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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Carlos COELHO (EPP, PT) on the proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation mechanism to verify application of the Schengen *acquis*.

The parliamentary committee recommends that the European Parliament's position adopted at first reading under the ordinary legislative procedure should be to modify the Commission's proposal as follows:

**Legal basis:** the committee considers that the legal basis on which the future Regulation should be based should be on the whole of Article 77**(2)** of the Treaty on the Functioning of the European Union (TFEU) - and **not simply point (e)** thereof which only concerns the measures regarding the absence of controls at internal borders as such. In opting for the whole of Article 77(2), Members want reference to be made to other related measures in the Schengen *acquis* concerning visas, checks on the external borders, freedom of movement for third country nationals and measures related to the establishment of an integrated management system for external borders, and thus for **the evaluation mechanism to cover the application of the entire Schengen *acquis***.

Moreover, they propose that Article 77(2) base should be in combination with **Article 74 TFEU** Which provides for the adoption of measures to ensure administrative cooperation between the authorities of the Member States, as well as between those and the Commission, in the areas covered by Title V of the TFEU ("Policies on border checks, asylum and immigration", "Judicial cooperation in criminal matters" and "Police cooperation"). As these are also part of the Schengen *acquis*, Members consider that this article should be added to the legal basis initially proposed for the future regulation.

**A system based on mutual trust:** Members emphasise that the Schengen area without border control at internal borders is founded, at its core, on **mutual trust between Member States** and relies on effective and efficient application by the Member States of accompanying measures in the areas of external borders, visa policy, the Schengen Information System (SIS). They also stress that the Schengen area is one of the main achievements of the Union. **Therefore, the absence of controls and checks at internal borders should be safeguarded**.

**Uniformity of the system:** Members oppose a system of double standards which is very strict in regard to candidate countries and consider that there should be one single uniform mechanism based on the same criteria for all. They call for the proposed evaluation and monitoring mechanism to be uniform and able to check the proper application of the Schengen acquis **both in the candidate States and in those Member States to which the Schengen acquis applies in whole or in part**. That mechanism should ensure **high uniform standards** in application of the Schengen *acquis*.

**Scope of the mechanism:** Members stipulate that the evaluation should ensure that the Member States apply the Schengen rules effectively in accordance with fundamental principles and norms. Therefore, the evaluation should encompass all relevant legislation and operational activities contributing to the functioning of an area without border control at internal borders

Members list the main objectives of the evaluation of the mechanism in question:

- to ascertain whether all the preconditions for bringing the Schengen *acquis* into force in a candidate State are fulfilled;
- to verify application of the Schengen *acquis* in the Member States to which the Schengen *acquis* applies in full; and
- to verify the application of the provisions of the Schengen acquis by those Member States which, according to Decision 2000/365/EC and Decision 2002/192/EC, apply the Schengen *acquis* only in part, limited to the extent of their participation in the Schengen *acquis*.

Members also consider that the mechanism should provide for a risk analysis regarding corruption and organised crime, in so far as **corruption and organised crime** may undermine the application of the Schengen *acquis* by the Member States. This control will be carried out by EUROPOL which will propose appropriate recommendations, which will also be transmitted to the European Parliament. An equivalent procedure will be provided for with a view to monitoring the respect of fundamental rights in this context by the **EU's Fundamental Rights Agency**.

**Application of measures in the event of a serious deficiency being detected:** a series of measures are proposed if **serious deficiencies are detected in carrying out controls at external borders,** such as the closing of particular border crossing-points for a limited period of time until these deficiencies are remedied. As a measure of last resort and in case of a serious threat to public policy or to internal security, provision could be made for t**he possibility of reintroducing border control at internal borders to the extent and for the duration necessary to remedy those deficiencies**. Upon the introduction of border controls, the Commission should set up financial compensatory measures in order to support the Member States concerned.

The evaluation and monitoring mechanism should provide for a **support mechanism** in the event of a serious deficiency being detected in the application of the acquis. This support would cover a period of six months with the technical assistance of Frontex and other relevant Union agencies.

**On-site visits:** given that the mechanism should also include verification of the relevant legislation on the abolition of controls at internal borders and checks within national territory. The relevant onsite visits should be entrusted to Commission representatives in cooperation with **Member States' experts and representatives of the European Parliament**. The monitoring mechanism may also involve the participation of EU bodies such as FRONTEX, EUROPOL and EUROJUST.

National experts cannot participate in on-site visits in the Member State in which they are employed. The Commission should invite the Member States to designate experts who are available for participation in the respective on-site visits.

The European Data Protection Supervisor and the national supervisory authorities, each acting within the scope of their respective competences, should participate in on-site visits concerning **data protection**.

Members stipulate that Member States may under no circumstance be provided with prior information of an **unannounced** on-site visit.

Additional provisions were introduced to improve the technical organisation of on-site visits.

**Information to the European Parliament:** a series of technical provisions were introduced to keep Parliament informed of the responses to questionnaires sent to the Member States. Thus, Parliament will be able to have the possibility of inviting the Commission to provide information on the progress made in implementing the action plans drawn up by Member States In response to deficiencies in the application of the Schengen *acquis*.

Implementing powers: lastly, Members propose the procedure applicable for the monitoring process, in particular as regards the adoption and adaptation of the annual evaluation programme, for drafting the evaluation reports, for scheduling announced and unannounced visits with a view to verifying the implementation of the action plan adopted by a Member State to remedy the weaknesses identified. In these specific cases, the implementing powers should be conferred on the Commission exercising its powers in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council, by means of the **examination procedure**.