to its adoption by the Council as an A-point on 11 May 2017. The text for final adoption is set out in 8753/17.
6. On that basis, the Council is invited to adopt the draft Council Implementing Decision set out in document 8753/17.

It is noted that Greece, Croatia, 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 10 May 2017, for inclusion in the minutes of the Council.

Statement by Greece  
COREPER (10 May 2017)

Greece regrets that the adoption of the Commission's proposal for a Council Implementing Decision setting out a recommendation for prolonging temporary internal border controls in exceptional circumstances, for a temporary period of six months, is based, inter alia, on the assumption that there is a serious threat to public policy and internal security in other Member States due to deficiencies in external border control in Greece and to secondary flows of illegal immigrants entering via Greece and travelling to other Schengen States [recital (2) of the proposed Recommendation].

Greece underlines that there is no concrete evidence that secondary movements from its territory to other EU Member States could pose a serious threat to public policy and internal security in the States concerned.

Since the unannounced Schengen evaluation visit in November 2015, all border controls and patrols at all of Greece's BCPs have been further tightened. Among other things, in the framework of the National Operation 'SARISA', Greece has taken all necessary measures in close cooperation with FRONTEX to prevent and deter all attempts to abscond from the mainland to the north, including to the former Yugoslav Republic of Macedonia. The situation is constantly monitored and is assessed as sustainable.

Furthermore, Greece has implemented all the recommendations made by the Commission <sup>1</sup> and the Council <sup>2</sup> after the unannounced on-site evaluation visit in 2015 fully, effectively and in time.

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<sup>1</sup> Commission Implementing Decision of 24 February 2016 setting out a recommendation on specific measures to be taken by the Hellenic Republic following the evaluation report of 2 February 2016.

<sup>2</sup> 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)

For this reason the Commission announced at the meeting of the Working Party for Schengen Matters (Evaluation) on 8 March 2017 that Greece was not required to submit further reports and that long-term actions would be monitored under the 2016 evaluation procedure. No comment was made or objection raised by any Member State during that meeting.

In the light of the above, Greece recalls that Article 29 of the Schengen Borders Code 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 controls.

Moreover, regarding the implementation to date of internal border controls in the Schengen States concerned, Greece considers that there is no evidence that the prolongation of internal border controls is justified on the basis of serious threats identified to public order or internal security.

Greece considers that the recommendation for the prolongation of the internal border controls within the Schengen area cannot be based on Article 29 of the SBC for reasons of legal justification and proportionality.

As a result, Greece cannot agree to this proposal for a Council Implementing Decision.

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## Statement by the Republic of Slovenia

The Republic of Slovenia strongly opposes the Commission's proposal to prolong controls at the internal land border between the Republic of Slovenia and the Republic of Austria.

The prolongation of controls on the Austrian-Slovenian border is unjustified. The official statistical data on illegal border crossings at the aforementioned internal border do not provide grounds for such controls. In 2016, the Austrian law enforcement authorities returned 76 foreign nationals who had illegally entered Austrian territory from Slovenia, with only 12 so far in 2017 (3 of them Slovenian citizens).

The controls on the Austrian-Slovenian border are hindering the free movement of persons and resulting in constant traffic congestion, economic loss and a negative impact on cooperation in the border regions. Moreover, the reintroduction of internal border controls on the border with Austria has not revealed any substantial security risks. In addition, the obligatory systematic checks on all passengers on the external borders, which Slovenia is implementing thoroughly, are another important factor in reducing the need for controls on internal borders.

Furthermore, the Republic of Slovenia insists on the transparency of the process of preparing this proposal in line with the last Council Implementing Decision from February 2017 <sup>1</sup>. In particular, despite repeated requests from a number of Member States, the competent Council Working Party has not yet had the opportunity to review and discuss all the relevant aspects of this measure, including the security risk assessments, which are the basis for justifying controls at internal borders.

On the other hand, the Republic of Slovenia welcomes the Commission's recommendation for more effective use to be made of alternative measures as they achieve similar effects in a less intrusive way, which makes it very clear that border controls should only be introduced as a measure of last resort.

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<sup>1</sup> Council Implementing Decision (EU) 2017/246 of 7 February 2017 setting out a recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk (OJ L 36, 11.2.2017).

Slovenia takes note of the announcement made by the Commission that this is the last proposal for the prolongation of controls at certain internal borders and invites the Commission to update its plan for a return to normal functioning of the Schengen area <sup>2</sup>.

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<sup>2</sup> Communication from the Commission to the European Parliament, the European Council and the Council, "Back to Schengen – A Roadmap", COM(2016) 120 final of 4 March 2016.

### Statement by Hungary

Hungary is of the view that 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 envisages measures that relate to the practically closed Western Balkan route.

The Commission's plan cannot be substantiated by any data that would justify temporary controls at the Austrian-Hungarian border, considering that secondary illegal migratory movements from Hungary to Austria are at a lower level than before the migration crisis.

The Commission also acknowledges that the migratory pressure at the internal borders of the 5 countries concerned is continuously decreasing. Hungary is of the view that the prolongation of border control for a further six months is not objectively justifiable.

In addition, the prolongation of temporary border controls at the internal border between Hungary and Austria creates unnecessary difficulties and imposes significant economic burden and costs on EU citizens and the region's economic operators.

In view of the above, the prolongation of border controls cannot be justified with the argument that the European Border Guard has not reached its full operational potential yet. The European Border Guard does not replace, but only complements the responsibility of the Member States, and Hungarian and Austrian statistics prove that the protection of external borders in Hungary is effective and contributes significantly to the security of the Schengen area by preventing secondary flows of irregular migrants.

The prolongation of border controls at certain border sections cannot be regarded as either temporary or exceptional, nor as a proportionate measure, nor indeed as necessary, and it may lead to the disintegration of the Schengen area. In Hungary's view, the proposal is neither legitimate nor legally justified. It merely hampers the free movement of EU citizens and places a severe added burden on the economy in the Schengen area.

Hungary therefore opposes the adoption of the proposal.