



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2010/0312(COD)

13.4.2011

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DRAFT REPORT

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*
(COM(2010)0624 – C7-0370/2010 – 2010/0312(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

EXPLANATORY STATEMENT

Background

The creation of the Schengen area in the late 1980s and early 1990s was one of European history's greatest successes, characterised by the absence of controls at shared borders between participating countries and the introduction of freedom of movement within this area. In parallel, various compensatory measures were implemented, in particular the strengthening of controls at external borders and of police, customs and judicial cooperation, the creation of the Schengen Information System, etc.

The abolition of internal border controls requires full mutual trust between the Member States in their capacity to fully implement the accompanying measures allowing those controls to be lifted. Indeed, the security of the Schengen area depends on the rigour and effectiveness with which a Member State carries out controls at its external borders, as well as on the quality and speed with which information is exchanged through the SIS. The fragility or inadequate functioning of any of these elements poses a risk to the security of the European Union and to the efficiency of the Schengen area.

In 1998 a Standing Committee was created with the task of assessing the Member States at two separate stages:

- putting into effect: the committee was to verify whether all the preconditions for application of the Schengen *acquis* had been met so that border controls could be lifted;
- implementation: the mutual trust established when internal controls were lifted was to be maintained and strengthened through assessments of the way in which the Schengen *acquis* was being applied by the Member States.

Following the entry into force of the Amsterdam Treaty in 1999 and the integration of the Schengen *acquis* into the EU, the name of the Standing Committee was changed to Schengen Evaluation Working Group (SCH-EVAL). Its mandate was, however, unchanged and its intergovernmental character was preserved.

Under the Hague Programme, the Commission was invited to submit a proposal to supplement and remedy the weaknesses identified in the existing Schengen evaluation mechanism. In March 2009, the Commission presented two proposals for a Council regulation and a Council decision to establish the legal framework for a single evaluation mechanism to verify and monitor the correct application of the Schengen *acquis*. The Council regulation covered activities relating to the free movement and border control elements of the Schengen *acquis*. The Council decision covered policing measures which compensated for the removal of internal border controls.

The proposals further aimed to respond to the changes in the legal situation following the integration of the Schengen *acquis* into the EU framework, when each provision of the *acquis* received a legal basis under the first or the third pillar.

The European Parliament was consulted about these two proposals and, proceeding from the opinion given by its the Legal Service regarding the verification whether the legal basis chosen by the Commission was the most appropriate one, concluded that codecision should have been the procedure chosen for the proposal for a regulation. Given that both proposals showed the same shortcomings and, in legal terms, represented two sides of the same coin, i.e. the creation of a single Schengen evaluation system, they should have been treated as a package. In October 2009, the European Parliament rejected the two proposals and invited the Commission to withdraw them and to submit new substantially improved proposals respecting the codecision procedure and taking into account the entry into force of the Treaty of Lisbon.

With the entry into force of the Lisbon Treaty, the third pillar proposal became obsolete and was withdrawn in the 'Omnibus Communication' of December 2009. At the same time, the remaining proposal (the first pillar regulation) was also withdrawn.

Scope of the new proposal

A single new proposal was put forward in November 2010, with the objective of establishing a legal framework for evaluating the correct application of the Schengen *acquis*. This evaluation mechanism is designed to maintain mutual trust between Member States in their capacity to apply, effectively and efficiently, the accompanying measures making it possible to maintain an area without internal borders.

Codecision is proposed as the legislative procedure, the European Parliament being a full participant in the area of justice and home affairs. To enhance transparency, regular reporting to the Council and to the European Parliament is proposed on evaluations carried out, conclusions drawn from evaluations and follow-up measures taken by the Member States concerned.

The proposal further aims at making the Schengen evaluation mechanism more efficient, ensuring the transparent, effective and consistent implementation of the Schengen *acquis*.

This new evaluation mechanism should be based on questionnaires and visits *in situ*, announced or not, and is organised in phases. There should be a multiannual programme of five years (each Member State should be evaluated at least once in the five-year period) with the list of countries that should be evaluated (preparatory phase). The draft programme should be adopted by a comitology procedure.

The same should happen in relation to the annual programme, which should be based on the risk analysis assessment made by Frontex. This programme should establish the evaluations that should take place per country, with or without previous warning (in this case, the list of Member States should be confidential).

Rapporteur's position

The rapporteur applauds the Commission for submitting this new proposal, which not only takes into account some of Parliament's earlier criticisms, but also provides – quite rightly – for a legal basis (Article 77(2)(e) TFEU) entailing the use of the codecision procedure (the ordinary legislative procedure).

A new Schengen evaluation mechanism needs to be established along the following lines:

- it should be more Community oriented (and based on a European approach and the involvement of the Community institutions as opposed to a purely intergovernmental approach);
- it should be more transparent (and hence impose an obligation to inform the Council and Parliament about the outcome of on-site visits and about Commission recommendations and their implementation);
- it should make for greater cooperation (striking a balance between the Commission and Member States in terms of their participation by allowing European and national experts to participate to the full);
- it should utilise resources more effectively (by involving Frontex and drawing on its experience and risk analyses);
- it should be more effective (teams should be less 'cumbersome');
- it should make for greater rigour (enabling accurate assessment to be brought to bear on the degree of compliance with Schengen rules and providing for prompt corrective action to dispel any feelings of impunity).

The rapporteur is opposed to a system based on 'double standards' that would be very severe to candidate countries and very lenient with countries already in the Schengen area. He therefore believes that the rules must invariably be the same and that the evaluation system must proceed from the premiss that they will continue to be complied with over time and not just at the moment of accession. It thus makes no sense to have different criteria and assessment systems for members and candidates.

The rapporteur wishes to draw attention once again to the importance of mutual trust, the bedrock on which the entire Schengen system is built.

Finally, he has sought to secure the partial participation of the United Kingdom and Ireland so as to enable them to be evaluated as regards police cooperation, SIS/SIRENE operations, and data protection.