

Dear Minister, *Dear Schwaner,*

I thank you for your letter of 17 February that informs us about the border management measures that your government has decided to implement as of tomorrow.

The Commission understands the challenges being faced by Austria and the other States along the Western Balkan route and the need for urgent measures to be taken to address them.

Whilst the prior notification of the measures planned is welcome, the deteriorating situation calls for even closer coordinated actions aimed at stabilising and managing the currently largely uncontrolled migratory flows, knowing that a 'wave through' policy only encourages secondary movements and disorder.

That is why the Commission made clear in its Communication of 10 February on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration that there should be an *"end of the 'wave-through' approach and an enforced insistence on the application of EU rules on asylum and border management"*.

Member States that have temporarily reintroduced controls at their internal borders – as is currently the case in Austria – should indeed fully apply the Schengen Borders Code and refuse entry at that internal border to third-country nationals who do not satisfy the entry conditions, including third-country nationals who have not made an asylum application despite having had the opportunity to do so.

Against this background, the two measures that you plan to implement as from tomorrow raise the following concerns.

Firstly, you intend to introduce rules on migrants *transiting* through Austria. However, it should be clear that a wish to transit through a Member State in order to apply for asylum in another Member State is not an acceptable reason for granting entry. Persons in need of international protection should in principle apply for asylum and remain in the first 'safe' country which they reach. Applicants for international protection are not free to move on to the State of their choice.

Secondly, you plan to apply a ceiling for the number of asylum applications which Austria is prepared to accept, both an annual total and a daily limit. Such a policy would be plainly incompatible with Austria's obligations under European and international law, including in particular the European Convention on Human Rights, the Geneva Convention and Article 18 of the Charter of Fundamental Rights of the European Union. Austria has a legal obligation to accept any asylum application that is made on its territory or at its border. The question whether Austria will then remain responsible for handling the particular application will be decided in accordance with the relevant provisions of EU law, including in particular the Dublin Regulation.

In view of these considerations, I would urge you to reconsider the unilateral measures which you are proposing.

To the extent that applying the existing EU rules will place an even greater burden on frontline States such as Greece, the relocation measures agreed by the Council in September last year are clearly designed to help, and their implementation is an urgent priority. This is the approach which the Commission has been advocating consistently over the past few months. Acknowledging the situation of particular pressure on the Austrian's asylum system, the Commission adopted last week a proposal on the temporary suspension of the relocation of 30% of applicants allocated to Austria under the Council Decisions on relocation.

Finally, the Commission is actively involved in discussions with all countries along the Balkans route. Therefore I would be grateful if you could keep me closely associated to any initiative that you undertake.

Yours faithfully,