DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2017/246

of 7 February 2017

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) [1], and in particular Article 29 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In accordance with Article 29 of the Schengen Borders Code, the Council adopted on 12 May 2016, on a proposal from the Commission, an Implementing Decision setting out a Recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk [2].

(2) The Council recommended that five Schengen States (Austria, Germany, Denmark, Sweden and Norway) maintain proportionate temporary border control at a limited number of their internal border sections, for a period of six months, in order to address the serious threat to public policy and internal security in these States by the combination of deficiencies in external border control in Greece and the secondary movements of irregular migrants entering via Greece and who may intend to move to other Schengen States. This period was prolonged by the Council on a proposal from the Commission for another three months on 11 November 2016.

(3) Under Articles 25 and 29 of the Schengen Borders Code, the initial period recommended by the Council can be further prolonged if the exceptional circumstances persist.

(4) The Recommendation of 11 November 2016 required that the Schengen States concerned report monthly to the Commission on the outcome of the controls carried out and on the assessment concerning the continued necessity of such controls, when applicable. The Commission received such reports from all the Schengen States concerned. The information contained in these reports demonstrates that the controls have remained within the conditions set by the Recommendation. It also confirms a progressive stabilisation of the situation in these States, with a continuous reduction in the number of persons to whom entry is refused, as well as the number of asylum applications received.

(5) However, despite this progress, the conditions set out in the Roadmap 'Back to Schengen' in order to allow lifting all internal border controls and returning to a normally functioning Schengen area are still not entirely fulfilled. Moreover, in spite of the ongoing progress and the significant improvement related to the external border management that Greece has made in 2016, an important number of irregular migrants still remains in Greece. Based on trends observed in the past, the Member States most affected by the secondary movements of irregular migrants coming from Greece remain exposed to the risk related to their irregular movements.

[1] OJ L 77, 23.3.2016, p. 1.
[2] OJ L 151, 8.6.2016, p. 8.

(6) In its Communication 'Back to Schengen — A Roadmap', the Commission identified the different policies to be put in place to return to a fully functioning Schengen Area. The European Border and Coast Guard Agency is now swiftly becoming operational, allowing it to provide assistance to Greece at the Northern Greek external border as of February 2017.

(7) Another element identified in the Back to Schengen Roadmap is the implementation of the EU-Turkey Statement. The fourth progress report ([1]) confirms the trend of a steady delivery of results, albeit in the face of many challenges. This implementation nevertheless needs to be constantly monitored. The same applies to the cooperation agreed upon in the Statement of the Western Balkans Route Leaders meeting.

(8) The exceptional circumstances constituting a serious threat to public policy and internal security and putting at risk the overall functioning of the Schengen area therefore still persist.

(9) In light of the facts above, it appears therefore justified, as a last resort measure, to allow a further prolongation of the temporary border controls at the internal borders concerned by the Schengen States currently carrying out such controls, namely Austria, Germany, Denmark, Sweden and the associated country Norway, in accordance with Article 29 of the Schengen Borders Code.

(10) Based on the factual indicators available at this stage, this prolongation should not exceed three months as from the date of adoption of the present Implementing Decision.

(11) The Member States that decide to continue carrying out internal border control under the present Implementing Decision should notify the other Member States, the European Parliament and the Commission accordingly.

(12) Before opting for such controls, the Member States concerned should examine whether other measures alternative to border controls could not be used to effectively remedy the identified threat, such as the exercise of police powers in a manner compatible with Article 23 of the Schengen Borders Code, and decide to reintroduce border controls at the internal borders concerned only as a measure of last resort, when such less restrictive measures for cross-border traffic cannot sufficiently address the threats identified. The Member States concerned should inform of the outcome of this reflection and the reasons for opting for border controls in their notifications.

(13) The controls under the present Implementing Decision should continue to be carried out only to the necessary extent, limited in their intensity to the absolute minimum necessary and adjusted to the circumstances. Accordingly, it can be envisaged that any further decrease of the flow should lead to suspending the controls at given border sections. Only targeted controls, based on constantly updated risk analysis and intelligence, should be carried out, in order to optimise the benefit of the controls and limit their negative effects on free movement. The Schengen States affected by these controls at the relevant border sections should be admitted to regularly express their views on their necessity; the Schengen State having decided to reintroduce such controls should take these views into account when examining and reviewing the necessity of such checks, with the objective of progressively reducing them.

(14) At the end of each month of implementation of the present Implementing Decision, a complete report on the results of the checks carried out should be promptly sent to the Commission and the Council, together with an assessment of their continuous necessity when applicable. This report should include the total number of persons checked, the total number of refusals of entry following the checks, the total number of return decisions issued following the checks and the total number of asylum applications received at the internal borders where the checks take place.

(15) The Council takes note that the Commission has announced that it will continue working with the Schengen States concerned to gradually phase out temporary internal border controls with the objective of returning to a normal functioning of the Schengen area as soon as possible.

(16) The Council also takes note that the Commission has announced that it will closely monitor the application of this Implementing Decision,

([1]) Fourth Report on the Progress made in the implementation of the EU-Turkey Statement (COM(2016) 792).

HEREBY RECOMMENDS:

1. Austria, Germany, Denmark, Sweden and Norway to prolong proportionate, temporary border controls for a maximum period of three months, starting from 11 February 2017, at the following internal borders:

   — Austria at the Austrian-Hungarian land border and Austrian-Slovenian land border,

   — Germany at the German-Austrian land border,

   — Denmark in the Danish ports with ferry connections to Germany and at the Danish-German land border,

   — Sweden in the Swedish harbours in the Police Region South and West and at the Öresund bridge,

   — Norway in the Norwegian ports with ferry connections to Denmark, Germany and Sweden.

2. Before deciding on further prolongation of such controls based on this Recommendation, the Member States concerned should exchange views with the relevant Member State(s) with a view to ensuring that internal border controls are carried out only where it is considered necessary and proportionate. Furthermore, the Member States concerned should ensure that internal border controls are only carried out as a last resort measure when other alternative measures cannot achieve the same effect, and only at those parts of the internal border where it is considered necessary and proportionate, in accordance with the Schengen Borders Code. The Member States concerned should notify the other Member States, the European Parliament and the Commission accordingly.

3. Border control should remain targeted, based on constantly updated risk analysis and intelligence, and limited in scope, frequency, location and time, to what is strictly necessary to respond to the serious threat and to safeguard public policy and internal security. The Member State that carries out internal border control pursuant to the present Implementing Decision should review weekly the necessity, frequency, location and time of controls, adjust the intensity of the controls to the level of the threat addressed, phasing them out wherever appropriate, and report promptly to the Commission and the Council every month.

Done at Brussels, 7 February 2017.

For the Council

The President

L. GRECH