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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Assessment of Greece's Action Plan to remedy the serious deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of management of the external border

1. Introduction

On 7 March, the EU Heads of State or Government¹ agreed to take forward, as a matter of priority, all elements of the Commission's "Back to Schengen"² Roadmap, so as to end temporary internal border controls and re-establish the normal functioning of the Schengen area before the end of the year. The Commission Communication detailed a series of measures to restore the normal functioning of the Schengen area, while giving full support to Member States under pressure. In particular, it set out measures to address deficiencies in the management of the EU's external borders. It is rectifying these deficiencies that will allow for controls exceptionally reintroduced at internal borders to be lifted. The Roadmap showed how the procedures laid down in the Schengen rules could be used to restore order to the functioning of the Schengen system before the end of the year. Among those measures is the presentation of an Action Plan by Greece to implement the recommendations made by the Council to address identified deficiencies in border management. This report is another stage foreseen in the process, a Commission assessment of the Action Plan presented by the Greek authorities.

The Process

Regulation (EU) No 1053/2013 ("the Regulation") establishes an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*³. On the basis of this mechanism, evaluation visits – announced and unannounced – are regularly carried out in the Member States by Commission led teams with experts from Member States and Frontex. Following each visit, a Schengen Evaluation Report is drawn up. If the report identifies any weaknesses in management of the external border, the Council, on the basis of a proposal from the Commission, adopts recommendations for remedial action. If serious deficiencies in the management of external borders are identified, the Commission may in addition recommend that the evaluated Member State take certain specific measures with a view to ensuring compliance with the Council Recommendation (Article 19b of the Schengen Borders Code⁴).

In order for the evaluation mechanism to be as efficient as possible and in accordance with Article 16 of the Regulation, the evaluated Member State has to provide the Commission and the Council with an Action Plan to remedy the deficiencies identified within three months of adoption of the Council Recommendation⁵. The Commission should present its assessment of the adequacy of the Action Plan presented by the Member State authorities to the Council within one month after receiving the Action Plan.

The application of the process to Greece

This process is now under way in the case of Greece, following an evaluation of the application of the Schengen *acquis* in the field of external border management in November 2015. The evaluation report, based on on-site visits, and revealing serious deficiencies in the carrying out of external border control by Greece, was adopted by the Commission on 2

¹ SN 28/16.

² COM (2016) 120 final of 4.3.2016.

³ OJ L 295, 6.11.2013, p. 27.

⁴ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (OJ L 105, 13.4.2006, p. 1; Codification published in OJ L 77, 23.3.2016, p.1).

⁵ One month if the Council Recommendation concludes that the evaluated Member State has seriously neglected its obligations.

February 2016⁶. Recommendations for remedial action were adopted by the Council on 12 February 2016⁷. As the Evaluation Report found serious deficiencies, the Commission in addition adopted on 24 February 2016 an implementing decision setting out a Recommendation on specific measures to be taken by Greece⁸.

This Communication sets out the Commission's assessment of the adequacy of the Action Plan presented by the Greek authorities on 12 March 2016 to remedy the serious deficiencies identified in the Evaluation Report. The first progress report on the implementation of the Article 19b Schengen Borders Code Commission Recommendation, which was provided by Greece to the Commission together with the Action Plan on 12 March 2016, is also taken into account by this assessment.

Since the situation on the ground in Greece is constantly changing, consideration has also been given to new developments such as the implementation of relevant aspects of the EU-Turkey joint action plan, and the implementation and functioning of the hotspot approach in Greece, as regularly reported on in the progress reports of the Commission. Accordingly, the present report assesses the adequacy of the Action Plan presented by the Greek authorities on the basis of the facts currently available, and does not prejudge the assessment of the second report by the Greek authorities, which will be provided in accordance with article 16(4) of the Regulation.

The Commission Communication "Back to Schengen – a Roadmap" explained the process described above and the steps taken so far. It notes that if the migratory pressures and the identified deficiencies in external border control were to persist beyond 12 May, the Commission would need to present a proposal under Article 26(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 Commission confirms that it will be prepared for this eventuality and would act without delay.

Any proposal by the Commission under Article 26 of the Schengen Borders Code would only propose border controls at those internal border sections where controls would be necessary and proportionate, in order to respond to the serious threat to public policy and internal security identified. Any recommended border controls would also be temporary and for the shortest possible period, in view of the threat addressed. As further explained in the Commission Communication "Back to Schengen – a Roadmap", if the overall situation allows, the objective should be to lift all internal border controls within the Schengen area within six months from their introduction, namely by mid-November 2016.

Finally, it should, in the light of the above, be recalled that the application of Article 26 of the Schengen Borders Code is a safeguard for the overall functioning of the Schengen area. It is not a sanction against any Member State, nor does it aim at excluding any Member State from the Schengen area.

⁶ C(2016) 450.

⁷ Council document 5895/16 of 12 February 2016.

⁸ C(2016) 1219.

2. General assessment

The Action Plan presented by the Greek authorities relates to the Council Recommendation but also refers to the Commission Recommendation where relevant. It presents the remedial actions already taken and those foreseen to implement these Recommendations.

The Council Recommendation listed 49 points, covering the registration procedure, border surveillance, risk analyses, international cooperation, human resources and training, border checks procedures, and infrastructure and equipment. The Council also recommended more generally that Greece take appropriate measures to ensure that at all external borders of Greece, external border control is carried out and brought in line with the Schengen *acquis*, in order not to jeopardise the functioning of the Schengen area.

The Council indicated that an adequate functioning of the identification and registration procedure and appropriate reception conditions are indispensable, given the subsequent secondary movements to other Member States which put the functioning of the whole Schengen area at risk and which has led several Member States to temporarily reintroduce border controls at their internal borders. The Council therefore indicated that it is important to remedy each of the deficiencies identified with the least possible delay and, in this respect, further specified priorities for the implementation of specific recommendations.

As regards the adequacy of the Action Plan presented by the Greek authorities on substance, timing and financing of the proposed actions, the Commission considers that for several actions more details and/or clarifications are needed, in order to properly assess and monitor the timely follow-up and implementation of the actions proposed. These elements are also necessary to fully inform the European Parliament and the Council as foreseen by Article 16(6) of the Regulation.

Chapter 3 of this Communication gives an overview of the remedial actions for which the Commission needs additional information or clarification on substance.

As far as the timing, financing and responsibility for the implementation of the different actions in general is concerned, the following general assessment is made.

Timing

The time indication "in progress" for several actions is considered to be insufficient. There should be precise time-frames for the implementation of all proposed actions for the purpose of monitoring, especially for actions related to the purchase of equipment (actions 12 and 38), the elaboration of specific systems (actions 1-9, as far as related to the setting up of a new system Immigrants Data Mapping, 12, 15, 35 and 48), bringing infrastructure in line with the *acquis* (action 36) and planned training activities (actions 19, 20 and 29).

Responsibility

The Action Plan presented by the Greek authorities lacks information on the authorities responsible for the implementation of certain actions and for monitoring the implementation of those actions. It should be complemented by information concerning the authorities responsible for the implementation of the Action Plan as a whole as well as for the separate actions, and concerning possible national follow-up mechanisms related to the implementation of the actions.

Financing

Although it does not present a clear and comprehensive financing plan, the Action Plan presented by the Greek authorities indicates that several key actions are implemented or planned to be implemented through the support of the Internal Security Fund, both under the Greek National Programme and under Emergency Assistance. Greece needs to make further efforts to ensure that the substantial financing received through the EU funding instruments, in particular the Internal Security Fund National Programme, is used in a timely, efficient and flexible manner. This requires further urgent adjustments to the programme and its management structure to ensure that the implementation of the programmes is fully in line with current needs.

In line with Article 12 of the Internal Security Fund – Borders and Visa Regulation⁹, since the adoption of the Council Recommendation, the Commission has been in constant contact with the Greek authorities to examine together the most appropriate ways to address the identified deficiencies and how to finance those actions.

It is of utmost importance that the Greek authorities start, without any further delay, to fully implement the Internal Security Fund Greek National Programme. Two pre-financing payments, amounting to a total of approximately €25 million, were already made (in September 2015 and February 2016). This is of direct relevance to implementation of the Council Recommendation, as some of the actions directly correspond to the needs identified. A clear example in this respect is the development of an Integrated Maritime Surveillance System indicated as a top funding priority for the Hellenic Coast Guard (within the National Objective 1 EUROSUR). According to information previously provided by Greece, this project would cost approximately €60 million, of which 75% would be co-financed by the Internal Security Fund National Programme.

In this context, Greece would be advised to frontload so that in 2016 and 2017, the bulk of the funds are allocated in particular to Specific Objectives 2 (Borders) and 3 (Operating Support-Borders), notably by anticipating the considerable investments in maritime border surveillance equipment initially foreseen for 2018.

Given that some of the measures foreseen in the National Programme are less urgent, Greece should also consider the possibility of reprioritising some of the actions of the National Programme, including through a formal revision of the National Programme. This reprioritisation should seek to reinforce the allocation for those measures aiming at catering for its most pressing needs in order to ensure that the necessary actions to remedy the identified deficiencies are taken in a timely manner, and are efficiently and adequately addressed.

This frontloading and reprioritisation of the Internal Security Fund National Programme resources would reduce, if not eliminate, the need for Greece to resort to frequent and "ad-hoc" requests for emergency assistance¹⁰, with all the risks that such approach entails in terms of uncertainty and lack of long-term planning. This approach is unsustainable. A new approach will also help to ensure full complementarity and consistency of the funded measures and to guarantee that there is no overlap or gap in financing.

⁹ Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014, establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa repealing decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143) (hereinafter ISF Border and Visa Regulation).

¹⁰ The Commission has awarded in the last year, since the start of the migratory crisis, approximately €180 million in emergency assistance for the benefit of Greece (either directly to Greek authorities or to international organisations/EU agencies).

Closely linked to the financing of certain actions through the Internal Security Fund is the support that can be provided by other parties to help Greece to implement remedial actions. Acknowledging that the difficulties which Greece faces in the protection of the external border have an impact on the European Union as a whole, the Commission referred in its Communication "Back to Schengen – A roadmap"¹¹ to the necessity that other Member States, EU Agencies and the Commission support Greece in implementing the recommendations made by the Council and the Commission¹². For this reason, the Communication invited Greece to present a clear "needs assessment" in parallel with its Action Plan, allowing other Member States, EU Agencies and the Commission to provide timely and focused support to Greece. While Greece did present a needs assessment on return in the light of the EU-Turkey agreement of 18 March 2016, the Commission urges the Greek authorities to complement it with a detailed and comprehensive needs assessment covering the full range of areas mentioned in the Council and Commission Recommendations¹³.

3. Detailed assessment

For the following remedial actions, the Commission considers that additional information and/ or clarification is needed for assessing the adequacy of the Action Plan presented by the Greek authorities.

3.1 Registration procedure

Recommendations/actions 1 and 2: this concerns the inclusion in the document 'suspension of removal' of obligations aimed at avoiding the risk of absconding in line with Article 7(3) of the Return Directive¹⁴, and the quality of the temporary stay documents and improvements introduced and completed by the Greek authorities.

Under the new fast track readmission procedure introduced from 20 March 2016 to implement the EU-Turkey agreement, Greece is encouraged to use the exemption under Article 2(2)(a) of the Return Directive, meaning that the national procedure should be applied¹⁵. In parallel, 'temporary stay' documents should no longer be issued, as under the EU-Turkey agreement persons entering Greece are considered to be subject to readmission to Turkey, following a case-by-case assessment in accordance with EU and international law. As a consequence, the proposed remedial actions related to the temporary stay documents have become obsolete for persons entering since 20 March. In this respect the Commission is asking the Greek authorities to regularly provide information about the progress of the implementation of the EU-Turkey agreement with regard to the readmission procedure adopted for irregular migrants.

¹¹ COM(2016) 120 of 4 March 2016.

¹² The table in Annex II of the Commission Communication "Back to Schengen" provides an overview of those recommendations for which the Commission and EU Agencies should contribute to ensure their full and timely implementation.

¹³ See also the comments below related to action 3, 12 and 50.

¹⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p.98).

¹⁵ In case that Greece opts to use the exemption under Article 2(2)(a), the level of protection for affected persons should not be less favourable than the safeguards set out in the Articles of the Return Directive dealing with the limitations on use of coercive measures, postponement of removal, emergency health care and needs of children and other groups of vulnerable persons, detention conditions and respect of the non-refoulement principle, in line with Article 4(4) of this Directive, or the safeguards under the EU asylum acquis, where applicable.

Recommendation/action 3: as regards the need to reinforce the Hellenic Police staff for registration, the Commission requests the Greek authorities provide information on the latest actions and plans, also taking into account the situation following the EU-Turkey agreement of 18 March and the need to speed up the registration process in view of a fast return to Turkey of migrants not requesting international protection.

Greece pointed out that the reinforced presence of 174 Hellenic Police officers in the Aegean islands in the hotspots has been ensured with the support of Internal Security Fund Emergency funding until 30 June 2016. However, it is unclear how this reinforced presence of the Hellenic Police officers will be maintained after that date. It should be clarified whether Greece will consider a permanent reinforcement of staff in the hotspots. This solution would address the legal obstacles limiting the secondment period to six months as referred to in the Action Plan and to ensure that the national capabilities are in place to respond to future migratory pressure.

In view of the recent reports by Frontex on the working conditions in Kos, it is unclear how Greece is planning to address the Commission Recommendation on the need to ensure appropriate material working conditions for the deployed members of the European Border Guard Teams in the hotspots (recommendation A 1 (b)). As a result, the Commission does not consider this action to be fully completed.

Recommendation/action 4: as regards the provision of accommodation facilities for migrants during the registration process, the Commission requests the Greek authorities also provide information on Greece's latest plans on the accommodation of migrants who do not ask for international protection and who, in principle, should be returned to Turkey following the EU-Turkey agreement of 18 March (e.g. possible conversion of open facilities into detention facilities).

While the Commission notes progress in setting up the hotspot facilities thanks to the intervention of the Hellenic Army, the Action Plan does not provide sufficient information on how the required reception conditions in those facilities will be ensured. In particular, there is no information on how the funding (national or EU) will be secured for this purpose.

As regards addressing the needs of children and other vulnerable persons, the Commission points out that the number of additional places dedicated for persons falling under these groups in Lesbos (18), Chios (25) and Kos (32) does not seem to be sufficient, given the high number of these persons observed. In the other two hotspots, in Leros and Samos, there is no existing or planned area with the capacity to accommodate groups of vulnerable persons. In this context, the Commission does not consider this action to be fully completed.

Recommendation/action 5: as regards possible acquisition of the full-page readers to be used for authenticity verification of the travel documents in the registration process, the Action Plan does not provide sufficient information on when and how the funding for these devices will be secured. Greece in the first place should consider reprioritising under its Internal Security Fund National Programme, instead of requesting additional funding. The Commission therefore does not consider this action to be fully completed and urges Greece to add a timeframe for the action in the reprogrammed Internal Security Fund National Programme.

Recommendation/action 7: concerning the adequacy and sufficiency of the IT capacity needed for the registration of migrants in Eurodac, the Greek authorities indicate that the Hellenic Police is currently assessing the needs in cooperation with EU-LISA, in order to

ensure the adequate IT capacity of the system. The estimate is that an upgrade of the IT system will take four to five months. As a result, the Commission does not consider this action to be fully completed and urges Greece to add an appropriate and specific timeframe for the upgrade of the IT system. In addition, the Commission would like to have the latest state of play on the needs assessment and development plans for the IT infrastructure to support the adequate registration of fingerprints into Eurodac, as also discussed with the relevant Commission services and EU-LISA.

Recommendation/action 40: as no information is given on the remedial action taken to provide an adequate number of Eurodac terminals at the reception centre in Fylakio. This should be added to the Action Plan presented by the Greek authorities.

3.2 Return

Recommendation/action 10: concerning the immediate launch of return procedures for which Greece has planned closer cooperation with Frontex and the Turkish authorities, the situation has significantly evolved with the new fast track readmission procedure and the new political commitments under the EU-Turkey agreement of 18 March 2016. In this respect, Greece should detail the specific legal and operational measures taken or to be taken in order to facilitate return to Turkey whilst providing for fundamental rights safeguards and respect for EU and international law during the whole process. Information should also be provided on how many (additional) staff has been deployed or is planned to organise return procedures and what measures have been taken at hotspots to avoid that irregular migrants abscond.

3.3 Sea border surveillance

Recommendation/action 12: while quite an informative reply is provided on the action to establish a comprehensive and effective coastal surveillance system in the long term, Greece has not sufficiently explained how the planned activities will improve sea border surveillance as compared with the current situation and the complementarity between new and existing capabilities.

As regards the measures to be financed under the Internal Security Fund National Programme, Greece still has to provide information about when exactly the increased capabilities for surveillance would be made available and when the relevant procurement process would start. In particular, given the essential role of the Integrated Maritime Surveillance System (IMSS) in addressing the recommendations, it is important to clarify the preparatory stages for the system (implementation expected as of 2017), and in particular whether the relevant technical specifications have been finalised and when the procurement process will effectively start. Given the importance of offshore elements complementary to the IMSS, Greece still needs to indicate how many patrol boats are planned under the Internal Security Fund National Programme and whether the planned number of boats guarantees the reaction capabilities at a sufficient level for all the islands. As regards assets for which the financing is foreseen under the Internal Security Fund National Programme Specific Actions (two coast patrol vessels and one thermal vision vehicle), Greece should specify in the respective indicative time planning when those assets will be procured and fully operational.

3.4 Risk analysis

Recommendation/actions 15 and 16: for the proposed remedial actions related to the elaboration of a risk analysis system on local level and carrying out risk analysis activities, the

Commission would like to stress that these measures should preferably be taken in line with the Common Integrated Risk Analysis Model.

3.5 Human resources and training

For the remedial actions on training, information should be given on the number of border guards trained after the evaluation visit in November 2015 and the number that will be trained per training programme planned, as well as a time indication for the training activities planned (**recommendations/actions**: 16, 17, 19, 20, 21, 29 and 49).

3.6 Border check procedures

As regards the remedial actions related to bringing the border check procedures in line with the *acquis*, for which instructions were sent by the Hellenic Police to the Border Crossing Points, information should be provided on the kind of supervision/follow-up mechanism used to check that instructions are indeed followed (**recommendations/actions**: 16, 17, 22, 23, 26, 28, 29, 30, 33 and 49).

Recommendation/action 27: it was planned to send a circular in March suspending the "exceptional approach of pleasure boats coming from third countries" in order to bring the control of pleasure boats in line with the Schengen Borders Code. The Commission is of the opinion that the proposed remedial action to suspend an exceptional approach – an approach which is not in line with the Schengen Borders Code – is not sufficient to remedy the deficiency in the long run. The exceptional approach should be abolished and the control of pleasure boats should be brought in line with the Schengen Borders Code.

Recommendation/action 37: Greece has indicated that there are administrative limitations in the Hellenic Police and legally binding obligations which prevent the recommended relocation of the surveillance centre from Nea Vyssa to the Regional Integrated Border Management & Monitoring Centre at the Police Directorate Orestiada, even though this would help to ensure a more comprehensive situational picture and allow the Police Directorate Orestiada to monitor and operate more effectively (as well as saving human resources by merging the two centres). The Commission requests Greece give details concerning these administrative limitations and legally binding obligations.

Recommendation/action 38: as regards the finalising of the installation of GPS transmitters to the patrolling vehicles or units to enable the surveillance centre to monitor their location, it was stated that the project was blocked at its initial stage due to financial and other constraints and that therefore a new study will be launched for a better technical and more affordable solution.

The Commission requests more details concerning the exact constraints, why a new study is needed and what the foreseen timeframe is for launching and completing the study. The Commission considers that the exchange of best practices with other Member States might be a more efficient solution.

3.7 Infrastructure and equipment

Recommendation/action 44: the Action Plan presented by the Greek authorities states that 'appropriate measures' will be taken to extend the Visa Information System verification application, in order to provide the first line with all information stored in the Visa Information System in order to facilitate examination of the entry conditions. It should be indicated what measures will be taken and within which timeframe.

3.8 General recommendation

Recommendation/action 50: as regards the appropriate measures to be taken by Greece to ensure that at all its external borders, border control is carried out and brought in line with the Schengen acquis, Greece indicated that it would closely cooperate with Frontex in order to ensure that third country nationals at the border with the former Yugoslav Republic of Macedonia can only leave the territory of Greece at the designated border crossing points. Greece is also finalising its needs assessment for additional personnel needed near the Border Crossing Points.

Due to the latest developments in the Western Balkans, notably the fact that the countries along the Western Balkan route have put an end to the 'wave-through' approach, Frontex has proposed to adapt its operational support at the Greek borders with the former Yugoslav Republic of Macedonia (and Albania) in the framework of a fully-fledged joint operation¹⁶. Given the critical situation and Greece's expressed need for additional personnel near the Border Crossing Points, the Commission urgently requests Greece to finalise the needs assessment and reply positively to Frontex's proposal.

As regard the remedial actions related to the carrying out of more systematic checks on migrants in the mainland and near the northern borders to ensure that they are registered and their identity is verified, for which instructions were sent out by the Hellenic Police, information should be provided on the supervision/follow-up mechanism required to check that the instructions are fully implemented.

As far as information about accommodation possibilities from the Hellenic Police to migrants who are not staying in a reception/registration or detention centre is concerned, Greece is requested to implement the measures without delay.

Greece should also monitor the situation closely, including any changes in migration routes, and adapt as necessary in order to take all necessary measures, including those identified in the Commission recommendation.

4. Conclusion

In the light of the assessment given above, the Commission concludes that significant progress has been made by Greece. However, further improvements are needed to the Action Plan presented by the Greek authorities in order to comprehensively address the deficiencies identified in the November 2015 evaluation. In particular, for many actions, more clarity is needed in terms of timing, responsibility and financial planning. Moreover, some actions cannot yet be considered adequately addressed or completed. Finally, for some actions substantive additional information or clarification is needed. The Commission requests Greece provide these additional elements and clarifications by 26 April 2016 and offers its continuous assistance in line with the spirit of the Commission Communication "Back to Schengen – a Roadmap".

¹⁶ Letter of 15 March 2016 from Mr Fabrice Leggeri, Executive Director of Frontex, to the General Secretary Mr Tzanetos Fillippakos.