



**COUNCIL OF
THE EUROPEAN UNION**

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"I/A" ITEM NOTE

From:	General Secretariat of the Council
To:	COREPER/Council
No. prev. doc.:	10597/13 JAI 467 SCHENGEN 21 SCH-EVAL 87 FRONT 70 COMIX 356
Subject:	Proposal for a Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis

1. On 23 and 24 June 2011, the European Council¹ called for "an effective and reliable monitoring and evaluation system [which] should be EU-based and involve experts from the Member States, the Commission and competent agencies", the Commission being invited "where necessary to propose measures to respond to any deficiencies which are identified".

¹ EUCO 23/1/11 REV 1, paragraphs 21 and 22.

It also 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 [which] should comprise a series of measures to be applied in a gradual, differentiated and coordinated manner in order to assist a Member State facing heavy pressure at the external borders" and which "as a very last resort" could include "a safeguard clause (...) to allow the exceptional reintroduction of internal border controls in a truly critical situation where a Member State is no longer able to comply with its obligations under the Schengen rules". The Commission was invited to submit a proposal to this end in September 2011.

2. On 19 September 2011 the Commission submitted to the Council a legislative package² composed of:

a) An amended proposal for a Regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis³.

This text amended the proposal submitted to the Council in November 2010 for a Regulation of the European Parliament and of the Council on the establishment of an evaluation mechanism to verify the application of the Schengen acquis⁴.

b) A proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances⁵.

3. After a preliminary debate in the Council on 22 September 2011, the proposals were extensively discussed by the Working Party for Schengen Matters (Acquis) and by JHA Counsellors between September 2011 and May 2013.

² See 14357/11.

³ 14358/11.

⁴ 16664/10.

⁵ 14359/11.

4. COREPER discussed the proposals on 2 December 2011, 23 and 30 May 2012, 17 and 19 December 2012, and 24 May 2013.
5. The Council discussed the proposals on 13 December 2011, 26 April 2012 and 7 June 2012.
6. At its meeting on 7 June 2012, the Council agreed to change the legal basis from Article 77(2)(e) to Article 70 TFEU as regards the amended proposal for a Regulation of the EP and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and to consult the EP on a voluntary basis in order to ensure that the opinion of the EP would be taken into consideration by the Council to the fullest extent possible in all its aspects⁶.
7. As a consequence, the text became a proposal for a Council Regulation, and no longer fell under the ordinary legislative procedure. However, it remained one of the instruments of the package. Both instruments have been handled and discussed in parallel and both Rapporteurs were appointed Shadows of each other. Also, both instruments were to be adopted and published together.
8. Several trilateral meetings took place concerning the discussions of the package. An overall compromise agreement was reached at a high-level trilogue on 29 May 2013.
9. At its meeting on 30 May 2013, COREPER confirmed that overall compromise agreement and agreed to consult the European Parliament on the Draft Council Regulation⁷ by letter of 30 May 2013.
10. At its meeting on 7 June 2013, the Council was informed of the overall compromise agreement.

⁶ See 11588/12.

⁷ 10273/13.

11. On 10 June 2013 the LIBE Committee voted its Opinion⁸, which was adopted by the Plenary on 12 June 2013.
12. The text has undergone the necessary lawyer-linguist scrutiny. The meeting with experts took place on 24 July 2013.
13. COREPER is therefore requested to recommend that the Council, at its meeting on 7/8 October 2013:
 - adopt the proposal for a Council Regulation establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, as set out in 10597/13;
 - order its publication in the Official Journal of the European Union together with Regulation (EU) of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, as set out in PE-CONS 30/13, as well as the Statement from the European Parliament, the Council and the Commission, as set out in 13570/13 ADD 1;
 - decide to enter in the minutes the Statement from the European Parliament, the Council and the Commission, as set out in 13570/13 ADD 1.

⁸ A7-0215/2013.