Evaluation and monitoring mechanism to verify the application of the Schengen acquis

2010/0312(NLE) - 16/09/2011 - Initial legislative proposal

The Commission presented an **amended proposal** for a Regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

BACKGROUND: the free movement of citizens within the area without internal border controls is based on a system which relies on mutual trust that each participating State will be ready and able to implement the various legislative instruments comprising the Schengen *acquis*.

The European Union has already put in place tools to support Member States to help them meet their obligations and to react to critical circumstances which might put Schengen at risk **These tools can not, however, of themselves alone ensure that the Schengen rules are applied in a consistent manner by each Member State**. The means to check this is the Schengen evaluation mechanism, used to monitor the application of the Schengen *acquis* and issue recommendations on any shortcomings. The current mechanism, relying on an intergovernmental system of peer review, is not strong enough to effectively remedy all weaknesses.

That is why the Commission proposed a Union-led approach last year. This new approach offers the possibility for announced or unannounced visits to a given Member State by Commission-led teams to take place, with experts from other Member States and Frontex, to verify the application of the Schengen *acquis*. A report drawn up following each visit would identify any shortcomings with clear recommendations for remedial action and deadlines for implementing them. The evaluated Member State would then have to establish an action plan setting out how it intends to address these recommendations. Union-level checks on the action plan’s implementation could include further visits.

These changes will improve the evaluation and monitoring system but they do not address situations where these steps are insufficient to remedy a Member State's deficiencies in implementing the acquis and, in **particular, in controlling its external borders**.

Therefore, where measures taken at the Union or national level do not improve the situation, **it might be necessary to reintroduce border control at internal borders with the failing Member State**, where the situation is such as to constitute a serious threat to public policy or to internal security at the Union or national level. **Such an action would only be taken as a measure of last resort, and only to the extent and for the duration necessary to mitigate in a proportionate manner the adverse consequences of the exceptional circumstances**.

The inclusion of such an possibility in the Schengen governance system would also serve as a preventive measure, with deterrent effect.For that reason, the Commission is amending its 2010 proposal to address this situation.

Legislative changes: in order to provide for the necessary legal framework to respond to the invitation of the European Council of 23-24 June 2011 to further strengthen the Schengen evaluation system and to introduce a safeguard clause to respond to truly critical situations where a Member State is no longer able to comply with its obligations under the Schengen rules, the Commission hereby amends its proposal by:

- providing for additional support at the Union and national level,

- strengthening the support given by Frontex,
- introducing the possibility of a Union-based mechanism for the reintroduction of border control at internal borders where a Member State is persistently neglecting its obligation to control its section of the external border, and insofar as the circumstances would be such as to constitute a serious threat to public policy or to internal security at the Union or national level.

Replacing the November 2010 proposal: the new proposal replaces the November 2010 proposal. As the initial proposal has not yet been adopted by the legislators (the European Parliament has not yet adopted a first reading position in accordance with Article 294(3) TFEU on the proposal), the amendment is included in the overall text of that initial proposal, which remains unchanged except for the changes concerning:

- the support to be given to a Member State;
- the possible reintroduction of border control at internal borders (Articles 14 and 15 as well as a reference to "monitoring" throughout the text);
- certain adaptation on the implementing powers given to the Commission (Article 5, 8, 13 and 17). These adaptations are necessary as the relevant horizontal rules on 'comitology' have been modified after the presentation of the initial proposal by Regulation (EU) No 182/2011 of the European Parliament and of the Council;
- some further adaptations are made to the text, including those relating to the role of Frontex (Article 6), Europol (Article 8) and reporting to the European Parliament and Council (Article 19).

LEGAL BASIS: Article 77 (2) (e) of the Treaty on the Functioning of the European Union (TFEU). Article 77 provides for the abolition of border control at internal borders as the ultimate objective of an area of free movement of persons within the European Union, as laid down in Article 26 of the TFEU.

CONTENT: the abolition of border control at internal borders must be accompanied by measures in the field of external borders, visa policy, the Schengen Information System, data protection, police cooperation, and judicial cooperation in criminal matters. Correct application of these measures makes it possible to maintain an area without border control at internal borders.

Evaluation and monitoring of the correct application of these measures therefore serves the ultimate policy objective of maintaining the area free of border control at internal borders. Measures aimed at mitigating the adverse impact of persistent serious deficiencies in a Member State's application of the Schengen *acquis*, including the possibility of resorting to the **exceptional temporary reintroduction of border control at internal borders as a measure of last resort** in circumstances where the deficiencies would be such as to constitute a serious threat to public policy or to internal security at the Union or national level, likewise serve to further the attainment of this ultimate objective.

From a technical point of view, the main provisions concern:

- **Measures at the external borders and Frontex support**: where serious deficiencies in the carrying out of external border control or return procedures are identified in the evaluation report, the Commission may decide to request the evaluated Member State to take certain specific measures, which may include one or more of the following: (i) initiation of the deployment of European Border Guard teams in accordance with the provisions of the Frontex Regulation; (ii) submission of its strategic decisions on risk assessment and plans for the deployment of equipment for approval to Frontex; (iii) closing of a specific border crossing point for a limited period of time until the weaknesses are remedied.
- **Serious deficiencies related to external border control or return procedures**: if the evaluation report concludes that the evaluated Member State is seriously neglecting its obligation to carry out external border control or return procedures, the evaluated Member State shall report on the implementation of the action plan within three months of receipt of the evaluation report. If,

following the three months period, the Commission finds that the situation persists, Articles 23, 23a and 26 of the Schengen Borders Code apply.

BUDGETARY IMPLICATIONS: The proposal for the establishment of a Schengen evaluation mechanism presented in November 2010 contains all necessary information on the budgetary implications, which remain unchanged (please refer to 16/11/2010).