



Council of the  
European Union

Brussels, 19 June 2018  
(OR. en)

10213/18  
ADD 1

FRONT 182  
COMIX 330

#### COVER NOTE

---

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	13 June 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2018) 3658 FV 2
Subject:	ANNEX to the Commission Recommendation adding Appendices A and B to the Recommendation C(2006)5186 of 6 November 2006 establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons

---

Delegations will find attached document C(2018) 3658 FV 2.

---

Encl.: C(2018) 3658 FV 2



Brussels, 11.6.2018  
C(2018) 3658 final

ANNEX

**ANNEX**

**to the**

**Commission Recommendation**

**adding Appendices A and B to the Recommendation C(2006)5186 of 6 November 2006  
establishing a common "Practical Handbook for Border Guards (Schengen Handbook)"  
to be used by Member States' competent authorities when carrying out the border  
control of persons**

## ANNEX

### “APPENDIX A

#### **Notification procedure referred to in Article 8(2a) of the Schengen Borders Code<sup>1</sup>**

When a Member State<sup>2</sup> intends to carry out targeted checks on EU/EEA/CH citizens, in accordance with Article 8(2a) of the Schengen Borders Code, it should notify without delay the intended application of those targeted checks to:

1- the other Member States,

2- the EBCG Agency and

3- the Commission.

The Member State concerned may decide to classify the notification or parts thereof.

In the notification, the grounds, scope and duration for the derogation should be explained as follows in order to ensure the *effet utile* of the notification and, in particular, to allow the other Member States, the Commission and the Agency to express possible concerns.

The grounds should be supported by objective elements pertinent to the derogation from the systematic checks at specific border crossing points.

In particular, the Member State concerned should present:

- (a) the main characteristics of the flow at the concerned border crossing point(s) such as the categories of persons crossing;
- (b) the estimated share of third country nationals and share of EU/EEA/CH nationals crossing that border;
- (c) indication that the alleged increase of the waiting time is due to the systematic checks (and not, for instance, to road works in the area adjacent to the border crossing point). A general reference to the upcoming holidays period is not sufficient in this regard. There is no universal indicator of the disproportionate impact on the traffic flow applicable to all Member States or border crossing points. The

---

<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 (Schengen Borders Code) (OJ L 077 23.3.2016, p. 1).

<sup>2</sup> In this text, "Member State" is to be understood as including the four Schengen Associated Countries.

assessment of the disproportionate effect on the waiting time cannot ignore the average waiting time or previously experienced delays;

- (d) how the derogation will remedy the disproportionate impact on the flow of traffic faced at the border crossing point(s) concerned.

The border crossing point(s) concerned should be specified.

The planned duration of the derogation should be proportionate and should not exceed what is necessary. The final date of derogation should be indicated for each border crossing point. Open-ended derogations are not acceptable. In line with Article 15 of the Schengen Borders Code Member States are obliged to deploy appropriate staff and resources in sufficient numbers to ensure the implementation of the systematic checks against relevant databases.

The Member State should indicate in the notification the date of transmission of the risk assessment to the Agency as required by Article 8(2a) of the Schengen Borders Code, and explain the main elements from the risk assessment allowing the addressees of such notification to take informed position.

Where other Member States, the Agency or the Commission have concerns about the intention to derogate from the rule of the systematic checks against databases, they should notify the Member State concerned of these concerns within two weeks after receiving the notification. The Member State should take those concerns into account.

The Member States should establish their internal channels of communication and should notify other Member States and the Commission via their Permanent Representation sending the notification to the point of contact within the Permanent Representation and the functional mailbox ([HOME-BORDERS@ec.europa.eu](mailto:HOME-BORDERS@ec.europa.eu)) respectively.

## APPENDIX B

### Procedure for derogations from the principle of systematic checks against relevant databases<sup>3</sup>

Article 8(2a) of the Schengen Borders Code allows Member States to derogate from the principle of the systematic checks against relevant databases with regard to the EU/EEA/CH citizens crossing the external borders provided that two cumulative conditions are fulfilled:

1. The Member State concerned must demonstrate a disproportionate impact on the flow of traffic in relation to carrying out of systematic checks on EU/EEA/CH citizens (*"Where the checks against the databases referred to in points (a) and (b) of paragraph 2 would have a **disproportionate impact on the flow of traffic** [...]"*).
2. Before taking a decision on the derogation, the Member State concerned must prepare a risk assessment demonstrating that applying checks on a targeted basis on EU/EEA/CH citizens would not lead to a security risk (*"[...] **following an assessment of the risks related to the public policy, internal security, public health or international relations of any of the Member States.** "*)

In order to ensure the *effet utile* of the provisions concerning the temporary derogation, the following aspects related to assessing the risk of carrying out checks on a targeted basis and to the follow-up of a notification of the intention to derogate should be clarified as follows:

#### A. The risk assessment

1. The Member State that wants to derogate prepares a risk assessment according to the Common Integrated Risk Analysis Model (CIRAM) methodology.

The Agency, in close cooperation with the Member States, will develop a standardised reporting template which will exploit synergies with other already existing risk assessments and vulnerability assessments, and provide access to it online.

2. The risk assessment concluding that there is low or medium threat is submitted to the Agency before effective implementation of the derogation, using standardised reporting template. In exceptional circumstances (e.g. an exceptional and unforeseen influx of EU/EEA/CH passengers at a certain border crossing point) the risk assessment can be submitted simultaneously with the implementation of the derogation only if the notification alone has already provided extensive information to demonstrate immediate disproportionate impact on the flow concerning the specific border crossing point.

According to Article 8(2a) second paragraph *"The risk assessment shall state the reasons for the temporary reduction to targeted checks against the databases, taking into account, inter*

---

<sup>3</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 (Schengen Borders Code) (OJ L 077 23.3.2016, p. 1).

*alia, the disproportionate impact on the flow of traffic and provide statistics on passengers and incidents related to cross-border crime."* As derogations can apply to EU/EEA/CH citizens only, the risk assessment should focus on assessing the risks caused by the EU/EEA/CH nationals at the specific border crossing points.

In concrete terms, the risk assessment of the Member State as set out in Article 8(2a) of the Schengen Borders Code prepared in line with the CIRAM methodology and a template should include:

- I. a description of the reason for the temporary reduction to targeted checks against the databases and, provision of quantitative data (e.g. projected passenger flow, processing time per passenger or similar) that demonstrates a disproportionate impact on the flow of traffic at the chosen border crossing point/s after options for increasing capacities have been exhausted;
- II. an estimated share of the total number and the dominant profiles of travelers from EU/EEA/CH that could pose a threat related to public policy, internal security, public health or international relations of any of the Member States during the period of time when a derogation of systematic checks will be performed;
- III. an assessment of the possible impact of the derogation on the security, i.e. public policy, internal security, etc. of the Member States, including the assessment of possible impact of the derogation on travel connections to other Member States.

A risk assessment concluding that the risks related to the public policy, internal security, public health or international relations of any of the Member States are high will not lead to a derogation.

On the basis of a risk assessment concluding that the risks related to the public policy, internal security, public health or international relations of any of the Member States are low [or medium], the Member State concerned should establish that the identified risks for each border crossing point concerned are mitigated with adequate strategies and means. These strategies and means will be described in the risk assessment to be submitted to the Agency.

3. The Agency evaluates the transmitted risk assessment within a timeframe agreed with the Member State. The Agency may use its own resources and information, especially information collected via vulnerability assessments, for evaluating risk assessments submitted by the Member States. It may seek the advice of Europol or other EU agencies.

- I. In case the risk assessment is incomplete or the information provided is not relevant, the Agency should contact the Member State concerned as soon as possible to seek additional information/justification.

In case the completed risk assessment is not submitted within the deadline agreed with the Agency, the Agency should alert the other Member States and the Commission about the situation after one final request made to the Member State concerned.

- II. In case of a disagreement between the Member State concerned and the Agency over the completeness and relevancy of the risk assessment provided, a common understanding will be sought on a bilateral basis within a reasonable period of time

(maximum within two weeks).

If the divergences persist, the Agency should alert the Commission and the other Member States. A meeting involving the Agency, the Member State concerned, the Commission and, where appropriate, other Member States can be conveyed. In such case, the Commission organises the meeting and invites relevant stakeholders to participate.

The views of the Agency should be first communicated for comments to the Member State who submitted the risk assessment. The Agency should inform the Commission and other Member States about its views.

4. The Member State concerned should update the risk assessment regularly. When doing so, point A.1 to A.3 should also be followed, where applicable.

#### **B. Notification of the intention to derogate and follow-up to such notification:**

1. The Member State concerned notifies the intention to derogate to the other Member States, to the Commission and to the Agency. The notification should meet the minimum requirements set out in Appendix I to the Schengen Handbook.

2. The Member States, the Agency or the Commission having concerns about the intention to carry out targeted checks against the databases, should notify the Member State in question of those concerns without delay. The other Member States or the Commission can ask the Agency to verify if the grounds for their concerns are justified.

The Member States having concerns can also inform the Agency, the Commission and other Member States of their concerns. While the concerns should be clarified in principle on a bilateral basis with the Member State notifying the intention of derogation, given the number or character of the concerns (e.g. related to the same aspect) a meeting for all the parties who raised concerns can be convened, while informing about this fact other parties entitled to submit concerns but who have not done so. Such meeting can be convened at the initiative of any of the entitled parties. The Commission is responsible for arranging and for chairing such meeting.

3. The Member State intending to derogate from the systematic checks against databases on EU/EEA/CH citizens should take those concerns into account.

4. The Member State concerned should report every six months to the Commission and to the Agency on the application of the checks against the databases carried out on a targeted basis on EU/EEA/CH citizens. The reports should provide detailed information on the actual use of targeted checks at specific border crossing points, data concerning the flow of traffic at these border crossing points benefiting from the derogation and about their impact on the evolution of the risk assessment related to the public policy, internal security, public health or international relations in the Member State concerned.

For each BCP and for each timeslot when derogations have been used, the Member State concerned should endeavor to provide the following information in its report:

- Exact time where derogations have been used (Started at: hours and minutes in UTC. Ended at: hours and minutes in UTC.)
- Number of passenger that were crossing the border, broken down by nationality and direction of travel (entry/exit);
- Number of EU/EEA/CH passengers that were not checked against databases on entry, broken down by citizenship and direction of travel (entry/exit) ;
- Number of EU/EEA/CH passengers that were checked against databases, broken down by citizenship and direction of travel (entry/exit);
- Number of hits against the relevant data bases passengers that were subject to targeted checks, broken down by direction of travel (entry/exit), citizenship and databases.

In addition, where appropriate, the Member State concerned should provide the following contextual information by BCP and by month covering the reporting period:

- Number passengers crossing the border, broken down by nationality and direction of travel (entry/exit)
- Number of hits in relevant databases during systematic checks, broken down by direction of travel (entry/exit) and citizenship.”