

Fact Sheet on the Legal Basis of the Schengen Evaluation Mechanism

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Concerning the decision of the Council to change the legal basis of the proposal on the Schengen Evaluation Mechanism, the Danish Presidency wishes to underline three facts:

1) The decision of the Council to change the legal basis was based on a purely legal assessment of the substance of the compromise text. The Council has no desire to exclude the European Parliament from its legitimate rights according to the Treaties.

At the Council meeting (Justice and Home Affairs) on 7 June 2012, the Council agreed on a compromise text on the Schengen Governance pack-age. An element in the agreement was a unanimous decision to change the legal basis of the proposal on the Schengen Evaluation Mechanism from Article 77 (2) (e) to Article 70 TFEU.

The substance of the proposal on the Schengen Evaluation Mechanism has been negotiated in Council since the proposal was presented by the Commission in September 2011.

On the basis of the developments in the negotiations on the substance, the Council Legal Service delivered an opinion on the question of the legal basis on 29 May 2012. According to this opinion, Article 70 is considered to be the correct legal basis for the proposal.

The discussions in Council have clearly demonstrated, that it would not be possible to obtain the necessary support for a proposal with a content that could be accommodated under Article 77 (2) (e) TFEU. The change of legal basis was therefore a prerequisite for making the desired progress towards a stronger Schengen Evaluation Mechanism.

2) The European Parliament has been closely involved in the negotiations

From the beginning of the negotiations in the Council during the Danish Presidency we have been in close contact with the rapporteur, Mr. Coelho, and other relevant Members of Parliament in order to accommodate the views of the Parliament on the Schengen Evaluation Mechanism.

From these contacts, it has been clear that a number of key issues regarding the substance of the Schengen Evaluation Mechanism were of particular importance to the European Parliament.

Among the issues that the Council has noted as being of particularly importance to the Parliament are:

The free movement should be reinforced by the mechanism.

The mechanism should be a European evaluation mechanism.

The absence of control at the internal borders should be covered by the mechanism.

It should be possible to carry out unannounced evaluation visits.

The mechanism should apply to both evaluations of countries that are already Schengen Member States as well as to evaluations of countries which are applying to become Schengen Member States.

The mechanism should be transparent and involve the Parliament.

On the basis of, inter alia, the strong views expressed by Parliament on these issues, the compromise text that the Council has agreed upon provides for:

A stronger role for the Commission and the involvement of Frontex and other relevant EU bodies.

That the absence of control at the internal borders can be evaluated.

Unannounced evaluation visits.

The same evaluation system for countries that are already Schengen Member States as well as for countries which are applying to become Schengen Member States.

Information from the Commission to the European Parliament on a regular basis on the evaluations and recommendations.

Yearly reports from the Commission to the Council and the European Parliament on the evaluations that have been carried out. These reports are made public.

It should also be noted that the political sensitive provisions on the reintroduction of the internal border control were moved from the Schengen Evaluation Mechanism proposal to the proposal on the Schengen Borders Code in order to ensure co-decision on these important key provisions.

The Danish Presidency is strongly committed to continuing the close dialogue between the Council and the European Parliament in regard to all elements of the Schengen Governance package.

3) The European Parliament will continue to be closely involved

The discussions at the Council meeting on 7 June 2012 clearly demonstrated that it was central to all Member States that the change of legal basis should not result in depriving the European Parliament of influence on the proposal in the final stages of the negotiations.

The Council stated in a declaration very clearly that the Council will consult the European Parliament in accordance with Article 19(7) (h) of the Council's Rules of Procedure, in order to ensure that the opinion of the European Parliament to the fullest extent possible is taken in to consideration by the Council in all aspects before the Council moves to adoption of a final text.