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- Draft Council conclusions on completion of the process of
evaluation of the state of preparedness of Switzerland to implement all
provisions of the Schengen acquis including the SIS-related provisions

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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NOTE

from : Schengen Evaluation Working Party
to: Coreper / Council (Mixed Committee)

Subject : Schengen evaluation of Switzerland

- Draft Council conclusions on completion of the process of evaluation of the state of preparedness of Switzerland to implement all provisions of the Schengen acquis including the SIS-related provisions ¹

PART I - Introduction

1. The readiness of Switzerland to fully implement the Schengen acquis was evaluated in 2008 on the basis of Article 15 of the *Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis* of 25 October 2004 (doc. 13054/04 approved by the Council on 28 January 2008 ², entry into force 1 March 2008) in conjunction with the *Decision of the Executive Committee of 16 September 1998* (cf. SCH/Com-ex (98) 26 def.).

¹ These conclusions do not yet include the results of the air borders- and SIS evaluation visits (nor of any possible revisits).

² Council Decisions (2008/149/JHA) and (2008/146/EC) of 28 January 2008.

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2. Following the Swiss declaration of readiness of 3 March 2008 to start the Schengen evaluations (doc. 7049/08), the programme for the evaluation visits on data protection, police cooperation and visa was approved by the Schengen Evaluation Working Party on 7 March 2008 (doc. 6227/1/08) and for those on SIS and air borders on 28 May 2008 (doc. 9563/1/08).

3. Following the receipt of Switzerland's Declaration of Readiness of 3 March 2008 (doc. 7049/08 SCH-EVAL 12 COMIX 173), the Schengen Evaluation Working Party verified in writing the preparation for the application of all parts of the Schengen acquis by Switzerland through a questionnaire and a series of supplementary questions and answers, followed by evaluation visits by teams of experts which led to exhaustive reports containing factual descriptions as well as positive and critical assessments and recommendations.

4. This verification, that the necessary conditions for the application of all parts of the acquis concerned have been met by Switzerland, is a precondition for the Council to take a Decision on the full application of the Schengen acquis and the resulting abolition of checks at internal borders with Switzerland.

5. The purpose of the following Council Conclusions is to establish whether Switzerland, subjected to the full evaluation procedure, fulfills all the conditions for the practical application of all relevant parts of the Schengen acquis. Where these conditions have not (yet) been completely fulfilled, the conclusions indicate where additional measures are required and in which cases these should be reassessed by way of a revisit. These conclusions should be read in conjunction with the detailed evaluation reports. A list of the relevant reports and follow-up reports is annexed to these conclusions.

PART II - Specific findings

6. Current Swiss legislation on **data protection** is fully in line with the Schengen Convention. The legislation and implementing regulations are extensive, especially in combination with the cantonal regulations. Access to log files for the cantonal data protection authorities should be clarified in written rules of procedure. The independence of the data protection authority as an independent supervisory body at both administrative and operational level should be improved and budgetary resources enhanced in light of the upcoming tasks.

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7. On **police cooperation**, it was demonstrated that most of the preparatory work for the implementation of the Schengen acquis has been done as regards institutional and operational structures. The bilateral agreements with Germany, Austria, Lichtenstein and France even go beyond the requirements, although the agreement with Italy should be renegotiated to bring cross border operations in line with Schengen standards. The e-learning training system was identified as a best practice along with the informative posters on Schengen matters available in all offices. In the field of crime intelligence & risk assessment, some structural and procedural issues need to be defined more clearly and efforts should be made to provide full interoperability among law enforcement authorities' databases.

8. On the basis of the information gathered and the checks carried out at the Swiss Embassy's **visa section** in Moscow and at its Consulate General in Istanbul, it was considered that Switzerland may be in a position to implement the Schengen acquis in due course. No significant failings or chronic errors were noted in the daily work of the visa sections.

Issues requiring special attention or reviewing related mainly to the need to adapt the computing system to Schengen standards and to reorganise the decision making process, to exemptions from the basic rule of personal appearance and assessment of the true purpose of the journey / risk of overstay, to the fact that when a visa is granted, the number of entries should correspond to the travel itinerary and the purpose of the journey, to staff training and finally to alignment to the Schengen provisions (CCI) of the "application stamp", the application form, the visa sticker and the administrative fee.

9. The Schengen evaluation of **air borders** (...)

*[9b Regarding **border surveillance** along the Swiss **land- and green border** with the Principality of Liechtenstein (FL), Switzerland was able to present an acceptable solution after agreeing, jointly with FL, on a regime in the spirit of the Schengen Acquis meeting the existing concerns (see doc. 13216/08 SCHEVAL 71 CH 49 FL 38 COMIX 676 RESTREINT).]*

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10. The Schengen evaluation of the **SIS-related provisions** took place in September 2008. The Swiss N.SIS was declared technically ready in May 2005 ³, the functional testing of SIRENE took place in June 2008 ⁴ and the SIS1+ became available for the Swiss end users on 14 August 2008 ⁵. Real data loading and use of the SIS took place cf. *Council Decision (2008/421/EC) of 5 June 2008 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Swiss Confederation* ⁶.

In general, the efforts to implement the SIS and the SIRENE functions were appreciated and considered successful, although some issues require further attention.

The network infrastructure at the federal level was very good. Access systems in general were well secured. The team found that the officers it met were well informed and convinced of the advantages of the Schengen cooperation. The group appreciated the training tools available. The SIRENE bureau was well organised and the staff showed a high level of competence and commitment.

The group felt however, that improvements were necessary at the level of the SIRENE workflow system. The Swiss authorities should consider the introduction of individual accountability for users of mobile workstations. The group observed a reservation by the Swiss authorities to use art. 99 CISA and recommends to define a policy for the introduction of alerts on discreet surveillance in accordance with national law. The group advises to work out more fluent procedures for the reporting of hits.

The survey group appreciated the quick reaction of the Swiss authorities to remedy a number of the technical deficiencies that were observed.

³ See documents 9458/08 SIS-TECH 67 COMIX 392 and 10261/08 SIS-TECH 81 COMIX 467.

⁴ See document 10300/08 SIRIS 94 COMIX 472.

⁵ See document 5475/7/08 SIS-TECH 9 COMIX 40.

⁶ OJ L 149, 7.6.2008, p. 74–77.

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PART III - Conclusions

11. On basis of the above, Switzerland has on the whole shown that it is sufficiently prepared to apply both the non-SIS-related provisions of the Schengen acquis (*reservation re air borders*) as well as its SIS-related provisions (*reservation re SIS*) in a satisfactory manner. On this basis, the preconditions have been fulfilled for taking the Decision referred to in Article 15 of the abovementioned Agreement, allowing for the lifting of internal border controls at the land borders as of 31 December 2008 and at the air borders as of 29 March 2009⁷.

12. Switzerland is requested to implement the recommendations listed in the evaluation reports, especially those referred to in Part II of these conclusions and to inform the Council, in the course of 2008-2009, on the follow-up it intends to give to these recommendations.

13. Finally, the Council draws attention to the Border Management Strategy as defined by the JHA-Council in December 2006, implying that any fundamental re-organisation of the functions of Integrated Border Management in any Schengen Member State should be reported to the Council via the Schengen Evaluation Working Party for an appropriate follow up.

⁷ See footnote 1.

Schengen evaluation of Switzerland - Evaluation reports and follow-up

Data protection:

Draft report on the Evaluation Committee's visit to the Swiss Confederation for evaluation of data protection within the framework of the evaluation of Switzerland's preparations for the full implementation of the Schengen acquis (doc. 8457/1/08 REV 1 SCH-EVAL 17 COMIX 302 RESTREINT UE).

Police cooperation:

- Report on Police cooperation (doc. 9562/08 SCH-EVAL 34 ENFOPOL 96 COMIX 406 RESTREINT UE)
- Replies from Switzerland to additional questions put forward by the Belgian delegation regarding the draft report on police cooperation (doc. 10604/08 SCHEVAL 54 ENFOPOL 116 COMIX 488 RESTREINT UE)

Visa issuance / consulates:

- Report on the Evaluation Committee's mission to the Visa section of the Embassy of Switzerland in Moscow in the context of Switzerland's preparations for the implementation of the Schengen acquis (doc. 10602/08 SCH-EVAL 52 VISA 211 COMIX 486 RESTREINT)
- Report on the Evaluation Committee's mission to the Consulate General of Switzerland in Istanbul in the context of Switzerland's preparations for the implementation of the Schengen acquis (doc. 10603/08 SCH-EVAL 53 VISA 212 COMIX 487 RESTREINT)
- Follow-up to the reports of the Evaluation Committee's missions to respectively the Visa section of the Embassy of Switzerland in Moscow and the Consulate General of Switzerland in Istanbul (doc. 11634/08 SCH-EVAL 60 VISA 243 COMIX 567 RESTREINT and updates)

SIS/ SIRENE:

SIS/SIRENE Evaluation : draft inspection report for Switzerland (doc. 13211/08 SCHEVAL 69 SIRIS 128 COMIX 674 RESTREINT)

Air borders:

Report on Air borders (doc. 13210/08 SCHEVAL 68 FRONT 80 COMIX 673 RESTREINT)