Basic information

2010/0312(NLE) NLE - Non-legislative enactments Regulation	Procedure completed
Evaluation and monitoring mechanism to verify the application of the Schengen acquis Repealed by 2021/0140(CNS) **Subject** 7.10.02 Schengen area, Schengen acquis 7.10.04 External borders crossing and controls, visas 7.30.05 Police cooperation 7.40 Judicial cooperation 8.50.01 Implementation of EU law	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	COELHO Carlos (PPE)	09/12/2010
	Shadow rapporteur ENCIU Ioan (S&D) WEBER Renate (ALDE) ŽDANOKA Tatjana (Verts/ALE) ERNST Cornelia (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3151	2012-03-08
Justice and Home Affairs (JHA)	3172	2012-06-08
Justice and Home Affairs (JHA)	3260	2013-10-07
Justice and Home Affairs (JHA)	3244	2013-06-06
Justice and Home Affairs (JHA)	3111	2011-09-22

European

Commission DG	Commissioner

Commission	Migration and Home Affairs	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
16/11/2010	Initial legislative proposal published	COM(2010)0624	Summary
23/11/2010	Committee referral announced in Parliament		
16/09/2011	Initial legislative proposal published	COM(2011)0559	Summary
22/09/2011	Debate in Council		Summary
08/03/2012	Resolution/conclusions adopted by Council		Summary
08/06/2012	Debate in Council		Summary
11/06/2012	Vote in committee		
12/07/2012	Committee report tabled for plenary, 1st reading/single reading	A7-0226/2012	Summary
30/05/2013	Legislative proposal published	10273/2013	Summary
10/06/2013	Vote in committee		
10/06/2013	Committee report tabled for plenary, 1st reading/single reading	A7-0215/2013	Summary
10/06/2013	Decision by Parliament		
10/06/2013	Report referred back to committee		
11/06/2013	Debate in Parliament		
12/06/2013	Decision by Parliament	T7-0260/2013	Summary
12/06/2013	Results of vote in Parliament		
07/10/2013	Act adopted by Council after consultation of Parliament		
07/10/2013	End of procedure in Parliament		
06/11/2013	Final act published in Official Journal		

Technical information

Procedure reference	2010/0312(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consultation of Parliament
Legislative instrument	Regulation
Amendments and repeals	Repealed by 2021/0140(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 70
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/12862

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE460.834	13/04/2011	
Amendments tabled in committee		PE464.941	30/05/2011	
Committee report tabled for plenary, 1st reading/single reading		A7-0226/2012	12/07/2012	Summary
Specific opinion	JURI	PE491.370	30/08/2012	
Committee draft report		PE513.085	04/06/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0215/2013	10/06/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0260/2013	12/06/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	10273/2013	30/05/2013	Summary

European Commission

Document type	Reference	Date	Summary
Initial legislative proposal	COM(2010)0624	16/11/2010	Summary
Initial legislative proposal	COM(2011)0559	16/09/2011	Summary
Commission document (COM)	COM(2016)0220	12/04/2016	Summary
Follow-up document	COM(2020)0779	25/11/2020	
Follow-up document	SWD(2020)0327	25/11/2020	
Follow-up document	COM(2022)0301	24/05/2022	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	RO_SENATE	COM(2010)0624	17/11/2010	
Contribution	PT_PARLIAMENT	COM(2010)0624	14/01/2011	

Contribution	IT_SENATE	COM(2010)0624	15/02/2011	
Contribution	LT_PARLIAMENT	COM(2011)0559	14/11/2011	
Contribution	PT_PARLIAMENT	COM(2011)0559	24/11/2011	
Contribution	RO_CHAMBER	COM(2011)0559	24/11/2011	
Contribution	IT_SENATE	COM(2011)0559	11/01/2012	
Contribution	CZ_SENATE	COM(2011)0559	12/01/2012	
Contribution	PL_SENATE	COM(2011)0559	13/01/2012	
Contribution	IT_CHAMBER	COM(2011)0559	23/01/2012	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Regulation 2013/1053
OJ L 295 06.11.2013, p. 0027 Summary

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**.

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.

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

2010/0312(NLE) - 12/06/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 526 votes to 101, with 55 abstentions, a legislative resolution on the draft Council regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis.

Parliament approved, **unamended**, the Council draft and the joint statement by Parliament, the Council and the Commission, annexed to this resolution.

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**.

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.

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

2010/0312(NLE) - 07/10/2013 - Final act

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

NON-LEGISLATIVE ACT : Council Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen.

BACKGROUND : the Schengen area without border control at internal borders relies on the effective and efficient application by the Member States of accompanying measures in the areas of external borders, visa policy, the Schengen Information System (SIS), data protection, police cooperation, judicial cooperation in criminal matters and drugs policies.

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

However, it seems necessary to set up a new evaluation and monitoring mechanism to verify application of the Schengen acquis given the need to:

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

Such a mechanism should build upon close cooperation between the Commission and those Member States.

The objective of this Regulation is to revise the evaluation mechanism set up in 1998 to cover all areas of the Schengen acquis except those where a specific evaluation mechanism already exists under Union law.

It should be noted that the Regulation was adopted at the end of some Interinstitutional disagreement between the European Parliament and the Council, which revolved around the **appropriate legal basis** for the Regulation.

The text which was adopted in the end is based on **Article 70 of the Treaty on the Functioning of the European Union** which provides that the Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies concerned by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation.

The Council's choice of this legal basis meant, however, that:

- the Regulation was **not adopted in accordance with the ordinary legislative procedure**;
- the **implementing power to adopt the recommendations** for remedial action are conferred on the Council, mirroring the specific powers conferred by the TFEU, in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice.

After intense negotiations, Parliament finally succeeded in guaranteeing its involvement both in the current procedure and in future initiatives in this field.

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

Scope: in particular, the Regulation aims 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;
- 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: 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.

Member States and the Commission shall **cooperate fully at all stages of evaluations**.

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,
- 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.

The first multiannual evaluation programme shall be established by **27 May 2014**. The starting date of that programme shall be 27 November 2014 and the end date shall be 31 December 2019.

Annual evaluation programme: the Commission shall establish an annual evaluation programme, taking into account notably the **risk 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 – this will be sent to the European Parliament and Council.
- 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**.

The first annual evaluation programme shall be established by **27 May 2014**. The starting date of that programme shall be 27 November 2014 and the end date shall be 31 December 2014.

Frontex risk analysis: by 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, **request Union bodies, offices and agencies, other than Frontex,** to carry out risk analyses, including regarding corruption and organised crime.

Questionnaire: by 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. The Commission may have **two representatives**.

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.

There are also provisions on:

- 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 evaluation report shall analyse the qualitative, quantitative, operational, administrative and organisational aspects, as appropriate, and shall list any deficiencies identified during the evaluation.
- the procedure to be followed by the Commission to inform Member States, through a draft report to which the latter must respond within 2 weeks. The final evaluation report must be sent to Parliament.

Recommendations: when drafting the evaluation report and in the light of the findings and the assessments 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 the 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.

The Regulation sets out provisions regarding a time-table for reacting to the acting plan proposed by the Member State concerned in terms of whether the plan is judged appropriate or not. Depending on the seriousness of the deficiencies and the remedial measures taken, the Commission may schedule **announced on-site revisits to verify implementation of the action plan.** It may also schedule unannounced on-site revisits. It shall inform the European Parliament and the Council on a regular basis about the implementation of the action plans or improvement 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.

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** for evaluation procedures which had already begun before 26 November 2013.

Participation of the United Kingdom and Ireland: specific provision is made for the participation of the UK and Ireland in the evaluation mechanism.

Declaration: in a joint statement, the European Parliament, the Council and the Commission indicate that the adoption of the Regulation on the temporary reintroduction of internal border controls in exceptional circumstances and of this Regulation on the establishment of an evaluation mechanism for the Schengen acquis **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.

The three institutions state that this new evaluation system is an EU-based mechanism and that it will cover all aspects of the Schengen acquis and 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.

ENTRY INTO FORCE : 26.11.2013.

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

2010/0312(NLE) - 12/04/2016 - Follow-up document

The Commission presents an assessment of Greece's action plan to remedy the serious deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of management of the external border.

In accordance with the roadmap agreed by the EU Heads of State or Government on the temporary reintroduction of internal border controls, the Commission presented a communication on re-establishing **the normal functioning of the Schengen area**. It set out measures to address deficiencies in the management of the EU’s external borders. The roadmap showed how the procedures laid down in the Schengen rules could be used to restore order to the functioning of the Schengen system before the end of the year 2016. Among those measures is the presentation of an action plan by Greece to implement the recommendations made by the Council to address deficiencies identified in border management. This report is another stage in the process: a Commission assessment of the action plan presented by the Greek authorities.

Assessment of the Greek action plan: in accordance with Regulation (EU) No 1053/2013, which establishes an evaluation and monitoring mechanism to verify the application of the Schengen acquis, an evaluation of the application of the situation in Greece was carried out in November 2015. On 2February 2016, the Commission adopted the evaluation report, based on on-site visits, which revealed **serious deficiencies in the carrying out of external border control by Greece.**

The communication sets out the Commission's assessment of the **adequacy of the action plan presented by the Greek authorities on 12 March 2016,** to remedy the serious deficiencies identified in the evaluation report.

Since the situation on the ground in Greece is constantly changing, consideration has also been given to new developments such as the implementation of relevant aspects of the EU-Turkey joint action plan, and the implementation and functioning of the hotspot approach in Greece that are regularly reported on in the progress reports of the Commission.

Accordingly, the present report assesses the adequacy of the Action Plan presented by the Greek authorities on the basis of the facts currently available, and does not prejudge the assessment of the second report by the Greek authorities, which will follow.

The action plan presents the remedial actions already taken and those envisaged in order to implement the Council’s roadmap:

- **as regards the adequacy of the action plan on substance, timing and financing of the proposed actions**, the Commission considers that for several actions **more details and/or clarifications are needed**, in order to properly assess and monitor the timely follow-up and implementation of the actions proposed. These elements are also necessary to fully inform the European Parliament and the Council as provided by the Regulation;
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in general terms, the Commission concludes that **significant progress has been made by Greece.** However, the Greek authorities need to make **further improvements to the action plan in order to comprehensively address the deficiencies identified in the November 2015 evaluation.** They should, in particular, provide more clarity in terms of timing, responsibility and financial planning. Moreover, some actions cannot yet be considered adequately addressed or completed. The Commission requests Greece provide these additional elements and clarifications by 26 April 2016 and offers its continuous assistance in line with the spirit of the Commission communication "Back to Schengen – a Roadmap".

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

2010/0312(NLE) - 22/09/2011

The committee had a **first exchange of views** on the Schengen governance package. The Council preparatory bodies were instructed to start the technical work on the different proposals as soon as possible.

The package as presented by the Commission consists of a communication concerning Schengen governance as well as the two legislative proposals accompanying it, which are:

1. an amended proposal for a regulation on a revised Schengen evaluation mechanism;
2. an amendment to the Schengen Borders Code as regards the rules for the temporary reintroduction of border controls at internal borders in exceptional circumstances.

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

2010/0312(NLE) - 16/11/2010 - Initial legislative proposal

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

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: the Schengen area was developed within an intergovernmental framework in the late ’80s and early ’90s by Member States willing to abolish internal border controls. It is based on mutual trust between the Member States in their capacity fully to implement the accompanying measures allowing the lifting of internal border controls.

In order to gain and maintain this mutual trust, the Schengen Member States set up a Standing Committee in 1998. Its mandate consists of two separate tasks: (i) verification whether all preconditions for application of the Schengen *acquis* have been met by Member States wanting to join Schengen; (ii) verification that the Schengen *acquis* is being correctly applied by the Member States implementing the *acquis*.

Due to legal reasons related to the integration of the Schengen acquis in the framework of the European Union, it is necessary to revise the evaluation mechanism set up in 1998 as regards the second part of the mandate given to the Standing Committee (the first part of the mandate given to the Standing Committee should continue to apply).

Moreover, the proposal responds to the need to overcome a number of weaknesses identified by the Member States and the Commission with regard to the current evaluation framework, notably the fact that:

- the current methodology for the evaluation mechanism is inadequate as the rules on consistency and frequency of evaluations are not clear;
- there is no practice of conducting unannounced on-site visits;
- there is a need to develop a methodology for priority-setting based on risk analysis;
- a consistently high quality of expertise during the evaluation exercise needs to be ensured (experts participating in the evaluation should possess an adequate level of legal knowledge and practical experience and the number of experts should be limited);
- the post-evaluation mechanism for assessing the follow-up given to recommendations made after the on-site visits needs improving;
- the institutional responsibility of the Commission as guardian of the Treaty concerning first pillar matters is not reflected in the current evaluation system.

It should be noted that this proposal replaces the proposals to establish a similar evaluation mechanism proposed in 2009 and which lapsed due to the entry into force of the Lisbon Treaty (see CNS/2009/0032 and CNS/2009/0033).

LEGAL BASIS: Article 77(2)(e) of the Treaty on the Functioning of the European Union (TFEU).

IMPACT ASSESSMENT: the proposal was not subject to an impact assessment.

CONTENT: the main objective of the proposed Regulation is to establish an evaluation mechanism to verify application of the Schengen acquis in the Member States to which the Schengen acquis applies in full. Experts from the Member States which, in accordance with the relevant Act of Accession, do not yet fully apply the acquis (Bulgaria, Romania and Cyprus) shall nevertheless participate in evaluation of all parts of the acquis.

The main elements of the proposal can be summarised as follows:

Responsibilities: the Commission shall be responsible for implementation of this evaluation mechanism in close cooperation with the Member States and with the support of European bodies, such as Frontex. Member States shall cooperate with the Commission to allow it to carry out the tasks conferred on it by this Regulation. Member States shall also cooperate with the Commission during the preparatory, on-site visit, reporting and follow-up phases of evaluations.

Evaluations: evaluations may consist of **questionnaires and on-site visits**. Both may be supplemented by presentations by the evaluated Member State on the area covered by the evaluation. On-site visits and questionnaires may be used either independently or in combination in relation to specific Member States and/or specific areas. On-site visits may be announced or unannounced.

Multiannual programme: a multiannual evaluation programme covering a **period of five years** shall be established by the Commission which shall contain the list of Member States to be evaluated **each year**. Each Member State shall be evaluated at least once during each five-year period. The order in which the Member States are to be evaluated shall be based on a **risk analysis** taking into account the migratory pressure, internal security, the time which has elapsed since the previous evaluation and the balance between the different parts of the Schengen acquis to be evaluated. **Frontex** shall submit to the Commission a risk analysis taking into account migratory pressure 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 programme.

Taking into account the risk analysis provided by Frontex, an **annual evaluation programme** shall be established by the Commission by not later than 30 November of the previous year. The programme may provide for evaluation of the (i) application of the acquis or parts of the acquis by one Member State, as specified in the multiannual programme; (ii) application of specific parts of the acquis across several Member States (thematic evaluations); (iii) application of the acquis by a group of Member States (regional evaluations).

Expertise of the Member States: the Commission shall establish a list of experts designated by Member States, Europol and Eurojust for participation in on-site visits. Those national experts shall be selected by the Member States on the basis of their competences. In order to guarantee a high quality of expertise, Member States must ensure that the experts have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation, as well as a sound knowledge of on-site visit principles, procedures and techniques. Experts shall be able to communicate effectively in a common language.

Teams responsible for on-site visits: on-site visits shall be carried out by teams appointed by the Commission. The teams shall consist of experts drawn from the list of experts and Commission officials. The Commission shall ensure the geographical balance and competence of the experts in each team. Member States' experts may not participate in an on-site visit to the Member State where they are employed. The Commission may invite Frontex, Europol, Eurojust or other relevant European bodies to designate a representative to take part as an observer in a visit concerning an area covered by their mandate. The number of experts (including observers) participating in evaluation visits may not exceed eight persons for announced on-site visits and six persons for unannounced on-site visits.

Provisions are laid down as regards the case of announced and unannounced visits. Under both circumstances, the leading experts for on-site visits shall be a Commission official and an expert from a Member State, who shall be appointed prior to the on-site visit jointly by the members of the team of experts.

Follow-up of the evaluation: a report shall be drawn up following each evaluation. The report shall be based on the findings of the on-site visit and the questionnaire as relevant. It shall analyse the qualitative, quantitative, operational, administrative and organisational aspects as relevant and shall list any shortcomings or weaknesses established during the evaluation. It shall also contain recommendations for remedial action as well as respective deadlines for their implementation.

The Member State will be obliged to report within six months on the implementation of its action plan. Depending on the weaknesses identified, the Commission may schedule and carry out announced on-site visits in order to verify the correct implementation of the action plan. In the event of serious deficiencies, the Commission has to inform the Council and the European Parliament without delay.

Transitional provisions are also laid down as regards the starting dates for the programmes.

Sensitive information: the teams shall regard as confidential any information they acquire in the course of performing their duties. The reports drawn up following on-site visits shall be classified as restricted. The Commission and the Member State concerned shall decide which part of the report can be made public.

Report: the Commission shall present a yearly report to the Council and the European Parliament on the evaluations carried out pursuant to this Decision. The report shall be made public and shall include information on the conclusions in relation to each evaluation and the state-of-play with regard to remedial actions as well as any infringement procedures initiated by the Commission as a result of the evaluations.

Territorial application: the legal basis for this proposal is in Title V, Part Three of the Treaty on the Functioning of the European Union. The 'variable geometry' system provided for in the protocols on the position of the United Kingdom, Ireland and Denmark and in the Schengen protocol therefore applies.

Consequently, the United Kingdom and Ireland shall not participate in the adoption of the Regulation and shall not be bound or subject to its application. Denmark may decided to apply the Regulation or not as the case may be. For specific legal reasons, Cyprus, Bulgaria and Romania shall also take part in this mechanism but only regarding those parts of the acquis which they already apply. Lastly, Norway, Iceland, Switzerland and Lichtenstein shall take part in the implementation of this text in accordance with the bilateral agreements concluded with the EU on the Schengen acquis.

BUDGETARY IMPLICATION: the Commission has set out a financial statement annexed to the draft Regulation. This financial statement creates a new budget line allocating a financial envelope of between EUR 526 000 and EUR 730 000/year from 2012 to 2014. Adequate human and financial resources will have to be allocated to the Commission, which will be responsible for the new Schengen evaluation mechanism. Costs incurred by the Member State experts will also be reimbursed.

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).

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

2010/0312(NLE) - 08/03/2012

The Council adopted conclusions regarding guidelines for the strengthening of political governance in the Schengen cooperation.

These conclusions follow up a discussion at the JHA Council in December 2011 in which support for strengthening the political guidance on developments in the Schengen area was expressed.

The conclusions may be summarised as follows:

- the evaluation reports have shown serious shortcomings, including special measures to be implemented, without prejudice to the applicable procedures for EU agencies and the competencies of each Member State;
- the fulfilment of agreed action plans aimed at tackling shortcomings and their implementation should also be discussed. Such political and strategic discussions should take place once during each Presidency and, where appropriate, be based on the reports from the Commission;
- the Council welcomes the Commission's intention to present regular reports to the European Parliament and to the Council on the functioning of the Schengen cooperation and the
- application of the Schengen acquis at least once every year. The first report should – together with specific suggestions from Member States or relevant EU agencies – form the **basis for a political and strategic discussion** in the Mixed Committee at Ministerial level in June 2012;
- the Commission is also invited, where relevant, to address in its reports how Schengen related shortcomings could be remedied, and, where appropriate, to give an indication of possible solutions at the practical and operational level or submit new initiatives, including legislative proposals to address these shortcomings.

The Council welcomes the intention of the Commission to present the first report in May 2012. The reports should be brief, concise and provide an overview of the main trends and recent developments regarding Schengen cooperation, including **analysis of causes**. In addition, identified weaknesses and/or threats that could affect the functioning of the Schengen area in the short term should be presented in order for the Council to consider preventive actions.

The overview should highlight matters which the Commission considers most relevant for the political and strategic discussion, such as:

- implementation of the relevant Schengen acquis and of key policy guidelines set out by the European Council or the Council as well as action plans adopted by the Council such as the Schengen related aspects of the 29 measures for reinforcing the protection of the external borders and combating illegal immigration, and Schengen cooperation in the fight against serious and organised crime;
- possible conclusions to be drawn from the functioning and the development of relevant ongoing and future IT projects and tools;
- selected findings from evaluation reports and key recommendations adopted in the context of the Schengen evaluation mechanism on selected issues such as controls at the external borders, visa processing at consular posts, data protection and the required functioning of the institutions involved in the application of the Schengen acquis, in particular when the reports point at serious shortcomings;
- application of the Schengen acquis at internal borders, especially in cases of temporary introduction of controls at internal borders;
- challenges linked to current and possible foreseen migration flows and external borders particular prone to pressure from illegal migration flows as well as proposals for possible ways for their prevention and deterrence;
- challenges in the Schengen relevant cooperation with key countries of origin and transit;
- any planned and existing visa facilitation and liberalisation and their consequences.

The Council invites the European Parliament also to make full use of the Commission reports as it deems appropriate, taking into consideration the sensitivity of the information contained in the reports.

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.

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

2010/0312(NLE) - 12/07/2012 - 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 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**.