



Brussels, 28.11.2013
COM(2013) 832 final

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

**Fourth bi-annual report on the functioning of the Schengen area
1 May - 31 October 2013**

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1. INTRODUCTION

As announced by the Commission on 16 September 2011 in its Communication on strengthening Schengen governance¹ and supported by the Council on 8 March 2012, the Commission submits biannual reports to the European Parliament and to the Council on the functioning of the Schengen area. This fourth report covers the period 1 May-31 October 2013.

2. SITUATIONAL PICTURE

2.1. Situation at the Schengen external borders ²

During April-June 2013, there were 24 805 detections of irregular border crossing, a 7.4% increase in relation to the same period in 2012 and an 155% increase compared to the first quarter in 2013. This is the sharpest increase between two consecutive quarters recorded since 2008, most likely linked to, on the one hand, improved weather conditions in the Mediterranean Sea and, on the other hand, changes in the asylum policy in Hungary.

From January 2013, asylum applicants in Hungary were sent to open rather than closed facilities and often they soon thereafter absconded to travel to other Member States. The number of detected irregular border crossings rose from 911 in the last quarter of 2012 and 2 405 in the first quarter of 2013 to 8 775 persons in the second quarter of 2013. During April-June 2013 Hungary detected more irregular border crossings than any other Member State, 35 % of the EU total, followed by Italy and Greece, both with 26 % of the EU total. However, in July 2013, Hungary once again amended its rules, making bigger use of closed facilities. Since then, detections of irregular border crossing have fallen. According to the Hungarian authorities, this decrease might also be a result of their reinforced cooperation with Kosovo³.

As far as nationalities are concerned, migrants from Kosovo ranked highest in detections of irregular border crossing, amounting to 4 456 persons in April-June 2013. Further, migrants from Albania counted 3 098 persons, mainly detected in Greece.

The number of Syrians detected for irregular border crossing increased from 2 024 in the second quarter of 2012 to 2 784 in the second quarter of 2013, mostly in the Aegan Sea (1 322

¹ COM (2011) 561 final

² Frontex quarterly risk analysis April-June 2013

³ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

persons). Following the launch of the Greek operation Aspida, the detections increased also at the Turkish-Bulgarian border, from 159 detections in the second quarter of 2012 to 1 059 in the same quarter of 2013. During summer 2013, the numbers of detected Syrians have continued to rise (1 840 in July 2013 and 3 413 in August 2013), especially at the Italian seaborder as well as the Turkish-Bulgarian land border. However, the Syrians who enter the Schengen area in i.a. Greece are often headed for Sweden or Germany to claim asylum. In this context, it is noted that the Swedish Migration Board on 2 September 2013 declared a new judicial position, according to which persons from Syria, who have previously been given three-year residence permits, are now granted permanent residence. People with permanent residence permits can then apply for family reunification.⁴

Following the significant increase in arrivals of migrants in the Central Mediterranean area since summer 2013 and the tragic boat accident off the coast of the Italian island of Lampedusa, the JHA Council on 7-8 October 2013 decided to convene a task-force in order to try to prevent such tragedies in the future. The Commission has taken the lead of this task force, which should identify the tools which the EU has at its disposal and which could be used in a more effective way. This includes i.a. reinforcing Frontex' joint operations in the Mediterranean.

2.2. Situation within the Schengen area

In April-June 2013, there were over 80 000 detections of irregular stay in the EU, most of which took place inland rather than at an external border. The most detections (11 683) were reported in Germany, followed by France (8 563) and Spain (8 156)⁵.

An information-gathering exercise on migration flows within the EU/Schengen area, operation Perunas, was carried out from 30 September to 13 October 2013 in 23 Member States⁶ as well as in Norway and Switzerland. One of the objectives of the operation is to examine the link between irregular border crossings at the external borders and intra-EU/Schengen secondary movements. According to information from the Lithuanian Presidency, 10 459 irregular migrants were intercepted, whereof 4 800 in Italy and 1 606 in Germany.

During three weeks in March-May 2013, AIRPOL (a network of police services, border guards and other relevant law enforcement services active in airports) coordinated an action, aimed at fighting trafficking and smuggling of human beings, the use of false documents, identity theft, organized crime and terrorism. 17 participating airports in 14 countries performed targeted measures for intra-EU risk flights for 24 hours and submitted their results to AIRPOL for further analysis. During the operation, 122 flights were subjected to checks, whereby 26 persons were intercepted, mainly on flights from Budapest to Berlin.

Although the information above is useful, there still exists a need for improved data collection and analysis of the irregular migratory movements within the EU. In order to address this

⁴ Website of the Swedish Migration Board on 5 September 2013

⁵ Frontex quarterly risk analysis April-June 2013

⁶ Croatia, Greece, Ireland, Luxemburg and Sweden did not participate.

need, Frontex, on the Commission's initiative and based on Member States submission of available information, will produce a tailored risk analysis on intra-EU migratory movements by mid-November 2013. In addition, the Frontex Risk Analysis Network is to agree in mid-December 2013 on indicators of these movements to be regularly collected as of January 2014.

3. APPLICATION OF THE SCHENGEN ACQUIS

3.1. Cases of temporarily reintroduced control at internal borders

Article 23 of the Schengen Borders Code⁷ provides that, exceptionally, where there is a serious threat to public policy or internal security, a Member State may reintroduce border control at its internal borders. During the period 1 May-31 October 2013, no Member State has reintroduced control at its internal borders.

3.2. Maintaining the absence of internal border control

Two areas of the Schengen acquis frequently subject to alleged violations are whether the carrying out of police checks close to the internal border have an effect equivalent to border checks (article 21 of the Schengen Borders Code) and the obligation to remove obstacles to fluid traffic flow, such as speed limitations, at road crossing-points at internal borders (article 22 of the Schengen Borders Code). In the period 1 May-31 October 2013, the Commission requested information on possible violations of articles 21 and/or 22 of the Schengen Borders Code in one new case (regarding Spain), while it closed two cases (involving Latvia and Lithuania) and continued investigating six existing cases (regarding Austria, the Czech Republic, Germany, Slovakia and Sweden).

3.3. Alleged violations of other parts of the Schengen acquis

Transposition of the Return Directive (2008/115/EC) into national legislation

The deadline for implementation of the Return Directive (2008/115/EC) expired on 24 December 2010. All EU Member States bound by the Directive and all associated countries except Iceland have notified full transposition of the Directive into national law. The Commission is examining the legal transposition and the practical application in the Member States in detail and will present its first application report as part of a Communication on EU Return Policy by the end of 2013.

Implementation of the Regulation on Local Border Traffic (EC No 1931/2006)

Since the entry into force of the local border traffic regime in 2006, the Commission has been monitoring its implementation. In relation to the previous report, the Commission has requested information from two Member States (Hungary and Slovakia) and continued its investigations regarding three Member States (Latvia, Poland and Slovenia) on the bilateral agreements that these countries have concluded with their third country neighbours.

⁷ Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation (EU) No 610/2013

The Commission's action in these cases is partially based upon the judgment of the European Court of Justice of 21 March 2013 in case C-254/11 (Shomodi). According to the Court, the holder of a local border permit can move freely within the border area for a period up to three months if his/her stay is uninterrupted and has a new right to a complete period of stay each time his/her stay is interrupted. Moreover, the stay of the holder of a local border permit must be regarded as interrupted as soon as the person concerned crosses back into his/her state of residence irrespective of the number and frequency of border crossings made.

3.4. Weaknesses identified in the framework of the Schengen evaluation mechanism

In the framework of the current Schengen evaluation mechanism⁸, Member States' application of the Schengen acquis is regularly evaluated by experts from the Member States, the Council General Secretariat and the Commission.

In the period 1 May-31 October 2013, Schengen evaluations were carried out regarding land borders in Hungary, Poland, Slovakia and Slovenia as well as SIS/Sirene in the Czech Republic, Malta, Slovakia and Slovenia. The reports are being finalised and are expected to include positive as well as negative comments and recommendations on issues such as training, use of risk analysis, information exchange, international cooperation and infrastructure at border crossing points. As was the case also during the previous six months, there is generally room for improvement, but no deficiencies have been found that would require the Commission to take immediate action.

Following the revisit to Greece in October 2013, the Commission notes the progress made in the management of the country's external borders, invites Greece to continue the implementation of its Schengen action plan and reiterates its commitment to support the Greek efforts, i.a. through the External Borders Fund, the future Internal Security Fund and through Frontex assistance.

For an indicative calendar of Schengen evaluations November 2013-April 2014, see Annex I.

As regards the Schengen evaluation mechanism itself, the Council on 7 October 2013 decided to adopt a new mechanism, capable of identifying deficiencies at an early stage and ensuring the appropriate remedy, follow-up and transparency. In the new mechanism, the Commission will be given a coordinating role, as it will conduct the evaluations together with Member States' experts and take on the responsibility for adopting reports and proposing recommendations for possible improvements. Furthermore, the Commission will plan unannounced on-site visits, for example to Schengen's internal borders.

Still, there might be very exceptional situations where the recommendations for remedial action are not sufficient to ensure that possible persistent serious deficiencies in a Member State's control of its external borders are adequately, or sufficiently swiftly, remedied. The new mechanism therefore allows for a decision, triggered by the Commission, on the temporary reintroduction of controls at internal borders with a Member State failing to manage its external borders. This is an exceptional measure of last resort in a truly critical

⁸ SCH/Com-ex (98) 26 def.

situation to ensure that the problems can be resolved, while minimising the impact on free movement.

The regulation on the new Schengen evaluation mechanism enters into force 20 days after its publication in the Official Journal, which took place on 6 November 2013. However, as regards the current Schengen states, it starts applying in practice only one year later. For other EU Member States, seeking to join the Schengen area, the regulation starts applying on 1 January 2016 at the latest. It is to be noted that as the Schengen evaluations of Bulgaria and Romania have been completed, they will not be evaluated again under the new mechanism. Following Croatia's EU-accession on 1 July 2013 and once it has notified its readiness, plans will be made for the Schengen evaluation in accordance with the new procedure.

3.5. Lifting of control at internal borders with Bulgaria and Romania

Following the Council conclusion in June 2011 that both Bulgaria and Romania fulfil the criteria to apply in full the Schengen acquis, further measures were implemented which would contribute to their accession. Still, the Council has not yet been able to decide on the lifting of control at the internal borders to these countries, but intends to revisit this topic in its meeting on 7-8 December 2013. The Commission continues to fully support Bulgaria's and Romania's accession to the Schengen area.

3.6. Technical amendments of the Schengen Borders Code etc.

Following the agreement on the Schengen governance package in May 2013, the amendments of the Schengen Borders Code were approved by the European Parliament and adopted by the Council in June 2013⁹ and entered into force on 19 July 2013. The purpose of these amendments was to do away with the different interpretations of the Schengen Borders Code and respond to practical problems that had arisen since the entry into force of the Code. The main changes are the introduction of a clear definition of the method for calculating 'stays not exceeding 90 days in any 180 days period' (short stays) of third-country nationals within the Schengen area and a clarification concerning the required period of validity of travel documents of third-country nationals.

4. FLANKING MEASURES

4.1. Use of the Schengen Information System

The second generation of the Schengen Information System (SIS II) entered into operation on 9 April 2013. At the expiration of the incident-free one-month intensive monitoring period that followed, the operational management of SIS II was handed over to the European Agency for the operational management of large-scale IT systems in the area of freedom security and justice (eu-LISA). Since its entry into operation, the SIS II has been functioning smoothly. Thanks to its enhanced functionalities and overall performance the system contributes

⁹ Regulation (EU) No 610/2013 of the European parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council

significantly to safeguarding both the security and the free movement of persons in the Schengen area. The number of alerts stored in SIS II constantly increases.

The first informal assessment of the implementation of SIS II as carried out by the Commission in July 2013 showed that Member States, in general, make use of the new alert categories and functionalities, which results in a significant increase in hits achieved in many Member States. That is in particular the case in Member States which carry out direct queries in the central system. By contrast, some Member States experienced a drop in hits in the first two months of SIS II operations compared to the same period in 2012. Available evidence suggests that this phenomenon is due to still on-going adjustments in Member States internal organisation to the SIS II environment, insufficient training of end-users or incomplete implementation of SIS II. As a matter of fact, not all the Member States have yet fully implemented the new SIS II data categories and functionalities. Given the crucial importance of SIS II for the functioning of the Schengen area, its full implementation as well as its secure and uninterrupted operation remains paramount. In order to further assess the state of play and progress made in the SIS II implementation, and next to the on-going Schengen evaluations, the Commission intends to carry out an additional survey in the last quarter of 2013, i.a. assessing Member States' hits statistics.

4.2. Use of the Visa Information System

The Visa Information System (VIS)¹⁰ is a system for exchange of information on short-stay visas. Since the end of the last reporting period (30 April 2013), the VIS on 6 June 2013 became operational in the sixth region (East Africa) and in the seventh region (South Africa). On 5 September 2013 it was deployed in the eighth region (South America)¹¹. Further, the VIS is scheduled to be deployed in the ninth region (Central Asia), tenth region (South-East Asia) and eleventh region (Palestine) on 14 November 2013. The discussions on the determination of the third and last set of regions for deployment have been finalised and the related Implementing Decision was adopted on 30 September 2013.

The VIS is functioning well and by 31 October 2013 the system had processed 5.0 million Schengen visa applications, while 4.2 million visas have been issued. Despite continuous efforts by Member States, the main issue of concern remains the mid to long-term effect of a non-optimal quality of data (both biometric and alphanumeric) introduced by the consular authorities of Member States into the VIS.

10 Council Decision of 8 June 2004 establishing the Visa Information System (VIS) (2004/512/EC)

11 Commission Implementing Decision of 21 September 2011 determining the date from which the Visa Information System (VIS) is to start operations in a first region (2011/636/EU), Commission Implementing Decision of 21 September 2012 determining the date from which the Visa Information System (VIS) is to start operations in a third region (2012/512/EU), Commission Implementing Decision of 7 March 2013 determining the date from which the Visa Information System (VIS) is to start operations in a fourth and a fifth region (2013/122/EU), Commission Implementing Decisions of 5 June 2013 determining the date from which the Visa Information System (VIS) is to start operations in a sixth and a seventh region (2013/266/EU), Commission Implementing Decision of 20 August 2013 determining the date from which the Visa Information System (VIS) is to start operations in an eighth region (2013/441/EU)

4.3. Visa policy and readmission agreements

Post-visa liberalisation monitoring mechanism for Western Balkan countries

According to Frontex figures, the total number of asylum applications from the visa-exempted Western Balkan countries in the most concerned EU/Schengen Member States decreased by 5.6% in the period between January 2013 and September 2013, when compared to the same period of last year. Almost an identical seasonal pattern can clearly be observed also this year with the number of lodged applications rising gradually from May 2013 on. The pattern is driven by nationals of Serbia and the former Yugoslav Republic of Macedonia. The top destination continues to be Germany, followed by Sweden, Belgium, Switzerland and Luxemburg.

Readmission agreements

In order to facilitate the readmission to the country of origin of persons residing without authorisation in a Member State, a readmission agreement with Cape Verde was signed on 18 April 2013. The consent of the European Parliament was given on 11 September and the Council Decision necessary for conclusion of the agreement was adopted on 9 October 2013. The ratification notifications are now to be exchanged between the EU and Cape Verde, whereby the agreement (together with the agreement on visa facilitation) should enter into force very soon. The readmission agreement with Turkey was initialled in June 2012 and its signature and the launch of a dialogue on visa liberalisation are expected. In October 2012, a readmission agreement with Armenia was initialled, followed by its signature on 19 April 2013 and entry into force is now expected soon. Furthermore, negotiations with Azerbaijan on visa facilitation and readmission agreements were completed with the initialling of both agreements on 29 July 2013; proposals for the Council Decisions on signature and conclusion will soon be discussed in the Council and in the European Parliament.