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**A7-0034/2009**

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## **REPORT**

on the proposal for a Council regulation on the establishment of an evaluation mechanism to verify the application of the Schengen *acquis*  
(COM(2009)0102 – C6-0110/2009 – 2009/0033(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a Council regulation on the establishment of an evaluation mechanism to verify the application of the Schengen *acquis* (COM(2009)0102 – C6-0110/2009 – 2009/0033(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal (COM(2009)0102),
  - having regard to Articles 67 and 66 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0110/2009),
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0034/2009),
1. Rejects the Commission proposal;
  2. Calls on the Commission to withdraw its proposal and submit a new one;
  3. Instructs its President to forward its position to the Council and the Commission.

## **EXPLANATORY STATEMENT**

### **INTRODUCTION**

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. At the same time 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 each 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<sup>1</sup> 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 unchanged, however, and its intergovernmental character was preserved.

### **SCOPE OF THE PROPOSAL**

The present proposal does not change the first part of the mandate in any way, since the Schengen Evaluation Working Group retains its responsibilities in the field of evaluation before putting into effect, which provides the basis for the vital relationship of mutual trust.

It therefore focuses on the second part of the mandate, i.e. verification that the acquis is being correctly applied following the lifting of internal border controls, and lays down that the Commission is to be entrusted with all the tasks carried out by the Schengen Evaluation Working Group.

The aim is to make the Schengen evaluation mechanism more efficient, ensuring the

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<sup>1</sup> SCH/Com-ex(98) 26 fin.

transparent, effective and consistent implementation of the Schengen acquis.

The proposal further aims 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. It establishes a legal framework for evaluating the correct implementation of those elements of the Schengen acquis that form part of Community law, in conjunction with the proposal for a decision (third pillar).

However, when the Treaty of Lisbon enters into force (which could be very soon), this objective will no longer apply, since the new legal situation will be completely different as a result of the abolition of the Community's pillar structure. It is crucial that a Schengen evaluation mechanism is created that is consistent with the consolidation of tasks currently divided between the first and the third pillar.

### **LEGAL BASIS**

When your rapporteur was appointed for the proposals relating to the creation of a Schengen evaluation mechanism at the end of the previous parliamentary term, he requested an opinion from the Legal Service<sup>1</sup> verifying whether the legal basis chosen by the Commission was the most appropriate basis for these proposals.

In the light of this opinion, two conclusions may be reached:

- the legal basis referred to in the Commission proposal on the establishment of an evaluation mechanism for the acquis communautaire, i.e. Article 66 of the EC Treaty, appears to be correct, bearing in mind the arguments put forward, and Parliament is to be consulted;
- however, since the purpose of this mechanism is to evaluate the operation of the SIS, the VIS, the Schengen Borders Code and the Visa Code, inter alia, the same objective could be achieved by amending the corresponding regulations. In that case, since all the instruments were adopted under the codecision procedure, the respective amendments would also be subject to codecision.

### **RAPPORTEUR'S POSITION**

It is vital that there should be a simple, effective, efficient and transparent evaluation mechanism that will enable the Schengen area to be preserved as an area of free movement, whilst at the same time it is indispensable to adapt the intergovernmental framework for Schengen evaluation to the EU framework.

Under the Hague Programme the Commission was invited to submit a proposal to supplement the existing Schengen evaluation mechanism. In substance, the present proposals (which make no changes to the rules relating to the first part of the mandate) are restricted (with regard to the second part of the mandate) to incorporating the recent improvements made to the existing evaluation mechanism<sup>2</sup>, and merely insert a new provision regarding the

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<sup>1</sup> SJ-0212/09, D(2009)20022.

<sup>2</sup> See the 'Schengen Evaluation Programme 2008-2013'.

possibility of making unannounced visits, which is to be welcomed. Nevertheless, these proposals transfer the role currently played by the Council in connection with the evaluation mechanism to the Commission en bloc, providing for fairly limited forms of cooperation with the Member States and keeping the European Parliament at a distance from the entire process, without supplying any proof of added value.

Your rapporteur is concerned that totally separating the evaluation mechanisms for each part of the mandate poses a risk of reduced efficiency. Moreover, it is essential to preserve consistency, avoid duplication of effort and financial resources and achieve a genuine 'upgrade' of the Schengen evaluation mechanism.

Your rapporteur would also stress the need to bear in mind that we are dealing with the security of the area of freedom, security and justice, whose preservation and further development is a responsibility shared not only by the Commission as guardian of the Treaties but also by the Member States, which remain responsible for security at their external borders, and by the European Parliament, which represents Europe's citizens. Since the security of the Schengen area and its citizens is at stake, all these players should be deeply involved in the establishment of this evaluation system, which will make it possible to guarantee security and strengthen the principle of mutual trust.

It is for this reason that codecision should be the procedure chosen. Parliament's position must not be a mere adjunct but must correspond to the significance of its role in adopting the respective basic legislative instruments.

Your rapporteur would also point out that, following the entry into force of the Treaty of Lisbon, it will be necessary to submit fresh proposals.



## PROCEDURE

<b>Title</b>	Establishment of an evaluation mechanism to verify the application of the Schengen acquis
<b>References</b>	COM(2009)0102 – C6-0110/2009 – 2009/0033(CNS)
<b>Date of consulting Parliament</b>	27.3.2009
<b>Committee responsible</b> Date announced in plenary	LIBE 2.4.2009
<b>Rapporteur(s)</b> Date appointed	Carlos Coelho 22.7.2009
<b>Discussed in committee</b>	5.10.2009                      6.10.2009
<b>Date adopted</b>	6.10.2009
<b>Result of final vote</b>	+:                      40 -:                      0 0:                      0
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Vilija Blinkevičiūtė, Louis Bontes, Simon Busuttil, Philip Claeys, Carlos Coelho, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Monika Flašíková Beňová, Kinga Gál, Jeanine Hennis-Plasschaert, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Juan Fernando López Aguilar, Monica Luisa Macovei, Véronique Mathieu, Louis Michel, Claude Moraes, Antigoni Papadopoulou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Tatjana Ždanoka
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Michael Cashman, Ioan Enciu, Nadja Hirsch, Monika Hohlmeier, Petru Constantin Luhan, Raül Romeva i Rueda, Joanna Senyszyn, Bogusław Sonik