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NOTE

From: the Presidency
To: Permanent Representatives Committee (Part 2) / Council
Subject: Integrity of the Schengen area

INTRODUCTION

The migratory and refugee crisis has put the application of the Schengen acquis and of the asylum acquis under severe pressure during the last years, with an unprecedented influx of migrants over the last months. In this context, several Member States have temporarily reintroduced border control at their internal borders, with reference to a serious threat to public policy or internal security as provided for by the Schengen Borders Code. Temporary controls at internal borders have also been carried out by a Member State for reasons related to terrorism, following the attacks in Paris on 13 November 2015. In addition, some Member States have taken specific measures to reinforce the control at their external borders.

In its Conclusions of 9 November 2015 on measures to handle the refugee and migration crisis, the Council has identified a number of measures to implement fully the orientations already agreed by the European Council ¹. These measures address a wide range of issues, including in particular reception capacities, hotspots, relocation, return, readmission, resettlement, lack of cooperation of migrants, contingency planning, the functioning of the Schengen area, external and internal borders, smuggling in human beings, visa policy, a common information strategy and the use of the Integrated Political Crisis Response (IPCR).

In the Conclusions adopted on 20 November 2015 on Counter-Terrorism after the Paris terrorist attacks by the Council and Member States meeting within the Council it was agreed to implement reinforced measures for the purpose of fighting terrorism, including strengthening controls at external borders².

Under point 9 of its Conclusions of 9 November 2015, the Council decided "to conduct at the December Justice and Home Affairs Council, on the basis of the 8th bi-annual reporting by the Commission, a thorough debate on the functioning of the Schengen area (1 May 2015 - 31 October 2015) and on the lessons learned from temporary reintroductions of controls at internal borders".

In Coreper on 26 November 2015 the Commission indicated, however, that the said 8th bi-annual report would not be ready for the meeting of the JHA Council in December 2015, but would be integrated in the future border package. The Presidency concluded that Ministers would be invited to hold a debate on the functioning of the Schengen area on the basis of a Presidency paper.

With a view to preparing this debate, the Presidency issued a questionnaire on lessons learned from temporary introductions of controls at internal borders ³. The Presidency has prepared the present paper in the light of replies from Member States, having in mind also major issues that have been raised during recent months regarding the functioning of the Schengen area, with a focus on border controls.

¹ 13880/15
² 14406/15
³ 14073/1/15

ISSUES FOR DISCUSSION

The Presidency invites the Council to hold a debate on the functioning of the Schengen area and to address in particular the following issues related to internal and external border controls.

1. *Consultations between Member States* – Based on the information available to the Presidency, it appears that, in situations where some Member States have applied recently Article 25 of the Schengen Borders Code to reinstate temporarily controls at internal borders, there has not been sufficient prior consultation with other Member States. The same has been noticed for technical reinforcement of borders between border crossing points, for changes in national policies leading to filter migrants at border crossing points and for organizing the transit of migrants from one border to next. This has severely hindered the possibility for neighbouring countries to prepare themselves for changes in migratory routes and for all Schengen countries to handle migratory flows in a coherent manner.

In addition, procedures approved by Coreper in March 2015 for improved information sharing on temporary reintroduction of border controls at internal borders have not been fully respected in all cases.

The Presidency proposes that:

- *even in emergency situations falling under Article 25 of the Schengen Borders Code and requiring immediate action, a Member State deciding to temporarily reintroduce internal border controls should make all efforts to inform neighbouring Member States sufficiently in advance to allow neighbouring Member States to adjust to the new situation and, where possible, to cooperate to reduce the negative impact of the reintroduction of internal border controls;*
- *Member States reconfirm their commitment to fully apply the procedures for improved information sharing on temporary reintroduction of border controls at internal borders agreed in Coreper in March 2015.* ⁴

⁴ 5685/15

2. Securing external borders – A number of irregular migrants entering the EU, or exiting an EU country to re-enter later in the EU, pass through the so-called "green land borders" (the parts of the land borders between border crossing points). According to Frontex, more than 1,2 million illegal border crossings have been detected at the EU external borders for January - October 2015, an increase of 431% compared with the corresponding period in 2014. In addition, a number of illegal crossings have not been registered. The exact figure is unknown.

Also in the context of the fight against terrorism, the Council concluded on 20 November 2015 that control at the external borders which are most exposed should be strengthened "in particular by deploying, when the situation so requires, rapid border intervention teams (RABITs) and police officers in order to ensure systematic screening and security checks".

In view of the critical situation that the EU is currently confronted with, the Presidency proposes that:

- *considerably more efforts should be made to prevent illegal border crossings (entry and exit) through the external "green land borders" and to ensure that external borders are crossed only at the border crossing points referred to in Article 4, subject to the exceptions in Article 4(2), of the Schengen Borders Code;*
- *RABITs are deployed as necessary for that purpose. This is at present particularly relevant for external land borders in relation to the Western Balkan countries route;*
- *A Frontex operation at the northern borders of Greece be deployed without delay to address severe difficulties encountered with neighbouring countries.*

3. Increasing checks regarding illegal migration – Irregular migrants who have entered the Schengen area and have not been registered at their arrival should not be able to stay in that area undetected for long periods of time.

The Presidency proposes that:

- *the possibilities for checking persons inside the Schengen area, including by the use of relevant databases, are fully exploited to ensure that irregular migrants are detected and registered and their cases processed.*

4. *Addressing serious deficiencies in external border controls* – Several Member States have recently reintroduced temporarily internal border control pursuant to Articles 23-25 of the Schengen Borders Code. Under these provisions, a Member State may not implement such controls for more than a total period of six months. A prolongation of this situation would require the adoption by the Council, upon a proposal from the Commission, of a recommendation in accordance with Article 26 of the Schengen Borders Code. Such recommendation may be adopted in exceptional circumstances to address a situation where a Schengen evaluation has identified persistent serious deficiencies relating to external border control and the measures referred to in Article 19a of the Schengen Borders Code are not effective. Where in such cases the overall functioning of the area without internal border control is put at risk, and insofar as the exceptional circumstances constitute a serious threat to public policy or internal security within the area without internal border control or within parts thereof, the period for the reintroduction of internal border control may be extended up to a total maximum of two years.

On this basis, the Presidency:

- *proposes that the Council invites the Commission to consider presenting a proposal as appropriate pursuant to Article 26 of the Schengen Borders Code for a Council recommendation that one or more Member States decide to reintroduce border control at all or at specific parts of their internal borders;*
- *considers that, at the same time, all possible measures should be taken aimed at strengthening the normal functioning of the Schengen area, in particular by reinforcing the control of external borders.*