

COUNCIL IMPLEMENTING DECISION (EU) 2016/1989**of 11 November 2016****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) 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 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.
- (2) The Council recommended to five Schengen States (Austria, Germany, Denmark, Sweden and Norway) to maintain proportionate temporary border controls for a maximum period of 6 months as from the day of adoption of the Implementing Decision, to address the serious threat to public policy or internal security posed in these States by the combination of deficiencies in external border control in Greece and the secondary movements of irregular migrants entering via Greece and who intend to move to other Schengen States.
- (3) On 28 September 2016, the Commission issued its Report on the implementation of the Implementing Decision. It concluded that the internal border controls carried out by Austria, Germany, Denmark, Sweden and Norway have been proportionate and in line with the Council recommendation. The Commission further concluded that, based on the information available and the reports received from the States concerned, it saw no need for proposing amendments to the Implementing Decision at the time of reporting.
- (4) On 18 and 21 October 2016, the Schengen States concerned reported for the second time to the Commission on the implementation of the Council recommendation. The information provided follows a trend similar to the data provided for the first report (reduction in the number of persons to whom entry is refused, as well as in the number of asylum applications received) and thus shows a progressive stabilisation of the situation.
- (5) However, despite a sharp drop in the number of arrivals of irregular migrants and asylum-seekers in the European Union, an important number of irregular migrants still remains in Greece as well as in the Member States most affected by the secondary movements of irregular migrants coming from Greece. Based on the trends observed in the past, it is justified to expect that these persons may want to move irregularly to other Member States when the border checks, which hinder their secondary movement, are lifted.
- (6) The cumulated number of asylum applications received since the beginning of the migratory crisis and the still incoming applications have put an important strain on the national administrations and services in all EU Member States and specifically in the Schengen States concerned by the Implementing Decision.
- (7) Internal border controls cannot be viewed in isolation from other important factors. In its communication 'Back to Schengen — A Roadmap' ⁽²⁾, the Commission identified the different policies to be put in place to return to a fully functioning Schengen Area.

⁽¹⁾ OJ L 77, 23.3.2016, p. 1.

⁽²⁾ COM(2016) 120 final.

- (8) The roadmap notably included the adoption and the implementation of the European Border and Coast Guard. Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard ⁽¹⁾ entered into force on 6 October 2016, within a 9 months' time frame since the presentation of the Commission proposal, showing the commitment of all actors involved. It is expected that the rapid reaction pools, covering both human resources and technical equipment, and the rapid return pools will be established and operational by, respectively, 7 December 2016 and 7 January 2017.
- (9) Another element identified in the 'Back to Schengen' roadmap is the successful implementation of the EU-Turkey Statement. While the implementation of the Statement, as set out in the third progress report ⁽²⁾, continues to deliver results, it is important to continue to ensure that the Statement functions on a sustained basis. Moreover, there remains an ongoing need for the cooperation agreed upon in the Statement of the Western Balkans Route Leaders meeting.
- (10) It follows from the above that despite the steady and important progress in the fields identified by the 'Back to Schengen' roadmap and a progressive stabilisation of the situation, these actions still need time to be fully implemented and the corresponding results to be confirmed.
- (11) 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.
- (12) Given the current fragile situation in Greece and the residue of pressure remaining in the Member States most affected by the secondary movements of irregular migrants coming from Greece, it therefore appears justified to allow a proportionate prolongation of the temporary internal border controls by the Schengen States currently carrying out such controls as a last resort measure in response to a serious threat to their public policy or internal security, namely Austria, Germany, Denmark, Sweden and the associated country Norway, in accordance with Article 29 of the Schengen Borders Code.
- (13) Based on the factual indicators available at this stage, this prolongation should not exceed 3 months as from the date of adoption of the present Implementing Decision.
- (14) The Member States that decide to continue carrying out internal border control following the present Implementing Decision should notify the other Member States, the European Parliament and the Commission accordingly.
- (15) Before opting for such controls, the Member States concerned should examine whether other measures alternative to border controls could not be used to effectively remedy the identified threat. The Member States concerned should inform of the outcome of this reflection and the reasons for opting for border controls in their notifications.
- (16) As stated in the European Council conclusions on migration of 20 October 2016, the process of getting 'Back to Schengen' entails adjusting the temporary internal border controls to reflect the current needs. The controls under the present Implementing Decision should be carried out only to the necessary extent, limited in their intensity to the absolute minimum necessary. For example, when during a given period there is an insignificant flow, controls at certain border sections may then not even be necessary. In order to impede as little as possible the crossing of the relevant internal borders for the general public, only targeted, risk analysis and intelligence based controls can take place. Furthermore, the necessity of these controls at the relevant border sections should be examined and re-evaluated regularly in cooperation with all the Member States affected with the objective of progressively reducing them.
- (17) 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 sent to the Commission, 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.
- (18) The Council takes note that the Commission has announced that it will closely monitor the application of this Implementing Decision,

⁽¹⁾ OJ L 251, 16.9.2016, p. 1.

⁽²⁾ Third Report on the Progress made in the implementation of the EU-Turkey Statement (COM(2016) 634).

HEREBY RECOMMENDS:

1. Austria, Germany, Denmark, Sweden and Norway to prolong proportionate, temporary border controls for a maximum period of three 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 prolonging such controls, 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. 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 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 to the Commission every month.

Done at Brussels, 11 November 2016.

For the Council
The President
P. ŽIGA
