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Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

#### Introduction

The EU is facing an unprecedented migratory and refugee crisis following a sharp increase of mixed migratory flows since the summer of 2015. This has led to severe difficulties in ensuring efficient external border control in accordance with the Schengen acquis and in the reception and processing of migrants arriving. Wider structural deficiencies in the way the Union's external borders are protected have also become evident in this crisis.

The Hellenic Republic is, mainly due to its geographical situation, particularly affected by these developments and has faced a dramatic increase in the number of migrants arriving on the Aegean islands. The massive inflow is of a nature that would put the external border control of any Member State under severe pressure.

#### Schengen Evaluation Mechanism

In accordance with Council Regulation (EU) No 1053/2013<sup>1</sup> and the annual evaluation programme for 2015<sup>2</sup>, an unannounced on-site visit was carried out from 10 to 13 November 2015 to evaluate the implementation of the Schengen acquis in the field of the management of the external border by the Hellenic Republic at its land border (Orestiada, Fylakio, Kastanies, Nea Vyssa) and sea border (Chios and Samos Islands) with Turkey.

On 2 February 2016 the Commission adopted an implementing decision establishing a report of the evaluation of the Hellenic Republic on the implementation of the Schengen acquis in the field of the management of the external border<sup>3</sup> concluding that there are serious deficiencies in the carrying out of external border control that must be overcome and dealt with by the Hellenic authorities. These serious deficiencies represent, as far as the carrying out of external border control is concerned, a situation where the obligations referred to in Article 16(1) and (4) of Regulation (EU) No 1053/2013 have not been met.

On 12 February 2016 the Council adopted in accordance with Article 15 of Regulation (EU) 1053/2013 recommendations on addressing the serious deficiencies identified during the evaluation and indicated the priorities for implementing them. Appropriate measures should be taken by the Hellenic authorities to ensure that at all external borders of the Hellenic Republic, external border control is carried out and brought in line with the Schengen Acquis in order not to jeopardize the functioning of the Schengen area.

On 24 February 2016 the Commission adopted in accordance with Article 19b of Council Regulation (EC) No 562/2006 of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code in force at that time)<sup>4</sup> recommendations on specific measures to be taken by the Hellenic Republic following

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<sup>1</sup> Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).

<sup>2</sup> Commission Implementing Decision C(2014) 8377 of 14 November 2014 establishing the annual evaluation programme of unannounced on-site visits for 2015 in accordance with Article 6 of Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

<sup>3</sup> C(2016) 450 of 2 February 2016.

<sup>4</sup> OJ L 105, 13.4.2006, p. 1.

the evaluation report of 2 February 2016 to ensure compliance with the recommendations of the Council of 12 February 2016.

On 12 March 2016 the Hellenic Republic notified in accordance with Article 16(1) of Regulation (EU) 1053/2016 its Action Plan to remedy the deficiencies identified in the evaluation report and subject to the Council Recommendations. The Commission presented on 12 April 2016 in accordance with Article 16(2) of Regulation (EU) 1053/2016 its assessment of the adequacy of the Action Plan to the Council. The Commission concluded that *'significant progress has been made by Greece. However, further improvements are needed to the Action Plan presented by the Greek authorities in order to comprehensively address the deficiencies identified in the November 2015 evaluation. In particular, for many actions, more clarity is needed in terms of timing, responsibility and financial planning. Moreover, some actions cannot yet be considered adequately addressed or completed.'*<sup>5</sup>

### **Current temporary internal border control**

The record number of migrants arriving in the European Union since 2015 and the deficiencies at parts of the Greek external border identified during the November 2015 evaluation have resulted in important secondary movements, prompting several Member States to temporarily reintroduce internal border control at all or parts of their internal borders on grounds of a serious threat to public policy or internal security resulting from the uncontrolled influx of persons not properly documented and/or registered upon their arrival in the first EU Member State.

Currently, five Schengen Member States have notified the Commission that they carry out temporary internal border control at their borders in response to a serious threat to public policy or internal security that was caused by secondary movements of irregular migrants triggered by serious deficiencies in external border controls. All of these Member States have prolonged several times these controls, in line with the relevant provisions of the Schengen Borders Code. According to the latest notifications:

- Germany notified controls as from 13 September 2015 till 13 May 2016 at all its internal borders, with a special focus at the German-Austrian land border. The decision is motivated by the serious threat to the internal security and public policy due to the massive influx of irregular migrants who have not been properly identified, fingerprinted and registered in any other EU Member State upon their arrival in the EU.
- Austria notified controls as from 16 September 2015 till 16 May 2016 at all internal borders, with a special focus on the Austrian-Slovenian and Austrian-Hungarian land borders. The border controls are motivated by the massive influx of third country nationals crossing the Austrian borders and putting extreme pressure on the emergency services and public infrastructure.
- Sweden notified controls as from 12 November 2015 till 8 May 2016 at all its internal borders, with a special focus on selected harbours in the Police Region South and West and the Öresund Bridge. The decision to reintroduce temporary border control was first motivated by the unprecedented migratory flows of mixed nature posing challenges for the functioning of the Swedish society. It continues to be motivated by the high number of asylum seekers and the consequences of the unprecedented high number of asylum applications in 2015.

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<sup>5</sup> COM(2016) 220 final of 12 April 2016.

- Norway notified controls as from 26 November 2015 till 12 May 2016. The reintroduced controls concern all the internal borders but a special focus is given to all ports with ferry connections to Sweden, Germany and Denmark. Both the decision on reintroduction and the subsequent prolongations were motivated by the consequences of the unpredictable migratory pressure and the ensuing challenges for the functioning of the Norwegian society.
- Denmark notified controls as from 4 January 2016 till 2 June 2016, at all its internal borders, with a special focus on ferries arriving from Germany and on the Danish-German land border. While the original decision was motivated by the unexpected migratory flows and the border measures adopted in the neighbouring countries, which could potentially lead to a very large number of illegal migrants being stranded in the Copenhagen area, the last notification emphasised the uncertainties regarding the vast number of refugees and migrants already in the EU.

For Germany and Austria, the Commission specifically acknowledged in its Opinion of 23 October 2015<sup>6</sup> the necessity and proportionality of the measures taken. Based on the information provided by the German and Austrian authorities, the Commission came to the conclusion that these reintroductions of controls at internal borders provide an adequate response to the identified threat to internal security and public policy in compliance with the Schengen Borders Code. This assessment has been confirmed by the subsequent information and data received from these and other Member States, the EU agencies and bodies involved and the Commission's teams present in the hotspots on the ground.

The Commission has been monitoring the situation in all the Member States concerned to assess if the reintroduced internal controls have been kept to the minimum necessary. These controls have not created major disruptions or limited unnecessarily the free movement of persons and goods within the Schengen area. The information available also shows that the measures put in place efficiently contributed to restoring order in the flows of persons crossing specific internal borders and as such curbed the secondary movements.

### **Towards a coordinated approach to internal border control**

In its Communication 'Back to Schengen – a Roadmap'<sup>7</sup>, the Commission referred to the need, if the migratory pressures and the serious deficiencies in external border control were to persist beyond 12 May 2016, to present a proposal to the Council under Article 29 of 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 the border<sup>8</sup> (the Schengen Borders Code currently in force) recommending a coherent Union approach to internal border controls until the structural deficiencies in external border control are mitigated or remedied. The Communication sets out the steps that need to be taken in order to return to a normally functioning Schengen area at the latest by the end of 2016.

Article 29 of the Schengen Borders Code sets out a specific procedure for exceptional circumstances where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control which have been identified in an evaluation report regarding a Member State, insofar as those circumstances constitute a serious threat to public policy or internal security within the Schengen area or parts thereof, and where all other measures were ineffective in mitigating the serious threat identified. In such situations, the Council may, as a last resort measure to

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<sup>6</sup> C(2015) 7100 final.

<sup>7</sup> COM(2016) 120 final.

<sup>8</sup> OJ L 77, 23.3.2016, p.1.

protect the common interests of the Schengen area, recommend that one or more Member States reintroduce border control at all or parts of their borders for a period of up to six months (with possible prolongations for a maximum total period of up to two years).

### **Evaluation of the situation by 12 May 2016**

In accordance with Article 21(3) of the Schengen Borders Code, where the Member State concerned must report on the implementation of the relevant action plan within three months in accordance with Article 16(4) of Regulation (EU) No 1053/2013, and where, following that three-month period, the Commission finds that the situation persists, it may trigger the procedure provided for in Article 29 of the Schengen Borders Code.

In light of the fact that the maximum period allowed by the relevant provisions of the Schengen Borders Code for unilateral re-introduction of internal border controls by certain Member States will expire mid-May (see above), and that Greece has already provided the report foreseen in Article 16 (4) of Regulation (EU) No 1053/2013, the Commission should not wait for the expiration of the three months period before making its assessment whether on 12 May 2016 the situation will persist, especially as the Commission has considerable information at its disposal as regards the situation of external border control in the Hellenic Republic.

This assessment shall be based, among others, on detailed information provided by the Member State(s) concerned or the EU Agencies involved, or obtained during on-site visits. Among the information available to the Commission, there is the information provided by the Commission's teams present in the hotspots in the Hellenic Republic, the information gathered during an announced on-site Schengen evaluation visit to the Hellenic Republic from 10 to 16 April 2016 to verify the application of the Schengen acquis in the field of management of the external border, in accordance with the annual evaluation programme for 2016<sup>9</sup>, and the information gathered by the Commission in the preparation of recent reports related to the migratory situation in the Hellenic Republic.<sup>10</sup>

In its Communication on the "Assessment of Greece's Action Plan to remedy the serious deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of management of the external border", the Commission has requested the Hellenic Republic to provide additional elements and clarifications by 26 April 2016, as it considered that "further improvements are needed to the Action Plan presented by the Greek authorities in order to comprehensively address the deficiencies identified in the November 2015 evaluation. In particular, for many actions, more clarity is needed in terms of timing, responsibility and financial planning. Moreover, some actions cannot yet be considered adequately addressed or completed. Finally, for some actions substantive additional information or clarification is needed." Moreover, in accordance with Article 16(4) of the SEM Regulation, the Hellenic Republic has to report on the implementation of its Action Plan within the same three month period.

On 26 April 2016, the Hellenic Republic provided the Commission with the requested additional elements and clarifications on its Action Plan. On 29 April 2016, the Hellenic Republic transmitted to the Commission the Report on the implementation of the Action Plan.

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<sup>9</sup> C(2015) 8537 of 9.12.2015.

<sup>10</sup> First report on relocation on resettlement of 16.3.2016 (COM(2016) 165 final), Progress report on the implementation of the hotspot approach in Greece of 4.3.2016 (COM(2016) 141 final), Second report on relocation and resettlement of 12.4.2016 (COM(2016) 222 final), First report on the progress made in the implementation of the EU-Turkey Statement of 20.4.2016 (COM(2016) 231 final).

Significant technical and financial support has been provided to the Hellenic Republic by both the Commission and the EU Member States. The Commission has awarded EUR 181 million of emergency assistance since the beginning of 2015. The emergency funding comes on top of the EUR 509 million already allocated to the Hellenic Republic under the national programmes on migration and border management for 2014-2020. Frontex has been facilitating the deployment of technical equipment and human resources of other Member States, to ensure effective controls and protection of the external land and sea borders of the Hellenic Republic, notably through Joint Operations POSEIDON SEA and RAPID INTERVENTION POSEIDON carried out at the sea borders and it has been coordinating joint operations Flexible Operational Activities and Focal Points Land at the external land borders. Frontex has also co-financed the internal re-deployment of equipment and border guard officers by the Hellenic Republic. Finally, the Commission, EASO, Frontex, Europol and Eurojust work on the ground with the Greek authorities to help them fulfil their obligations under EU law and swiftly identify, register and fingerprint incoming migrants in the hotspots.

The Hellenic Republic has made significant progress in addressing many of the deficiencies in its external border management identified during the November 2015 evaluation. Moreover, the initial implementation of the EU-Turkey Statement of 18 March 2016<sup>11</sup>, together with the on-going operations by Frontex and NATO, have led to a sharp decrease in the number of irregular migrants and asylum seekers crossing from Turkey into the Hellenic Republic. This substantial reduction in the flow of irregular migrants and asylum seekers to the Hellenic Republic, together with the support provided by EU Agencies and other Member States in the hotspots, has enabled the Hellenic Republic to significantly improve the registration of newly arriving irregular migrants and asylum seekers. The sustainability of the substantial reduction of the migratory flow needs to be confirmed. Also the progress achieved by Greece in the area of return will depend on the sustainability of the substantial reduction of the migratory flow, as well as on the setting up and maintaining of structures and the provision of adequate resources that will enable an effective return of irregular migrants.

Having analysed the information provided by the Hellenic Republic, the findings made by the Commission experts during the on-site Schengen evaluation visit in April 2016 (without prejudging the evaluation report to be drawn up in accordance with Article 14 of Regulation (EU) No 1053/2013) and the information available via the presence of the Commission services in the hotspots, the following assessment is made:

- With the support of the respective EU agencies (Frontex and EASO), both in terms of equipment and human resources, the registration process of irregular migrants on the Greek islands visited (Lesvos, Samos, Kos and Symi) and at the land border with Turkey visited (registration centre Fylakio) has improved significantly. Arriving irregular migrants are fully identified, fingerprinted and registered into Eurodac. A security check of the migrants and their travel documents is performed. As far as the accommodation of these migrants is concerned, the situation has changed after 20 March 2016 with the start of the application of the EU-Turkey Statement of 18 March 2016.
- The national border management system of the Hellenic Republic presently does not yet have the required operational and administrative capacities to manage external borders according to the standards of the Schengen Borders Code, although work is in progress to establish these capacities. In particular, some core functions, e.g. risk analysis, are presently not implemented in full and the approach to border

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<sup>11</sup> SN 38/16 of 18.03.2016.

management is fragmented. Not all the national capacities suitable for border surveillance (Army, Navy) are fully used by the Hellenic Republic.

- For the surveillance of the sea border with Turkey, Greece is relying significantly on the support of the EU, Frontex and other Member States. However, without this support, an adequate level of sea border surveillance could not be maintained by Greece. For their situational awareness the Hellenic Coast Guard (the border authority responsible for sea border surveillance) is depending on information forwarded to them by the Hellenic Navy and Hellenic Army and on their own limited number of patrol vessels and observation posts. Moreover, the reaction capacity is considered not to be sufficient taking into account the vicinity of Turkey and the risk of irregular migration despite the implementation of the EU-Turkey Statement; there is no reliable near to real-time situational picture at regional and local level and there is no secure mobile communication network available to be used by the relevant border control authorities.
- For the surveillance of the land border with Turkey and Albania, the number of personnel, level of situational awareness and reaction capability, as well as the equipment is at a sufficient level, with some points for improvement. At the land border with the former Yugoslav Republic of Macedonia (Police Directorate Kilkis, responsible for surveillance of the border over a stretch of 87 km) border surveillance is currently not fully compliant with the Schengen Borders Code. In addition there is no automated video surveillance system in place at the border, the situational awareness was found to be very limited and there was no overall operational picture available. There is no systematic registration of migrants found in this region who had not been registered upon entry in the Hellenic Republic.

Consequently, despite the significant efforts made by the Hellenic Republic and the significant progress achieved, not all of the serious deficiencies in its external border management identified during the November 2015 evaluation will be adequately and comprehensively addressed within the three months' time limit laid down in Article 21(3) of the Schengen Borders Code. Some of the serious deficiencies in external border control persist, and they put at risk the overall functioning of the area without internal border control.

An adequate functioning of the border surveillance, systemic identification and registration of irregular migrants, reception and return procedures remain indispensable for a correct functioning of the Schengen area. In addition, a considerable number of unregistered migrants who may seek to move irregularly to other Member States, remain present in the Hellenic Republic.

Consequently, some of the serious deficiencies in external border controls that triggered secondary movements of irregular migrants and prompted several Member States to temporarily reintroduce internal border controls for reasons related to public policy or internal security persist, putting at risk the overall functioning of the area without internal border control. This persistent risk of secondary movements requires a coherent, coordinated and sustainable approach of temporary internal border control.

As all other measures have been ineffective in mitigating the serious threat identified, it follows that the conditions for applying Article 29 of the Schengen Borders Code as a last resort are fulfilled in the present case.

#### **Scope of the proposed recommendation**

Article 29 of the Schengen Borders Code is a safeguard for the overall functioning of the Schengen area. It does not aim at sanctioning or isolating a Member State, nor does it aim at

excluding any Member State from the Schengen area; it rather aims at mitigating serious threats to public policy or internal security within the Schengen area. To date irregular migrants do not travel in significant numbers by air or sea from the Hellenic Republic to other Member States. Re-introducing controls on those passengers would therefore not mitigate the threats and would thus be disproportionate. Therefore, the proposal should not consider introducing internal border controls by all Member States on passengers of flights and ferries coming from/travelling to the Hellenic Republic. Article 29 is by nature a measure limited both in scope and duration to what is strictly necessary to address the threat putting at risk the overall functioning of the area without internal border controls.

Concerning the scope of temporary internal border control recommended under Article 29, based on the information currently available, the Member States currently carrying out internal border control should be permitted to continue doing so as those controls have proved able to efficiently address the serious threat to public policy and internal security that was caused by secondary movements of irregular migrants coming from the Hellenic Republic, namely Germany, Denmark, Austria and Sweden and the associated country Norway. The internal borders currently affected by the checks correspond indeed to the identified migratory routes and threats, with focus on specific land border sections or specific ports.

The Member States that decide to carry out internal border control in accordance with this recommendation should notify the other Member States, the European Parliament and the Commission accordingly.

Internal border control should be carried out only to the necessary extent, be limited in its intensity to the absolute minimum necessary and impede as little as possible the crossing of the respective internal borders for the general public. For this purpose, only targeted controls should be carried out. Furthermore, the necessity of these controls, together with the border sections affected, should be re-evaluated regularly in cooperation with the Member States concerned in view of the changing situation.

Border control should only take place during the time necessary to remedy to all the serious deficiencies in the management of the Union's external border. Several legislative initiatives and actions undertaken by the Union in order to reinforce its external border management (European Coast and Border Guard, return to a full application of EU asylum law provisions by the Hellenic Republic, stepping up of the implementation of the emergency relocation scheme, the EU-Turkey Statement) should also be in place and fully operational without delay and thus further contribute to a substantial reduction in the secondary movements of irregular migrants.

The Commission will monitor the application of this recommendation and the situation on the ground and any time, where necessary, propose adaptations to this recommendation to reflect changes in the migratory flow.

The Commission intends to report to the European Parliament and the Council after four months as from the date of adoption of this recommendation on its application and on that occasion, the Commission may propose amendments in light of the experience acquired and the circumstances.

- **Consistency with existing policy provisions in the policy area**

This recommendation serves to implement the existing provisions in the policy area.

- **Consistency with other Union policies**

This recommendation has links with the Union's internal market and migration and asylum policy.



## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Article 29 of Regulation (EU) No 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.

- **Subsidiarity (for non-exclusive competence)**

Article 29 of Regulation (EU) No 2016/399 specifies that the Council shall adopt a recommendation for temporary internal border control on the basis of a Commission proposal.

Action at Union level is required where the overall functioning of the area without internal border controls is put at risk.

- **Proportionality**

The present proposal does not go beyond what is necessary to achieve the objective pursued.

## **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

n.a.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The protection of fundamental rights was taken into account during the drafting of the proposal.

## **4. BUDGETARY IMPLICATIONS**

n.a.

## **5. OTHER ELEMENTS**

n.a.

Proposal for a

## **COUNCIL IMPLEMENTING DECISION**

### **setting out a recommendation for 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) No 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)<sup>12</sup> and in particular Article 29 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The EU is facing an unprecedented migratory and refugee crisis following a sharp increase of mixed migratory flows since 2015. This has led to severe difficulties in ensuring efficient external border control in accordance with the Schengen acquis and in the reception and processing of migrants arriving. Wider structural deficiencies in the way the Union's external borders are protected have also become evident in this crisis.
- (2) The Hellenic Republic is, mainly due to its geographical situation, particularly affected by these developments and has faced a dramatic increase in the number of migrants arriving on the Aegean islands.
- (3) In accordance with Council Regulation (EU) No 1053/2013<sup>13</sup> and the annual evaluation programme for 2015<sup>14</sup>, an unannounced on-site visit was carried out from 10 to 13 November 2015 to evaluate the implementation of the Schengen acquis in the field of the management of the external border by the Hellenic Republic at its land border (Orestiada, Fylakio, Kastanies, Nea Vyssa) and sea border (Chios and Samos Islands) with Turkey.
- (4) On 2 February 2016 the Commission adopted an implementing decision establishing a report of the evaluation of the Hellenic Republic on the implementation of the Schengen acquis in the field of the management of the external border<sup>15</sup> concluding that there are serious deficiencies in the carrying out of external border control that must be overcome and dealt with by the Hellenic authorities.

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<sup>12</sup> OJ L 77, 23.03.2016, p. 1.

<sup>13</sup> Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).

<sup>14</sup> Commission Implementing Decision C(2014) 8377 of 14 November 2014 establishing the annual evaluation programme of unannounced on-site visits for 2015 in accordance with Article 6 of Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

<sup>15</sup> C(2016) 450 of 2 February 2016.

- (5) On 12 February 2016 the Council adopted recommendations on addressing the serious deficiencies identified during the evaluation and indicated the priorities for implementing them. Appropriate measures should be taken by the Hellenic authorities to ensure that at all its external borders, external border control is carried out and brought in line with the Schengen Acquis in order not to jeopardize the functioning of the Schengen area.
- (6) On 24 February 2016 the Commission adopted recommendations on specific measures to be taken by the Hellenic Republic following the evaluation report of 2 February 2016 to ensure compliance with the recommendations of the Council of 12 February 2016.
- (7) On 12 March 2016 the Hellenic Republic notified its Action Plan to remedy the deficiencies identified in the evaluation report and subject to the Council Recommendations. The Commission presented on 12 April 2016 its assessment of the adequacy of the Action Plan to the Council. While the Commission concluded that significant progress has been made by Greece, further improvements to the Action Plan are needed in order to adequately and comprehensively address the deficiencies identified in the Evaluation Report. It requested Greece to provide additional elements and clarifications on its Action Plan by 26 April.
- (8) On 26 April 2016 the Hellenic Republic provided the Commission with the requested additional elements and clarifications on its Action Plan. On 29 April 2016, the Hellenic Republic transmitted to the Commission the Report on the implementation of the Action Plan in accordance with Article 16(4) of Regulation (EU) No 1053/2013.
- (9) Between 10 and 16 April 2016, in accordance with Regulation (EU) 1053/2013 and the annual evaluation programme for 2016, an announced on-site visit was carried out in the Hellenic Republic<sup>16</sup>.
- (10) The record number of migrants arriving in the European Union since 2015 and the deficiencies at parts of the Union's external border identified during the November 2015 evaluation have resulted in important secondary movements, causing a serious threat to public policy or internal security in several Member States.
- (11) Currently five Schengen States (Austria, Germany, Denmark, Sweden and Norway) carry out border controls at internal borders in response to a serious threat to public policy or internal security that was caused by secondary movements of irregular migrants triggered by serious deficiencies in external border controls. These reintroductions of controls at internal borders provide an adequate response to the identified threat to the internal security and public policy in compliance with the Schengen Borders Code, and these measures are necessary and are considered proportionate. On 23 October 2015, the Commission issued an Opinion on the necessity and proportionality of the controls at internal borders reintroduced by Germany and Austria<sup>17</sup> concluding that the reintroduction of controls, as well as the prolongations thereof, was in compliance with the Schengen Borders Code.
- (12) In its Communication 'Back to Schengen – a Roadmap'<sup>18</sup>, the Commission referred to the need, if the migratory pressures and the serious deficiencies in external border control were to persist beyond 12 May 2016, to present a proposal under Article 29(2) of the Schengen Borders Code to the Council recommending a coherent Union

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<sup>16</sup> C(2015)8537 of 9 December 2015.

<sup>17</sup> C(2015)7100 of 23 October 2015.

<sup>18</sup> C(2016) 120 final.

approach to internal border controls until the structural deficiencies in external border control are mitigated or remedied. The Communication sets out the steps that need to be taken in order to return to a normally functioning Schengen area at the latest by the end of 2016.

- (13) The Hellenic Republic has made significant progress in addressing many of the deficiencies in its external border management identified during the November 2015 evaluation. Moreover, the initial implementation of the EU-Turkey Statement of 18 March 2016<sup>19</sup>, together with the on-going operations by Frontex and NATO, have led to a sharp decrease in the number of irregular migrants and asylum seekers crossing from Turkey into the Hellenic Republic. This substantial reduction in the flow of irregular migrants and asylum seekers to the Hellenic Republic, together with the support provided by EU Agencies and other Member States in the hotspots, has enabled the Hellenic Republic to significantly improve the registration of newly arriving irregular migrants and asylum seekers. The sustainability of the substantial reduction of the migratory flow needs to be confirmed.
- (14) Despite this significant progress, not all of the serious deficiencies identified could be adequately and comprehensively addressed within the three months' time limit laid down in Article 21(3) of Regulation (EU) 2016/399. Some of the serious deficiencies in external border control persist, and they put at risk the overall functioning of the area without internal border control. In particular, the Hellenic Republic has not been able to remedy the structural deficiencies in external border control related its overall border management system, border surveillance and situational awareness. Moreover, a considerable number of persons who stay irregularly on the territory of the Hellenic Republic have not been registered and may seek to move irregularly to other Member States. This risk of secondary movements is particularly high for those irregular migrants who are not accommodated in adequate reception facilities. Finally, while the Council recommended that the Hellenic Republic should take appropriate measures to ensure that at all its external borders, external border control is carried out and brought in line with the Schengen Acquis, border surveillance at the border with the former Yugoslav Republic of Macedonia is currently not fully compliant with the Schengen Borders Code. The Hellenic Republic did not implement the Commission's Recommendation to take further measures at the border with the former Yugoslav Republic of Macedonia to ensure that third-country nationals can only leave the territory of the Hellenic Republic at the designated border crossing points. This adds to the risk of secondary movements of migrants to other Member States.
- (15) Consequently, some of the serious deficiencies in external border controls that triggered secondary movements of irregular migrants and prompted several Member States to temporarily reintroduce internal border controls for reasons related to public policy or internal security persist, putting at risk the overall functioning of the area without internal border control. This persistent risk of secondary movements requires a coherent, coordinated and sustainable approach of temporary internal border control.
- (16) As all other measures have been ineffective in mitigating the serious threat identified, it follows that the conditions for applying Article 29 of the Schengen Borders Code as a last resort are fulfilled.
- (17) Therefore, a recommendation to carry out internal border control under Article 29 of the Schengen Borders Code should be addressed, based on the information available, to those Member States that are currently carrying out internal border control in

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<sup>19</sup> SN 38/16 of 18.03.2016.

response to a serious threat to public policy or internal security that was caused by secondary movements of irregular migrants, namely Germany, Denmark, Austria and Sweden and the associated country Norway. These Member States should be permitted to carry out such controls as these controls adequately address the serious threat to public policy and internal security related to the secondary movements of irregular migrants. The internal borders currently affected by the checks correspond to the identified migratory routes and threats, with focus on specific land border sections or specific ports.

- (18) The Member States that decide to carry out internal border control following the present Recommendation should notify the other Member States, the European Parliament and the Commission accordingly.
- (19) The controls under Article 29 of the Schengen Borders Code should be carried out only to the necessary extent, limited in their intensity of the controls to the absolute minimum necessary and impeding as less as possible the crossing of the respective internal borders for the general public. For this purpose, only targeted controls should be carried out. The necessity of these controls, together with the border sections affected, should be re-evaluated regularly in cooperation with the Member States concerned.
- (20) Border control should take place only as long as required to address the threat to public policy and internal security. Several legislative initiatives and actions undertaken by the Union in order to reinforce its external border management (European Coast and Border Guard, return to a full application of EU asylum law provisions by the Hellenic Republic, stepping up of the implementation of the emergency relocation scheme, the EU-Turkey Statement) should also be in place and fully operational without delay and thus further contribute to a substantial reduction in the secondary movements of irregular migrants,
- (21) The Council takes note that the Commission will monitor the application of this recommendation and, where necessary, propose adaptations to reflect changes in the migratory flow.
- (22) The Commission has also announced that it will report to the European Parliament and the Council after four months as from the date of the adoption of this recommendation on its application and on that occasion may propose amendments to this recommendation in light of the experience acquired and the circumstances,

#### HEREBY RECOMMENDS:

1. Austria, Germany, Denmark, Sweden and Norway to maintain proportionate temporary border controls for a maximum period of six months, starting from the day of the 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. The Member States concerned should notify the other Member States, the European Parliament and the Commission accordingly.
- 3. Border control should 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 Member State that carries out internal border control pursuant to the present Implementing Decision should regularly review the necessity, frequency, location and time of controls, adjust the controls to the level of the threat addressed, phasing them out wherever appropriate, and report to the Commission every two months.

Done at Brussels,

*For the Council*  
*The President*