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

2010/0312(NLE) - 08/06/2012

The Council reached a **general approach** on amendments to the the Schengen Evaluation Mechanism, the common rules to verify the application of the Schengen acquis. The Council also decided to change the legal basis from Article 77 to Article 70 TFEU.

The Council also adopted a general approach on amendments to the Schengen Borders Code, the common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances.

More specifically, as regards the **revision of the Schengen evaluation mechanism** : throughout the discussions of the Schengen Evaluation proposal the **question of legal basis has been a key question**. A vast majority of the Member States, as well as the Council Legal Service, consider that the correct legal basis for such a mechanism is Article 70 TFEU, which was specifically inserted in the Treaty for this very purpose.

The Council unanimously decided to **change the legal basis** of the proposal from Article 77(2)(e) **to Article 70 TFEU**. The Council also **decided to consult the European Parliament on a voluntary basis to ensure that the opinion of the Parliament will, to the fullest extent possible, be taken into consideration by the Council** in all its aspects before the adoption by the Council of the final text.

This Article enables the Council, on a proposal from the Commission, to adopt by qualified majority arrangements on mutual evaluations. Furthermore, Article 70 provides that mutual evaluations are to be conducted by the "Member States, in collaboration with the Commission" and for the European Parliament and the national parliaments to be "informed of the content and results of the evaluation".

Concerning the substance of the text on the table (see 5754/6/12), the following main provisions should be mentioned:

Purpose and scope: as under the current system, the rules do not only apply to verifying the correct application of the Schengen acquis by those countries which are already part of the Schengen area, but also to verifying that countries wishing to join the Schengen area meet all the conditions to start applying the Schengen acquis.

Responsibilities: in contrast to the current system, which relies on an inter-governmental system of peer review where the Commission participates only as an observer, as well as in contrast to the original Commission proposal of a Union-led approach with on-site visits carried out by Commission-led teams, the compromise text states that the member states and the Commission shall be jointly responsible for the implementation of the evaluation and monitoring mechanism. Each evaluation team will have two leading experts, one from a member state and one from the Commission.

Evaluations: the evaluations cover all aspects of the Schengen acquis, including the absence of border controls at internal borders, which is currently not covered. The new text also adds that account should be taken of the functioning of the authorities which apply the relevant parts of the Schengen acquis.

Multiannual and annual programmes: the Commission will be responsible for establishing multiannual and annual evaluation programmes which will include announced and unannounced on-site visits. The annual evaluation programmes will take into account recommendations made in an annual risk analysis

drafted by the European border management agency (Frontex). Announced on-site visits to a member state will be preceded by a questionnaire.

Evaluation reports: evaluation teams will seek a compromise on the final reports which will, as is currently the case, include deficiencies and recommendations for remedial action. The Council will adopt the evaluation reports as submitted by the Commission.

Follow-up: the member state concerned will be required to submit an action plan to remedy any deficiencies. The Commission will continuously monitor and report on the action plan to the Council until the action plan is fully implemented. Such monitoring and reporting may include announced or unannounced follow-up visits.

Serious deficiencies: if an on-site visit reveals a serious deficiency deemed to constitute a serious threat to public policy or internal security within the area without internal border controls, the Commission, on its own initiative or at the request of a member state, shall inform the Council and the European Parliament as soon as possible.

Yearly summary report: the Commission will present a yearly summary report to the Council and the European Parliament on the evaluations carried out.