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

2010/0312(NLE) - 30/05/2013 - Legislative proposal

PURPOSE: to establish an evaluation mechanism to verify the application of the Schengen acquis.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the Schengen area without border control at internal borders 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, data protection, police cooperation, judicial cooperation in criminal matters and drugs policies.

By Decision SCH/Com-ex (98) 26 def of the Executive Committee of 16 September 1998, a Standing Committee on the evaluation and implementation of Schengen was set up. The Standing Committee was given the mandate, first, to establish whether **all the preconditions for lifting border control at internal borders with a candidate State have been fulfilled and, second, to ensure that the Schengen acquis is properly applied by the States already implementing the acquis in full**.

A specific evaluation and monitoring mechanism to verify application of the Schengen acquis is necessary given the need to :

- ensure high uniform standards in application of the Schengen acquis in practice and;
- maintain a high level of mutual trust between those Member States that form part of an area without border control at internal borders.

The aim of this proposal is precisely to review the 1998 evaluation mechanism to cover all areas of the Schengen acquis except those where a specific evaluation mechanism already exists within EU law. The evaluation mechanism should set up transparent, efficient and clear rules on the method to be applied for the evaluations, the use of highly qualified experts for on-site visits and the follow-up to the findings of the evaluations.

The mechanism shall be supported by Frontex, Europol and Eurojust in the areas covered by their mandate.

It should be noted that the evaluation and monitoring should pay particular attention to respect of fundamental rights in the application of the Schengen acquis.

LEGAL BASIS: Article 70 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposal seeks to establish an evaluation mechanism to verify the application of the Schengen acquis in Member States.

Scope: the draft Regulation aims in particular to:

- to verify application of the Schengen acquis in the Member States to which the Schengen acquis applies in full as well as in Member States to which, in accordance with the relevant Protocols annexed to the TEU and to the TFEU, the Schengen acquis applies in part;
- to verify that the necessary conditions for the application of all relevant parts of the Schengen acquis have been met in those Member States in respect of which a Council decision stating that the provisions of the Schengen acquis shall apply in full or in part has not been taken, with the exception of those Member States whose evaluation had already been completed at the time of entry into force of this Regulation. Experts from the Member States which, in accordance with the relevant Act of Accession, do not yet fully apply the Schengen acquis shall nevertheless participate in evaluation of all parts of the Schengen acquis.

Responsibilities: **the Member States and the Commission shall be jointly responsible** for implementation of the evaluation and monitoring mechanism, with the support of the EU bodies, offices and agencies involved in the implementation of the Schengen acquis.

The Commission shall have an overall coordination role in relation to the annual and multiannual programming, the drafting of the questionnaire and the schedules of the visits, the conduct of the visits and the drafting of the evaluation reports and recommendations. It shall also ensure the follow-up and monitoring of the evaluation reports and recommendations.

Evaluations: evaluations may cover all aspects of the Schengen acquis, including the effective and efficient application by the Member States of accompanying measures in the areas of:

- external borders,
- visa policy,
- the Schengen Information System,
- data protection,
- police cooperation,
- judicial cooperation in criminal matters,
- as well as the absence of border control at internal borders.

Evaluations may consist of **questionnaires and of on-site visits which may be announced or unannounced**.

Multiannual evaluation programme: a multiannual evaluation programme covering a period of **five years** shall be established by the Commission where appropriate after consulting Frontex and Europol, not later than six months before the start of the next five-year period. The Commission shall transmit the multiannual evaluation programme to the European Parliament and the Council.

Each Member State shall be evaluated during each five-year period covered by a multiannual evaluation programme. The multiannual evaluation programme shall list the order of Member States to be evaluated each year.

Annual evaluation programme: an annual evaluation programme shall be established by the Commission, taking into account notably the r**isk analysis provided by Frontex** and where appropriate information provided by Europol or other Union bodies.

The first section of the annual evaluation programme, including a provisional time-schedule of the on-site visits shall list the Member States to be evaluated in the next year in accordance with the multiannual evaluation programme. That section shall list the areas to be evaluated and the on-site visits.

The second section of programme which shall list the unannounced on-site visits to be carried out in the next year. It shall be considered **confidential**.

Frontex risk analysis: by not later than 31 August each year, Frontex shall submit to the Commission and the Member States a risk analysis in accordance with its mandate and taking into account, inter alia, illegal immigration and significant changes in the operational environment at the external borders, and making recommendations for priorities for evaluations in the next year. The recommendations shall refer to specific sections of the external borders and to specific border crossing-points to be evaluated in the next year under the multiannual evaluation programme. The Commission shall transmit the risk analysis without delay to the European Parliament and the Council.

At the same time, Frontex shall submit to the Commission a separate risk analysis making recommendations for priorities for evaluations to be implemented in the form of **unannounced on-site visits** in the next year, independently of the Member States to be evaluated in accordance with the multiannual evaluation programme. These recommendations may concern any region or specific area and shall contain a list of at least ten specific sections of the external borders and at least ten specific border crossing points.

The Commission may also, where appropriate, ask for risk analysis, including regarding corruption and organised crime.

Questionnaire: by not later than 1 July of the previous year, the Commission shall send a standard questionnaire to the Member States to be evaluated in the next year. Member States shall provide their replies to the questionnaire to the Commission within eight weeks of communication of the questionnaire. The Commission shall make the replies available to the other Member States and shall inform the European Parliament of the replies. **If so requested by the European Parliament, notably due to the seriousness of the matter**, on a case-by-case basis and in accordance with the applicable rules on relations between the European Parliament and the Commission, the **Commission shall also inform the European Parliament** of the content of a specific reply.

Teams responsible for on-site visits: the teams responsible for on-site visits shall consist of experts designated by Member States and of Commission representatives. Measures are set out as regards the mobilisation of experts, delays, competences, etc as well as specific measures in case of unannounced visits.

The number of Member States' experts participating in evaluation on-site visits may not exceed **eight persons** for announced on-site visits and **six persons** for unannounced on-site visits.

Member States' experts may not participate in an evaluation mission that includes an on-site visit to the Member State where they are employed.

The Commission may invite Frontex, Europol, or other EU bodies to designate a representative to take part as an observer in an on-site visit concerning an area covered by their mandate.

The leading experts for on-site visits shall be a Commission representative and an expert from a Member State, who shall be appointed jointly by mutual agreement.

Provisions are also provided to define:

- the conduct of on-site inspections (whether announced or unannounced);
- the establishment of evaluation reports following evaluations (so to identify the compliance of each Member State and possible improvements if necessary).

The evaluated Member State shall provide its comments on the draft evaluation report within two weeks. The Commission shall transmit the evaluation report to the European Parliament.

Recommendations: when drafting the evaluation report and in the light of the findings and the assesments contained in that evaluation report, Member States' experts and the Commission representatives shall draft **recommendations for remedial actions aimed at addressing any deficiencies** and an indication of the priorities for implementing them, as well as examples of good practices where appropriate.

The Council shall adopt the recommendations and shall transmit them to the European Parliament and the national parliaments.

Follow-up and monitoring: within three months after adoption of the recommendations, the Member State concerned shall provide the Commission and the Council with an **action plan to remedy any deficiencies identified**. If the recommendations conclude that the evaluated Member State is seriously neglecting its obligations, the evaluated Member State shall provide the action plan within one month. The Commission shall transmit such action plan to the European Parliament.

Depending on the seriousness of the deficiencies identified and the measures taken to remedy them, the Commission may schedule announced on-site revisits to verify implementation of the action plan. The Commission may also foresee **unannounced on-site revisits**.

The Commission shall inform the European Parliament and the Council on a regular basis about the implementation of the action plans or improvements measures.

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 the European Parliament or a Member State, shall inform the European Parliament and the Council as soon as possible thereof.

Sensitive information: the teams shall regard as confidential any information they acquire in the course of performing their duties. The evaluation reports drawn up following on-site visits shall be classified as EU RESTRICTED/ RESTREINT UE in accordance with applicable security rules. Classification shall not preclude information from being made available to the European Parliament.

Committee and implementing powers: some implementing powers should be conferred on the Commission and some on the Council. The powers to prepare and plan the evaluations and the power to adopt the evaluation report should be conferred on the Commission. These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council on the Commission's exercise of implementing powers. The examination procedure should be applicable for the adoption of such acts.

Transitional provisions: the first multiannual evaluation programme and the first annual evaluation programme shall be established six months after this Regulation enters into force. The starting dates for both programmes shall be one year after this Regulation enters into force.

The first risk analysis to be provided by Frontex shall be provided to the Commission not later than three months after this Regulation enters into force.

Reporting to the European Parliament and the Council: the Commission shall present a **yearly comprehensive report** to the European Parliament and the Council on the evaluations carried out in the Member States. This report shall include information on:

- the evaluations carried out during the previous year, and
- the conclusions drawn from each evaluation and the state of play with regard to remedial action.

Review: the Commission shall undertake a review of the operation of this Regulation and submit a report to the Council within 6 months after the adoption of all reports regarding the evaluations covered by the first multiannual evaluation programme. Such review shall cover all the elements of this Regulation, including the functioning of the procedures for adopting acts under the mechanism. The report shall be transmitted to the European Parliament.

Transition: the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen shall continue to apply **until 1 January 2016**.