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Council and the European Parliament reach a provisional agreement on the Schengen Governance legislative package

The Permanent Representatives Committee¹ (Coreper) today endorsed the agreement reached with the European Parliament on 29 May on the Schengen governance legislative proposals, namely a regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and an amendment to the Schengen Borders Code as regards the rules for the temporary reintroduction of border controls at internal borders in exceptional circumstances.

The European Council in June 2011 called for the introduction of a mechanism to respond to exceptional circumstances putting the overall functioning of Schengen cooperation at risk, without jeopardising the principle of free movement of persons. To this end, and to improve Schengen governance, the Commission submitted this legislative package to the Council and the European Parliament in September 2011.

Schengen evaluation mechanism

Regarding the revision of the Schengen evaluation mechanism, the Council has worked closely with the European Parliament in order to ensure that their views have been taken into consideration to the fullest extent possible in the proposed Council Regulation. Concerning the substance of the compromise text, the following main provisions should be mentioned:

¹ The Permanent Representatives Committee is composed of the ambassadors of the 27 EU member states. Its role is to prepare decisions of the Council.

P R E S S

- Purpose and scope: As under the current system, the rules apply not only to the verification of correct application of the Schengen acquis by those countries which already apply part of the Schengen acquis, but also to verification that countries wishing to join the Schengen area meet all the conditions to start applying the Schengen acquis.
- Responsibilities: In contrast to the current system, whereby the Commission participates only as an observer, the compromise text states that the member states and the Commission shall be jointly responsible for the implementation of the evaluation and monitoring mechanism.
- Evaluations: The evaluations cover all aspects of the Schengen acquis, including the absence of border controls at internal borders. The compromise text also adds that account should be taken of the functioning of the authorities which apply the relevant parts of the Schengen acquis.
- Multiannual and annual programmes: The Commission will be responsible for establishing multiannual and annual evaluation programmes which will include announced and unannounced on-site visits. The annual evaluation programmes will take into account recommendations made in an annual risk analysis drafted by the European border management agency (Frontex). Announced on-site visits to a member state will be preceded by a questionnaire.
- Evaluation reports: Evaluation teams will draft evaluation reports which will be adopted by the Commission. The Council will adopt any necessary recommendations for remedial action.
- Follow-up: The member state concerned will be required to submit an action plan to remedy any deficiencies. The Commission will continuously monitor and report on the action plan until it is fully implemented. Such monitoring and reporting may include announced or unannounced follow-up visits.
- Yearly summary report: The Commission will present a yearly summary report to the European Parliament and the Council on the evaluations carried out.

Schengen Borders Code

The Schengen Borders Code established by Regulation (EC) No 562/2006 on the one hand lays down the rules on border control at the external borders and on the other hand provides for the abolition of border control at internal borders and the possibility of its reintroduction in limited cases.

The compromise text provides for specific measures at external borders in case of deficiencies linked to the Schengen evaluation mechanism and makes amendments to the existing provisions allowing for the reintroduction of controls at internal borders in two other cases under the heading "Serious threat to public policy or internal security":

i) Serious threat to public policy or internal security:

- As under the current rules, a member state will be able to unilaterally decide to temporarily reintroduce border controls at internal borders in exceptional circumstances, namely where 'there is a serious threat to public policy or internal security'.

First case: Foreseeable events

- If the threats motivating such reintroduction are foreseeable (e.g. major sporting events, political demonstrations, or high-profile political meetings), the member state in question must notify the other member states and the Commission not less than four weeks before the planned reintroduction. Shorter periods are possible in specific circumstances.
- The member state will need to provide all relevant information about the scope and duration of the reintroduction, and the reasons for doing so. The Commission can issue an opinion on the notification, which may result in consultations between member states and the Commission.

Second case: Urgent cases

- In urgent cases (e.g. terrorist attack), the reintroduction may be effected immediately.

ii) Specific measures in the case of serious deficiencies relating to the external border controls (new provisions)

Third case: Persistent serious deficiencies at external borders

- Where an evaluation report under the Schengen evaluation mechanism identifies serious deficiencies in a member state in carrying out external border controls, the Commission may recommend to the member state to take specific actions which may include the deployment of European Border Guard teams in accordance with the Frontex Regulation and/or the submission of its strategic plans to remedy the situation.

- Where an evaluation report under the Schengen evaluation mechanism concludes that a member state has been seriously neglecting its obligations, putting the overall functioning of the area without internal border controls at risk, and where the Commission finds that after three months this situation persists, the Council may on the basis of a Commission proposal recommend that one or more specific member states reintroduce border controls at all or specific parts of the internal borders. As in the first and second cases described above, the serious deficiency relating to external border controls must constitute a serious threat to public policy or internal security.

 - Such a recommendation can only be adopted as a last resort, and the Council has to take into consideration a number of factors, including whether the reintroduction of border controls is likely to adequately remedy the threat to public policy or internal security; whether the measure is proportionate; and whether there are additional technical or financial support measures, for example through Frontex, EASO, Europol etc., that could remedy the situation.
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