



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 April 2012**

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**Interinstitutional Files:  
2010/0312 (COD)  
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**8540/12**

**SCHENGEN 26  
SCH-EVAL 46  
FRONT 53  
COMIX 220  
CODEC 928**

**OUTCOME OF PROCEEDINGS**

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

on: 2 April 2012

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Subject: Summary of discussions

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**1. Adoption of the Agenda**

The agenda was adopted as set out in CM 2323/12.

**2. Information by the Presidency**

**– State of play**

The Presidency informed the meeting about the pertinent aspects dealt with at the European Council on 1/2 March 2012 (see in particular point 44 of EUCO 4/12 CO EUR 2 CONCL 1); at the Council (Justice and Home Affairs) on 8 March 2012 (see in particular 7417/12).

**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 (5754/1/12 REV 1 SCHENGEN 7 SCH-EVAL 15 SCH-EVAL 15 FRONT 8 COMIX 50 CODEC 202)**

**– Certain issues**

**- Comitology**

The Presidency presented 8145/12.

It was underlined that normally implementing powers are conferred on the Commission. However, implementing powers can also be conferred on the Council in duly justified specific cases.

Such implementing acts can be binding (e.g. decisions) or non-binding (e.g. recommendations, programmes).

It was also stressed that unless otherwise determined Council decisions are to be adopted by qualified majority.

Most delegations considered the revised version as set out in 5754/1/12 REV 1 as good basis for further work. They also reiterated that the Schengen evaluation mechanism should be strengthened, including the role of the Commission, in line with the Conclusions of the European Council of 23/24 June 2011 (EUCO 23/1/11 REV 1, point 22). In view of the current proposal, delegations recalled that a better balance should be sought.

Following an extended exchange of views, the Presidency concluded that in cooperation with the Council Legal Service it would consider possible compromise solutions acceptable for all the stakeholders as regards the different implementing acts in the context of this instrument.

**– Article 4**

Some delegations thought that the sentence "*the required functioning of the institutions involved in the application of the Schengen acquis*" should be further clarified in the context of this instrument.

On the basis of the discussion, the Presidency would continue to work on this Article.

**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 (6161/1/12 REV 1 SCHENGEN 9 FRONT 15 SCH-EVAL 17 COMIX 83 CODEC 292)**

**– Certain issues**

**- Comitology**

ES recalled it had entered a general reservation on this document in the meeting on 14/15 Feb 2012, which should be mentioned in the following version of 6161/1/12.

It was reminded that normally implementing powers are conferred on the Commission. However, implementing powers can also be conferred on the Council in duly justified specific cases.

Such implementing acts can be binding (e.g. decisions) or non-binding (e.g. recommendations, programmes).

It was also stressed that unless otherwise determined, Council decisions are to be adopted by qualified majority and that in accordance with Article 288 TFEU a decision is binding in its entirety; recommendations have no binding force.

Taken into account the discussion, the Presidency would submit a proposal regarding the different implementing acts to be taken, in particular in relation with Article 26.

Some delegations expressed concerns in relation to the term '*difficulties*' which appears in several provisions of the proposal (6161/1/12). BG entered a reservation on "*difficulties or deficiencies*".

**5. Way forward**

The Presidency asked the delegations to send in any comments in writing – to the Presidency and to the General Secretariat of the Council – by 20 April 2012.

**6. Any other business**

Some delegations made further remarks on other aspects of the proposals, which would be introduced in the coming revisions of the documents (5754/1/12 and 6161/1/12).