



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 19 June 2012**

**11588/12**

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**Interinstitutional Files:  
2010/0312 (COD)  
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**SCHENGEN 51  
SCH-EVAL 89  
FRONT 105  
CODEC 1714  
COMIX 395**

**OUTCOME OF PROCEEDINGS**

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of: Council

on: 7 and 8 June 2012

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No. prev. doc. 5754/6/12 REV 6 SCHENGEN 7 SCH-EVAL 15 FRONT 8 COMIX 50  
CODEC 202

6161/4/12 REV 4 SCHENGEN 9 FRONT 15 SCH-EVAL 17 COMIX 83  
CODEC 292

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Subject: – Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis

– Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances

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The JHA Council at its meeting on 7 and 8 June 2012 reached political agreement on the above proposals as follows:

- It agreed at this stage on the substance of the text of the Schengen evaluation mechanism proposal as set out in the Presidency compromise set out in 5754/6/12 REV 6, including the proposal of change of the legal basis from Article 77(2)(e) to Article 70 TFEU;

- It decided to consult the European Parliament on a voluntary basis on the Schengen evaluation mechanism proposal, 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 will, to the fullest extent possible, be taken into consideration by the Council in all its aspects before the adoption by the Council of the final text;
- It agreed on the substance of the text of the proposal on reintroduction of border control as set out in the Presidency compromise set out in 6161/4/12 REV 4. Delegations are on that basis invited to lift their reservations on this proposal. The Presidency compromise text will then constitute the basis for the first informal trilogue with the European Parliament on this proposal.

Regarding the text of the Schengen evaluation mechanism proposal, it was concluded that following a legal and technical revision of the text as a consequence of the change of the legal basis, including in relation to the participation of IE and UK, it would be transmitted to the European Parliament in accordance with Article 19(7)(h) of the Council's rules of procedure.

Certain statements made at the meeting for entry in the minutes of the Council in relation to the above political agreement are set out in the Annex.

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Declaration by the Commission

The Commission continues to take the view that the appropriate legal basis for the adoption of the Schengen evaluation mechanism is Article 77 TFEU, and that implementing powers for the adoption of reports and recommendations under the mechanism should - in line with the terms of Article 291 TFEU - be delegated to the Commission rather than to the Council. Accordingly, the Commission maintains its position on these two issues, and expressly reserves its rights and powers under the Treaties to challenge these aspects of the Regulation before the Court of Justice.

Statement by Germany

Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) is based in particular on Article 62(1) and (2)(a) of the Treaty establishing the European Community, which has now been replaced by Article 77 of the Treaty on the Functioning of the European Union. According to those provisions, the Union is to develop a policy with a view to, inter alia, ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders. Article 72 of the TFEU makes it clear that Title V of the TFEU, to which Article 77 belongs, does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. Thus while the legislative powers of the European Union do extend to regulating the crossing of the internal borders, they do not stretch to the exercise of police powers to maintain law and order and safeguard internal security.

The Federal Republic of Germany therefore expects that the evaluation mechanism will also deal only with whether there really is an absence of any controls when crossing internal borders and not with the exercise of police powers within the territory. The exercise of police powers within the territory falls exclusively within the scope of national sovereignty and is not covered by the evaluation mechanism.

## Statement by Romania

Having in mind political guidelines for the strengthening of the Schengen governance, adopted at EU level in 2011, Romania remains of the opinion that Article 77(2)(e) of the TFEU is a suitable legal basis to found a robust, EU-centered Schengen evaluation system on.

However, having also taken note of the opinion expressed by the Council Legal Service, and in a spirit of compromise aimed at achieving swift accord on the Regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis at the level of the Council, Romania would not oppose the change of the said legal basis into Article 70 of the TFEU.

By the same token, Romania remains persuaded that the same spirit of loyal and constructive cooperation will prevail among all Member States in other matters pertaining to the Schengen acquis on which the Council Legal Service would have given a clear opinion.

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