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NOTE

From: Presidency
To: Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)
Subject: Confidence in the Schengen area

Courtesy translation

During the informal meeting of the Home Affairs Ministers on 3 February in Lille, the Presidency's proposals on the Schengen reform received broad support. The Presidency proposes to take advantage of this SCIFA to clarify governance issues, with a view to organising the first exchanges in the form of the "Schengen Council" on 3 March.

The Schengen Council

As the ministers agreed in Lille, it is more necessary than ever to better articulate the political steering of the Schengen area and the operational level. In order to do this, it is not necessary to create a new Council configuration within the meaning of Article 236 TFEU: the "mixed committee" format of the "Home Affairs" Council already exists and will provide the legal framework for the "Schengen Council".

The Presidency proposes that the Schengen Council's discussions be organised in such a way as to enable it to:

- examine the situation of the Schengen area, on the basis i) of a scoreboard ("barometer") drawn up in close coordination between all the links necessary for the overall governance of Schengen (see below) and supplied by the Commission and the agencies, as well as by the MS, and ii) a report to thoroughly examine the state of Schengen, based in particular on the results of the Scheval evaluations, prepared and presented by the Commission;

- mobilise the relevant instruments to address notably issues of security or relating to difficulties that may arise from the movement of people inside the Schengen area;
- set out the broad political guidelines for the Schengen area, and for the response to the crises affecting our common space;
- discuss the systemic difficulties encountered by several Member States and notably identified during Schengen evaluation, examine the means to be implemented for their follow up and exchange good practices.

The Schengen Council would be the most appropriate forum for essential exchange of views at the political level on the reforms underway. As many ministers emphasised at the informal meeting of the JHA Council on the 3rd of February, it will favour mutual trust between Member States and the Associated Countries. In order to ensure its effectiveness, it should therefore be convened at regular intervals, in principle in the margins of each Council and, whenever necessary, in times of crises.

The Presidency therefore wishes to gather the views of the Member States and Associated Countries on the role and orientations of the Schengen Council. In particular:

- *What should the missions of the Schengen Council be in your opinion?*
- *Are you in favour of the Schengen Council discussing, at least once a year, the orientations of Frontex action, as proposed by the Commission at the informal meeting of JHA Council? Are there any other issues that you would like to discuss in this context?*

Establishment of a scoreboard on the situation at the borders

To date, there are no simple and unified indicators that provide a complete picture of the situation at the borders and which would allow for the prevention or identification of a situation of emergency.

In terms of immigration, several tools exist to assess the level of pressure of the flows:

- Frontex carries out annual vulnerability assessments, establishes and updates situational pictures, analyses security risks at the Union's borders (migration and cross-border criminal activities);
- ISAA (the team formed by the Commission and EEAS under the IPCR) and the Blueprint network collect and process information to produce an integrated analysis;
- At internal borders, Member States have difficulty in objectively accounting for secondary movements, which the proposal amending Eurodac Regulation should eventually improve.

In the field of security, the European Union has several threat assessment mechanisms. Some focus on organised crimes (Europol's SOCTA analysis, the basis of the EMPACT cycle of the fight against organised crime, which has for priority the fight against illegal immigration) while other focus on terrorist threats, with an INTCEN report and an annual Europol report (ECTC) on the terrorist threat in the European Union, as well as a biannual report discussed in the Council's Terrorism Working Party (TWP). These reports are examined by the Council's Standing Committee on Internal Security (COSI).

In the field of public health, the COVID-19 crisis has confirmed the importance of the assessments of the European Centre for Disease Prevention and Control (ECDC) in addition to those of the Member States and the WHO. The reform of the Schengen Borders Code under discussion proposes to create the basis to strengthen decision-making on travel restrictions in epidemic situations. In addition, the European Health Emergency Response and Preparedness Authority (HERA) is now responsible for assessing health threats.

Thus, the drawing up of a simplified scoreboard (“barometer”) at each meeting of the Schengen Council should enable the ministers to have an overall view of the situation in the Schengen area. The various dimensions of this "barometer" were discussed at the informal meeting of JHA Council of February 3rd. It should allow for an assessment of the pressure at the external borders, the state of play on asylum and migration, the state of movements within the Schengen area, security risks and health risks. Such a summary instrument could take into account the following indicators:

- migratory pressure at the external borders: the 2019 Frontex regulation requires the agency to assign an "impact level" to each border section (low, medium, high or critical) but this pressure at the borders could be better assessed in connection with the total number of the authorized entries in the Schengen area, the number of refusals of entry, the deployment of European support resources, or the saturation rate of detention and reception capacities;
- movement of persons inside the Schengen area: this indicator could be based on information on non-admissions, on asylum applications, on transfers of person between Member states as well as on solidarity efforts, on the number of return decision and the number of return operations carried out. Information should be provided by the Member States and on the basis of statistics from Eurodac and Eurostat;
- threats to the security of the Schengen area: the assessment of the situation could be based on the analyses provided by the Member States, Europol, INTCEN and, if necessary, Frontex;
- health risk: the aggregate currently used by the ECDC, which groups together five indicators and makes it possible to assess the response capacity of the Member States, could be used.

For each of these indicators, the threat would be assessed according to a "colour code" allowing for the evaluation of a very risky (red), risky (amber) or no risk (green) situation. The vulnerabilities thus identified would form the basis for discussions at the Schengen Council. The agencies, as well as the Member States, coordinated by the Commission, could provide the necessary data enabling the Commission to compile this barometer on a quarterly basis. The presentation by the Commission of the annual report presenting the state of play of the functioning of the Schengen area, in particular based on the Schengen evaluations, will feed the discussions of ministers within this Council.

The Presidency therefore wishes to gather the views of Member states and Schengen associated countries on the development of this scoreboard:

- *Do the delegations consider the indicators taken into account by the Presidency to be relevant?*
- *Do you believe the proposed frequency of the presentation of the scoreboard ("barometer"), three times a year in normal circumstances and more if necessary in times of crisis, to be appropriate?*

Schengen Coordinator

The permanency and reactivity of the system are fundamental. To ensure these, one possibility would be to appoint a "Schengen coordinator", supported by a coordination system at the operational and technical level. As logical consequence, his role and building on existing capacities, would be i) to prepare the work of the Schengen Council, in particular by ensuring the necessary coordination effort to design the periodic "barometer", which would be an essential tool in the preparation of the discussions by the Council Presidencies, and ii) to ensure the follow-up of the measures and actions taken in the framework of the Schengen Council. The Schengen coordinator would also play a central role in case of crisis at the external borders, in order to ensure a proportionate and appropriate European response at all levels.

The Schengen coordinator would hence ensure the linking of all the actors necessary for the overall governance of Schengen (Commission, agencies, Member States, Council).

- *The Presidency would like to hear the views of the Member States and Schengen Associated Countries on these proposals and on the missions that would be devolved to the Coordinator.*

Solidarity platform in case of crisis at the external border

Emergency situations at the border are becoming more and more frequent and are of a mixed nature, combining migration risks, security risks, civil protection issues and defence issues. Member States must be able to rely on Frontex, spearhead of our border protection. In particular, the agency has a solid intervention mechanism in all sorts of emergency situations that must be fully used by the Member States. However, we cannot exclude the fact that there may be in the future, situations of extreme urgency where, in addition and complementarily to the agency's support, direct and *ad hoc* bilateral support could also be useful.

A reactive platform for the mobilisation of Member States' resources at the external border would allow, complementary to the action of Frontex:

- To coordinate the provision of support in response to the needs of Member States and possibly third countries, beyond what can be offered by the agencies, through bilateral support (e.g. concerning security inside the Schengen area, deployment of staff on the basis of Article 17 of the Prüm Decision 2008/615/JHA);
- complementarity between these bilateral contributions from States and those of Frontex, EASO and the MPCU (the European mechanisms having their own equipment but also relying on contributions from the Member States);
- good coordination between bilateral support and European agencies, as one can be a precursor to the others.

This platform deployed in times of crisis, upon decision of the Schengen Council, could be rely on the IPCR. It would bring together the Member States, Schengen Associated Countries and agencies whose support is required to respond to the challenges encountered.

Therefore, the Presidency wishes to hear the opinions of Member and Associated Countries on the following issues:

- *Do you consider that the solidarity platform meets the need to face crisis situations, as complement to Frontex's action? Should this platform operate permanently or only during crises?*
- *How do you conceive the articulation of this platform with Frontex, the Schengen Council and the coordinator?*
