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NOTE

from :	Schengen Evaluation Working Party
to:	Coreper / Council
N° prev. docs:	Doc. 13831/2/09 REV 2 SCHEVAL 116 SCHENGEN 25 COMIX 709 Doc. 13506/1/09 REV 1 SCHEVAL 113 SCHENGEN 24 COMIX 690 Doc. 7348/09 SCHEVAL 39 SCHENGEN 2 COMIX 210 Doc. 7349/09 SCHEVAL 40 SCHENGEN 3 COMIX 211
Subject :	Draft Council Regulation and draft Council Decision on the establishment of an evaluation mechanism to verify the application of the Schengen acquis - Proposal for the way ahead

During the Czech Presidency, the Commission has presented draft proposals on a Council Regulation and a Council Decision on the establishment of an evaluation mechanism to verify and monitor the application of the Schengen acquis.

Under the Swedish Presidency, a first reading (article by article) of both proposals was completed. Member States' opinions and comments have been taken down as footnotes in doc. 13831/2/09 REV 2 SCHEVAL 116 (Regulation) as well as in the respective outcomes of proceedings of the meetings of the working party, which include the Commission's comments also. These documents give a detailed overview of the positions of delegations as well as their reservations.

The discussions in the working party have resulted in a number of constructive suggestions on how to improve the current Schengen evaluations. There is a general support from a majority of Member States to further enhance the efficiency of the evaluation process. A more efficient evaluation includes for example a restricted number of experts taking part in the evaluation missions and a stringent follow-up process. Member States have also expressed views on timeframes and deadlines in order to match Member States' working conditions. Constructive suggestions were also made regarding the role of Frontex, the inclusion of unannounced visits and distribution of reports.

However, some parts of the draft Regulation and Decision have raised serious concerns with a substantial number of Member States. Even though a greater efficiency of the evaluation mechanism is welcomed in general, the establishment of a new evaluation mechanism implying the (co)existence of two different but parallel evaluation processes is strongly contested. The proposals suggest one evaluation mechanism for new Member States and one for existing Schengen Member States, which is broadly considered not in line with the enhanced efficiency of the mechanism. Furthermore, there is little support among Member States for the substantial shift of competences from the Member States to the Commission. The current system being based on mutual trust among Member States, a strong role for the Member States and their active participation in future Schengen evaluations is considered key to the current Schengen cooperation. The most contested proposals therefore concern issues such as the role, responsibility and composition of the "coordination group" and the designation of national experts.

As regards the position of the European Parliament, its legal service stated that although the chosen legal base is correct, a different legal base providing for co-decision could have been chosen. The Committee on Civil Liberties, Justice and Home Affairs, at its meeting on 6 October 2009, voted to reject the Commission's proposals and called on it to withdraw them and resubmit substantially amended proposals under the co-decision procedure. In its plenary session on 20 October 2009, the European Parliament rejected the Commission proposals.

With the entry into force of the Lisbon Treaty, the proposal for the Council Decision becomes obsolete. The proper legal basis for the proposal for the Council Regulation will need to be identified and communicated by the Commission.

Based on discussions in the working party, the written comments, the outcome of the European Parliament's decision as well as the entering into force of the Lisbon Treaty, the Presidency considers that the Council should, for the time being, not continue discussions on this issue, while awaiting the Commission's position with regard to the appropriate legal basis under the Lisbon Treaty and any new or amended proposal that may result. The Presidency therefore invites the Commission to reflect on the opinions expressed in the course of the discussions on this issue and, where appropriate, to take them into account.

Coreper / Council is invited to take note of this proposal for the way ahead and of this information.
