



## Informal meeting of the Justice and Home Affairs Ministers Sopot

18-19 July 2011

### The Future of the Schengen Area

**How to respond to today's challenges to ensure the stable functioning of Schengen in the future?**

#### *Why we now need to talk about the future functioning of Schengen?*

As the European Council confirmed in its conclusions on the 24<sup>th</sup> June 2011, the free movement of persons constitutes a fundamental achievement of European integration. Schengen cooperation - the creation of an area without controls at internal borders - is the framework within which this fundamental freedom functions.

The European Council indicated the enforcement of the common rules underpinning the Schengen cooperation should be further improved and deepened, in particular through the Schengen cooperation mechanism, so as to be able to give an efficient response to future challenges. The European Council likewise called for the introduction of a mechanism in order to respond to exceptional circumstances putting the overall functioning of Schengen cooperation at risk, without jeopardising the principle of the free movement of persons.

The stability of Schengen has been challenged by uncoordinated and unilateral efforts to tackle collective problems. This demands a practical and joint response. A departure from Schengen rules would have negative effects on the European economy as a whole and on the budgets of individual Member States. It would also lower the level of security now enjoyed by European citizens.

#### *Why is trust in Schengen at risk ?*

This risk is conditioned by the external context, but it is also attributable to the Member States themselves.

One of the most important **external factors** or which may affect the proper application of the Schengen acquis is the **serious migratory pressure** that has accumulated in a short space of time in certain regions, the causes of which are armed conflicts, political and social tensions, as well as economic crises occurring in

the close and distant neighbourhood of the EU. In response, efforts should be undertaken to improve the long-term effectiveness of a range of EU policies, in particular the external assistance to these third countries as well as the external dimension of migration policy. Better coordination in the external action of the Union is necessary particularly with regard to development, trade or foreign policy.

**The internal factor** are gaps in the current Schengen acquis, as well as the weak or improper implementation and enforcement of existing secondary law. That is why the European Council called for a series of measures to be undertaken:

- Strengthening the protection of external borders: a basic requirement to ensure a feeling of security and to guarantee that law and order in the EU are respected. This is a key issue which should be subject to a separate in-depth discussion. This is linked to the proper regulation of cooperation with third countries in border protection and the fight against cross border crime and irregular migration; the EUROSUR project will play an important role in this area.
- The strengthening of the Schengen evaluation system which needs to become an effective instrument that enables to ensure a better application of the Schengen acquis. An appropriate institutional balance between Member States and the European institutions in this area should be considered.

The emergency mechanism, as described in paragraph 22 of the European Council conclusions, should be part of a comprehensive strengthening of the Schengen area. Moreover, the proper regulation of international protection is a very important part of the challenges faced in the area of migration. This issue is explored in a separate document submitted for discussion: *Moving forward in the negotiations on the Common European Asylum System*.

### ***Strengthening confidence in Schengen***

A response to problems in the functioning of the Schengen area should encompass the adoption of new, and the improvement of existing, legal and financial instruments. Measures regarding practical cooperation should also be adopted. Mechanisms should be put in place to require the Member States to respect their updated obligations under the Schengen acquis. The goal of this discussion is to identify adequate responses of the Union to address the internal factors mentioned above.

On the other hand it is necessary to strengthen measures that respond to external factors and provide pro-active assistance to countries that are under serious

migratory pressure. This is also the case in the context of supporting third countries whose internal situation puts pressure on the Member States of the EU.

To that end, the Polish Presidency proposes a discussion on the questions below

### **1) Facing serious crises**

The European Council, in paragraph 22 of its conclusions, has called for the undertaking of actions to establish a mechanism to respond to exceptional circumstances putting the overall functioning of Schengen cooperation at risk. It will be necessary to address the question of what constitutes such exceptional circumstances which would trigger such a mechanism.

It is impossible for the EU and its Member States to respond in an effective and coordinated manner to a crisis without adopting a common and objective definition of a state of crisis.

### **2) Handling the external dimension of a crisis**

The social, economic and political change that is taking place in the European Union's neighbourhood is generating increasing migratory pressure on some Member States. An urgent response is needed to the question of what the scope of assistance to Member States who are under greater migratory pressure should be. The long term challenge for the European Union, is the development of a comprehensive migration and aid policy towards third countries that are the source of migratory pressures.

However, what is currently of greater urgency is the need to look at how immediate action can be taken in order to effectively counter the effects of the increased pressure at the external borders.

In this context, what measures should be taken to support cooperation mechanisms with third countries in the field of external border protection?

### **3) Schengen evaluation (assessment, sanctions, assistance)**

Paragraph 21 of the European Council conclusions points to the deficiencies in the current evaluation system. It requires that the existing mechanism be improved. Past practice suggests that the current mechanism fails to ensure that Member States implement the recommendations made by experts. Addressing this matter would require the establishment of a system of enforcement.

Such a system could be made up of the following gradual stages:

- Monitoring *in situ* by experts - modifying the current system of evaluation by establishing continuous process of assessment of the implementation of the Schengen acquis. It would allow for responses to detected serious violations to be adopted quickly.
- Regular discussion of progress in the implementation of recommendations at JHA Council - Mixed Committee at Ministerial Level.
- Improving the transparency of the system - could the results of the Schengen evaluation of individual Member States be made public in part?
- Financial sanctions could be applied when a Member State refrains from adopting a remedial programme (withholding payments from Union funds).
- As a last resort it could be decided to re-introduce controls at internal borders, on the basis of an EU decision, with Member States that neglect their obligations towards their partners thus jeopardising the common security of the EU and its citizens.

#### **4) The scope of assistance**

The proper implementation of the assistance programmes designed to provide quick and effective restoration of a proper degree of security in the Schengen area is a core challenge for the EU and the Member States.

The key question to be answered is what additional measures should be adopted to assist Member States going through difficulties in implementing the Schengen acquis to the requisite standard? Would Member States allow the use of funds from existing financial instruments (e.g. SOLID) be partially redirected to supporting assistance programs in Member States that are having difficulties implementing the Schengen acquis?

Should EU agencies (FRONTEX, EASO) play a greater part in the implementation of remedial programmes? If so, in what way can they work towards the rebuilding of the capacity of Member States to fulfil their obligations under the Schengen acquis? Should training programs and technical support be the main source of assistance?

**Questions:**

With all the aforementioned questions in mind and with the goal of mapping the direction of future work and providing political impetus, also in the long term, the discussion should concentrate on the following issues:

1. What should be the main criteria for assessing whether a situation is a crisis? Would such a step increase the effectiveness of measures taken in this area?
2. What should be the scope of additional measures to assist Member States undergoing difficulties in implementing the Schengen acquis to the requisite standard?
3. Should a system be introduced in order to ensure that the conclusions of evaluation experts are enforceable as regards Member States which do not correctly apply the Schengen acquis?