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- Draft-Council conclusions on the state of preparedness of the
REPUBLIC OF POLAND towards the implementation of all provisions of
the Schengen acquis except SIS-related issues

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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THE EUROPEAN UNION**

**Brussels, 27 October 2006 (27.10)
(OR. en)**

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**SCH-EVAL 166
COMIX 884**

NOTE

from : the Presidency
to: the Schengen Evaluation Working Party

Subject : Schengen evaluation of the new Member States
- Draft-Council conclusions on the state of preparedness of the REPUBLIC OF POLAND towards the implementation of all provisions of the Schengen acquis except SIS-related issues

PART I

a. Background applicable to all new Member States

1. The Schengen Evaluation Working Party has started evaluating the new Member States from 2005 on and has completed by the end of 2006 all non-SIS-related tasks. Altogether 58 themes were evaluated for the ten countries in the course of nineteen evaluation missions.
2. The evaluations were meant to ascertain whether the countries involved are able to apply all parts of the Schengen acquis with the ultimate goal of allowing the Council to decide on the abolition of controls at internal borders.
3. The evaluation task fits within the requirements of Article 3(2) of the 2003 Act of Accession which foresees that the provisions of the Schengen acquis and the acts building upon it or related to it, listed in the Annex referred to in that Article, shall be binding on and applicable in the new Member States from the date of accession.

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The provisions and acts not referred to in that Annex, although binding on the new Member States from the date of accession, will only apply in a new Member State pursuant to a Council decision to that effect in accordance with that Article.

4. The Council Decisions referred to in Art 3(2) of the 2003 Act of Accession will be taken on a Member State-by-Member State basis. Each Member State will be evaluated on its own merits.
5. The legal basis for the evaluations is the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (Sch/Com-ex (98) 26 Def.
6. The evaluation process started with a Declaration of Readiness for all non-SIS related evaluations by the Member States involved.
7. The Schengen Evaluation working party verified in writing the preparation of the new Member States for the application by them of all parts of the Schengen acquis through a questionnaire and a series of supplementary questions and answers.
8. These visits led to exhaustive reports containing factual descriptions as well as positive and critical assessments, and recommendations.
9. The purpose of the following Council Conclusions is to establish whether each of the new Member States subjected to the full evaluation procedure satisfies the conditions that are necessary for the application by it of all parts of the Schengen acquis, where additional follow-up measures are required and in which cases the necessary changes should be reassessed during inspection visits.
10. In taking the Decisions referred to in Article 3(2) of the 2003 Act of Accession, the Council may determine that all the new Member States will not be ready to apply the Schengen acquis as a whole from the same date. In such a case, it may be necessary to organise additional visits in order to evaluate the application of the Schengen acquis at borders between Members States at which the Council has decided not to abolish border checks and which have not already been evaluated. No such evaluation has taken place so far.

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11. These conclusions should be read in conjunction with the detailed inspection reports. A list of the relevant reports and a follow-up table is annexed to these Council conclusions.
12. The Council considers it necessary to require follow-up measures to remedy the weaknesses that were detected during the evaluation process, in particular as to the ones mentioned in the following Part II, in order to allow the Council to adopt the Decisions referred to in point 3 and 9.

b. Background for Poland

13. The Declaration of Readiness of Poland allowed to start the Schengen evaluation by 1 May 2006, without any reservation.
14. Inspections on site took place at the land, sea and air borders as well as in two Consulates. Police cooperation and Data protection have been assessed in situ, too.
15. (Poland has provided the Schengen evaluation working party with a follow up report, in which it states that it will be possible to remedy the weaknesses that have been detected without creating unnecessary delays.)

PART II - Specific findings

As stated before, the current conclusions should be read in conjunction with the evaluation reports. In these reports, many positive findings are mentioned in these, in some cases even best practices; However, for the purpose of the underlying conclusions and in particular with a view to defining which sites should be revisited, it is obvious that more focus has been put on weaknesses that should be remedied.

In the field of Border management, Poland has been positively assessed. The organisation is streamlined and functional, including national level competency for supervision and instruction. The personnel are professional and in general, the equipment is up-to-date. The land borders are controlled systematically both at the Border Crossing Points as at the green borders. However, the quality of thorough checks of third country nationals, profiling as well as the second-line activities needs to be enhanced.

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Poland has actively promoted bilateral cooperation with its neighbouring third countries, also in terms of joint patrols, contact point and common stations at border crossing points. *Concerning some of the joint activities, the Visiting Committee detected some serious practical problems and has proposed an analysis of the legal background (international and EU legislation) that is still underway.*

The infrastructure at the visited land border crossing points is, in general terms, in line with the Schengen standards. Some crossing points were under reconstruction and some others will be subject to reconstruction works in the future. The infrastructure and border management concept at Terespol and Medyka road border crossing points do not meet the Schengen standards. A revisit is envisaged.

The coast (**seaborders**) is planned to be entirely covered by an integrated radar surveillance network, which still is under construction (only one station out of the planned 18 is operational). The coast is also covered by a network of coast guard stations in readiness for rapid reaction and there is an offshore element (offshore patrol crafts, helicopters and fixed wing aircraft). The blue border surveillance system should be revisited before the lifting of the internal border controls, in order to verify the development of the radar system.

The Warsaw, Gdansk and Krakow **airports** do not fulfil the requirements at this stage, due to ongoing construction works. The airport of Warsaw should be revisited.

A special note is taken on the high quality and sufficient quantity of the border management personnel.

Following the inspection of Polish **visa issuance** at its consular sections in Moscow and Kiev, it was concluded that Poland may be in a position to implement the CCI/Schengen acquis in full in due course and that no significant shortcomings were noted in the daily work.

The amount and quality of information provided, security and staff training and education was appreciated.

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However more attention should be paid to the submission (Kiev) and the assessment (Moscow) of individual applications, including interviews, instead of allowing for batch-authorisations of visa applications; the visa decision making process and awareness of the risk of illegal immigration. Furthermore the practice of collecting the handling fee, national legislation on the types of visas (incl. the possibility to issue visas 6 months in advance) and bilateral agreements incl. waiver of the handling fee / exemption from presenting an invitation, should be reviewed.

The practice with respect to **Data protection** has been assessed positively, under the reservation that the powers of the Data Protection Authority will by no means limited with respect to SIS.

Police cooperation

Most of the preparatory work for the implementation of the Schengen acquis has already been accomplished as regards institutional and operational structures. Close cross-border cooperation is an integrated part of the day-to-day police routine.

The introduction of the Polish-German Handbook and the planned Handbooks with the Police Authorities of Slovakia and Lithuania, containing important information for cross-border police cooperation are recognized as good practise. The European Criminal Intelligence Model (ECIM) should be introduced..

The ratification procedures for bilateral agreements should be accelerated. The need to conclude a bilateral agreement with Slovakia on hot pursuit was emphasised.

The Border Guards should be provided with direct (online) access to the relevant police databases. Furthermore, a direct radio communication with the Border Guards should be implemented on a permanent basis, also with respect to the nationwide introduction of the TETRA system.

Access to the Handbook on International Police Cooperation is to be provided.

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[PART III- Conclusions

The Council is of the opinion that Poland has progressed in a substantial manner towards applying the Schengen acquis in full.

It is necessary to follow up the weaknesses that were detected, in particular to require correction of the weaknesses taken up in Part II, in order to allow the Council to take the Decisions referred to in Article 3(2) of 2003 Act of Accession. The Schengen partners must be kept informed of the measures adopted to this end. Among the weaknesses that will be re-visited in-situ, one can refer to the issues mentioned in Part II.]

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