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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**Third biannual report on the functioning of the Schengen area
1 November 2012 - 30 April 2013**

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1. INTRODUCTION

As announced by the Commission on 16 September 2011 in its Communication on strengthening Schengen governance¹ and supported by the Justice and Home Affairs Council/Mixed Committee on 8 March 2012, the Commission adopts biannual reports to the European Parliament and to the Council on the functioning of the Schengen area. This third report covers the period 1 November 2012 – 30 April 2013.

2. SITUATIONAL PICTURE

2.1. Situation at the Schengen external borders²

During October-December 2012, there were 13 613 detections of irregular border crossing, a 52% reduction compared to the fourth quarter 2011. This figure is the lowest ever since Frontex' data collection began in early 2008. The significant reduction was mainly due to the launch on 30 July 2012 of the Greek operation Shield, involving the deployment of 1 800 police officers to the land border with Turkey. Following this operation, the number of detections of irregular migrants dropped from 2 000 during the first week of August 2012 to 200 in the second week, and further down to 10 in the last week of October.

The majority of detections took place at the EU external sea border (59%). While Greece during July-September 2012 reported more than half of all detections of irregular border crossing, this situation changed following the launch of Operation Shield. During October-December 2012, Italy reported 31% of all detections (4 231 persons), followed by Greece, reporting 30% of the detections (4 035 persons). There was an increase of detections at the Greek sea border with Turkey and the Bulgarian land border with Turkey, probably the result of a displacement effect from the Greek-Turkish land border. As far as nationalities are concerned, migrants from Afghanistan accounted for most detections of irregular border crossing, counting 1 969 persons in October-December 2012. Despite the desperate situation in their home country, the number of Syrian nationals detected was cut by two thirds, compared to July-September 2012, to 1 241 persons.

2.2. Situation within the Schengen area

During October-December 2012, secondary movements from in particular Greece to other EU Member States tended to be reflected in the detections of³:

- irregular border crossing along the Western Balkan land borders;
- migrants arriving at the sea border of southern Italy;
- clandestines on board ferries to Italy;
- migrants travelling with fraudulent documents on flights from Greek airports to many major EU airports.

¹ COM (2011) 561 final

² Frontex quarterly risk analysis October-December 2012

³ Frontex quarterly risk analysis October-December 2012

Operation Aphrodite, the most recent information-gathering exercise on migration flows within the EU/Schengen area, was carried out from 22 October to 4 November 2012, in 25 Member States⁴ as well as in Liechtenstein, Norway and Switzerland. The aim of the operation was to fight irregular migration by focusing on irregular border crossings, secondary movements of irregular migrants within the EU/Schengen area and routes followed by irregular migrants. According to the data reported by the participating Member States, compiled by Cyprus and communicated in December 2012⁵, 5 298 third country nationals from 130 different countries were apprehended during these two weeks. The largest number of irregular migrants within the Schengen area were found in Germany (1 510 persons) and Spain (468 persons) and these were also the main countries of final destination⁶.

In February-April 2013, the European network of airport law enforcement services (AIRPOL) coordinated an action, aimed at fighting trafficking and smuggling of human beings, the use of false documents, identity theft, organized crime and terrorism. The participating airports performed targeted measures for intra-EU risk flights for 24 hours and submitted their results to AIRPOL for further analysis. A report including recommendations for countermeasures is expected in summer 2013.

Although the information above is useful, there still exists a need for improved data collection and analysis of the irregular migratory movements within the EU. Following an expert meeting on 2 October 2012, the Commission and Frontex reviewed Member States feedback on data availability and considered how to best move forward. In a second meeting on 29 April 2013, it was agreed that a pilot project based on available information will be carried out during the second half of the year, with a view to launching a regular collection and analysis of specific data as of the beginning of 2014, coordinated by Frontex.

3. APPLICATION OF THE SCHENGEN ACQUIS

3.1. Cases of temporarily reintroduced control at internal borders

Article 23(1) of the Schengen Borders Code⁷ provides that, exceptionally, where there is a serious threat to public policy or internal security, a Member State may temporarily reintroduce border control at its internal borders. During the period 1 November 2012 - 30 April 2013, control at the internal borders has been reintroduced once.

On 30 November 2012, Norway notified the Commission that on the occasion of the Nobel Peace Prize ceremony in Oslo on 10 December 2012, it was to reintroduce control at the internal borders from 3 until 12 December 2012. During these days, Norway performed border checks on 3 136 persons, whereof 19 persons were refused entry, 8 persons were detained and 9 persons applied for asylum⁸.

3.2. Maintaining the absence of internal border control

The large majority of alleged violations of the Schengen acquis still regard whether the carrying out of police checks close to the internal border have an effect equivalent to border checks (article 21 of the Schengen Borders Code) and the obligation to remove obstacles to fluid traffic flow, such as speed limitations, at road crossing-points at internal borders (article

⁴ France and Greece did not participate.

⁵ Presentation by the Cypriot Presidency in the Council Working Party on Frontiers in December 2012

⁶ Moreover, 728 persons were detected in the United Kingdom, the main country of destination in the EU.

⁷ Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

⁸ Council document 6346/13 FRONT 9 COMIX 90

22 of the Schengen Borders Code). In the period 1 November 2012 – 30 April 2013, the Commission requested information on possible violations of articles 21 and/or 22 of the Schengen Borders Code in two new cases (regarding Germany and Spain), while it closed five cases (involving Germany, Latvia, Lithuania and the Netherlands) and continued investigating four existing cases (regarding Austria, the Czech Republic, Slovakia and Sweden).

3.3. Alleged violations of other parts of the Schengen acquis

Transposition of the Return Directive (2008/115/EC) into national legislation

The deadline for implementation of the Return Directive (2008/115/EC) expired on 24 December 2010. All EU Member States bound by the Directive and all associated countries except Iceland have notified full transposition of the Directive into national law. The Commission is examining the legal transposition and the practical application in the Member States in detail and will present its first application report by the end of 2013.

Implementation of the Regulation on Local Border Traffic (EC No 1931/2006)

Since the entry into force of the local border traffic regime in 2007, the Commission has been monitoring its implementation. In July 2012, the Commission decided to request information from three Member States (Latvia, Poland and Slovenia) on the bilateral agreements that those countries have concluded with neighbouring third countries. The replies submitted in October and November 2012 are in the final stage of internal consideration.

Application of the Schengen acquis during sea border surveillance

Further, on 23 February 2012, the European Court of Human Rights found Italy to be in violation of the European Convention of Human Rights, for intercepting migrants on the high seas and sending them back to Libya⁹. The facts of this case also formed the subject-matter of an examination undertaken by the Commission with the Italian authorities. The Commission therefore analysed the implications of the judgment and inquired into which measures Italy would take to ensure compliance with the judgment. Italy is bound by the ruling and has expressed its commitment to abide by it, particularly as regards any existing or future agreements of an operative nature with Libya. In view of the reassurances provided by Italy, the Commission has now closed this case. The analysis of the judgment has been taken into account in the Commission's proposal for a regulation establishing rules for sea operations coordinated by Frontex, which is intended to replace the annulled Council Decision 2010/252/EU¹⁰. This proposal was adopted on 12 April 2013¹¹ and discussions have been initiated with the European Parliament as well as the Council.

3.4. Weaknesses identified in the framework of the Schengen evaluation mechanism

In the framework of the current Schengen evaluation mechanism¹², Member States' application of the Schengen acquis is regularly evaluated by experts from the Member States, the Council General Secretariat and the Commission.

In the period 1 November 2012 – 30 April 2013, Schengen evaluations were carried out:

- regarding police cooperation in Estonia, Latvia and Lithuania;
- regarding air borders in Poland, Slovakia and the Czech Republic;
- regarding land borders in Estonia, Latvia and Lithuania
- regarding visa in Estonia, Poland and Slovakia.

⁹ Case of Hirsi Jamaa and others v. Italy. Application no. 27765/09

¹⁰ Judgment of 5 September 2012 in case C-355/10, European Parliament v. Council

¹¹ COM (2013) 197 final

¹² SCH/Com-ex (98) 26 def.

The reports are still being finalised, but are expected to include positive as well as negative comments and recommendations on issues such as training, use of risk analysis, information exchange, international cooperation and infrastructure at border crossing points and embassies/consulates. As was the case during the previous six months, there is generally room for improvement, but no deficiencies have been found that would require the Commission to take immediate action.

Following its last mission of February 2013, the Commission invites Greece to continue the implementation of its Schengen action plan and reiterates its commitment to support the Greek efforts to manage its external borders, i.a. through the External Borders Fund and Frontex assistance.

For an indicative calendar of Schengen evaluations in May – October 2013, see Annex I.

3.5. Lifting of control at internal borders with Bulgaria and Romania

Following the Council conclusion in June 2011 that both Bulgaria and Romania fulfil the criteria to apply in full the Schengen acquis, further measures were implemented which would contribute to their accession. Still, the Council has not been able to decide on the lifting of control at the internal borders to these countries. The Commission continues to fully support Bulgaria's and Romania's accession to the Schengen area as well as the Presidency's efforts in this direction.

4. FLANKING MEASURES

4.1. Use of the Schengen Information System

The second generation of the Schengen Information System (SIS II) entered into operation on 9 April 2013, thereby providing Member States with enhanced and new functionalities and categories of alerts. In order to ensure the use of the SIS II to its full potential, the Commission, in cooperation with the Member States, has updated the SIRENE Manual to adapt the practical cooperation among the SIRENE Bureaux (created for exchanging supplementary information on alerts in the SIS) to the SIS II environment. Furthermore, the Commission has supported the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) in establishing the modules for training of technical use of SIS II. Initial residential and e-learning courses have been organised in cooperation with the European Police College (CEPOL) and Member States' experts and are to be continued after the hand-over of the operational management of the SIS II to eu-LISA in May 2013. Finally, an information campaign, focussing on the new system's objective and data protection aspects, accompanied the entry into operations of SIS II.

4.2. Use of the Visa Information System

The Visa Information System (VIS)¹³ is a system for exchange of information on short-stay visas. After its entry into operation in the first region (North Africa), the second region (Near East) and the third region (the Gulf)¹⁴, the VIS has been launched on 14th of March 2013 in the fourth region (West Africa) and fifth region (Central Africa). On 6 June 2013, VIS will

¹³ Council Decision of 8 June 2004 establishing the Visa Information System (VIS) (2004/512/EC)

¹⁴ Commission Implementing Decision of 21 September 2011 determining the date from which the Visa Information System (VIS) is to start operations in a first region (2011/636/EU), Commission Implementing Decision of 21 September 2012 determining the date from which the Visa Information System (VIS) is to start operations in a third region (2012/512/EU), Commission Implementing Decision of 7 March 2013 determining the date from which the Visa Information System (VIS) is to start operations in a fourth and a fifth region (2013/122/EU)

become operational in the sixth region (East Africa) and in the seventh region (South Africa), on 5 September 2013 in the eighth region (South America) and on 14 November 2013 in the ninth region (Central Asia), tenth region (South-East Asia) and eleventh region (Palestine). The sequence and possibly the dates of deployment for the remaining regions are being discussed with Member States and will be decided in the coming months.

The VIS is functioning well and by 6 May 2013 the system had processed 2,9 million visa applications, whereby 2,4 million visas have been issued and 348 000 visas have been refused. Despite continuous efforts by Member States, the main issue of concern remains the mid to long-term effect of a non-optimal quality of data (both biometric and alphanumeric) introduced by the consular authorities of Member States into the VIS. As from 1 December 2012, the VIS is operated by eu-LISA.

4.3. Visa policy and readmission agreements

Post-visa liberalisation monitoring mechanism for Western Balkan countries¹⁵

According to the Frontex report for the period 31 December 2012 – 3 February 2013 the number of asylum applications by Western Balkan nationalities in the top five EU/Schengen states decreased by 44 % in January 2013 compared to the same month in 2012. While the number of asylum seekers from Serbia, Montenegro and the Former Yugoslav Republic of Macedonia decreased (-61% for Serbia, -45 % for Montenegro and -46% for the Former Yugoslav Republic of Macedonia), there was a considerable increase of asylum seekers from Albania (+74%) and Bosnia and Herzegovina (+51%). The top destination continues to be Germany, followed by Sweden, Belgium, Switzerland and Luxemburg.

Readmission agreements

In order to facilitate the readmission to the country of origin of persons residing without authorisation in a Member State, the Commission in April 2012 initialled a readmission agreement with Cape Verde, the signature of which was authorised by the Council in February 2013. The readmission agreement with Turkey was initialled in June 2012 and its signature and the launch of a dialogue on visa liberalisation are expected. In October 2012, a readmission agreement with Armenia was initialled and the Commission continues to work towards its signing and conclusion as soon as possible. Furthermore, negotiations have been launched also with Azerbaijan on visa facilitation and readmission agreements.

¹⁵ Since 19 December 2009, the citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia, holding a biometric passport, have enjoyed visa-free travel to the EU Member States, in accordance with Regulation 539/2001. Under the same conditions the citizens of Albania as well as Bosnia and Herzegovina have enjoyed visa-free travel to the EU Member States since 15 December 2010.

ANNEX I: Indicative calendar of Schengen evaluations in May – October 2013¹⁶

Time	Member States	Theme
2-10 June 2013	Estonia, Latvia, Lithuania	SIS/Sirene
7-18 July 2013	Poland, Slovakia	Land borders
8-14 September 2013	Malta, Slovenia	SIS/Sirene
29 September-9 October 2013	Hungary, Slovenia	Land borders
6-12 October 2013	Czech Republic, Slovakia	SIS/Sirene

¹⁶ Council document 12032/12 SCH-EVAL 99 COMIX 423