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

2010/0312(NLE) - 10/06/2013 - Committee report tabled for plenary, 1st reading/single reading

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

Legal background of the proposal: the text on which the European Parliament is being consulted is the result of an **agreement reached between the three institutions** following a long process of negotiations.

In 2009, Parliament rejected two proposals and invited the Commission to withdraw them and to submit new, substantially improved proposals in accordance with the codecision procedure and taking into account the entry into force of the Treaty of Lisbon. A new proposal was put forward in November 2010, based on Article 77(2)(e) TFEU, which provides for the **ordinary legislative (co-decision) procedure**.

Whilst Parliament responded favourably to this proposal, the Council decided to **change the legal basis to Article 70 TFEU**, arguing that this article was specifically inserted in the Treaty for the purpose of approving agreements on mutual evaluations. **This decision gave rise to an unprecedented interinstitutional dispute.**

After intense negociations, Parliament finally succeeded in guaranteeing its involvement both in the current procedure and in future initiatives in this field. Even though the mechanism is to be approved on the basis of Article 70 of the Treaty, which does not provide for Parliament to be involved in the decision-making process, **this regulation has in effect been negotiated as a co-decision text and includes the vast majority of the amendments tabled by Parliament** in its previous report (see report dated 12 July 2012).

The Council also confirmed its intention to adopt the regulation in accordance with the exact terms of the agreed text; it also confirmed its i**ntention to consult Parliament if a decision was taken to amend the regulation in the future**.

This commitment is given not only in a joint statement from the three institutions annexed to the regulation, but also in the text of the regulation itself and in the evaluation clause laid down in the Schengen Borders Code (Article 37a). This latter document also includes important guarantees with regard to any future amendment of the Schengen evaluation mechanism, while setting out a large number of details relating to the operation of the evaluation mechanism.

For reasons of legal certainty and consistency, the Council is now under pressure not to make any amendments to the evaluation mechanism that **could conflict** with the terms of the evaluation clause laid down in the Schengen Borders Code.

The committee recommends the European Parliament to approve the Council draft unamended and approve the joint statement by Parliament, the Council and the Commission annexed to this resolution.

Draft Interinstitutional statement: the European Parliament, the Council and the Commission welcome the adoption of the Regulation amending the Schengen Borders Code in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances and of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the

application of the Schengen acquis. They believe that these new mechanisms **address adequately** the call of the European Council in its Conclusions of 24 June 2011 for:

- **an enhancement of the cooperation and the mutual trust between the Member States in the Schengen area**;
- an effective and **reliable monitoring and evaluation system** in order to ensure the enforcement of common rules and the strengthening, adaptation and extension of the criteria based on the EU acquis.

The draft statement recalls that Europe's external borders must be effectively and consistently managed, on the basis of **common responsibility, solidarity and practical cooperation**.

In parallel, the three institutions underline that this new evaluation system is an EU-based mechanism and that it will cover all aspects of the Schengen acquis and involve experts from the Member States, the Commission and relevant EU agencies. They understand that **any future proposal from the Commission for amending this evaluation system would be submitted to the consultation of the European Parliament** in order to take into consideration its opinion, to the fullest extent possible, before the adoption of a final text.