



Questions & Answers: Temporary internal border controls, proportionate police checks and police cooperation in the Schengen area

Brussels, 2 May 2017

What has the Commission recommended today on temporary internal border controls?

The Commission has today recommended Austria, Germany, Denmark, Sweden and Norway phase out the temporary controls currently in place at some of their internal Schengen borders over the next six months. If the Council adopts the Commission's recommendation, Member States will be allowed to maintain the temporary controls currently in place for a maximum of six months but should only do so as a last resort when other measures such as the exercise of police powers in the border area would not be sufficient to address the threats identified.

The Recommendation concerns the following internal borders where controls are already in place pursuant to the previous Recommendations:

- Austria at the Austrian-Hungarian and Austrian-Slovenian land borders;
- Germany at the German-Austrian land border;
- Denmark in Danish ports with ferry connections to Germany and at the Danish-German land border;
- Sweden in Swedish harbours in the Police Region South and West and at the Öresund bridge;
- Norway in Norwegian ports with ferry connections to Denmark, Germany and Sweden.

Why is the Commission recommending the Council allows the prolongation of temporary controls at these internal borders?

As set out in the Commission's "Back to Schengen" [Roadmap](#), the objective of the Commission is to return to a normally functioning Schengen area as soon as possible. Continued progress has been made in the implementation of the Roadmap, leading to a progressive stabilisation of the situation. The roll-out of the European Border and Coast Guard is progressing steadily and cooperation between the Agency and neighbouring third countries is advancing. The sustained implementation of the EU-Turkey Statement has continued to considerably reduce the number of irregular arrivals to Greece and the application of the Dublin rules should be gradually restored.

However, further efforts are still needed in order to ensure the full operationalisation of the European Border and Coast Guard Agency, and the implementation of the EU-Turkey Statement as well as the situation along the Western Balkans route need to be constantly monitored. There is still a significant number of irregular migrants and asylum seekers in Greece (approximately 60,000) and more efforts are needed to step up the processing of asylum requests as well as relocation and the reintegration of Greece in to the Dublin system. The situation in Greece and along the Western Balkans route therefore remains fragile, and the Member States most affected remain exposed to a risk of secondary movements.

These elements point towards the persistence of the exceptional circumstances that led to the adoption of the Council Recommendation of 12 May 2016 and the subsequent prolongation of 11 November 2016 and 7 February 2017. The Commission therefore considers justified, that the Council allows Austria, Germany, Denmark, Sweden and Norway to prolong for a third and last time the current internal border controls for a maximum period of six months.

Does the Recommendation set limits and conditions on the recommended prolongation of internal border controls in these five countries?

Decisions on whether or not to prolong temporary internal border controls are to be taken by the Schengen States concerned. The Commission recommends using alternative measures that can provide the same level of security, such as police checks in border areas and along main transport routes.

Border checks should in all cases only be adopted as a last resort when other, less restrictive measures, cannot sufficiently address the threats identified.

With a view to returning to a normal functioning of Schengen and gradually phasing out the current temporary internal border controls, the Commission encourages the Schengen States to make use of such intensified police checks and to this effect has presented today a Recommendation on how these can be carried out.

Temporary border controls 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 or internal security. The Schengen States should inform of the outcome of this examination in their notification and should inform other Member States, the European Parliament and the Commission on the reasons for opting for the maintenance of internal border controls as a last resort measure. After each month of implementation of the Recommendation, the Member States concerned should report to the Commission and the Council on the outcome of the controls carried out and on the continued necessity of such controls. This report should at minimum 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.

What is the Commission's assessment of the temporary border controls carried out so far under the Council Recommendation?

Based on the monthly reports submitted by the five Schengen States concerned, as well as the information at its disposal, the Commission can conclude that the controls have so far remained within the conditions set by the Recommendation. They have been carried out only when necessary, and have remained proportionate, targeted and limited in their intensity while impeding as little as possible the crossing of the respective internal borders by the general public.

What will happen at the end of the six month period?

Today's prolongation constitutes the third and final prolongation provided for under the Article 29 procedure of the Schengen Borders Code triggered on 12 May 2016. This is the last time a prolongation of these controls is legally possible under EU rules.

In order to facilitate a gradual phasing out of temporary internal border controls the Commission has today presented measures to intensify police checks and police cooperation in the Schengen area, including in border areas, where needed and justified.

What has the Commission recommended today on proportionate police checks and police cooperation in the Schengen area?

The Recommendation on proportionate police checks and police cooperation sets out measures Schengen States should take to allow for a more effective use of existing police powers against threats to public policy or internal security.

When needed and justified, Member States should intensify police checks in border areas and on main transport routes. The Commission also encourages Schengen States to make use of modern technologies to monitor vehicles and traffic flows.

In addition, the Commission recommends that all Member States strengthen cross-border police cooperation to address threat to public policy or internal security. Member States should also enhance the application of existing bilateral agreements that allow for the swift bilateral return of third-country nationals in accordance with the EU Return Directive. That way, irregular secondary movements can be prevented without having to reintroduce internal border controls.

Why is the Commission recommending Schengen States make use of proportionate police checks on their territories, including in the border area?

In the current circumstances of threats related to public policy or internal security intensified police checks in the entire territory of Member States, including in border areas may be both necessary and justified. The decision on such checks as well as their location and intensity remains fully in the hands of the Member States and should always be proportionate to the identified threats.

Such checks may prove more efficient than internal border controls to address threats, notably as they are more flexible than static border controls in specific border crossing points and can be adapted more easily to evolving risks.

The Commission encourages Member States, before introducing or prolonging temporary internal border controls, to assess whether such proportionate police checks would achieve the same results.

Can police checks prevent effectively secondary movements?

Police checks carried out, in a proportionally intensified manner, along the main transport routes or in entire territory, including in border areas, should allow Member States to prevent secondary movements of irregular migrants as efficiently as border controls on internal borders.

How do you make sure that police checks do not *de facto* constitute border checks, with the only difference that they are carried out by the police?

When carrying out police checks limited to border areas Member States are obliged to ensure that police checks do not amount to measures equivalent to border controls. The European Court of Justice established in 2012 (Melki judgment) that in this case Member States must provide specific provisions in relation to the intensity and frequency of such controls.

Over the past years a number of Member States made use of such intensified police checks in border areas (e.g. Austria, Belgium, Czech Republic, Germany, Denmark, Netherlands, France, Italy, Slovenia, and Switzerland). The Commission considers that these practices did not represent measures equivalent to border controls and can be considered as examples of good practice in addressing persistent, increased threats to public policy or internal security.

Are the temporary controls linked only to the situation in Greece? Can Member States still reintroduce temporary internal border controls for other reasons and at other borders than those mentioned in the Recommendation?

Yes. Today's Recommendation (like the previous two) is only linked to the exceptional circumstances resulting from the context of the unprecedented migratory and refugee crisis which started in 2015, and the deficiencies identified in the external border management by Greece as well as the secondary movements resulting from these deficiencies. Controls in response to migration routes not linked to Greece's management of its external border, for example from the Central Mediterranean, cannot take place on the basis of the current Recommendation.

However, all Member States, including the five Member States concerned by the present Recommendation, have the possibility to temporarily reintroduce internal border controls in the event of another serious threat to public policy or internal security. A Schengen State may reintroduce temporary border controls at all or parts of its internal borders for a maximum of two months in cases requiring immediate action (Article 28) and a maximum of six months in case of foreseeable events (Article 25). In such cases, the Commission will assess the necessity and proportionality of the controls carried out.

Will the Commission amend the Schengen Border Code again?

The Commission recognises that new security challenges have arisen in the past years, as demonstrated by the recent terrorist attacks in Berlin, Stockholm and Paris.

The Commission is committed to ensuring that the tools already in place are fully used and that the situation is further stabilised. In this respect, whilst the current legal framework has been sufficient to address the challenges faced until now, the Commission is reflecting on whether it is sufficient to address the evolving security challenges.

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