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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the application of Council Implementing Decision of 12 May 2016 setting out a
Recommendation for temporary internal border control in exceptional circumstances
putting the overall functioning of the Schengen area at risk**

1. INTRODUCTION

On 12 May 2016, the Council adopted, on the basis of a Commission proposal, 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. It is the first time that the specific safeguard procedure of Article 29 of Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)¹ has been used.

This Recommendation is addressed to the five Schengen Member States (Austria, Germany, Denmark, Sweden and Norway) most affected by the flows of irregular migrants coming from Greece in the context of the unprecedented migratory and refugee crisis that started in 2015. It authorised these five Schengen Member States to maintain proportionate temporary border controls at specific sections of their internal borders for a maximum period of six months as from the day of adoption of the Recommendation.

The reintroduced border control under the Recommendation must be targeted 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 necessity, frequency, location and time of controls must be regularly reviewed, and if necessary adjusted, by the Schengen Member States concerned. The Schengen Member States carrying out controls should report to the Commission every two months in line with the Recommendation.

The Recommendation notes that the Commission will monitor the application of the Recommendation and report to the European Parliament and the Council after four months as from the date of adoption of this Recommendation.

The present report contains the findings of the Commission after monitoring the manner in which the current temporary internal border controls are carried out, as foreseen by the Council Recommendation. It focuses on whether, as recommended, the reintroduced internal border controls by the above Schengen Member States have been limited to what is strictly necessary and proportionate in light of the serious threat to public policy and internal security posed by the persistent risk of secondary movements of irregular migrants entering via Greece and who might move to other Schengen Member States. It also analyses whether the circumstances have changed so as to require an adaptation of the Council Recommendation.

This report does not prejudge the decision, at the expiry of the six months period foreseen by the Recommendation, whether to recommend prolonging or not the current temporary internal border controls.

¹ OJ L 77, 23.3.2016, p.1.

2. FACTS

All five Schengen Member States concerned prolonged their internal border controls at the specific sections indicated in the Council Recommendation and notified accordingly the other Member States, the European Parliament and the Commission.

All five Schengen Member States provided information on the controls and their outcome, as detailed below. However, the information provided differs substantially from one Schengen Member State to another. Therefore the Commission invites the Schengen Member States concerned to provide the information listed in Annex II for the next report required by the Council Recommendation.

Austria

On 13 May 2016, the Commission received a notification from the Austrian authorities informing that Austria will implement the Council Recommendation and maintain internal border controls at the Austrian-Hungarian and Austrian-Slovenian land border sections in line with the Recommendation, from 16 May 2016 until 12 November 2016.

As the first report from the Austrian authorities on the application of the Recommendation was not provided on the due date (16 July 2016), the Commission addressed a reminder to Austria on 12 August 2016.

On 16 August 2016 the Austrian Federal Minister of Interior wrote to the Commission informing that the implementation of the border controls at the relevant land border sections is in line with the Council Recommendation. Austria confirmed on 9 September 2016 that all checks are carried out at the necessary level and are limited in scope, frequency, time and location and adjusted to the level of the threat. Austria further confirmed that the limitation to the free movement of persons and goods could therefore largely be avoided.

The Commission addressed on 9 September 2016 a request for additional information on the controls performed and their outcome, to which Austria replied on 13 September 2016. For the period going from 16 May till 31 August 2016, Austria provided the total number of refusals of entry that took place following the controls (233) and the total number of asylum applications received (12 584)².

Germany

On 13 May 2016, Germany notified the Commission that it will implement the Council Recommendation and maintain internal border controls at the relevant land border sections until 12 November 2016.

As the first report from the German authorities on the application of the Recommendation was not provided on the due date (12 July 2016), the Commission addressed a reminder to Germany on 12 August 2016.

On 23 August 2016, the Commission received a first letter from the German authorities, informing of a higher number of smuggling activities due to an altered and intensified border management of the Western Balkans route. Germany notably put forward the

² See also tables in Annex 1.

number of about 115 000 third country nationals detected at the German-Austrian land border between January and July 2016 and not meeting the entry conditions as referred to in Article 6 of the Schengen Borders Code.

The German authorities explained the system of controls put in place which consists of alternating fixed and mobile controls. They informed of the good cooperation between national and other Schengen Member States' police and border authorities ensuring that the impact on cross-border traffic is limited to the absolute minimum necessary and also guaranteeing road safety during the controls. They finally confirmed a regular examination of the scope and intensity of the checks which remain limited to the level required.

The Commission addressed on 12 September 2016 a request for additional information on the controls performed and their outcome, to which Germany replied on 14 September 2016. Germany provided, for the period going from 12 May till 31 July 2016, the total number of refusals of entry that took place following the controls (3 077) and, for the period going from 12 May till 31 August 2016, the total number of asylum applications received (66 919)³.

Denmark

Denmark notified on 1 June 2016 that it will implement the Council Recommendation of 12 May and maintain internal border controls at all Danish ports with ferry connections to Germany and at the Danish-German land border until 12 November 2016.

As the first report from the Danish authorities on the application of the Recommendation was not provided on the due date (12 July 2016), the Commission addressed a reminder to Denmark on 12 August 2016. The Danish government informed on 7 September 2016 the Commission that the current border control at the border with Germany is deemed to be proportionate with regard to scope, frequency, location and time, and is limited to what is strictly necessary to respond to the serious threat and to safeguard public policy and internal security in Denmark. It also informed that it considers that there are no grounds, at this stage, for phasing out or scaling down the existing border control at the border with Germany.

The Commission further contacted the Danish authorities on 12 September 2016 with a request for additional information on the controls performed and their outcome, to which Denmark replied on 14 September 2016. For the period going from 12 May till 11 September, Denmark provided the total number of persons checked (1 074 406), the total number of refusals of entry that took place following the controls (1 088) and the total number of asylum applications received (1 489), specifying the number of those lodged at the internal borders where controls take place (747)⁴.

Sweden

Sweden notified on 2 June 2016 that it will implement the Council Recommendation of 12 May and maintain internal border controls at the relevant border sections starting 8 June 2016, namely at the Öresund Bridge and at the harbours of Trelleborg, Malmö and

³ See also tables in Annex 1.

⁴ See also tables in Annex 1.

Helsingborg in the Police Region South and at Gothenburg harbour in the Police Region West.

Sweden sent to the Commission a first report on the implementation of the Council Recommendation on 11 August 2016. In this report, Sweden confirmed that the border controls carried out pursuant to the Recommendation are performed on a strict basis of necessity and proportionality with regard to the serious threat addressed and the specific characteristics of the each border section. Sweden informed that the number of checks on persons carried out varies between 10% and 95% of all persons passing through a specific internal border crossing point. Sweden also informed that the frequency and intensity of checks also varies according to the location. For example, at the Öresund bridge, checks are performed at any hour since the bridge is open to traffic 24 hours; at the harbours, checks take place in connection with each arrival of vessels and are supported by intelligence. Finally, Sweden confirmed that it is regularly reviewing the necessity, frequency, location and time of controls, in line with the Council Recommendation.

On 24 August 2016, the Commission asked the Swedish authorities for additional information and figures on the controls performed and their outcome, to which Sweden replied on 1 and 13 September 2016. For the period going from 8 June till end August 2016, Sweden reported an estimate of the total number of persons checked (3 000 000), the total number of refusals of entry that took place following the controls (640) and the total number of asylum applications received (6 097), while specifying the number of those lodged at the internal borders where controls take place (166)⁵.

Norway

Norway notified on 10 June 2016 that it will implement the Council Recommendation of 12 May and maintain internal border controls at the relevant borders sections until 12 November 2016.

As the first report from the Norwegian authorities on the application of the Recommendation was not provided on the due date (12 July 2016), the Commission addressed a reminder to Norway on 12 August 2016.

On 8 September 2016, the Norwegian authorities sent such report to the Commission. Norway informed that targeted border controls are limited to what is strictly necessary to respond to the serious threat and to safeguard public policy and internal security. Checks on persons are carried out in Oslo, East, South East and West police districts where there are ports with ferry connections to Sweden, Denmark and Germany. According to an operational order from the National Police Directorate, police forces are present at all ferry arrivals and border checks adapted to the specific situation of each ferry connection are carried out based on intelligence. Norway is regularly reviewing the necessity, frequency, location and time of its controls.

On 12 September 2016, the Commission asked the Norwegian authorities for additional information and figures on the controls performed and their outcome, to which Norway replied on 13 September 2016. For the period going from 12 May till 11 September 2016, Norway provided the total number of refusals of entry that took place following the controls (14) and the total number of asylum applications received (1 088), while

⁵ See also tables in Annex 1.

specifying the number of those lodged at the internal borders where controls take place (2)⁶.

3. FINDINGS

The present report builds on the information provided in the exchanges between the Commission and the five Schengen Member States concerned (Austria, Germany, Denmark, Sweden, and Norway) on the implementation of the Council Recommendation of 12 May 2016.

The information provided in the exchanges with the five Schengen Member States concerned, as detailed above, shows that these border controls have remained limited to the identified migratory routes and threats, with focus on the specific border sections or specific threats. No controls outside the border sections enumerated in the Council Recommendation appear to have been carried out.

Furthermore, these controls have been targeted and limited in scope, frequency, location and time; they have been based on intelligence and risk assessment and adapted to the specific border crossings where they take place. Their necessity, frequency, location and time were also regularly evaluated by the Schengen Member States concerned.

Cooperation between the police and border national authorities of the Schengen Member States concerned is reported as having been good and efficient.

The Commission has also received information on the economic impact of the temporary internal border controls, notably on the transport and tourism sector. However, according to the information at the disposal of the Commission at this stage, including from the reports of the Schengen Member States concerned, the current border controls have been carried out only to the necessary extent and have been limited in their intensity. While a certain economic impact cannot be excluded, it appears that the crossing of the internal borders by the general public has thus been impeded as little as possible.

Taking into account the above, it can be concluded that internal border controls carried out by Austria, Germany, Denmark, Sweden and Norway have been proportionate and in line with the Council Recommendation.

The unprecedented migratory flows of persons seeking protection and entering the EU since the autumn of 2015 put considerable pressure on Member States. The secondary movements of irregular migrants posed a serious threat to public policy and internal security in several Member States. Several Schengen Member States reintroduced temporary controls at their internal borders in order to streamline the previous mass arrivals of up to several thousands of migrants per day, according to the reception capacities. In this respect, the necessity of limited internal border controls has been recognised⁷ as helping processing the backlog and the incoming flows, as well as ensuring a thorough application of the relevant EU legislation, thus protecting to a certain extent

⁶ See also tables in Annex 1.

⁷ See also Commission opinion of 23.10.2015 on the necessity and proportionality of the controls at the internal borders reintroduced by Germany and Austria (C(2015) 7100 final).

from the threat to public policy and internal security posed by the secondary movements of irregular migrants⁸.

At the same time, the information and figures on the controls performed by Schengen Member States under the Council Recommendation of 12 May, as summarised in the table annexed to this report, show a diminishing trend in both the number of persons to whom entry is refused, as well as in the number of asylum applications received, especially in comparison with the high figures of the first months of the migratory crisis.

This is partly due to the implementation of the EU-Turkey Statement, resulting in a considerable reduction of migrants' arrivals.

These figures however should be considered in the context of the exceptional length of the migratory crisis. The large numbers of arrivals in the EU since the autumn 2015 and of the subsequent asylum requests have already posed substantial challenges to all EU Member States and thus must be also taken into account. Challenges such as ensuring adequate reception of migrants and asylum seekers, processing the remaining backlog of asylum applications, integration of recognised applicants and managing further arrivals continues to put a strain on the functioning of the administrations of these Member States and their asylum systems.

In addition, according to the information available to the Commission, there is still an important number of irregular migrants in Greece who may seek to move north.

Finally, it is important to underline that several of the legislative initiatives and actions undertaken by the Union in order to reinforce its external border management are not, at the time of this report, yet in place and fully operational. For example, the Regulation on the European Border and Coast Guard will enter into force on 6 October 2016⁹. Frontex, the Commission and Member States are currently working intensively to render it operational as soon as possible. In addition to the support being provided by Frontex for example in Greece and Bulgaria, the response capability of Frontex will be considerably strengthened once the rapid reaction and equipment pools are fully established by 6 December 2016 and the return pools by 6 January 2017, as required by the Regulation.

The continued efficient implementation of the EU-Turkey of 18 March 2016 Statement also remains an important factor. The third Report on the Progress made in the implementation of the EU-Turkey Statement¹⁰ shows that the EU-Turkey Statement continues to deliver results in spite of the continuing challenges.

Taking into account the above, it appears thus that, at the time of the present report, maintaining temporary internal border control is still necessary and provides an adequate response to the identified threat to internal security and public policy as it contributes to restoring order in the flows of persons crossing specific internal borders and as such curbs the secondary movements.

Such control should however, in line with the Council Recommendation, remain targeted, limited in their intensity to the absolute minimum necessary and impeding as less as possible the crossing of the respective internal borders for the general public.

⁸ See recital 15 of the Council Recommendation.

⁹ Regulation (EU) 2016/1624.

¹⁰ COM(2016) 634

The Schengen Member States are invited to provide in their next report pursuant to the Recommendation, by 18 October 2016, the information listed in Annex II to the present report.

4. CONCLUSION

In light of the above, the Commission is of the view that the temporary border control carried out by Austria, Germany, Denmark, Sweden and Norway pursuant to the Council Recommendation of 12 May has remained within the conditions set by the Council. Furthermore, based on the information available and the reports from the Schengen Member States concerned, the Commission does not see a need for proposing amendments to the Recommendation at this stage.

The Commission underlines that the present report does not prejudge the decision to be taken, before the expiry of the period foreseen in the Recommendation (12 November 2016), to prolong or not the current temporary internal border controls. The Commission recalls that in accordance with Article 29(2) of the Schengen Borders Code, the Council, on a proposal from the Commission, may recommend a prolongation in accordance with the conditions and procedure followed for the adoption of the initial Recommendation.

ANNEX I

(1) Total number of persons checked since the beginning of the application of the Council Recommendation

| Member State | May 2016 | June 2016 | July 2016 | August 2016 | Total |
|----------------|---|-----------|-----------|-------------|---|
| Austria | <i>Austria does not collect such numbers.</i> | | | | - |
| Germany | <i>Germany does not collect such numbers.</i> | | | | - |
| Denmark | <i>Denmark has not provided monthly breakdowns.</i> | | | | 1 074 406 |
| Sweden | <i>Not applicable.</i> | 424 500 | 1 235 000 | 1 088 000 | ca. 3 000 000 (including early September) |
| Norway | <i>Norway does not collect such numbers.</i> | | | | - |

(2) Total number of refusals of entry following controls pursuant to the Council Recommendation

| Member State | May 2016 | June 2016 | July 2016 | August 2016 | Total |
|----------------|--|-----------|-----------|-----------------------------------|--------------|
| Austria | 41 | 65 | 73 | 54 | 233 |
| Germany | 912 | 885 | 1 280 | <i>Figures not yet available.</i> | 3 077 |
| Denmark | <i>Denmark did not provide monthly breakdowns.</i> | | | | 1 008 |
| Sweden | <i>Not applicable.</i> | 196 | 276 | 168 | 640 |
| Norway | - | 3 | 9 | 2 | 14 |

(3) Total number of asylum applications received since the beginning of the application of the Council Recommendation

| Member State | May 2016 | June 2016 | July 2016 | August 2016 | Total |
|----------------|--|-----------|-----------|-------------|---------------|
| Austria | <i>Austria did not provide monthly breakdowns.</i> | | | | 12 584 |
| Germany | 16 281 | 16 335 | 16 160 | 18 143 | 66 919 |
| Denmark | 247 | 464 | 404 | 290 | 1 489 |
| Sweden | <i>Not applicable.</i> | 2 140 | 2 195 | 2 437 | 6 097 |
| Norway | <i>Norway did not provide monthly breakdowns.</i> | | | | 1 088 |

(4) Total number of asylum applications lodged at the internal borders where controls take place pursuant to the Council Recommendation

| Member State | May 2016 | June 2016 | July 2016 | August 2016 | Total |
|----------------|--|-----------|-----------|-------------|------------|
| Austria | <i>Austria does not collect these numbers.</i> | | | | - |
| Germany | <i>Germany does not collect these numbers.</i> | | | | - |
| Denmark | <i>Denmark did not provide monthly breakdowns.</i> | | | | 747 |
| Sweden | <i>Not applicable.</i> | 42 | 73 | 51 | 166 |
| Norway | - | 1 | 1 | 0 | 2 |

NB. Please note that some of the above figures are only estimates received from the Schengen Member States concerned.

ANNEX II

With regard to the internal borders where controls take place pursuant to the Council Recommendation of 12 May 2016, the Schengen Member States concerned are asked to provide the following monthly information:

- 1) The number of persons crossing;
- 2) The number of persons checked;
- 3) The number of refusals of entry;
- 4) The number of asylum applications registered/lodged;
- 5) Information on the nature of the checks, their level and intensity, and the way they are performed;
- 6) Statistics on the delays for the general public and the commercial flow.

The Schengen Member States are requested to provide this information for controls carried out until 15 October 2016. If possible, a weekly breakdown should be provided.