

José Manuel Barroso
President of the European Commission

Brussels, 13 MAI 2011
PRES - Ares(2011)

Dear Prime Minister,

Thank you for our telephone discussion earlier today concerning the Danish Government's intention to introduce strengthened intra-EU border control measures in order to fight cross-border crime and tax evasion.

I understand from the Danish Government's announcement that the new measures are to take the form of a permanent customs presence at the borders and will imply the construction of new facilities, the recruitment of additional customs staff, comprehensive video surveillance and police back-up.

As you know, the European Commission has already expressed its grave concerns about the announced measures, which appear to put into question the smooth functioning of Europe's Single Market and the benefits that an integrated area without internal borders brings for both businesses and citizens.

Shortly after we spoke, I received a first legal assessment of the announced measures from the Commission services. This analysis raises important doubts about whether the proposed measures, if implemented in the 'intensive and permanent' way that has been announced, would be in line with Denmark's obligations under European and international law, in particular the Treaty provisions and secondary legislation on the free movement of goods, persons, services and capital, and the provisions of the Schengen Borders Code.

As a matter of principle, under the Treaty freedoms and under secondary law Member States may not carry out systematic intra-EU border controls, whether of goods or of people. They may, however, make spot checks where this is justified by over-riding public interests, such as the need to enforce tax legislation, subject always to compliance with the principle of proportionality.

In determining whether such checks may be considered proportionate, the Member State bears the burden of proof: it must demonstrate that such measures are both apt to ensure observance of the legislation in question and indispensable to that end.

Mr Lars Løkke RASMUSSEN
Prime Minister of Denmark

In so far as the measures announced would be implemented in way that amounted to the introduction of systematic frontier controls, they would appear to be contrary to the Treaty freedoms (notably free movement of goods, freedom to provide services). In so far as the envisaged measure would raise obstacles to the crossing of internal borders, and namely to fluid traffic flow at road crossing-points, they would appear to be incompatible with Articles 20 and 22 of the Schengen Borders Code.

I have taken note of the Danish Government's assurances that any new measures will fully respect this legal framework. I would encourage you to refrain from unilateral steps in this regard and to engage with the European Commission in an open dialogue prior to implementing any new measures, in order to make sure that such measures would be fully compatible with Denmark's obligations.

I have asked Commissioner Malmström to coordinate this within the European Commission and would ask your Government to engage in constructive and open cooperation with her and her team, in particular to exchange information about the legal basis for the envisaged checks, the sources of information based on which these checks will be carried out, and whether the announced measures will be part of larger measures to combat crime throughout the whole Danish territory.

Whilst the European Commission is fully committed to ensuring that this dialogue results in a satisfactory outcome, I must recall that if necessary we will take all necessary steps to ensure the full respect of the relevant law.

Yours sincerely,

A handwritten signature in blue ink, consisting of a vertical line on the left and a large, sweeping curve that extends to the right and then loops back down to the left.

José Manuel BARROSO