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Subject: 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

Delegations will find in the annex 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, adopted by the Council at its 3534th meeting held on 11 May 2017.

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**

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) In accordance with Article 29 of the Schengen Borders Code, the Council adopted on 12 May 2016, on a proposal from the Commission, an Implementing Decision setting out a Recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.

¹ OJ L 77, 23.3.2016, p. 1.

- (2) The Council recommended that five Schengen States (Austria, Germany, Denmark, Sweden and Norway) maintain proportionate temporary border control at a limited number of their internal border sections, for an initial period of six months, in order to address the serious threat to public policy and internal security in these States by - deficiencies in external border control in Greece and the subsequent secondary movements of irregular migrants entering via Greece and who move to other Schengen States. This period was prolonged by the Council on a proposal from the Commission twice, respectively on 11 November 2016 and on 7 February 2017, for further periods of three months at a time.
- (3) Under Articles 25 and 29 of the Schengen Borders Code, the initial period recommended by the Council can be further prolonged if the exceptional circumstances persist.
- (4) The Recommendations of 11 November 2016 and 7 February 2017 required that the Schengen States concerned report monthly to the Commission on the outcome of the controls carried out and on the assessment concerning the continued necessity of such controls, when applicable. The Commission received such reports from all the Schengen States concerned. The information contained in these reports demonstrates that the controls have remained within the conditions set by the Recommendation. It also confirms a stabilisation of the situation in these States, in terms of number of refusals of entry and asylum applications received during the controls.
- (5) However, despite this progress, the conditions identified in the Roadmap "Back to Schengen" in order to allow lifting all internal border control and returning to a normally functioning Schengen area are still not entirely fulfilled. Moreover, in spite of the ongoing progress and the significant improvement related to the external border management that Greece has made in 2016 as well as the fulfillment by Greece of recommendations made following the 2015 unannounced evaluation visit, an important number of irregular migrants is still present in Greece and along the Western Balkans route. The risk of irregular secondary movements within the Schengen area of these migrants remains.

- (6) In its Communication "Back to Schengen – A Roadmap", the Commission identified the various policies to be put in place to return to a fully functioning Schengen area. The process of rolling out of the European Border and Coast Guard Agency is ongoing. However, further contributions from Member States are needed to complete its resources and allow it to fully play its role in securing the external borders of the Union. Recommendations following the first vulnerability assessments have not been issued yet. The status agreements with Serbia is currently being negotiated.
- (7) After more than one year, the implementation of the EU-Turkey Statement of 18 March 2016 continues to deliver tangible results, as was confirmed in the fifth progress report.² Yet arrivals continue to outpace the number of returns from Greece to Turkey which leads to additional pressure on the Greek islands. Progress on other elements of the Statement needs to continue. The implementation of the Statement thus needs to be constantly monitored. The same applies to the situation along the Western Balkans Route and the implementation of the Statement of the Western Balkans Route Leaders meeting.
- (8) The exceptional circumstances constituting a serious threat to public policy and internal security and putting at risk the overall functioning of the Schengen area therefore still persist.
- (9) In light of the facts above, it appears justified, as a last resort measure, to allow a further and final prolongation of the temporary border control at the internal borders concerned by the Schengen States currently carrying out such controls, namely Austria, Germany, Denmark, Sweden and the associated country Norway, in accordance with Article 29 of the Schengen Borders Code.

² Fifth Report from the Commission to the European Parliament, the European Council and the Council on the Progress made in the implementation of the EU-Turkey Statement, COM(2017) 204 final of 2 March 2017.

- (10) The Council takes note of the Commission Recommendation on proportionate police checks and police cooperation in the Schengen area that would also contribute in gradually phasing out temporary internal border controls with the objective of lifting all internal border control and returning to a normal functioning of the Schengen area as soon as possible by giving precedence to the use of police checks to adequately address the serious threats to public policy or internal security. The Council takes note that the Commission recommends that all Schengen States implement the recommended measures as soon as possible and at the latest within six months.
- (11) Based on the estimation of the remaining time necessary to implement the pending measures aiming at ensuring adequate protection of the EU external borders and adequate security within the Schengen area, this prolongation should not exceed six months as from the date of adoption of the present Implementing Decision.
- (12) The Member States that decide to continue carrying out internal border control under the present Implementing Decision should notify the other Member States, the European Parliament and the Commission accordingly.
- (13) Before opting for such border controls, the Member States concerned should examine whether other measures alternative to border controls and impeding less the free movement of persons and goods could not be used to effectively remedy the identified threat. In the Commission Recommendation on proportionate police checks and police cooperation in the Schengen area, the Commission calls upon the Schengen States to use their police powers across the territory, including in the border area and on the main routes in a more effective way and give precedence to police checks. However, pending the implementation of that Commission Recommendation, the Schengen States concerned should inform of the outcome of the reflection on the most appropriate tools and the reasons for opting for border controls as a last resort measure in their notifications.

- (14) The controls under the present Implementing Decision should continue to be carried out only to the necessary extent, limited in their intensity to the absolute minimum necessary and adjusted to the circumstances. Accordingly, it can be envisaged that any further decrease of the flow should lead to suspending the controls at given border sections. Only targeted controls, based on constantly updated risk analysis and intelligence, should be carried out, in order to optimise the benefit of the controls and limit their negative effects on free movement. The Schengen States affected by these controls at the relevant border sections should be admitted to regularly express their views on their necessity; the Schengen State having decided to reintroduce such controls should take these views into account when examining and reviewing the necessity of such checks, with the objective of progressively reducing them.
- (15) At the end of each month of implementation of the present Implementing Decision, a complete report on the results of the checks carried out should be promptly sent to the Commission and the Council, together with an assessment of their continuous necessity when applicable. This report should include the total number of persons checked, the total number of refusals of entry following the checks, the total number of return decisions issued following the checks and the total number of asylum applications received at the internal borders where the checks take place.
- (16) The Council takes note that the Commission has announced that it will closely monitor the application of this Implementing Decision,

HEREBY RECOMMENDS:

1. Austria, Germany, Denmark, Sweden and Norway to prolong proportionate, temporary border controls for a maximum period of six months, starting from the day of 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.

2. Before deciding on further prolongation of such controls based on this Recommendation, the Member States concerned should exchange views with the relevant Member State(s) with a view to ensuring that internal border controls are carried out only where it is considered necessary and proportionate. Furthermore, the Member States concerned should ensure that internal border controls are only carried out as a last resort measure when other alternative measures cannot achieve the same effect, and only at those parts of the internal border where it is considered necessary and proportionate, in accordance with the Schengen Borders Code. When it provides the same security results, the use of police powers should be preferred as a measure with a lesser impact on the free movement of persons and goods. The Member States concerned should notify the other Member States, the European Parliament and the Commission accordingly.

3. Border control should remain targeted, based on constantly updated risk analysis and intelligence, 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 review weekly the necessity, frequency, location and time of controls, adjust the intensity of the controls to the level of the threat addressed, phasing them out wherever appropriate, and report promptly to the Commission and the Council every month.

Done at Brussels,

For the Council

The President
