



Brussels, 1 July 2019
(OR. en)

14264/03
DCL 1

EVAL 21
ELARG 109

DECLASSIFICATION

of document: 14264/03 RESTREINT UE/EU RESTRICTED

dated: 10 November 2003

new status: Public

Subject: Enlargement: statement by the Collective Evaluation Working Party

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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COUNCIL OF
THE EUROPEAN UNION

Brussels, 10 November 2003

14264/03

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EVAL 21
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PRESIDENCY NOTE

from : the Italian Presidency
to: Collective Evaluation Working Party
on: 13 November 2003
Subject : Enlargement: statement by the Collective Evaluation Working Party

INTRODUCTION

The Collective Evaluation Working Party was established by a Joint Action of 29 June 1998 ¹ as a mechanism for evaluating the enactment, application and effective implementation by the applicant countries of the EU *acquis* in the field of Justice and Home Affairs (JHA).

One of the most important tasks of the Working Party during the enlargement process consisted of drawing up country reports that, in a first stage, pointed out the precise areas where the most serious shortcomings existed and, in a second stage, focussed on the administrative capacity and implementing performance of each country in order to catch up with the EU *acquis* in the field of Justice and Home Affairs.

¹ JA 98/429/JAI, OJ L 191, 07.07.1998

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Monitoring checklists have been distributed and updated and were considered as a very useful tool for the Council, its Member States and their respective Parliaments in the final stages of the accession process.

With only a few months separating the acceding countries from EU membership, the Collective Evaluation Working Party herewith submits its final overall assessment on the state of play in the field of Justice and Home Affairs in the 10 acceding countries. The following comments should be read in conjunction with the previous reports in order to get a full picture of the assessment.

In the conclusion, one should look ahead at ways of maintaining a dialogue and a partnership with the acceding countries in order to assist them in implementing the EU's recommendations for correct application of the EU acquis.

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RESTRICTION OF THE EXERCISE OF THE TREATY POWERS

1. Border management

The ten acceding States have all gone through a successful development programme, under which the legislation and organisational structures have been adjusted to meet the Schengen requirements. Nevertheless, the planned administrative capacity and implementation performance have not yet been fully met in any of the states. Especially, more equipment is needed for surveillance of green and blue borders. As well, in many places, more devices to support reaction capability and border checks should be deployed and further training should be provided. In some countries there are open questions in regard to the full professionalisation of the border service and the level of staffing in general. None of these problems pose any serious security problems to the current Member States immediately after accession, because the border checks towards the new Member States will be maintained. In the longer run, the performance of the border guards is a matter that has major implications for the security of all other Member States. The sole entry and exit control will one day take place at the new external borders (it is anticipated that the lifting of internal border checks, "full Schengen implementation" will take place at a later stage, but only after a possible separate Council decision, that has to be taken unanimously).

Currently, systematic entry and exit checks and surveillance are being carried out at the borders between the acceding States and the Member States. In some acceding States, the number of EU-bound illegal migrants apprehended at these future internal borders is greater than the number of persons apprehended at the external borders. Besides that, the border guards in current Member States are apprehending similar numbers of EU-bound illegal migrants on the other side of these same future internal borders. Checks and surveillance will be maintained on the internal borders after accession, and thus, the accession will not bring along any major changes to the border situation. But immediately after full implementation of the Schengen *acquis*, two effective security filters would be lost at the internal borders, and the crime would gradually adapt to the new situation. At the new external borders, this would see new problem areas emerge and possibly even stimulate the overall pressure. Any discussion on border security in acceding States must be reflected to the later stage, where full Schengen implementation has been started.

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It must also be recognised, that the burden of maintaining those having entered irregularly may become unbearable, if it is not shared by other Member States. Overwhelming illegal migration may change a Member State's position towards effective control of illegal traffic.

Thus, the current situation allows for accession of all states, but further development is necessary in regard to the lifting of internal border checks, that will take place later. To this end, the new Member States' governments should maintain progress in the field of border security. The Schengen Action Plans should be implemented in full, and the purchase of proper equipment for border guards should be seen as a primary objective of the Schengen facility funding. All plans should be made in view of the situation after lifting the checks at the internal borders, which will alter the pressure at the external borders.

This development should be monitored closely and continuously. The final evaluation related to full implementation of the *acquis* should be thorough and pragmatic. The Council working group for Schengen Evaluations and its expert committees should be guaranteed the best possible expertise and a freedom to base their conclusions on covering operational information.

Finally, the risks related to the enlargement suggest that the operational cooperation between Member States' border authorities should be deepened. The transparency of national border management should be enhanced further. Some new evaluation methods could be implemented, possibly as a part of the joint risk analysis.

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2. Visa - migration - asylum

a) *Current situation*

Visa

Although there are less than six months left before the accession a significant number of acceding countries have not yet fulfilled a number of obligations in relation to the visa part (category 1) of the Schengen *acquis*, that has to be applied upon accession (uniform format for visa, common visa lists, secondary rules-including decisions of the Ex. Com. and Common standards documents, as Common Consular Instructions).

At the same time Visa policy has not aligned in all cases completely with E.U. standards (administration management-organisation etc).

On the other hand provisions on the Schengen *acquis* connected with the abolition of internal controls (e.g. issuing of Schengen visas valid for travel in all Schengen states, visa fees, preparations for SIS system and **SIRENE** offices), included in category 2, can not be evaluated now, as their implementation is to take place after accession and before lifting the internal border controls.

Migration

Control and fight against illegal immigration and illegal employment must be under continuous monitoring until accession. Although most of the acceding countries have appropriate legislation, the administrative capacity and the implementing performance are still lacking. Proper staff must be appointed and trained in the services dealing with migration and illegal immigration. Their coordination, which is not adequate in many cases has to be enhanced.

Special attention must be paid in the effective management of illegal immigrants, using the area of the acceding countries, as transit to the E.U. territory.

Readmission agreements, especially with third neighbouring countries (e.g. Russian Federation, Ukraine, Belarus) must be concluded-where lacking- before accession by speeding up the relevant negotiations.

RESTRICTION OF THE EXERCISE OF THE RIGHT OF ASYLUM

Asylum

In most cases legislation has been aligned with the E.U. *acquis*. Provisions or details that still do not comply with the *acquis* have to be amended until accession at the latest. In most cases the legislation on asylum set by the acceding countries is new. For that reason monitoring of their correct application has to be continued, as it is very important in respecting the rights of protection from one side and avoiding the danger of secondary movements from the other.

Due to the fact that there are new legislative instruments (regulations and directives) in this field (adopted or still discussed by the Council), special care has to be taken for the right and on time transportation of them in the legislation of the new Member States (after accession). The Commission is the responsible body for controlling this obligation (1st pillar).

The situation in reception centres seems to have been improved regarding their number, while new centres are still under construction in some cases. A common weak point is the poor state involvement in material reception conditions of the applicants and in granting them substantial rights, such as free legal aid. In many cases acceding countries are still based on UNHCR or NGO's assistance. This practice has to change as soon as possible.

Preparations (organisational and technical) for the on time establishment of EURODAC and DUBLINET units must be accelerated, so that acceding countries would be in a position for an active participation by accession. It is without saying that in a few cases where also legislative amendments are needed, these have to be completed as soon as possible.

b) Future steps

It is absolutely necessary in the remaining time (until 1 May 2004) for the acceding countries to speed up in order to cover identified gaps, regarding the category 1 provisions of the Schengen *acquis* on visas. The result of their efforts has to be evaluated by the relevant bodies - Working Groups before accession. The Schengen Evaluation Working Group will take over responsibility for evaluating the new Member States in the future in relation to their preparations for lifting internal border controls.

RESTRICTION OF THE EXERCISE OF THE TREATY OF THE EUROPEAN UNION

Administrative capacity and implementing performance of the services responsible for migration and illegal immigration have to be monitored until accession in the direction of improving their effectiveness and minimising the danger of secondary movements.

The conclusion of readmission agreements - where lacking - and the effective application of existing agreements have also to be monitored until accession.

Monitoring of appropriate amendments in asylum legislation of acceding countries and their application is essential. Special attention must be paid to the enjoyment of all rights of the applicants and the substantial participation of the state to the burden of the reception conditions.

3. Police / customs

a) *Police*

Acceding countries have made very good progress in terms of legislation and most countries have adopted basic legislation. They have generally reached a reasonable degree of alignment and implementation of the EU *acquis*. In some areas, alignment with the *acquis* needs to be completed and efforts should continue with a view to complete transposition and to implement the legislation. Special attention has to be paid to ensure the effective implementation and enforcement of the legislation.

While alignment with the *acquis* is well advanced, most countries still need to strengthen their administrative capacity. Work should continue to consolidate and modernise the administrative capacity of law enforcement agencies. Most countries are well advanced towards reaching an adequate administrative capacity and implementing structures are in place to a large extent, but acceding countries need to focus their efforts on further reinforcing their administrative capacity.

Progress has been made in the fight against crime, but further efforts are still needed in particular areas, such as the fight against organised crime, fraud, corruption, money laundering, trafficking in human beings and drug trafficking. These areas remain a source of serious concern.

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Particular attention should be paid to the following issues:

- Understaffing of some police services
- Training and selection procedures (long term strategy in the area of police training and training in police investigation methods, information analysis and in countering modern forms of criminality)
- Measures against internal corruption (training, codes of ethics, increase the integrity, the rule of law and transparency of the organisation)
- Public confidence in the police (improve the relationship of the police with the public)
- Police budget (modernisation of IT system, computerisation/ on line connections, and improvement of modern technical equipment and police data base)
- Unclear division of competencies between law enforcement agencies. Minimising overlaps between authorities. Signature of co-operation agreement between law enforcement agencies in order to improve co-operation and exchange of information between law enforcement authorities.
- National crime prevention programmes
- National drug strategies
- Anti-corruption strategies
- Multi-agency and comprehensive approach to combat organised crime and in particular new types of organised crime
- Improve instrument for measuring crime rate
- Develop new methods of technical and forensic criminal investigation
- Improve criminal intelligence analysis and operational capacity of the police
- Establishment of specialised services dealing with specific types of crimes.
- Conclusion of agreements with neighbouring countries on police co-operation
- Reinforce co-operation with EU Member States, Europol, OLAF and other institutions
- Develop a network of police liaison officers
- Reinforce the institutional capacity of data protection authorities

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b) *Customs*

Alignment with the *acquis* is well advanced in the custom area, but still needs to be completed in some countries. Special efforts should now focus on further reinforcing the administrative capacity of the customs service in order to combat customs related offences. Particular attention should be paid to the following issues:

- Understaffing of some customs services
- Investigation powers of customs officers
- Co-operation with business organisations in line with the Joint Action of 29 November 1996 and signature of memoranda of understanding with business organisations
- Implementation of specific strategy against internal corruption
- Training
- Better use of risk analysis and other investigative techniques
- Reinforcement of the quality of customs controls
- More involvement of customs authorities in the fight against drugs and fraud
- Technical equipment of customs offices
- Improve customs intelligence capacity
- To continue preparations for the Naples II and CIS Conventions
- Improve co-operation with other authorities

4. Justice

1. The latest reports by the Working Party on Collective Evaluation on the effectiveness of judicial systems in the acceding States were submitted in autumn 2002. The Working Party then helped to update the follow-up reports presented by the Commission before the summer.

For a complete picture of the evaluations conducted, the assessments below should be read in conjunction with the country reports.

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It transpires from the information collected by the Working Party that the material and human resources allocated to the judicial systems of the acceding countries are in many cases still insufficient, and hence do not allow for satisfactory functioning of the justice system. The most worrying delays concern the implementation of judicial reform in some countries, where substantive provisions relating to the structure of the judicial system and the statute of magistrates have still not been adopted. Delays in the adoption and entry into force of measures ensuring the independence of the judiciary have also been observed in some countries.

The work has also shown that insufficient resources are allocated to the introduction of strategies to combat corruption in the judiciary in several countries.

2. In the run-up to the accession of the ten acceding States, the Working Party on Collective Evaluation proposes, with regard to the assessment of implementation of the acquis in the area of justice, to focus its work on the criteria for implementation of the specific safeguard clause inserted in Article 39 of the Act of Accession in relation to **mutual recognition of judgements in civil and criminal matters**, the triggering of which is directly linked to the procedures for monitoring the undertakings entered into by the acceding States¹.

¹ Article 39:

"If there are serious shortcomings or any imminent risks of such shortcomings in the transposition, state of implementation, or the application of the framework decisions or any other relevant commitments, instruments of cooperation and decisions relating to mutual recognition in the area of criminal law under Title VI of the EU Treaty and Directives and Regulations relating to mutual recognition in civil matters under Title IV of the EC Treaty in a new Member State, the Commission may, until the end of a period of up to three years after the date of entry into force of this Act, upon motivated request of a Member State or on its own initiative and after consulting the Member States, take appropriate measures and specify the conditions and modalities under which these measures are put into effect.

These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between a new Member State and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and enter into force as of the date of accession. The measures shall be maintained no longer than strictly necessary, and, in any case, will be lifted when the shortcomings are remedied. They may however be applied beyond the period specified in the first paragraph as long as these shortcomings persist. In response to progress made by the new Member State concerned in rectifying the identified shortcomings, the Commission may adapt the measures as appropriate after consulting the Member States. The Commission will inform the Council in good time before revoking safeguard measures, and it will take duly into account any observations of the Council in this respect."

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This exercise appears to be particularly useful in view of the entry into force in these States, as from accession, of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, which enshrines the shift from cooperation granted by one State to another towards a mechanism for direct enforcement of a judgement passed in another Member State of the Union.

Emphasis should be placed on the following aspects which make it possible to verify fulfilment of the conditions required for mutual trust in the judicial systems of the Member States, a necessary prerequisite for implementation of the principle of mutual recognition of judgements:

- independence and impartiality of the justice system,
- observance of the fundamental procedural guarantees enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms,
- effectiveness of international judicial cooperation in terms of human (including training) and material resources,
- preparation for implementation of the formal *acquis*.

3. Besides, the CEWG is examining and monitoring issues regarding the transnational criminal organisations trafficking in human beings.
4. In parallel with this exercise relating to the acceding States, the Working Party on Collective Evaluation is continuing its analysis of the workings of the justice system and the fight against fraud, corruption and organised crime in the candidate countries (Bulgaria, Romania and Turkey), and undertakes to conduct this analysis with a view to possible future accession negotiations.

5. Corruption

Corruption is still widespread in acceding countries and remains a significant concern.

In some countries legislation is not fully aligned with the *acquis* in particular with the provisions of the 1995 Convention on the Protection of the European communities' financial interest and its protocols.

Further efforts are needed in order to

- further improve overall anti-corruption strategies
- implement decisive anti-corruption measures
- develop appropriate training for law enforcement officers and prosecutors
- develop a more co-ordinated multi-agency approach and improve investigative tools
- strengthened co-ordination and co-operation between law enforcement agencies and prosecution
- increase specialised staff to fight against corruption
- implement awareness - raising campaigns to increase public intolerance to corruption
- increase integrity, accountability and transparency in public administration

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CONCLUSION

The Council is invited to take note of the opinion of the delegations in the Collective Evaluation working party according to which the acceding States should continue their efforts in legislative alignment and administrative capacity building. Monitoring should continue until accession.

The relation with the acceding States will mute on 1 May 2004 from a negotiation status to a full partnership. Acceding States and Member States will from then on become partners in one single Area of Freedom, Security and Justice.

This new partnership will require confidence. It is therefore necessary to continue to assess the progress made by the new Member States, e.g. the way they will implement the recommendations made so far to them.

The Council might invite the new Member States to inform their partners in the Council once a year of the progress made in these fields of border management, visa/migration/asylum, police/customs, justice and corruption.