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European Union

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COMIX 64**

NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Evaluation and monitoring mechanism to verify the application of the Schengen acquis - guidance for further work

COURTESY TRANSLATION

On 2 June 2021, the Commission presented a proposal for a Regulation revising the evaluation and monitoring mechanism for verifying the application of the Schengen acquis. This revision has several objectives, including to strengthen the strategic orientation of the mechanism and the role of the Council in overseeing the well functioning of the Schengen area, to simplify and accelerate the procedures, to optimise the participation of experts from the Member States and to optimise the cooperation with the Union's bodies and organisations.

The evaluation mechanism is important for several reasons. It contributes to maintaining and reinforcing mutual trust within the Schengen area. It is also an important dimension of the good governance of the Schengen area.

Building on the work that started under the Slovenian Presidency (a progress report was presented to the Council on 9 December 2021) and that has been ongoing since January 2022, the Presidency wishes to

- verify that the proposed compromises provide a basis for finalising discussions on the regime of unannounced visits and the adoption of recommendations;
- raise the situation of those Member States for which a Council decision providing for the application of the provisions of the Schengen acquis in whole or in part has not been taken;
- take stock of the modalities of consultation of the European Parliament.

1. Regime of unannounced visits and adoption of recommendations

a) System of unannounced visits

In its proposal, the Commission has provided that unannounced evaluations, without prior notice, may be organised: (i) to evaluate practices at internal borders; (ii) when the Commission is aware of new or systemic problems that may have a significant negative impact on the functioning of the Schengen area; (iii) when the Commission has reasons to believe that a Member State is seriously failing to fulfil its obligations under the Schengen acquis, in particular in the case of allegations of serious violations of fundamental rights at the external borders. Exceptionally, the Commission may inform the Member State concerned at least 24 hours in advance, when the main purpose of the unannounced visit is a random verification of the implementation of the Schengen acquis.

Discussions in the Council led to an adjustment of the criteria for the three cases provided for in the Commission's proposal and to a limitation of the cases in which no prior notification is made.

Thus, the compromise proposed by the Presidency provides for unannounced visits to be notified at least 24 hours in advance. However: i) unannounced visits to internal borders do not give rise to such prior notification; ii) prior notification is not compulsory when the Commission has serious reasons to believe that serious violations of fundamental rights are taking place; iii) it is not compulsory either for verification visits (first time evaluation, verification of the implementation of an action plan, serious deficiencies).

b) Adoption of recommendations

The Commission's proposal is to merge the evaluation report and the recommendations addressed to the Member State into a single document and a single act in the interest of procedural speed and greater efficiency. This single act would be adopted by the Commission. However, for evaluations corresponding to the most significant issues, only the report should be adopted by the Commission, while the Council adopts the recommendations. These significant issues are: i) in the event of serious deficiencies; ii) first time evaluations; iii) thematic evaluations.

Discussions in the Council confirmed this balance. In addition, the Presidency compromise proposal provides that, when the Member State evaluated contests substantial elements of the draft report, it is also up to the Council to adopt the recommendations concerned.

COREPER is invited to confirm its support for the approach envisaged by the Presidency on the above two points.

2. Situation of the Member States for which a Council decision on the full application of the provisions of the Schengen acquis has not been taken

The Commission provides, in Article 1 §2 (b) of its proposal, that the evaluation mechanism aims, inter alia, at verifying that the necessary conditions for the application of all relevant parts of the Schengen acquis have been fulfilled in those Member States for which a Council decision providing for the application of the provisions of the Schengen acquis in full or in part [sic], has not been taken.

Recital 39 states that "*Given that the verification in accordance with the applicable Schengen evaluation procedures concerning Bulgaria, Cyprus, Romania and Croatia has already been completed pursuant to their respective Act of Accession, the verification under Article 1(2)(b) of this Regulation should not be carried out again in respect of these Member States.*"

In the framework of the discussions in the Council, it has been proposed to clarify Article 1(2)(b) in this sense.

The Presidency proposes an exchange of views on this issue.

3. Arrangements for consulting the European Parliament

Finally, the Regulation is based on Article 70 TFEU, which provides for an ad hoc adoption procedure, which is neither a legislative nor a co-decision procedure.

In a statement published in the OJ on 6 November 2013, the European Parliament, the Council and the Commission agreed, however, that *‘any future proposal from the Commission for amending this evaluation system would be submitted to the consultation of the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before the adoption of a final text’*.

By letter of 8 December 2021, the Council confirmed its decision to consult the European Parliament, requesting that it be delivered by the end of February 2022.

By letter of 9 February 2022, the Chairman of the LIBE Committee of the European Parliament addressed the following requests to the Presidency:

- to postpone the deadline for submitting this opinion, insofar as the vote in the LIBE Committee will take place on 16 or 17 March, and will have to be followed by a vote in plenary session;
- to involve the European Parliament *‘on an equal footing with the Council, preferably using the ordinary legislative procedure, or at least enhanced cooperation as a de facto co-legislator in the framework of the consultation procedure’*; the LIBE Committee Chairman also mentions *‘the organisation of trilogue meetings’*.

The Presidency proposes:

- **to recall that the Council will adopt the Regulation pursuant to Article 70 TFEU and after consulting the European Parliament on a voluntary basis, in accordance with the terms of the November 2013 declaration;**
- **to indicate to the Chair of the LIBE Committee that, in view of the timetable communicated by the latter, the Council is prepared to wait until the Parliament adopts its opinion at the plenary session on 4-7 April before finally adopting the text.**
- **a draft reply to this effect will be submitted to COREPER for approval.**