



Council of the
European Union

026902/EU XXVI. GP
Eingelangt am 18/06/18

Brussels, 18 June 2018
(OR. en)

14524/06
DCL 1

SCH-EVAL 165
COMIX 883

DECLASSIFICATION

of document: 14524/06 RESTREINT UE/EU RESTRICTED

dated: 27 October 2006

new status: Public

Subject: Schengen evaluation of the new Member States

- Draft-Council conclusions on the state of preparedness of the
REPUBLIC OF MALTA 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)

14524/06

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SCH-EVAL 165
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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 MALTA 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.
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.

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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 Malta

13. The Declaration of Readiness of Malta allowed to start the Schengen evaluation by 1 May 2006, with the exception of airports and seaports, as of 1 May 2006. Malta has later issued a second Declaration informing that it is now ready for the evaluation of its Airport and Seaport.
14. Inspections on site took place on the basis of the first Declaration in two Consulates. Police cooperation and Data protection have been assessed in situ, too.
15. (Malta 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.

Border management strategy in has not yet been evaluated, since the Declaration of readiness foresees that Malta will be prepared by the first quarter of 2007 to receive the Schengen evaluation.

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Following the inspection of **Maltese visa issuance** at its consular sections in Moscow and Tunis, it was difficult to draw a uniform conclusion, given that Malta, as far as its Embassy in Moscow was concerned, was at the time of inspection not in a position to implement the CCI/Schengen acquis in full in due course and did not meet the requirements. Significant shortcomings concerned the security of staff, material and premises; procedures; access to information; the role of the Embassy in the visa decision-making process and the submission of applications.

In Tunis conversely, no significant shortcomings were noted in the daily work (*implying that Malta could be in a position to implement the CCI/Schengen acquis in full in due course*); access management, the availability of information and the security situation inside the premises was appreciated.

However certain practices including the differentiation of fees, the security situation outside the building / consular premises and that of the visa management system, the number of visa stickers stored and the safe-keeping of stamps should be reviewed.

Finally, national legislation should take account of the procedural safeguards enjoyed by EU family members (refusals, right of appeal).

Data protection in Malta was in many respects considered to rank among the best practices within the Schengen area.

Police cooperation:

The preparation of the Maltese Authorities for the full application of the Schengen Convention is on a rather early stage. The lack of a concrete Action Plan, indicating a detailed operational plan with clear time limits for all measures in order to meet the Schengen requirements, make it difficult to assess the current situation.

It is of utmost importance that the Maltese Authorities keep the time-schedule designed for establishing the **SIRENE** Office. The time schedule as such is well-functional, but no delays should be allowed.

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The basic training in Schengen matters is included in the training curriculum of the police and there are ongoing Twinning projects with a view to give tailor-made, specific trainings. The Handbook is available both as an electronic copy and as a paper copy and distributed to all police staff.

The European Criminal Intelligence Model (ECIM) is to be introduced.

The Maltese Authorities should either extend their international relations by considering the secondment of liaison officers abroad or/and make use of other Member States' resources.

[PART III- Conclusions

The Council is of the opinion that Malta 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.]

The Council cannot but underline that important efforts are needed with respect to Visa issuance in Consulates and that effective Police cooperation still has to materialise