



# Procedure file

Basic information		
NLE - Non-legislative enactments Regulation	<a href="#">2009/0033(NLE)</a>	Procedure lapsed or withdrawn
Schengen: evaluation mechanism to verify the application of the Schengen acquis		
Subject 7.10.02 Schengen area, Schengen acquis 7.30 Police, judicial and customs cooperation in general 8.50.01 Implementation of EU law		

Key players			
European Parliament			
Council of the European Union			
Council configuration	<a href="#">Justice and Home Affairs (JHA)</a>	Meeting	Date
		<a href="#">2979</a>	30/11/2009
European Commission			
Commission DG	<a href="#">Justice and Consumers</a>	Commissioner	
		MALMSTRÖM Cecilia	

Key events			
03/03/2009	Legislative proposal published	<a href="#">COM(2009)0102</a>	Summary
02/04/2009	Committee referral announced in Parliament		
06/10/2009	Vote in committee		Summary
09/10/2009	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0034/2009</a>	
19/10/2009	Committee referral announced in Parliament		
19/10/2009	Debate in Parliament		
20/10/2009	Results of vote in Parliament		
20/10/2009	Decision by Parliament		Summary
30/11/2009	Debate in Council	<a href="#">2979</a>	Summary
02/12/2009	Additional information		Summary
16/11/2010	Proposal withdrawn by Commission		

Technical information	
Procedure reference	2009/0033(NLE)

Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consultation of Parliament
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 074
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/7/00264

### Documentation gateway

Legislative proposal	<a href="#">COM(2009)0102</a>	04/03/2009	EC	Summary
Committee draft report	<a href="#">PE428.162</a>	24/09/2009	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0034/2009</a>	09/10/2009	EP	

### Additional information

National parliaments	<a href="#">IPEX</a>
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## Schengen: evaluation mechanism to verify the application of the Schengen acquis

**PURPOSE:** to establish an evaluation mechanism to verify the application of the Schengen acquis.

**PROPOSED ACT:** Council Regulation.

**BACKGROUND:** the Schengen area was developed within an intergovernmental framework in the late 80s and beginning of the 90s by Member States willing to abolish internal border controls. This area is based on full mutual trust between the Member States in their capacity to fully implement the accompanying measures allowing the lifting of internal border controls. In order to gain and maintain this mutual trust, the Schengen Member States set up a Standing Committee in with a mandate to: (i) verify whether all preconditions for application of the Schengen acquis (i.e. lifting of border controls) have been met by Member States wanting to join Schengen (?putting into effect/application?); (ii) verify that the Schengen acquis is being correctly applied by the Member States implementing the acquis (implementation?).

Once the Schengen acquis became part of the European Union framework (following the entry into force of the Amsterdam Treaty), modifications to this mechanism proved necessary. While, for legal reasons, the ?putting into effect/application? part must continue to be managed on an exclusively intergovernmental basis, the same cannot be said for the ?implementation? part, particularly for first pillar matters (establishing an Area of freedom, security and justice covered by the Treaty).

In this context, the Commission proposes a new evaluation mechanism for the second part (implementation) of the Schengen acquis, under the terms set out in this proposal.

Moreover, the proposal responds to the need to overcome a number of weaknesses identified by the Member States and the Commission with regard to the current evaluation framework, notably the fact that:

- the current methodology for the evaluation mechanism is inadequate as the rules on consistency and frequency of evaluations are not clear;
- there is no practice of conducting unannounced on-site visits;
- there is a need to develop a methodology for priority-setting based on risk analysis;
- a consistently high quality of expertise during the evaluation exercise needs to be ensured (experts participating in the evaluation should possess an adequate level of legal knowledge and practical experience and the number of experts should be limited);
- the post-evaluation mechanism for assessing the follow-up given to recommendations made after the on-site visits needs improving;
- the institutional responsibility of the Commission as guardian of the Treaty concerning first pillar matters is not reflected in the current evaluation system.

Note that the proposed Regulation goes together with the proposal for a Decision on the establishment of an evaluation mechanism to monitor the application of those elements of the Schengen acquis that are part of Community law (see [CNS/2009/0032](#)).

**IMPACT ASSESSMENT:** the proposal was not subject to an impact assessment.

**CONTENT:** the main objective of the proposed Regulation is to establish a legal framework for evaluating the correct application of those elements of the Schengen acquis that form part of EU law. It goes together with the [proposal for a Decision](#) on the establishment of an evaluation mechanism to monitor the application of those elements of the Schengen acquis that are part of Community law. This double evaluation mechanism is designed to maintain mutual trust between Member States in their capacity to effectively and efficiently apply the accompanying measures allowing the creation of an area without internal borders.

The main elements of the proposal can be summarised as follows:

Methodology for evaluations: this proposal for a Regulation establishes an evaluation mechanism to verify the application of the Schengen acquis in the Member States to which the Schengen acquis applies in full and in the Member States which have been authorised by the Council to take part in some of the provisions of the Schengen acquis. Member States which have been authorised to take part in some of the provisions of the Schengen acquis shall only participate in the evaluation of the provisions that are covered by the authorisation and which they already apply.

The Commission is responsible for the implementation of this evaluation mechanism with the help of a coordination group consisting of representatives of the Member States.

The proposal introduces a clear programming, providing for multiannual and annual programmes of on-site visits. Member States will continue to be evaluated on a regular basis in order to ensure the overall correct application of the acquis. All parts of the Schengen acquis which have their legal basis in the Treaty establishing the European Community can be the subject of evaluation. A non-exhaustive annex specifies the areas that may be the subject of evaluation.

This evaluation can be based on:

- d) replies to questionnaires;
- e) on-site visits; or
- f) a combination of both. In the latter case, the visits can take place shortly after the replies to the questionnaires are received.

On-site visits may be announced or unannounced (unlike the proposal for a Decision where only announced on-site visits can be carried out). The concrete need for such visits will be determined by the Commission after seeking the advice of the Member States, taking into account changes in the legislation, procedures or organisation of the Member State concerned as well as the risk analysis provided by Frontex regarding external borders and visas (see below).

Thematic or regional evaluations can also be included in the annual programme.

Both multiannual and annual programmes can always be adapted if need be.

Risk analysis: a risk analysis shall be provided by Frontex before an on-site visit programme is carried out. This risk analysis shall take into account migratory pressure with recommendations for priorities for evaluations in the coming year. The recommendations shall refer to specific sections of the external borders and to specific border crossing points to be evaluated in the coming year. Frontex shall submit to the Commission a separate risk analysis with recommendations for priorities for evaluations to be implemented through unannounced on-site visits in the coming year.

Expertise of the Member States: the Commission shall establish a list of experts designated by Member States, Europol and Eurojust for participation in on-site visits. Those national experts shall be selected by the Member States on the basis of their competences. In order to guarantee a high quality of expertise, Member States must ensure that the experts have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation, as well as a sound knowledge of on-site visit principles, procedures and techniques.

On-site visits shall be carried out by teams appointed by the Commission. Only a proportion of the experts shall be responsible for unannounced on-site visits. The number of experts participating in the announced on-site visits may not exceed eight persons and six persons for unannounced visits.

The Commission shall ensure the geographical balance and competence of the experts taking part in each team. Member State experts may not participate in an on-site visit to the Member State where they are employed. The members of the team shall also agree jointly on the appointment of a coordinating expert, who shall be responsible for conducting the on-site visits.

Experts of Frontex may also participate in the evaluation as observers.

The proposal also contains provisions on the conduct of on-site visits.

Follow-up of the evaluation: a report shall be drawn up following each evaluation. The report shall be based on the findings of the on-site visit and the questionnaire as relevant. It shall analyse the qualitative, quantitative, operational, administrative and organisational aspects as relevant and shall list any shortcomings or weaknesses established during the evaluation. It shall also contain recommendations for remedial action as well as respective deadlines for their implementation.

Within two weeks, the Member State concerned should provide its comments on the report and within six weeks an action plan on how to remedy the weaknesses. The Member State will be obliged to report within six months on the implementation of its action plan. Depending on the weaknesses identified, the Commission may schedule and carry out announced on-site visits in order to verify the correct implementation of the action plan. In the event of serious deficiencies, the Commission has to inform the Council without delay. This does not affect the Commission's power to initiate an infringement procedure at any stage of the evaluation.

Sensitive information: the teams shall regard as confidential any information they acquire in the course of performing their duties. The reports drawn up following on-site visits shall be classified as restricted. The Commission and the Member State concerned shall decide which part of the report can be made public.

Report: the Commission shall present a yearly report to the Council and the European Parliament on the evaluations carried out pursuant to this Decision. The report shall be made public and shall include information on the conclusions in relation to each evaluation and the state-of-play with regard to remedial actions as well as any infringement procedures initiated by the Commission as a result of the evaluations.

Territorial provisions: for legal reasons established in the Treaty, the United Kingdom and Ireland shall take part in the implementation and application of this text. The same is true for Denmark, but Denmark shall have a period of six months to adopt this text. The participation of these three countries shall, however, be limited to certain defined areas. For specific legal reasons, Cyprus, Bulgaria and Romania shall also take part in this mechanism but only regarding those parts of the acquis which they already apply. Lastly, Norway, Iceland, Switzerland and Lichtenstein shall take part in the implementation of this text in accordance with the bilateral agreements concluded with the EU on the Schengen acquis.

**BUDGETARY IMPLICATIONS:** the Commission has prepared a common financial statement annexed to the draft Regulation the parallel [draft Decision](#) on the establishment of an evaluation mechanism to monitor the correct application of the Schengen acquis under Title IV of the EC

Treaty. This statement provides for a financial envelope of between EUR 560 000 and EUR 730 000 per year for the implementation of this mechanism, in terms of operational expenses only, until 2013). Adequate human and financial resources will have to be allocated to the Commission, which will be responsible for the new Schengen evaluation mechanism. Costs incurred by the Member State experts will also be reimbursed.

## Schengen: evaluation mechanism to verify the application of the Schengen acquis

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The Committee on Civil Liberties, Justice and Home Affairs adopted unanimously the report drafted by Carlos COELHO (EPP, PT) calling on the European Parliament to reject the proposal for a Council regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis.

The proposal has been rejected by the MEPs for two reasons:

- the scope of the proposal: when the Treaty of Lisbon enters into force, this objective will no longer apply, since the new legal situation will be completely different as a result of the abolition of the Community's pillar structure. It is crucial that a Schengen evaluation mechanism is created that is consistent with the consolidation of tasks currently divided between the first and the third pillar;
- legal basis: although technically correct, the legal basis laid down for this proposal - i.e. Article 66 of the EC Treaty - could pose problems given that the evaluation mechanism aims to evaluate the operation of the SIS, the VIS, the Schengen Borders Code and the Visa Code which are all subject to the codecision procedure. It is for this reason that codecision should be the procedure chosen. Parliament's position must not be a mere adjunct but must correspond to the significance of its role in adopting the respective basic legislative instruments. Moreover, given that both proposals show the same shortcomings and, in legal terms, represent two sides of the same coin, i.e. the creation of a single Schengen evaluation system, they should be treated as a package. As a consequence, the Commission is asked to withdraw this proposal and the [proposed parallel decision](#) and to submit, substantially improved proposals that respect the codecision procedure in relation to the first pillar.

## Schengen: evaluation mechanism to verify the application of the Schengen acquis

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The European Parliament rejected the proposal for a Council regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis.

Since the Commission did not withdraw this rejected proposal, the matter was referred back to the committee responsible, pursuant to Rule 56(3) of Parliament's Rules of Procedure.

## Schengen: evaluation mechanism to verify the application of the Schengen acquis

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The Council took note of the proposal for a Council regulation and decision on the establishment of an evaluation mechanism to verify the application of the Schengen acquis. The overall goal of the proposal is to improve the current Schengen evaluations.

## Schengen: evaluation mechanism to verify the application of the Schengen acquis

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The Lisbon Treaty, which entered into force on 1 December 2009, amended the EU's two core treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community (EC Treaty). The latter was renamed the Treaty on the Functioning of the European Union (TFEU).

These changes had various consequences for many ongoing procedures. First of all, the articles of the TEU and of the old EC Treaty that constitute the legal basis of all the proposals founded on those Treaties were renumbered in accordance with the table of equivalences mentioned in Article 5 of the Lisbon Treaty.

In addition, some proposals underwent a change to their legal basis going beyond a mere change to their numbering, and this resulted in changes to the type of procedure.

The Lisbon Treaty also introduced new concepts of decision-making procedure. The old "codecision procedure" was extended to new areas and renamed the "ordinary legislative procedure". A new "consent procedure" replaced the old "assent procedure". New interinstitutional procedures were also set up for the adoption of certain non-legislative acts, for example the conclusion of some international agreements.

The ongoing proposals concerned by these changes were formally modified by the Commission in a Communication published on 2 December 2009 ([COM\(2009\)0665](#)).

In the case of the proposal for a Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis, the entry into force of the Lisbon Treaty had the following impacts:

- the old legal basis ? Treaty/EC/ Art. 66(1) - became Article 74 of the TFEU. Please note that the numbering of the old legal basis corresponds to the consolidated version of the Treaty that was applicable immediately before the entry into force of the Lisbon Treaty, and may differ from the references in the original Commission proposal;
- the proposal, which had previously fallen under the old consultation procedure (CNS), was classified as an interinstitutional non-legislative procedure (NLE).