EUROPEAN
COMMISSION

Strasbourg, 15.12.2015
COM(2015) 675 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Eighth biannual report on the functioning of the Schengen area

1 May - 10 December 2015

1. INTRODUCTION

The Commission has been preparing biannual reports to the European Parliament and to the Council on the functioning of the Schengen area since 2011. This system of reporting was introduced to help strengthen cooperation in the Schengen area and give a basis for debate and decision-making, as explained in the Commission's September 2011 Communication on Schengen governance[1] in which it was proposed and supported by the Council on 8 March 2012. In order to take into account the tragic events in Paris on 13 November and other important developments, the reporting period of this eighth report has been extended until 10 of December 2015.

The biannual reports published to date have given the broadest possible overview of developments in the Schengen area, covering all aspects of its functioning. However, in the context of the current migration crisis, the Commission would like to focus on the developments that have had the most significant effect on the functioning of the Schengen area. As indicated in the Council conclusions of 9 November 2015, the report should serve as a basis for a thorough debate on this subject and on the lessons learned from temporary reintroductions of controls at internal borders. It should also look into the way in which the facts being reported are affecting the Schengen area and its functioning, and, where relevant, how the resulting situation could be addressed.

The major issues to be discussed from this reporting period are: the measures taken by the Member States at their internal and external borders in the light of: 1) the unprecedented number of migrants arriving in the Schengen area and their subsequent secondary movements; and 2) the multiple terrorist attacks in Paris on 13 November 2015 and an attempted terrorist attack on the Thalys train travelling from Amsterdam to Paris on 21 August 2015. The sections below provide a detailed analysis of each. In addition, the report also reflects the experiences with the new Schengen evaluation mechanism.

2. UNPRECEDENTED MIGRATORY PRESSURE

2.1. Migration flows at the external borders

The numbers of irregular migrants and applicants for international protection arriving in the EU have increased dramatically. The number of irregular border crossings detected so far in 2015 (1 553 614)[2] considerably exceeds the total number of irregular border crossings during the 2009-2014 period (813 044). Migrants have been entering via the three main routes where an absolute majority of all irregular EU border crossings were detected in January-November 2015: the eastern Mediterranean (716 202 detections), the Western Balkans (667 147) and the central Mediterranean (144 300). It should be noted however that part of the irregular

[1] COM(2011) 561 final.

[2] The data for January-October 2015 (1 284 549) is available from Frontex Risk Analysis Network (FRAN) and covers the Schengen area and Schengen candidate countries. It includes only the third country nationals detected at external borders (except temporary external borders) when entering or attempting to enter illegally between the border crossing points (BCPs). For November, the data originates from Joint Operations Reporting Application (JORA) and from the Croatian Ministry of Interior (http://www.mup.hr/219696.aspx); estimates have been used for routes where no data was yet available.

migrants that are detected on the Western Balkans route have already been counted once in the figures for the eastern Mediterranean route through Greece.

Many of those arriving in the EU are fleeing conflicts in their region and therefore request international protection. Although the asylum legislation is not part of the Schengen acquis, it is obvious that the refugee crisis has significant consequences for the situation at the EU's external borders and within the Schengen area.

The dramatically increased number of arrivals has put the border control and asylum systems of the countries concerned under extreme pressure. In response to this situation, the Commission introduced the **'hotspot' approach**, which provides a platform to allow the EU agencies to assist the frontline Member States in registering, screening and debriefing incoming migrants quickly, to help with the asylum procedures and to coordinate the return operations. Italy and Greece are the first two Member States where this approach is being implemented[3]. The Commission has also sent its own personnel to both Member States to provide practical coordination and support. The Migration Management Support Teams active at the 'hotspots' rely on the Member States' contributions via Frontex' and EASO's calls for experts and equipment in an appropriate manner.

Following the proposals of the Commission the Council in September has agreed on **relocation** of 160 000 applicants in clear need of international protection from Italy, Greece and possibly other Member States directly affected by the refugee crisis.[4] Full implementation of the relocation mechanism, alongside the roll-out of 'hotspots', should alleviate the pressure on these countries.

In addition to the ongoing Frontex **joint operations** — Triton (hosted by Italy) and Poseidon Sea (hosted by Greece), to which the financial allocation has been trippled to enable reinforcing their surveillance and rescue capacity — the EU launched a Common Security and Defence Policy operation in the southern central Mediterranean on 22 June. This operation aims specifically at disrupting the business model of human smuggling and trafficking networks.

Furthermore, Member States faced with a situation of urgent and exceptional pressure may request the assistance of the Rapid Border Intervention Teams (**RABITs**) provided in the Frontex Regulation. On 3 December, Greece submitted such a formal request to Frontex for the deployment of a Rapid Border Intervention Team operation to provide immediate border guard support at its external border in the Aegean islands. On 10 December Frontex took the necessary decisions to launch this operation and to immediately agree on the operational plan with the Greek Authorities within the same operational area as Poseidon Sea.

Hungary has constructed a fence along its external border with Serbia. The **installation of fences** for the purposes of border control is not as such contrary to EU law. However, the applied measures must be proportionate and must comply with the respect of fundamental

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[3] See the progress reports on the implementation of the hotspots in Greece (COM(2015) 678 final) and in Italy (COM(2015) 679 final).

[4] Council decisions (EU) 2015/1523 (OJ L 239, 15.9.2015, p. 146) and (EU) 2015/1601 (OJ L 248, 24.9.2015, p. 80).

rights and the rights resulting from the EU asylum acquis, in particular the *non-refoulement* principle. The Commission continues to monitor that the installation of the fence does not impede on these rights, in particular on the right to have effective access to the asylum procedure at the border crossing points.

Hungary has also erected a fence at its border with another EU Member State which is due to join the Schengen area, namely Croatia. A comparable installation is constructed at certain sections of Slovenian-Croatian border. While it not explicitly prohibited by the EU law to build a fence at what in the meantime is still an external Schengen border, the Commission notes however that such construction is inconsistent with the objective of future accession of Croatia to the Schengen area. The Commission also maintains its full support to the accession of Bulgaria and Romania as explained in the 7th biannual report[5].

It is of utmost importance that everyone crossing external borders is checked in accordance with the existing legislation. Those who cross the border illegally should be **properly registered** and channelled into asylum or return procedure as appropriate. Currently, the fingerprinting obligation imposed by the Eurodac Regulation[6] is not always complied with. The ratio between cases where fingerprints have been taken in case of irregular border crossing (in accordance with Article 14 of the Eurodac Regulation) and the number of such crossings is estimated at around 23%[7], varying widely between Member States. The Commission is taking action to ensure full compliance with EU law in this area[8]. This, as well as the screening procedures embedded in the 'hotspots' and relocation scheme, is essential to limit the security risks related to the fact that high numbers of persons cross the EU's external border in an irregular manner.

Those who do not qualify for international protection status should be **swiftly returned** instead of being allowed to travel further. In 2014, less than 40% of the irregular migrants ordered to leave the EU actually did so. While voluntary return is the preferred option wherever possible, its success depends on the credibility of the prospect of forced return. In September 2015, the Commission tabled an EU action plan on return[9] and presented the Return Handbook[10], setting out measures that could be introduced to improve the effectiveness of the EU return system. In addition, the Commission has sent letters requesting

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5 COM(2015) 236 final.

6 Regulation (EU) No 606/2013 (OJ L 180, 29.06.2013, p. 1).

7 Data for January-October 2015 for the Schengen members and Schengen candidate countries that have reported at least one case of illegal border crossing. Accurate comparisons between EURODAC data (fingerprint totals for Category 2 with no error that include all types of external border) and FRAN data (illegal border crossing at the external land and sea borders only) cannot be made. Only fingerprints of persons over the age of 14 who have not been sent back nor detained during the entirety of the period between apprehension and removal are taken for the purposes of the EURODAC Regulation (see Article 14 for details), whereas FRAN data covers illegal border crossings for all third country nationals as explained under footnote 2.

8 Over the period covered by this report, the Commission has sent four reasoned opinions, 42 letters of formal notice and eight administrative letters in the field of asylum concerning the implementation of the Eurodac Regulation, and the transposition of and compliance with the recast Asylum Procedures and Reception Conditions Directives.

9 COM(2015) 453 final.

10 Commission Recommendation C(2015) 6250 final of 1.10.2015.

clarification on the application of the Return Directive to ten Member States, notably with regard to the issuance of return decisions and the enforcement thereof.

It needs to be pointed out that the current crisis also has an impact on other law enforcement authorities involved in the management of external borders. With customs officers assisting other authorities to manage the crisis (depending on national organisational structures and intensity of the problem per country), their ability to perform an appropriate level of customs controls on goods is negatively affected.

2.2. Situation at the internal borders

The refugee crisis has not only resulted in massive arrivals at the external borders, but also in significant secondary movements inside the Schengen area, since the applicants for international protection were travelling further to the Member States of their preference instead of having their applications examined by the Member States responsible under the Dublin rules. To prevent this from happening, the Member States of first entry into the EU should register the applicants properly and have reception conditions in line with EU law and fundamental rights, so that the applicants can be taken back in line with the Dublin system[11]. Incentives for travelling to other Member States during the examination of the asylum application should be limited, as should the issuing of documents allowing this travel, except in cases where there are serious humanitarian reasons. The situation in Calais, where people stay illegally in the Schengen area while trying to enter the Channel Tunnel to get to the UK, must also be mentioned in this context.

The aforementioned shortcomings in the implementation of the EU acquis led to **temporary reintroduction of controls** at the German, Austrian, Slovenian, Hungarian, Swedish and Norwegian internal borders. It should be noted that this is a last-resort measure explicitly foreseen in the Schengen Borders Code (SBC) to be used in the event of a serious threat to public policy and internal security both in cases requiring immediate action and for foreseeable events. It is limited in time and must remain proportionate to the serious threat it seeks to address.

A decision on the reintroduction of border controls at the internal borders is a prerogative of the Member States, who are obliged to assess the extent to which the measure is likely to adequately remedy the threat to public policy or internal security, as well as the proportionality of the measure in relation to that threat. In the latter assessment, the likely impact of any threats to public policy or internal security and the likely impact of the measure on free movement of persons within the area without internal border control should be taken into account. The Commission can issue an opinion with regard to the necessity and proportionality of the measures and did so on 23 October 2015[12] with regard to Austria and

[11] Since 2011, following judgments by the ECJ and ECHR, Dublin transfers back to Greece have been suspended as the persistent deficiencies on the Greek asylum system made doing so a violation of an individual's fundamental rights. The Commission has dedicated substantial resources to assist Greece in overcoming these deficiencies. If all conditions are met, it will recommend to the European Council to confirm the reinstatement of Dublin transfers.

[12] Commission opinion C(2015) 7100 final of 23.10.2015.

Germany[13], concluding that the initial reintroduction, as well as the prolongations thereof, were necessary and proportionate to the identified serious threats to the internal security and public policy and as such in compliance with the SBC.

Although in 2013 the legislators agreed that migratory flows cannot *per se* justify the reintroduction of checks at internal borders, the Commission takes the view that the uncontrolled influx of high numbers of undocumented or inadequately documented persons, not registered upon their first entry to the EU, may constitute a serious threat to public policy and internal security and thus may justify the application of this extraordinary measure available under the SBC.

While the border controls in all aforementioned cases have been reintroduced (and subsequently extended) on the basis of Article 25 SBC (cases requiring immediate action with a maximum duration of two months), Germany and Austria notified the Commission that they would continue the border controls for a period of three months on the basis of Article 23 SBC. Also Sweden announced in its recent notification of the prolongation until 20 December 2015 based on Article 25 SBC that it would prolong the border controls further based on Article 23 SBC if the situation does not improve. The successive use of Articles 25 and 23 SBC is possible on condition that the Member State demonstrates that the introduced or prolonged checks are necessary, adequate and proportionate to remedy the serious threat to public policy or internal security identified.

Article 23 SBC allows with respect to foreseeable events the carrying out of controls for a period up to 30 days or for the foreseeable duration of the serious threat, for a maximum of six months in total. This provision was used during the reporting period on several occasions, e.g. by Germany (between 16 May and 15 June 2015) due to G7 summit, Malta (between 9-29 November 2015) in view of the Valetta Conference on Migration and Commonwealth Heads of Government Meeting and France in relation to COP21 .

On 9 December 2015, France notified the Commission that in the context of the state of emergency declared in France and due to the serious threat to the internal security, the controls at the internal borders of France will be reintroduced for a period from 14 December 2015 to 26 February 2016.

On 25 of November Malta has notified its intention to retain border control at the Maltese internal borders with regard to the global terrorist threat and in view of the fact that Malta is in the process of addressing a smuggling ring targeting it as a destination for illegal migrants travelling from other Schengen territories. The Commission has requested in detail the facts and figures demonstrating the necessity and proportionality of the decision.

The Commission will closely monitor whether the grounds for the reintroduction and prolongation of temporary border controls under all SBC provisions are and remain valid. The

[13] Slovenia lifted internal border control before the adoption of the opinion. Hungary introduced border control for 10 days on 17 October 2015. Sweden reintroduced the border controls on 12 November for the initial period of 10 days and, as notified on the occasion of the latest prolongation, the controls will continue to be carried out at least until 20 December. Norway initially reintroduced border controls between 26 November and 6 December and further prolonged them until 26 December.

Commission expects the Member States to regularly evaluate whether the conditions for the reintroduction continue to be met, and if not to lift those controls immediately. If needed, the Commission will issue an opinion in this regard.

Since 2013, Article 26 SBC provides also for a possibility of reintroducing border control at internal borders where the overall functioning of the Schengen area is put at risk. A recommendation addressed to one or more Member States is adopted by the Council upon a proposal from the Commission. This provision can only be triggered in case of persistent serious deficiencies related to external border control as confirmed in a Schengen evaluation procedure.

With regard to the installations that have been placed by the Austrian authorities at the Austrian-Slovenian border, they have not been designed to prevent border crossing, but to channel the arrivals in an orderly manner to enable organised provision of medical care, food and transport. As things stand now, they are not in contradiction with the SBC provisions. However, it is essential that any such installations remain temporary in nature, in line with the temporary nature of the border controls. The Commission will continue to monitor that any further steps taken at the internal borders respect the Schengen acquis.

2.3. Lessons learned

Several conclusions can be drawn from the current crisis. Firstly, the ongoing crisis as well as terrorist threats described in the next section have demonstrated that it is imperative that the management of the external border, including registration and screening of those who cross it irregularly, take place fully in line with the EU legislation and standards. If a Member State is faced with a high pressure at its external border which the national border guard system is not able to cope with on its own, it is important that the Member State concerned makes full use of all the available remedies including a request from the relevant EU Agencies, in particular Frontex, to intervene so as to address the emergency situation. To manage those requests in a better, faster and more adequate manner, the Commission sees a clear need to establish a European Border and Coast Guard as presented in its Border Package[14].

Secondly, whilst temporary reintroduction of the controls at internal border *per se* does not have any influence on the total number of migrants or asylum seekers arriving to the Schengen area, it allows to better manage their subsequent secondary movements in a structured way, enabling to make the best possible use of the available resources for registration, reception, relocation and (if applicable) return. Hence it must remain a temporary measure helping to bring the situation back to normal.

Thirdly, there is an obvious need for clear communication and delivery on all fronts that EU legislation has to be respected, that applicants for international protection do not have a right to choose the Member State where their applications are examined and that registration and fingerprinting is mandatory. In this context, also relevant is the principle that – as long as there was a prior non-refoulement and proportionality check – countries could refuse entry to individuals who did not express a wish to apply for international protection. Linked to this is

[14] See COM(2015) 673 final and COM(2015) 671 final.

the principle of "no registration, no rights": the registration of migrants (irrespective of their status) is the precondition to appropriately managing the flows and setting the rights and duties of migrants.

Finally, with thousands of people arriving every day at certain sections of the external border, it is clear that Member States need to be able to monitor the situation as it evolves (situational awareness) and to react appropriately (reaction capability). The national coordination centres (NCCs) set up under the Eurosur Regulation[15] can play an important role in this respect, and Member States should make better use of them in strengthening their reaction capability.

It is worth recalling that in reply to this crisis situation, the Commission prepared two implementation packages for the European Agenda on Migration (adopted in May and in September) which contain a number of measures to help to alleviate the burden on the Member States most severely affected and enhance the preparedness of the Union as a whole to address similar challenges.

3. TERRORIST THREATS IN THE SCHENGEN AREA

The **terrorist attacks perpetrated in Paris** on 13 November 2015 as well as the failed attack in the Thalys train on 21 August 2015 confirmed the seriousness of the terrorist threat faced by the EU. This threat is not limited only to one Member State and requires multiple measures to address it in a comprehensive manner in order to protect the Schengen area.

Those and previous attacks highlight the importance of detecting fraudulent documents and of fully exploiting available instruments, such as the use of databases and interagency cooperation at national, European and international level. At the same time, it is also clear that radicalisation can take place even without one having left the Member State of residence. Hence, the problem of terrorism is broader and goes beyond issues relevant to the Schengen acquis.

Member States have to ensure that arrivals to the Schengen area take place in an orderly manner, including identification and registration. The full implementation of the 'hotspots' approach and the relocation mechanism will also contribute to increasing security, as explained in section 2.

The phenomenon of **foreign terrorist fighters** remains a major source of concern, especially as EU citizens continue to travel to Syria and Iraq to support terrorist groups. Detecting and preventing their travel to and from conflict zones has been identified as a priority.

The European Commission has consistently supported the strengthening of the Schengen framework in this regard and the full use of measures that can be taken within it. As announced in the European Agenda on Security,[16] the Commission finalised in June 2015 a first set of **common risk indicators** for foreign terrorist fighters, to be used by border guards to help them when conducting checks. The list is based on travel trends, patterns and specific characteristics of those persons, and was compiled using contributions from Member States,

[15] Regulation (EU) No 1052/2013 (OJ L 295, 6.11.2013, p. 11).
[16] COM(2015) 185.

the European External Action Service, Europol and Frontex, with due respect to fundamental rights.

Sharing information is a crucial part of effective and coordinated border control and law enforcement. The **Schengen Information System** (SIS) plays a central role as a platform for exchanging information, in order to trace terrorist suspects and conveyances used for terrorism and serious crime. Issuing **alerts for discreet and specific checks,** in accordance with Article 36 of Council Decision 2007/533/JHA[17] can be especially useful in that regard. It is important to emphasise that whilst those alerts are invaluable as a way of collecting information for identifying terrorists' and other criminals' travel routes, they do not constitute arrest warrants.

The steady increase in the number of alerts for discreet and specific checks, and hits based upon them, is generating a significant volume of supplementary information, which needs to be exchanged between the SIRENE Bureaux[18] as a matter of priority. Furthermore, the amendments made to the SIRENE Manual[19] with effect from 30 January 2015 require an immediate reporting of hit information on terrorism-related activities at national and at European level. The majority of Member States are making use of the technical and legal improvements made to the SIS[20], namely the possibility of speedy information exchange and the visualisation of the fact that an identification document has been invalidated for travel purposes, thus preventing the holder of the document from leaving or entering the Schengen area. It is essential that Member States share relevant information via the SIRENE channel at the time of a terrorism-related alert being created and that the SIRENE Bureaux are sufficiently equipped to cope with the tasks entrusted to them. In addition, the Member States must fully implement the new functionalities of the SIS, with particular attention to be given to the linking functionality and the display of photographs. Links between alerts created by Member States must be visible to end-users in all countries in the Schengen area. The existence of fingerprints and the European Arrest Warrant must also be indicated to the end-users on their electronic devices to carry out checks.

In addition, further improvements that contribute to prevention of terrorism and travel of foreign terrorist fighters to/from the conflict areas can be made such as the detection of forged, false or invalidated documents (notably through systematic consultation of Interpol's stolen and lost travel document database and of the document section of the SIS); full use of the SBC provisions as regards checks on persons (with the support of the common risk indicators referred to above); the full check of persons not covered by the Union right to free movement in the SIS; and cross-checking of advance passenger information (API) or passenger name record (PNR) data, where available, against the relevant databases. Finally, to further increase security, the Commission has made a proposal for a targeted amendment to

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17 Council Decision 2007/533/JHA (OJ L 205, 7.8.2007, p. 63).

18 SIRENE stands for Supplementary Information REquest at the National Entries.

19 Commission Implementing Decision (EU) 2015/219 (OJ L 44, 18.2.2015, p. 75).

20 For further details, see the section 4.1 of the 7th biannual report on the functioning of the Schengen area (COM(2015) 236 final).

the Schengen Borders Code[21] to provide for mandatory checks of persons enjoying the right to free movement at the external borders of the EU against relevant databases.

Recent terrorist attacks have drawn attention to the means by which criminals are able to obtain **firearms**, including military-grade firearms in Europe. In the area without controls at internal borders, it is important that there are adequate instruments in place to uncover such weapons, hence particular attention was given to improving alerts on firearms which are to be traced and seized. Two projects have been launched to align SIS and Interpol's firearms database, iArms, that would allow for their parallel use. This would enable making best use of SIS and to ensure that firearms are traceable world-wide.

Furthermore, on 2 December 2015, the Commission adopted the security package entailing the Communication on an Action Plan on trafficking of firearms and explosives and a proposal for a directive on combating terrorism.

4. SCHENGEN EVALUATION MECHANISM

It is essential that all Member States comply fully with the Schengen standards in order for the EU to be able to address the current migration crisis and contain the threat of terrorist attacks in the Schengen area. The proper functioning of the **Schengen evaluation mechanism remains a priority for the Commission.** Announced and unannounced visits and their follow-up enable to identify Schengen implementation gaps and remedies for them quickly.

The new Schengen evaluation mechanism continued to function effectively during the reporting period. The implementation of the mechanism relies on the **quality and timely character of the replies to the Schengen Questionnaire** by the evaluated Member States. The experiences in this regard during the reporting period were mixed: half of the Member States to be evaluated in 2016 did not respect the timetable for the replies (even after extended deadline), and the quality of some replies was relatively poor or questions were left unanswered. This may indicate inherent weaknesses in (some) national Schengen governance systems.

To ensure an efficient functioning of the new mechanism, a Schengen Evaluation Guide and the General guidelines on practical arrangements for unannounced on-site visits to the internal borders have been agreed.

During the reporting period, **announced visits** were carried out in Germany and the Netherlands covering all the policy areas. The recommendations from these visits are not yet available to date. In the meantime, the **results of the earlier visits** to Austria and Belgium have become available.

In the case of **Austria**, the Commission has adopted all the proposals for Council recommendations, except for data protection. Special notice was taken of the well-developed Austria Integrated Border Management concept and the way it is implemented, the excellent state of the art of the technical infrastructure of the N.SIS and SIRENE Bureau and the limited average period of pre-removal detention. The main recommendations focus on the correct

[21] COM(2015) 670 final.

application of the Schengen acquis as well as enhancing the quality of its implementation (e.g., all entry conditions should be verified during the border checks on third country nationals, the search functionalities of the N.SIS are to be further developed and the border police training related to vulnerable groups needs strengthening). As far as return is concerned, the practice of not issuing entry bans in mandatory cases foreseen by the Return Directive was identified. In two areas (external borders and visa) the recommendations have already been adopted by the Council.

The main challenges for border management in **Belgium** are related to the capacity to manage the situation at its air borders, secondary movements inside the country and irregular migration towards the UK across the North Sea. Gaps identified concern insufficient resources and correct execution of border checks. Some important instruments like the development of the national Integrated Border Management (IBM) strategy and API system, are not yet implemented. Belgium is also lacking national legislation and procedures to process the alerts within the second generation of SIS as well as a binding written security framework for the system. Further serious shortcomings have been identified on the implementation of the SIS for end-users. The Commission services are currently working on the proposals for Council recommendations regarding the visits to Belgium.

Under the previous Schengen evaluation mechanism, serious technical deficiencies had been detected with regard to the implementation of the **SIS in Poland**[22], in particular at the external borders. The revisit showed that Poland has made great progress by introducing a new stable N.SIS, a new SIRENE application as well as a new application for border guards. The recommendations made to Poland are to ensure the 99.99% availability of the SIS, to maintain the non-discrepancy of data between national and central SIS, to display photographs attached to the alert to the end-users and to ensure the search of SIS on the police mobile devices as a default option.

The results of the unannounced visit to **Sweden** (Arlanda airport) carried out in the previous reporting period (March 2015) have become available. The decision to evaluate the airport was made on the basis of risk analysis made by Frontex which highlighted atypically low rates of refusals of entry and detection of fraudulent documents. During the visit, some deficiencies related to insufficient resources and training as well as correct execution of border checks were identified.

During the reporting period, **unannounced visits** took place in Spain, Hungary and Poland as far as the management of external borders is concerned. The findings of the visits to Hungarian and Polish external borders are finalised at expert level and sent to the Member States concerned for comments. Without prejudging the results of the evaluation, it can be observed that in general, the border control at the sites visited was found to be carried out in line with the Schengen acquis with the necessary level of professionalism. The results of the visit to Spain are also at the stage of finalisation at the expert level. It can be noted that some elements of the border management system in Algeciras still need to be fully implemented and all tools should be in full operational use.

[22] See section 4.1 of COM(2014) 711 final and COM(2015) 236 final.

An unannounced visit was carried out in November to the Greek-Turkish land border as well as to the sea border (Chios and Samos). Additional efforts are required with regard to the actual return of irregular migrants and prevention of secondary movements.

The conclusions of the two visits are currently being finalised at the expert level. The Commission will continue monitoring the situation closely, including the evolving situation at the border between Greece and the former Yugoslav Republic of Macedonia. The potential for this border to become a source of tension has been intensified including by the erection of border fencing as a border management tool, and the decision by the former Yugoslav Republic of Macedonia to follow the decision of other countries and restrict passage on the grounds of nationality or the little engagement in bilateral border-related confidence building measures, although day-to-day contacts between the border administrations have improved. On 3 December an agreement was reached that Frontex will assist Greece with identification and registration of migrants at the border between Greece and the former Yugoslav Republic of Macedonia.

Depending on the results of the aforementioned Schengen evaluations, specific measures as referred in Article 19a SBC may be recommended.

Should an evaluated Member State be found to be seriously neglecting its obligations and progress in rectifying the situation is insufficient, the use of Article 26 SBC (as described in section 2.2 of this report) can be invoked that implies reintroducing border control at internal borders where the overall functioning of the Schengen area is put at risk.

The Schengen evaluation mechanism now also comprises unannounced visits at internal borders. The first such visits were carried out at the Latvian (at its internal border with Lithuania and the port of Riga) and German/French borders. The proposal for the Council recommendation following the latter is under preparation relating to minor improvements to the infrastructure. There were no recommendations to be made as far as the visit to Latvia is concerned. The latest unannounced visit at the internal borders took place in November at the Swiss border with Italy. Its findings are being finalized at expert level.

5. CONCLUSION

The Commission has repeatedly underlined that the Schengen framework cannot be held responsible for the current crisis. On the contrary, Schengen can be part of the solution. Addressing the two major challenges faced in the Schengen area — the refugee crisis and the terrorist threat — requires full and correct implementation of the measures already contained in the two sets of documents tabled by the Commission in spring: the European Agenda on Migration and the European Agenda on Security. These include measures that are essential for ensuring the proper functioning of the Schengen *acquis* and of the Schengen area. The Commission therefore firmly believes that it is of utmost importance to implement rapidly and effectively all measures included in these two Agendas.

An essential prerequisite in addressing effectively the current crisis is strengthened protection of the EU's external borders. The new Schengen evaluation mechanism makes it possible to better identify the gaps and weaknesses for instance in the protection of the external borders and to recommend effective remedies. There are a number of other instruments (e.g.,

'hotspots', RABITS and joint operations) available which were designed to help the Member States facing a significant pressure, and those Member States should not hesitate to make full use of them. In parallel with the adoption of this report the Commission has proposed a targeted amendment to the Schengen Borders Code in order to introduce systematic checks on all travellers against relevant databases at all external borders.

At the same time, in emergency situations where the burden on the national border guarding systems of the frontline Member States is such that it is impossible for them to cope with it, it is important that the EU can step in quickly so as to effectively manage the crisis. To address this need, the Commission (in parallel to the adoption of this report) has tabled a proposal to establish a European Border and Coast Guard. The new European Border and Coast Guard Agency, which should replace and considerably strengthen the current "Frontex" Agency, as well as the relevant authorities of the Member States will work together to ensure an integrated management and the protection of the EU's external borders based on the principle of shared responsibility.