



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 January 2012

**Interinstitutional Files:
2010/0312 (COD)
2011/0242 (COD)**

5546/12

**SCHENGEN 6
SCH-EVAL 8
FRONT 7
COMIX 30
CODEC 153**

OUTCOME OF PROCEEDINGS

of: Working Party for Schengen Matters (Acquis) / Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein)

on: 17 and 18 January 2012

Subject: Summary of discussions

1. Adoption of the agenda

The agenda was adopted as set out in CM 1028/1/12 REV 1.

2. Report from the Presidency

The Presidency said it intended dealing with the legislative proposals on the Schengen Governance¹ as a package and that the proposals would be discussed in parallel. For this reason, the meeting of the Working Party in February 2012 would also be a two-day session, with one day devoted to the evaluation mechanism and the other to the Schengen Borders Code.

The Presidency said it would meet the appointed EP Rapporteurs in order to exchange information and views on this file.

¹ See 14357/11, 14358/11 and 14359/11.

3. 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 acquis

5194/12 SCHENGEN 1 SCH-EVAL 3 FRONT 2 COMIX 12 CODEC 66

18869/11 SCHENGEN 66 SCH-EVAL 221 FRONT 204 COMIX 859 CODEC 2499

The Presidency presented doc. 5194/12 and the Working Party had an exchange of views on the questions raised by the document. The Presidency, on the basis of that exchange, concluded that:

- Delegations generally supported the idea of strengthening the Schengen evaluation system, with increased and more stringent follow-up procedures, including binding measures, whilst maintaining peer-to-peer evaluation.
- Such a system could be based on Article 70 TFEU, which was deemed to be the most appropriate legal basis (see 10148/11).
- The proposal for a Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis (see 14358/11) should not include provisions on the reintroduction of control at internal borders or closing border crossing points. Instead, such provisions could be included in the 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 circumstances (14359/11). Reiterating that the Schengen cooperation should continue to be founded on mutual trust and assistance, and referring to the Opinion of the Council Legal Service as set out in 18392/11, Delegations were opposed to including in this instrument any measures that could be considered to be sanctioning or punishing and not compatible with the Treaty system.
- Delegations considered that the Commission should play a stronger role in the Schengen evaluation mechanism, in particular as regards preparation and follow-up procedures.
- Delegations agreed that the involvement of the European Parliament should be ensured.

On the basis of the outcome of discussions, and taking into account any written comments from the delegations, the Presidency would submit revised draft texts ahead of the next meeting of the Working Party scheduled for 14 and 15 February 2012.

4. 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 circumstances

5318/12 SCHENGEN 3 FRONT 4 SCH-EVAL 5 COMIX 18 CODEC 92

18392/11 JUR 594 FRONT 198 SCH-EVAL 219 SCHENGEN 64 COMIX 827

CODEC 2377

The Presidency presented doc. 5318/12 and the Working Party had an exchange of views on the questions raised by the document. The Presidency, on the basis of that exchange, concluded that:

- A large majority of delegations agreed that decisions to reintroduce border control at internal borders in the context of Articles 23 to 25 should be taken by the Member States, both concerning periods of up to 30 days and the entire foreseeable duration of a threat.
- Almost all delegations were in favour of a system of checks and balances. However, this would not include procedures under comitology.
- Most delegations reiterated their satisfaction with the functioning of the mechanism currently provided for in Article 23 of the Schengen Borders Code (Regulation EU No 562/2006). A number of Member States showed willingness to consider the definition of specific assessment criteria that would inform decisions to reintroduce controls at internal borders.
- As regards the last question raised on page 4 of 5318/12, since it refers to scenarios not covered by the proposal (14359/12) and not supported by specific examples, the Presidency would further reflect on this matter taking into consideration the sensitivity of the issue and the outcome of the exchange of views on this question.

The Council Legal Service presented its Opinion as set out in 18392/11. A representative of the Commission also commented on Article 26 of the proposal set out in 14359/11 and said that the Commission would also issue a legal opinion on this subject.

On the basis of the outcome of the discussions, and taking into account any written comments from the delegations, the Presidency would submit a revised draft compromise version of the 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 circumstances, ahead of the next meeting of the Working Party scheduled for 14 and 15 February 2012.

5. Any other business

None.
