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**A7-0215/2013**

10.6.2013

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## **REPORT**

on the draft Council regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis (10273/2013 – C7-0160/2013 – 2010/0312(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

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

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

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

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the draft Council regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis  
(10273/2013 – C7-0160/2013 – 2010/0312(NLE))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Council draft (10273/2013),
  - having regard to Article 70 of the Treaty on the Functioning of the European Union,
  - having regard to the request for an opinion received from the Council (C7-0160/2013),
  - having regard to the undertaking given by the Council representative by letter of 30 May 2013 to adopt the act in the form as transmitted to Parliament,
  - 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 (A7-0215/2013),
1. Approves the Council draft;
  2. Approves the joint statement by Parliament, the Council and the Commission annexed to this resolution;
  3. Instructs its President to forward its position to the Council and the Commission.

## **ANNEX**

### **Draft statement from the European Parliament, the Council and the Commission**

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 and for 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, while recalling that Europe's external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and practical cooperation.

They state that this amendment to the Schengen Borders Code will reinforce the coordination and cooperation at the level of the Union by providing on the one hand for criteria for any reintroduction of border controls by Member States and on the other hand for an EU-based mechanism to respond to truly critical situations where the overall functioning of the area without internal border controls is put at risk.

They 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.

## EXPLANATORY STATEMENT

### Context

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.

An initial attempt to respond to the weaknesses and shortcomings of the current evaluation mechanism, which is purely intergovernmental in nature and was established by Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/ Com-ex (98) 26 def.), was made in March 2009, when the Commission put forward two proposals (one for the former first pillar and one for the former third pillar) designed to replace the evaluation mechanism. Parliament rejected both proposals in October 2009 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 fresh 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 Justice and Home Affairs Council of 7 and 8 June 2012 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 which was eventually resolved after intense negotiations.

### Rapporteur's position

The rapporteur welcomes the agreement reached and recommends that this text be approved. Even though this agreement is not precisely what Parliament would have desired, it responds to most of Parliament's concerns and represents substantial progress by comparison with the current Schengen rules, thereby strengthening Schengen governance. Furthermore, it strengthens the right of citizens to move freely within the Schengen area, making explicit provision for the possibility of evaluating whether or not illegal checks are being carried out at internal borders, in particular through the possibility of making unannounced visits.

### A European mechanism

The evaluation mechanism will no longer be a purely intergovernmental mechanism, instead taking on a European dimension. The Commission will no longer merely play the part of observer and will instead be responsible for the general coordination of the evaluation and follow-up process. It will be responsible for the majority of decisions relating to the evaluation procedure, the annual and multiannual programme, the preparation and carrying-out of on-site visits and the drawing-up of evaluation reports and recommendations. Following an evaluation, the Commission will be responsible for approving the report and proposing recommendations for remedial action designed to overcome the shortcomings found, which will then have to be approved by the Council. Two Commission representatives will take part in each visit, one of whom will act as visit leader, alongside a national expert. The number of Member State experts taking part in on-site evaluation visits may not exceed a

total of eight in the case of announced on-site visits and six in the case of unannounced on-site visits. Various EU agencies and institutions will also be involved.

### **A more efficient and rigorous mechanism**

Unlike the current system, which is not legally binding and which provides only peer-to-peer evaluation, the new system has more effective and dissuasive mechanisms. It will allow a more precise evaluation of the level of compliance with the Schengen rules and enable immediate remedial action to be taken, which will do away with any impression of impunity. The Member States will be obliged to resolve any problems they encounter. The new system also makes provision for the possibility of unannounced on-site visits to internal borders, which will help preserve what is one of the main achievements of European integration, i.e. free movement of citizens in an area without internal borders. Whilst there are currently no formal rules on the follow-up action to be taken following an evaluation which has uncovered shortcomings, one of the most significant innovations under the new system is the inclusion of rigorous provisions on the follow-up action to be taken to remedy such shortcomings. Member States in respect of which recommendations have been made for action to remedy shortcomings must draw up an action plan to remedy any deficiencies identified within three months (or one month if the recommendations conclude that the evaluated Member State is seriously neglecting its obligations). This action plan will be assessed and closely monitored and, where necessary, fresh on-site visits will be made to verify that the action plan has been implemented correctly. Provision has also been made for additional monitoring as part of the revision of the Schengen Borders Code, which may include the adoption of recommendations for specific measures such as the deployment of European Border Guard teams, the submission of strategic plans that must be assessed by Frontex, and as a last resort, in view of the gravity of the situation, the closure of a specific border crossing-point for a limited period of time.

This new mechanism also puts an end to the current double standards. From now on, candidate countries and countries that already belong to Schengen must be evaluated in the same way and according to the same rules. The Schengen acquis must be rigorously respected not only on joining Schengen but also afterwards.

### **A mechanism subject to democratic scrutiny**

The Commission will play a significant role in this new evaluation mechanism, and the implementation of the new mechanism will thus be subject to political scrutiny by the European Parliament.

Parliament will be kept informed throughout the process and will have access to all the relevant documents, including the Frontex risk analysis, the multiannual and annual evaluation programme, the evaluation reports, the recommendations for remedial action and the action plans to remedy deficiencies that have been detected. It will also have access to Member States' specific replies to questionnaires. This shows that huge progress has been made in terms of transparency and Parliament's right to information, since up to now Parliament has not had access to any Schengen evaluation documents.

Finally, Parliament has 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 report (A7-0226/2012). In the letter sent to Parliament to confirm the agreement reached, the Council also confirmed its intention to adopt the regulation in accordance with the exact terms of the agreed text; it also confirmed its intention 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.

It should also be stressed that the majority of the most significant improvements were obtained after the negotiations had been reopened, that is following the Council's decision to change the legal basis and the interinstitutional dispute. This is true, for example, of the coordination role assigned to the Commission, its responsibility for adopting the evaluation reports, the possibility of carrying out unannounced on-site visits at internal borders and the increased involvement of the European Parliament and its access to information and documents. It was only thanks to the strong and united position that Parliament maintained throughout this lengthy process of negotiations that all these improvements could be achieved.

## **Conclusion**

The rapporteur takes the view that this new mechanism - which is more European, more transparent, efficient and rigorous - represents a huge step forward by comparison with the status quo. It strengthens the tools needed to identify and swiftly remedy any shortcomings found in the Member States with regard to the implementation and application of the Schengen rules, thereby helping to preserve the Schengen area as an area without internal borders and protect citizens' freedom of movement. For all these reasons, and with satisfactory guarantees having been agreed to safeguard Parliament's institutional role, the rapporteur recommends that this agreement be approved.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	10.6.2013
<b>Result of final vote</b>	+: 41 -: 7 0: 2
<b>Members present for the final vote</b>	Sonia Alfano, Roberta Angelilli, Edit Bauer, Rita Borsellino, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Salvatore Caronna, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Cornelia Ernst, H�el�ene Flautre, Kinga G�oncz, Sylvie Guillaume, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jim�enez-Becerril Barrio, Timothy Kirkhope, Juan Fernando L�opez Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Clemente Mastella, V�eronique Mathieu Houillon, Roberta Metsola, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero L�opez, Birgit Sippel, Csaba S�ogor, Rui Tavares, Nils Torvalds, Kyriacos Triantaphyllides, Wim van de Camp, Axel Voss, Renate Weber, Cecilia Wikstr�om, Tatjana �Zdanoka, Auke Zijlstra
<b>Substitute(s) present for the final vote</b>	Anna Maria Corazza Bildt, Dimitrios Droutsas, Franziska Keller, Ulrike Lunacek, Marco Scurria, Bogusław Sonik
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Phil Bennion, Johannes Cornelis van Baalen