Questions & Answers: A coordinated EU approach for temporary internal border controls

Brussels, 4 May 2016

What has the Commission proposed today?

The Commission has today proposed to allow those Member States currently carrying out internal border controls related to migration, namely Germany, Austria, Sweden, Denmark and the associated country Norway, to continue doing so for a period of up to six months to adequately address the persistent risk of secondary movements of irregular migrants coming from the Greece.

Specifically, the Commission recommends that the 5 countries maintain the following internal border controls for a further six months:

- 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.

The Commission's 'Back to Schengen' Roadmap of 4 March 2016, endorsed by EU Heads of State or Government on 7 March 2016, set out measures to address deficiencies in the management of the EU's external borders. It is rectifying these deficiencies that will allow for controls exceptionally reintroduced at internal borders to be lifted. The Roadmap made clear that if the migratory pressures and the identified deficiencies in external border control in Greece were to persist beyond 12 May, the Commission would need to present a proposal under Article 29 (formerly Article 26(2)) of the Schengen Borders Code to the Council, to allow controls to be prolonged at certain specific borders for a limited period of time.

Are there still deficiencies in Greece's external border management?

Based on the information available, the Commission concluded that Greece has made significant progress in addressing many of the deficiencies at its external border. However, not all of the serious deficiencies identified in Greece's external border management have been adequately and comprehensively addressed within the three months' time limit laid down in the Schengen Borders Code.

Because some of these deficiencies persist, the reasons related to public policy or internal security that prompted several Member States to temporarily reintroduce internal border controls still remain and continue to put at risk the overall functioning of the Schengen area. This persistent risk requires a coherent, coordinated and sustainable approach for temporary internal border controls, in line with the Commission's Roadmap "Back to Schengen".

Does activating Article 29 single Greece out?

The Draft Recommendation adopted today does not propose the introduction of border controls at the Schengen borders of Greece, namely airports and ports. 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.

Greece is, mainly due to its geographical situation, particularly affected by the refugee crisis and has faced a dramatic increase in the number of migrants arriving on the Aegean islands.

This massive inflow is of a nature that would put the external border control of any Member State under severe pressure. However, it does mean that there is an immediate need to address the current shortcomings in the protection of the external border by and in Greece. This is primarily the responsibility of Greece, but ultimately of the entire Union. Greece's external borders are also the external borders of each member of the Schengen area.

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 that would otherwise undermine the overall functioning of the Schengen area.

**Why is the Commission only proposing internal border controls where Member States are already carrying out checks?**

The internal borders where the Commission recommends maintaining controls, and which are currently affected by checks, correspond to identified migratory routes. There is a focus on specific land border sections or specific ports. The controls related to migratory flows carried out by Germany, Austria, Sweden, Denmark and the associated country Norway have proved adequate to address the serious threat to public policy and internal security which was caused by secondary movements of irregular migrants coming from Greece.

**Are the proposed controls linked only to the situation in Greece, or do they take into account the overall migratory situation (e.g. also flows coming from Italy)?**

The temporary controls proposed by the Commission are only linked to the serious deficiencies identified in the external border management by Greece and the secondary movements resulting from these deficiencies.

The Commission proposal based on Article 29 of the Schengen Borders Code (formerly Article 26) follows the completion of a procedure focused on Greece, under the Schengen Evaluation Mechanism:

- Following an evaluation of the application of the Schengen rules in the field of external border management which took place in November 2015, the Commission identified serious deficiencies in the external border management by Greece in an evaluation report adopted on 2 February 2016.
- Recommendations for remedial action were adopted by the Council on 12 February 2016.
- As the Evaluation Report found serious deficiencies, the Commission in addition adopted on 24 February 2016 an implementing decision setting out a Recommendation on specific measures to be taken by Greece. The recommendations aimed to ensure that Greece applies all Schengen rules related to management of the external border correctly and effectively.

As of today, all of the identified deficiencies have not been remedied. The Commission has therefore adopted a proposal under Article 29 of the Schengen Borders Code, as a last resort, to protect the common interests of the Schengen area. The proposal to adopt a coordinated EU approach to temporarily carry out internal border controls will cover the time necessary to remedy the serious deficiencies identified during this specific evaluation in Greece.

**Why has the Commission made a recommendation before the three-month period for reporting on the Action Plan has ended?**

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 below). Greece has already provided its report on the implementation of the Action Plan and the Commission has all necessary information at its disposal as regards the situation of external border control in Greece.

There is therefore no reason for the Commission to wait for the expiration of the three months period before presenting its assessment, when it has already a clear picture of that situation. It then falls to the Council to take its position.

**Can these countries introduce controls at other borders than the ones listed in the recommendation?**

To introduce controls in response to alternative routes not linked to the Greece/Turkey migratory route and concerns relating to Greece's control of its external border, for example from the Central Mediterranean, these countries would need to make separate notifications under the Schengen Borders Code.

The Member States concerned by today's proposals must regularly review the necessity of the targeted controls, and adjust their measures as needed, ensuring they remain proportionate. The Commission may propose adaptations at any time.

**What does this mean for controls between Austria and Italy?**

Controls at the Austrian border with Italy, not related to the Greece/Turkey migratory route do not fall under this proposal and would have to be subject to a separate notification under the Schengen Border Code, restarting the process from scratch and subject to an assessment of the proportionality and necessity of the measures.
Will the Commission evaluate the continued necessity of these controls?

The Commission's proposal foresees monitoring of the application of the Recommendation and the situation on the ground. The Commission may propose adaptations at any time, if necessary, to reflect changes in the migratory flows.

The Commission will report to the European Parliament and the Council four months from the date of adoption of the Recommendation. At that time, the Commission may propose amendments in light of the experience acquired and the circumstances on the ground.

Can Member States still make use of the general provisions of the Schengen Borders Code to temporarily reintroduce internal border controls?

Article 29 of the Schengen Borders Code states that the exceptional procedure referred to under this article is without prejudice to measures that may be adopted by Member States in the event of a serious threat to public policy or internal security under the general provisions for temporary reintroduction of border control at internal borders (Articles 25 to 28 of the Schengen Borders Code).

In the case of a serious threat to public policy or internal security in a Member State, that Member State may reintroduce temporary border controls at all or parts of its internal borders for a maximum of 2 months in cases requiring immediate action (Article 28) and a maximum 6 of months in case of foreseeable events (Article 25).

What will happen when the 6-month period of these controls ends?

As set out in the Commission's "Back to Schengen" Roadmap, the objective is to return to a normally functioning Schengen area at the latest by the end of 2016. In this respect, it is essential that the Commission's proposal for a European Border and Coast Guard is agreed and legally adopted by June, so that it can start functioning during the summer and ensure that the European Union can deliver on the joint responsibility for protecting the external border.

The sustainable implementation of the EU-Turkey Statement of 18 March 2016 is a key factor in restoring the normal functioning of the Schengen area, as well as the full application of the existing Dublin rules, with the full participation of Greece. The implementation of the emergency relocation schemes and the return of persons who have no right to stay in the EU are also important criteria.

Article 29 of the Schengen Borders Code states that the six-month period of controls can be extended, no more than three times, for further periods of up to six months, and up to a maximum period of two years. Any extension would depend on the persistence of the exceptional circumstances that triggered the application of the Article.

What progress has been made by Greece since the Schengen Evaluation?

Greece has made significant progress in addressing many of the deficiencies in its external border management identified during the November 2015 evaluation. The substantial reduction in the flow of irregular migrants and asylum seekers to Greece, together with the support provided by EU Agencies and other Member States in the hotspots, has enabled Greece to significantly improve the registration of newly arriving irregular migrants and asylum seekers. The sustainability of the substantial reduction in the migratory flow needs to be confirmed.

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 and at the land border with Turkey has improved significantly. Arriving irregular migrants are fully identified, fingerprinted and registered into the EU fingerprint database, Eurodac. A security check of the migrants and their travel documents is performed.

Significant technical and financial support has been provided to Greece by both the Commission and the EU Member States. 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 Greece.

Frontex has also co-financed the internal re-deployment of equipment and border guard officers by Greece. 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.

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.

What deficiencies remain in Greece?

Greece's national border management system presently does not have the required operational and
administrative capacities to manage external borders according to the standards of the Schengen Borders Code. In particular, some core functions, such as risk analysis, are not implemented in full and the approach to border management is fragmented.

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.

At the land border with the former Yugoslav Republic of Macedonia, 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 Greece.

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 Greece.

What sources of information are the evaluations based on?

The Commission based its assessment on the following sources of information: the Action Plan presented by Greece to remedy the deficiencies identified in the Council recommendation and the reports on the respective Commission recommendations, the report of the Greek authorities on the implementation of this Action Plan, the findings of its teams of experts obtained during on-site visits, the information provided by the Commission’s teams present in the hotspots in Greece and the information gathered by the Commission in the preparation of recent reports related to the migratory situation in Greece.

Which countries currently have internal border controls in place?

Currently, five Schengen 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:

- Germany notified controls from 13 September 2015 until 13 May 2016 at all its internal borders, with a special focus at the German-Austrian land border.
- Austria notified controls from 16 September 2015 until 16 May 2016 at all internal borders, with a special focus on the Austrian-Slovenian and Austrian-Hungarian land borders.
- Sweden notified controls from 12 November 2015 until 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.
- Norway notified controls from 26 November 2015 until 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.
- Denmark notified controls from 4 January 2016 until 2 June 2016, at all its internal borders, with a special focus on ferries arriving from Germany and on the Danish-German land border.France notified controls from 14 December 2015 until 26 May 2016, at all its internal land borders and air borders, in relation to the national state of emergency introduced after the Paris attacks. As such, these controls are to be considered separately from the process outlined above.