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PROPOSAL

from: European Commission
dated: 4 March 2009

Subject: Proposal for a Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: COM(2009)102 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.3.2009
COM(2009)102 final

2009/0033 (CNS)

Proposal for a

COUNCIL REGULATION

**on the establishment of an evaluation mechanism to verify the application of the
Schengen acquis**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Grounds for and objective of the proposal

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 Community 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 EU 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 overall objectives of the new mechanism should be to ensure transparent, effective and consistent implementation of the Schengen *acquis*, also reflecting the changes in the legal situation after the integration of the Schengen *acquis* within the framework of the European Union.

• General context

The area without internal borders as set up by the Schengen *acquis* — 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 and implement accompanying measures to this end, such as common rules on external border controls, a common visa policy, police and judicial cooperation and the establishment of the Schengen Information System (SIS). It was not possible to abolish internal border controls within the Community framework, as the Member States could not agree on the need for their abolition in order to achieve the objective of the free movement of persons (Article 14 EC Treaty). Over the years, however, all Member States at that time except the United Kingdom and Ireland have joined the Schengen area.

The Schengen *acquis* became part of the European Union framework with the entry into force of the Amsterdam Treaty in 1999¹.

The Schengen 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: e.g. checks at external borders are carried out by Member States not only to protect their own interests but also on behalf of all other Member States to which people could travel once having crossed the external borders of the Schengen area.

¹ To this end, it was necessary to define the Schengen *acquis* (Council Decision 1999/435/EC, OJ L 176 of 10.7.1999, p. 1) and to determine the legal basis in the Treaties for each of the provisions or decisions constituting this *acquis* (Council Decision 1999/436/EC, OJ L 176 of 10.7.1999, p. 17). Each provision of the *acquis* received a legal basis under the first or the third pillar. Those provisions of the Schengen *acquis* for which no single legal basis could be determined (i.e. the SIS provisions) were considered to be part of the third pillar. All modifications to this *acquis* must have an appropriate legal basis under the Treaties.

In order to gain and maintain this mutual trust, the Schengen Member States set up a Standing Committee in 1998. Its mandate is set out in a decision of the Schengen Executive Committee (SCH/Com-ex (98) 26 def) and consists of two separate tasks:

1. Verification 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');
2. Verification that the Schengen *acquis* is being correctly applied by the Member States implementing the *acquis* ('implementation").

Schengen thus makes a distinction between 'putting into effect' and 'implementation'. Therefore, first of all, checks have to be made to determine whether the conditions for mutual trust are met before the *acquis* can be put into effect. Secondly, mutual trust then needs to be maintained by checking the correct implementation of the *acquis*. In the intergovernmental phase of Schengen, specific provisions for verifying correct implementation were needed.

The Schengen *acquis* was integrated within the European Union framework without being renegotiated. The Standing Committee and its 1998 mandate were thus taken over without change, except that the Standing Committee became the Schengen Evaluation Working Group (SCH-EVAL) in the Council. It came under Article 66 EC Treaty and Articles 30 and 31 EU Treaty, as the Schengen *acquis* covers both first and third pillar measures.

Given its intergovernmental basis, Schengen evaluation has been and still is entirely in the hands of the Member States, with the Commission participating as an observer. This continues to be a logical approach for the first part of the mandate, as there is nothing similar in the EU/Justice and Home Affairs *acquis* with a distinction between 'putting into effect' and 'implementation'. Moreover, it should be noted that the decision-making procedure for the lifting of internal border controls and the full application of the Schengen *acquis* was, for the enlargements of 2004 and 2007, laid down in the accession treaties, thus in primary law. The Acts of Accession provided for a Council Decision after consultation of the European Parliament. There is no right of initiative foreseen for the Commission.

However, the approach is less logical for the second part of the mandate, especially as far as first pillar matters are concerned. Hence, already at the time of integration of the *acquis*, the Commission issued a declaration stating that it 'considers that the integration into the Union framework of the Decision of the Executive Committee setting up a Schengen Implementing Convention Standing Committee (SCH/Com-ex (98) 26 Def of 16.9.1998) does not in any way affect the powers devolving on it from the Treaties and in particular its responsibility as guardian of the Treaties'.

As evaluation before putting into effect is fundamental for Member States in order to gain mutual trust, it seems reasonable for this to remain the responsibility of Member States. Moreover, where a Member State does not follow the recommendations made, no decision can be taken to lift internal border controls, which is thus an effective 'incentive' for full and correct application of the *acquis*. The Commission will continue to participate fully as an observer in these evaluations.

- **The need to improve evaluation of the correct application of the *acquis***

The Hague Programme of 2004 invites the Commission ‘to submit, as soon as the abolition of controls at internal borders has been completed, a proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism, ensuring full involvement of Member States experts, and including unannounced inspections’.

Since 1999, there have been several discussions between Member States and the Commission on making the Schengen evaluation mechanism more efficient, in particular concerning the second part of the mandate, namely verification of the correct application of the *acquis* after the lifting of internal border controls. The following main weaknesses have been identified:

- (1) The current methodology for the evaluation mechanism is inadequate. The rules on consistency and frequency of evaluations are not clear. There is no practice of conducting unannounced on-site visits.
- (2) There is a need to develop a methodology for priority-setting based on risk analysis.
- (3) A consistently high quality of expertise during the evaluation exercise needs to be ensured. The experts participating in the evaluation should possess an adequate level of legal knowledge and practical experience. Sending an expert from each Member State on each on-site visit may be detrimental to the efficiency of the exercise. An appropriate number of experts to participate in visits needs to be determined.
- (4) The post-evaluation mechanism for assessing the follow-up given to recommendations made after the on-site visits needs improving, as the measures taken to remedy deficiencies as well as the timeframe within which they are to be remedied vary from one Member State to another.
- (5) The institutional responsibility of the Commission as guardian of the Treaty concerning first pillar matters is not reflected in the current evaluation system.

The following points are intended to address these weaknesses:

Methodology for evaluations

The present proposal introduces a clear programming, providing for multiannual and annual programmes of both announced and unannounced 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.

This evaluation can be based on replies to questionnaires, on-site visits or a combination of both. In the latter case, the visits can take place shortly after the replies to the questionnaires are received.

In recent years, Member States have not seen the need to carry out evaluations on the spot concerning judicial cooperation in criminal matters, weapons and drugs. Data protection has also not always been subject to on-site evaluations.

Nevertheless, on-site visits are not limited to external borders and visas and can cover all parts of the Schengen *acquis*, including the provisions for the lifting of controls at internal borders. However, as far as weapons are concerned, it should be noted that when the *acquis* was integrated within the EU framework the relevant provisions of the Schengen *acquis* were

replaced by Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons². Verification of the correct transposition of this Directive was entrusted to the Commission in accordance with the EC Treaty. As Member States have never seen the need to carry out evaluations on the spot, there is no need to include verification of the correct transposition of the Directive in the present proposal.

The concrete need for on-site 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.

In addition, if necessary, thematic or regional evaluations can also be included in the annual programme.

On top of these regular evaluations, unannounced on-site visits can be made on the basis of the risk analysis provided by Frontex or any other source indicating a need to carry out an unannounced visit.

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

Expertise of the Member States

Member State experts are also involved in verifying correct application in other fields of Community law, e.g. aviation and maritime security. As the correct implementation of the accompanying measures allowing the lifting of internal border controls is of fundamental importance for the internal security of Member States, experts of the Member States will continue to play an important role in the evaluation process. They will participate in both announced and unannounced visits and advise the Commission on drafting the multiannual and annual evaluation programmes.

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.

Appropriate training should be provided for by the relevant bodies (e.g. Frontex) and funds should be made available to Member States for initiatives targeted at specific training in the field of the evaluation of the Schengen acquis (e.g. through including training in the priorities for Community actions adopted in accordance with the rules established by the External Borders Fund)³.

Given the need to reduce the number of participating experts in order to ensure efficient evaluation on the spot, the number of experts participating in announced visits should be limited to eight. As it might be more difficult to make available experts for unannounced visits at short notice, the number of experts participating in such visits should be limited to six.

² OJ L 256, 13.9.1991, p. 51.

³ OJ L 144 of 6.6.2007, p. 22.

The correct implementation of measures to ensure the free movement of persons in accordance with Article 14 EC Treaty does not affect the internal security of other Member States, so evaluation of the abolition of internal border controls can be fully entrusted to the Commission. It is worth mentioning that verification of the abolition of internal border controls is not covered by the intergovernmental mandate.

Follow-up of the evaluation

In order to address effectively the identified weaknesses and shortcomings, the findings of the report should each be assigned to one of three categories. 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 or unannounced 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. A Member State might be in breach of the *acquis*, e.g. where it refuses entry to persons who are in possession of a valid Schengen visa issued by another Member State. In such cases, the internal security of the Member State is not at stake, but it is nevertheless infringing Community law.

Integration of the Schengen *acquis* within the European Union framework

Given the Commission's responsibilities under the EC Treaty, it is essential for the Commission to take charge of the Schengen evaluation process to assess the correct application of the *acquis* after the lifting of internal border controls. Nevertheless, the expertise of the Member States is also important in order to be able to verify implementation on the spot as well as to maintain mutual trust between the Member States.

The costs of the participation of the Member State experts will be borne by the EU budget.

It should also be recalled that as regards the provisions to be applied by Member States upon accession, the Commission retains its powers as guardian of the Treaties. The new evaluation mechanism does not cover the correct application of these provisions, as this first needs to be evaluated by the Council to determine whether internal border controls can be lifted.

- **Existing provisions in the area of the proposal**

Decision of the Executive Committee setting up a Schengen Implementing Convention Standing Committee (SCH/Com-ex (98) 26 Def of 16.9.1998)

- **Consistency with the other policies and objectives of the Union**

The proposal is consistent with existing policies and objectives of the European Union, in particular the objective of creating and maintaining an area of freedom, security and justice.

2. CONSULTATION OF INTERESTED PARTIES

Since 1999, several discussions have been held within the Council Working Group ‘Schengen Evaluation’ in order to render the Schengen evaluation mechanism more efficient. The group agreed for instance to limit the number of experts participating in evaluations. However, this agreement is not legally binding and every Member State still has the right to send an expert on evaluation visits, which sometimes makes it difficult to ensure the smooth functioning of these visits. In addition, the frequency and methodology of the evaluations have also been discussed.

In April 2008, the Commission organised an expert meeting. Member States agreed with the assessment of the weaknesses as identified by the Commission. While the Member States acknowledged the need to change the current mechanism, some Member States expressed doubts about the institutional role of the Commission in a new Schengen evaluation mechanism.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposed action

The instrument provides for a new Schengen evaluation mechanism in order to ensure transparent, effective and consistent implementation of the Schengen *acquis*. It also reflects the changes in the legal situation after the integration of the Schengen *acquis* within the European Union framework.

• Legal basis

Article 66 of the Treaty establishing the European Community. The intergovernmental mandate received Article 66 EC Treaty (as well as Articles 30 and 31 EU Treaty for the third pillar part) as legal basis and the areas of evaluation remain the same.

• Subsidiarity and proportionality

In accordance with the principle of subsidiarity, the objective of the proposed instrument, namely rendering more efficient the existing Schengen evaluation mechanism, which is currently the responsibility of the Council, can only be achieved at Community level.

The present proposal remains within the current framework, while limiting the number of participating experts and increasing efficiency. It does not go beyond what is necessary to achieve its objective.

• Choice of legal instrument

An evaluation mechanism to ensure the correct application of Community law by its very nature cannot require any action by Member States to transpose it into national law, so the instrument chosen is a Regulation.

4. BUDGETARY IMPLICATIONS

The Commission has prepared a common financial statement applying also to the Decision proposed under Title VI of the EU Treaty. It is annexed to this Regulation. 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.

5. ADDITIONAL INFORMATION

Consequences of the various protocols annexed to the Treaties and of the association agreements concluded with third countries

The legal basis for this proposal is in Title IV of the EC Treaty, so the system of ‘variable geometry’ provided for in the protocols on the position of the United Kingdom, Ireland and Denmark and in the Schengen protocol, applies.

This proposal builds upon the Schengen *acquis*. The following consequences in relation to the various protocols therefore have to be taken into account:

United Kingdom and Ireland: This provides for an evaluation mechanism covering parts of the Schengen *acquis* in which the United Kingdom and Ireland do not participate, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* and Council Decision 2002/192/EC of 28 February 2002 concerning Ireland’s request to take part in some of the provisions of the Schengen *acquis*. Therefore, the United Kingdom and Ireland participate in the adoption of this Regulation and are bound by it or subject to its application only to the extent that the evaluation mechanism covers those parts of the Schengen *acquis* in which the United Kingdom and Ireland do participate, such as for example carrier’s liability and drugs.

Denmark: Under the Protocol on the position of Denmark annexed to the EU Treaty and the EC Treaty, Denmark does not take part in the adoption by the Council of measures under Title IV of the EC Treaty, with the exception of ‘measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas’.

This proposal builds on the Schengen *acquis*, and under Article 5 of the Protocol ‘Denmark shall decide within a period of six months after the Council has decided on a proposal or initiative to build upon the Schengen *acquis* under the provisions of Title IV of the Treaty establishing the European Community whether it will implement this decision in its national law’.

Consequences for the new Member States of the two-stage procedure for implementing instruments building on the Schengen *acquis* (Bulgaria, Cyprus and Romania):

Article 3(1) of the 2003 Act of Accession⁴ and Article 4(1) of the 2005 Act of Accession⁵ state that the provisions of the Schengen *acquis* and the acts building upon it or otherwise related to it, listed respectively in Annex I and Annex II to these Acts, will be binding on and applicable in the new Member States from the date of accession. Provisions and acts not referred to in the Annexes, while binding on the new Member States from the date of accession, will only apply in a new Member State pursuant to a Council Decision to that effect taken in accordance with these Articles.

This is the two-stage implementation procedure whereby certain provisions of the Schengen *acquis* are binding and applicable from the date of accession to the Union whereas others, specifically those linked intrinsically to the removal of controls at internal borders, are binding from the date of accession but applicable in the new Member States only after a Council Decision to that effect.

This instrument specifies how the correct implementation of the *acquis* is to be ensured after the lifting of internal border controls.

It should be underlined that for those provisions, which are applicable upon accession, the Commission retains its powers as guardian of the Treaties. Nevertheless, the evaluation mechanism introduced by this instrument applies to these provisions only after the Council has carried out the Schengen evaluation to determine whether internal border controls can be lifted.

Norway and Iceland: As regards Norway and Iceland, this proposal constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of the latter two States with the implementation, application and development of the Schengen *acquis*⁶.

Switzerland: As regards Switzerland, this proposal constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis*⁷.

Liechtenstein: As regards Liechtenstein, this proposal constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which falls within the areas referred to in Article 1, points A to G, of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC⁸.

⁴ OJ L 236, 23.10. 2003, p. 33.

⁵ OJ L 157, 21.6. 2005, p. 29.

⁶ OJ L 176, 10.7.1999, p. 36.

⁷ OJ L 53, 27.2.2008, p. 52.

⁸ OJ L 83, 26.3.2008, p. 3.

It needs to be underlined that infringements identified in the application of the Schengen *acquis* by Iceland, Norway, Switzerland and Liechtenstein have to be brought before the Mixed Committees established under the above-mentioned Agreements and the respective provisions on the settlement of disputes apply.

Participation of experts from Member States that do not yet fully apply the *acquis* or which are allowed to apply only parts of the *acquis*:

As far as Cyprus, Bulgaria and Romania are concerned, their experts can participate in the evaluation of those parts of the *acquis* which they already apply in accordance with the respective Acts of Accession (e.g. external borders except SIS).

As far as the United Kingdom and Ireland are concerned, their experts can only take part in evaluations of those parts of the *acquis* which have already been put into effect.

Proposal for a

COUNCIL REGULATION

on the establishment of an evaluation mechanism to verify the application of the Schengen *acquis*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Hague programme⁹ invited the Commission ‘to submit, as soon as the abolition of controls at internal borders has been completed, a proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism, ensuring full involvement of Member States experts, and including unannounced inspections’.
- (2) By decision of the Executive Committee of 16 September 1998¹⁰, a Standing Committee on the evaluation and implementation of Schengen was set up. The Standing Committee was given the mandate, firstly, to establish whether all the preconditions for lifting internal border controls with a candidate State have been fulfilled, and secondly, to ensure that the Schengen *acquis* is properly applied by the States already implementing the *acquis* in full.
- (3) A specific evaluation mechanism to verify the application of the Schengen *acquis* is necessary given the need to maintain a high level of mutual trust between those Member States that form part of an area without internal border controls and the need to ensure high uniform standards in the application of the Schengen *acquis* in practice. Such a mechanism should build upon close cooperation between the Commission and those Member States, without prejudice to the powers of the Commission under Article 226 of the Treaty establishing the European Community.
- (4) The evaluation mechanism set up in 1998 should therefore be revised as regards the second part of the mandate given to the Standing Committee. The first part of the mandate given to the Standing Committee should continue to apply as laid down in part I of the Decision of 16 September 1998.

⁹ OJ 53, C 3.3.2005, p. 1 (point 1.7.1)

¹⁰ OJ L 239, 22.9.2000, p. 138

- (5) The Schengen *acquis* contains both provisions covered by the Treaty establishing the European Community and provisions covered by the Treaty on European Union. The experience gathered during previous evaluations demonstrates the need to maintain a coherent evaluation mechanism covering both pillars.
- (6) This Regulation constitutes the necessary legislative basis for implementing the evaluation mechanism in respect of matters falling within the scope of the Treaty establishing the European Community. Council Decision XXXX/XXX/JHA of ... establishing an evaluation mechanism to verify the application of the Schengen *acquis* constitutes the necessary legislative basis for implementing the evaluation mechanism in respect of matters falling within the scope of the Treaty on European Union.
- (7) The fact that the legislative basis necessary for setting up the evaluation mechanism consists of separate instruments does not affect the principle that all evaluations should be implemented as part of one single mechanism. Certain provisions of these instruments should therefore be identical.
- (8) The evaluation mechanism should set up transparent, efficient and clear rules on the methodology to be applied for the evaluations, the use of highly qualified experts for on-site visits, and the follow-up to be given to the findings of the evaluations. Notably, the methodology should provide for unannounced on-site visits to complement the announced on-site visits, in particular with regard to border controls and visas.
- (9) The scope of the evaluation mechanism should also include verification of the relevant legislation on the abolition of controls at internal borders and checks within national territory. In view of the specific nature of these provisions, which do not affect the internal security of the Member States, the relevant on-site visits should be entrusted exclusively to the Commission.
- (10) The European Agency for the management of operational cooperation at the external borders of the Member States of the European Union¹¹ (hereinafter referred to as Frontex) should support the implementation of the mechanism, primarily in the area of risk analysis relating to external borders. The mechanism should also be able to rely on the expertise of the Agency for carrying out on-site visits at the external borders on an ad hoc basis.
- (11) Member States should ensure that experts made available for on-site visits have the necessary experience and have undergone specific training for this purpose. Appropriate training should be provided for by the relevant bodies (e.g. Frontex) and funds should be made available to Member States for initiatives targeted at specific training in the field of the evaluation of the Schengen *acquis* through the existing financial instruments and their development.
- (12) This Regulation and the Decision of the Executive Committee of 16 September 1998, in so far as it is not repealed by this Regulation, are without prejudice to the Commission's powers under the Treaty establishing the European Community as regards the application of those provisions of the Schengen *acquis* referred to in Article 3(1) of the 2003 Act of Accession as regards the Republic of Cyprus and in

¹¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 (OJ L 349 of 25.11.2004, p. 1).

Article 4(1) of the 2005 Act of Accession as regards the Republic of Bulgaria and Romania.

- (13) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is therefore not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of that Protocol, decide within a period of six months after the adoption of this Regulation whether it will implement it in its national law.
- (14) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which the United Kingdom participates to the extent that the Schengen *acquis* subject to evaluation is included in Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*¹², and subsequent Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen *acquis* by the United Kingdom of Great Britain and Northern Ireland¹³. The United Kingdom is therefore taking part in its adoption and is bound by it or subject to its application only to this extent.
- (15) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which Ireland participates to the extent that the Schengen *acquis* subject to evaluation is included in Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*¹⁴. Ireland is therefore taking part in its adoption and is bound by it or subject to its application only to this extent.
- (16) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*¹⁵ which falls within the areas referred to in Article 1, point A to G of Council Decision 1999/437/EC¹⁶ of 17 May 1999 on certain arrangements for the application of that Agreement, with the exception of Article 13 (7) and the third indent of Article 16.
- (17) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*¹⁷, which fall within the areas referred to in Article 1, points A to G, of Council Decision 1999/437/EC as read in conjunction with

¹² OJ L 131, 1.6.2000, p. 43.

¹³ OJ L 395, 31.12.2004, p. 70.

¹⁴ OJ L 64, 7.3.2002, p. 20.

¹⁵ OJ L 176, 10.7.1999, p. 36.

¹⁶ OJ L 176, 10.7.1999, p. 31.

¹⁷ OJ L 53, 27.2.2008, p. 52

Article 3 of Council Decision 2008/146/EC¹⁸ of 27 February, with the exception of Article 13 (7) and the third indent of Article 16.

- (18) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which falls within the areas referred to in Article 1, points A to G, of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC¹⁹ of 26 March 2008, with the exception of Article 13 (7) and the third indent of Article 16.
- (19) As regards Cyprus, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.
- (20) As regards Bulgaria and Romania, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

Purpose and scope

This 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.

Member States which do not yet fully apply the *acquis* shall only participate in the evaluation of those parts of the *acquis* which they already apply.

Article 2

Definitions

For the purposes of this Regulation the following definition applies:

¹⁸ OJ L 53, 27.2.2008, p. 1.

¹⁹ OJ L 83, 26.3.2008, p. 3.

‘Schengen *acquis*’, means the provisions of the Schengen *acquis* as integrated into the framework of the European Union by the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, as well as the acts building upon it or otherwise related to it, in so far as those provisions and acts have their legal basis in the Treaty establishing the European Community;

Article 3

Responsibilities

1. The Commission is responsible for the implementation of this evaluation mechanism. This mechanism is coordinated by a group, hereinafter referred to as "coordination group", which consists of representatives of the Member States and of the Commission. The group is chaired by a representative of the Commission. The Commission may invite Frontex to participate in the coordination group.
2. Member States shall cooperate with the Commission within the coordination group to allow the Commission to carry out the tasks conferred on it by the present regulation. Member States shall also cooperate with the Commission during the preparatory, on site visit, reporting and follow up phases of evaluations.

Article 4

Evaluations

1. Evaluations may consist of questionnaires and on-site visits. Both may be supplemented by presentations by the evaluated Member State of the area covered by the evaluation. On-site visits and questionnaires may be used independently or in combination in relation to specific Member States and specific areas. On-site visits may be announced or unannounced.
2. The specific areas that may be covered by evaluations are listed in the Annex to this Regulation, in so far as these areas relate to acts or provisions that have their legal bases in the Treaty establishing the European Community. The Annex contains a non-exhaustive list of such areas.

Article 5

Multiannual programme

1. A multiannual evaluation programme covering a period of five years shall be established by the Commission in close cooperation with the coordination group, not later than three months before the start of the next five-year period.
2. The multiannual programme shall contain the list of Member States to be evaluated each year. Each Member State shall be evaluated at least once during each five-year period. The order of the Member States to be evaluated will be based on a risk analysis taking into account the migratory pressure, the time elapsed since the

previous evaluation and the balance between the different parts of the Schengen acquis to be evaluated.

3. A standard questionnaire shall be attached to the multiannual programme.
4. The multiannual programme may be adapted, if necessary, in close cooperation with the coordination group.

Article 6

Risk analysis

1. Not later than 30 September each year, Frontex shall submit to the Commission a risk analysis taking 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 under the multiannual programme. The Commission shall make this risk analysis available to the Member States.
2. By the same deadline in paragraph 1, 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. These recommendations may concern any region or specific area and shall contain a list of at least ten specific sections of the external borders and ten specific border crossing points.

Article 7

Annual programme

1. Taking into account the risk analysis provided by Frontex in accordance with Article 6, an annual evaluation programme shall be established by the Commission, not later than 30 November of the previous year. The programme may provide for the evaluation of:
 - the application of the *acquis* by one Member State, as specified in the multiannual programme;and in addition, where relevant:
 - the application of specific parts of the *acquis* across several Member States (thematic evaluations);
 - the application of the *acquis* by a group of Member States (regional evaluations).
2. A first section of the programme, established by the Commission in close cooperation with the coordination group, will enumerate the Member States to be evaluated in the coming year in accordance with the multiannual programme. This section shall contain a list of the areas to be evaluated and include the questionnaire

to be communicated to the Member States concerned. If an assessment is possible at that stage, the programme shall contain a list of on-site visits to be carried out.

The Commission shall decide, after analysis of the replies to the questionnaire, whether an on-site visit is to take place or not.

An on-site visit shall not take place earlier than four months after communication of the questionnaire by the Commission to the Member State concerned.

3. The Commission shall draw up a second section of the programme, which lists the unannounced on-site visits to be carried out in the coming year. This section shall be considered confidential and shall not be communicated to the Member States.
4. The annual programme may be adapted, if necessary, in accordance with the provisions of paragraphs 2 and 3.

Article 8

List of experts

1. The Commission shall establish a list of experts designated by Member States for participation in on-site visits. The list shall be communicated to the coordination group.
2. Member States shall indicate the respective areas of expertise of each expert with reference to the areas listed in the Annex to this Regulation. Member States shall notify the Commission of any changes as soon as possible.
3. Member States shall indicate which experts can be made available for unannounced on-site visits in accordance with the requirements set out in Article 9(5).
4. The experts shall have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation mechanism, as well as sound knowledge of evaluation principles, procedures and techniques, and shall be able to effectively communicate in a common language.
5. Member States shall ensure that their designated experts meet the requirements specified in the previous paragraph, including by indicating the training the experts have received. In addition, Member States shall ensure that the experts receive continuous training to maintain their compliance with these requirements.

Article 9

Teams responsible for on-site visits

1. On-site visits shall be carried out by teams appointed by the Commission. The teams shall consist of experts drawn from the list of experts referred to in Article 8 and Commission official(s). 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.

2. The Commission may invite Frontex to designate a representative of the agency to take part in a visit to external borders as an observer.
3. The number of experts participating in evaluation visits may not exceed eight persons for the announced on-site visits and six persons for the unannounced on-site visits.
4. In the case of announced visits, the Member States whose experts have been appointed in accordance with paragraph 1 shall be notified by the Commission not later than 4 weeks before the on-site visit is scheduled. Member States shall confirm the availability of the experts within one week.
5. In the case of unannounced visits, the experts appointed in accordance with paragraph 1 shall be notified by the Commission not later than one week before the on-site visit is scheduled. Member States shall confirm the availability of the experts within 48 hours.
6. The coordinating expert for on-site visits shall be a Commission official.

Article 10

Conduct of on-site visits

1. The on-site visit teams shall undertake all necessary preparatory activities in order to ensure the efficiency, accuracy and consistency of on-site visits.
2. Prior to the on-site visits the Member States shall be notified:
 - at least 2 months before an announced on-site visit is due to take place;
 - at least 24 hours before an unannounced on-site visit takes place.
3. The members of the on-site visit team shall each carry identification authorising on-site visits on behalf of the Commission.
4. The Member State concerned shall ensure that the team of experts can directly address relevant persons. It shall ensure access of the team to all areas, premises and documents as required for the evaluation. It shall ensure that the team is able to exercise its mandate to verify the activities related to the areas to be evaluated.
5. The Member State concerned shall, by any means within its legal powers, assist the team in accomplishing its task.
6. In the case of announced on-site visits, the Commission shall provide the relevant Member States with the names of the experts of the team in advance. The Member State concerned shall designate a contact point for making the practical arrangements for the on-site visit.
7. The Member States shall be responsible for making the necessary arrangements for travel and accommodation for their experts. The costs of travel and accommodation for experts participating in the visits shall be reimbursed by the Commission.

Article 11

Questionnaire

1. The questionnaires shall cover the relevant legislation and the organisational and technical means available for the implementation of the Schengen *acquis* and statistical data for each field of evaluation.
2. Member States shall provide their replies to the questionnaire to the Commission within six weeks of its communication.

Article 12

Verification of the free movement of persons at internal borders

Notwithstanding Article 9, on-site visit teams for unannounced on-site visits to verify the absence of controls at internal borders shall consist of Commission officials only.

Article 13

Evaluation reports

1. 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.
 - (a) If the evaluation is based only on the questionnaire or an unannounced visit, the report shall be drawn up by the Commission;
 - (b) In the case of announced on-site visits, the report shall be drawn up by the team during the visit. The Commission official shall take overall responsibility for drafting the report as well as ensuring its integrity and quality.
2. The report shall analyse the qualitative, quantitative, operational, administrative and organisational aspects as relevant and shall list any shortcomings or weaknesses established during the evaluation. The report shall contain recommendations for remedial action as well as respective deadlines for their implementation.
3. One of the following classifications shall apply to each of the findings of the report:
 - (a) compliant;
 - (b) compliant but improvement necessary;
 - (c) non-compliant, with serious deficiencies.
4. The report shall be notified by the Commission to the Member State concerned within four weeks of the on-site visit or the receipt of replies to the questionnaire as relevant. The Member State concerned shall provide its comments on the report within two weeks.

Within six weeks of receipt of the report, the Member State concerned shall provide an action plan on how to remedy any weaknesses identified to the Commission.

5. The report and the reply of the Member State concerned shall be presented by the Commission expert to the coordination group. The Commission shall present its assessment of the adequacy of the action plan. Member States shall be invited to comment on the report and the action plan.
6. The Member State concerned shall report to the Commission on the implementation of the action plan within six months of receipt of the report, and shall thereafter continue to do so every three months as long as the action plan is not fully implemented. Depending on the severity of the weaknesses identified and the measures taken to remedy those weaknesses, the Commission may schedule announced or unannounced on-site visits to verify the implementation of the action plan.
7. Paragraphs 1 to 6 are without prejudice to the powers of the Commission under Article 226 of the Treaty establishing the European Community.
8. If an on-site visit reveals a serious deficiency deemed to have a significant impact on the overall level of security of one or more Member States applying the Schengen *acquis* in full, the Commission shall inform the Council as soon as possible.

Article 14

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, after consulting the Member State concerned, shall decide which part of the report can be made public.

Article 15

Transitional provisions

1. The first multiannual programme in accordance with Article 5 and the first annual programme in accordance with Article 7 shall be established six months after the entry into force of this Regulation. The starting dates for both programmes shall be one year after the entry into force of this Regulation.
2. The first risk analysis to be provided by Frontex in accordance with Article 6 shall be provided to the Commission not later than three months after the entry into force of this Regulation.
3. Member States shall designate their experts in accordance with Article 8 not later than three months after the entry into force of this Regulation.

Article 16

Reporting to the Parliament and the Council

The Commission shall present a yearly report to the Council and the European Parliament on the evaluations carried out pursuant to this Regulation. The report shall be made public and shall include information on:

- the evaluations carried out during the previous year,
- the conclusions in relation to each evaluation and the state-of-play with regard to remedial actions, and
- any infringement procedures initiated by the Commission as a result of the evaluations.

Article 17

Repeal

Where this relates to the Schengen *acquis* as defined in Article 2, part II of the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/Com-ex (98) 26 def.), entitled ‘Implementation committee for the states already applying the convention’, shall be repealed as of one year after the entry into force of this Regulation.

Article 18

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States, in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council
The President

ANNEX

- **Internal borders:**
 - Abolition of checks at internal borders
 - Abolition of obstacles at internal borders
- **External borders:**
 - Strategy and organisational and functional structure of border services
 - Risk analysis, intelligence and data flow management;
 - Readmission, expulsion and illegal immigration, including carrier's liability
 - Provisions for carrying out checks at border crossing points
 - Infrastructure of border crossing points
 - Technical means available at the external borders for border control
 - Numbers and training of border guards
 - Surveillance systems at borders
 - Existing forms of cooperation with neighbouring third countries
- **Visas:**
 - Provisions on the issuance of visas
 - Consultation of the Schengen Information System and Visa Information System
 - Security of Consulate premises
 - Provisions and practical arrangements for the procurement of Schengen visa stickers and storage conditions
 - Numbers and training of consular staff
 - IT equipment for detecting false and falsified documents
 - Consular cooperation
- **Data protection**
 - Legal, organisational and technical aspects of the protection of personal data
 - Measures to prevent access to information systems and to data stored
 - Data subject rights and complaints handling;

- Supervisory role (on-site visits)
- Data protection in relation to visa issuance
- Cooperation with other Data Protection Authorities (DPA)
- **Schengen Information System (SIS) / Sirene**
 - Security of data
 - Security of IT systems and networks where data are processed
 - Security of premises
 - Legislative and regulatory provisions regarding the SIS
 - Data handling, entry, modification, deletion of alerts, data quality measures
 - Technical availability and operational capacity of the Sirene Bureaux
 - End-user access to relevant SIS data
 - Training
- **Drugs**
 - Implementation of the Schengen medical certificate and obstacles encountered

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

1. NAME OF THE PROPOSAL:

Proposal for a Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis and for a Council Decision on the establishment of an evaluation mechanism to monitor the application of the Schengen acquis

2. ABM / ABB FRAMEWORK

Policy Area: Area of Freedom, Security and Justice (title 18)

Activities: Solidarity – External borders, visa policy and free movement of people (chapter 18.02)

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:

Under Chapter 18.02 (Solidarity — External borders, visa policy and free movement of people), creation of an article 18 02 XX - entitled “Schengen evaluation”*

**Budget line to be created in the PDB 2010*

3.2. Duration of the action and of the financial impact:

It is envisaged that the action will start as of 2010 or 2011. The action will be permanent.

3.3. Budgetary characteristics :

Budget line	Type of expenditure		New	Contribution from Schengen associated countries	Contributions from applicant countries	Heading in financial perspective
See 3.1	Non-comp	Diff ²⁰	YES/	YES	NO	No [3A]

²⁰ Differentiated appropriations

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		Year 2010	2011	2012	2013	n + 4	n + 5 and later	Total
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Operational expenditure²¹

Commitment Appropriations (CA)	8.1.	a	p.m.	0.56	0.73	0.73			
Payment Appropriations (PA)		b							

Administrative expenditure within reference amount²²

Technical & administrative assistance (NDA)	8.2.4.	c							
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TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c	p.m.	0.56	0.73	0.73			
Payment Appropriations		b+c	p.m.	0.56	0.73	0.73			

Administrative expenditure not included in reference amount²³

Human resources and associated expenditure (NDA)	8.2.5.	d	0.12	0.61	0.85	0.85			
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e	p.m.	0.06	0.1	0.1			

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c +d +e	0.12	1.23	1.68	1.68			
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²¹ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

²² Expenditure within article xx 01 04 of Title xx.

²³ Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

TOTAL PA including cost of Human Resources		b+c +d +e	0.12	1.23	1.68	1.68			
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Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
.....	f							
TOTAL CA including co-financing	a+c +d +e +f							

4.1.2. Compatibility with Financial Programming

Proposal is compatible with existing financial programming²⁴. **If necessary, financial appropriations for 2010 will be made available by a transfer within chapter 18.02.**

- ✘ Proposal will entail reprogramming of the relevant heading in the financial perspective.
- ✘ Proposal may require application of the provisions of the Interinstitutional Agreement²⁵ (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on Revenue

Proposal has financial impact – the effect on revenue is as follows:

The present proposal builds upon the Schengen acquis, as defined in Council Decision 1999/437/EC. Third countries associated with the Schengen acquis, Iceland and Norway²⁶ as well as Switzerland²⁷ and Liechtenstein²⁸ contribute thus to the costs.

²⁴ The evaluation mechanism will continue to be implemented after the financial year 2013.

²⁵ See points 19 and 24 of the Inter-institutional agreement.

²⁶ Article 12 (1), last paragraph of the Agreement between the Council and the Republic of Iceland and the Kingdom of Norway concerning the association of both these States with the implementation, application and development of the Schengen acquis (OJ L 176 of 10.7.1999, 36)

EUR million (to one decimal place)

		Prior to action [Year n-1]	Situation following action					
Budget line	Revenue		2010	2011	2012	2013	[n+4]	[n+5] ²⁹
18.02.XX	a) Revenue in absolute terms		p.m.	0.07	0.1	0.11		
	b) Change in revenue	Δ						

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

The need for human and administrative resources shall be covered within the allocation granted to the managing service in the framework of the annual allocation procedure

Annual requirements	Year 2010	2011	2012	2013	n + 4	n + 5 and later
Total number of human resources	1	5	7	7		

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

Given the intergovernmental origin of the Schengen acquis, the current Schengen evaluation mechanism is entrusted to the Council. Expenditure incurred in the framework of the evaluations is born by the national budget of Member States whose experts participate in the Schengen acquis. After the integration of the Schengen acquis into the framework of the European Union, it is necessary to provide also for a legal framework in which these evaluations are carried out. Consequently, the costs incurred through this mechanism, in particular related to the participation of the experts of the Member States (reimbursement of travel expenditure and accommodation during the on the spot visit) shall be borne by the EU budget. The

²⁷ Article 11 (3) 2nd alinea of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 50)

²⁸ Article 3 of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 83, 26.3.2008, p. 3)

²⁹ Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years

per diem of the Member States expert continue to be covered by the budget of the MS concerned.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The maintenance of the Schengen area as an area of free movement without internal border control is dependant on an effective and efficient evaluation mechanism in relation with the accompanying measures allowing for the maintenance of such an area without internal border control. It is indispensable to adapt the framework of the intergovernmental Schengen evaluation to the EU framework, where the Commission as guardian of the Treaties takes over its responsibilities while fully ensuring the participation of member States experts in order to maintain mutual trust. In order to keep a coherent set of evaluation, also the evaluation based on the third pillar shall be coordinated by the Commission, while again, fully involving the experts of Member States.

The Council invited the Commission in the Hague Programme to submit a proposal supplementing the existing Schengen evaluation mechanism which involves the experts of the Member States.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The overall objectives is the correct application of the Schengen acquis in all areas of accompanying measures allowing to maintain an area without internal border control.

Action 1: Evaluation either through on the spot visits or on the basis of questionnaires covering the following policy areas: external borders, visa, police cooperation at internal borders, Schengen Information System, data protection, drugs, judicial cooperation in criminal matters.

Indicator: Assessment of the correct application of the acquis in the reports (fully compliant, compliant but improvement necessary, non-compliant)

Action 2: Evaluation through unannounced on the spot visits covering the first pillar areas of the Schengen acquis

Indicator: Assessment of the correct application of the acquis in order to remedy specific shortcomings. A report will be established after each visit indicating the compliancy with Community law.

5.4. Method of Implementation (indicative)

Centralised Management

directly by the Commission

✕ indirectly by delegation to:

✕ executive Agencies

- ✘ bodies set up by the Communities as referred to in art. 185 of the Financial Regulation
- ✘ national public-sector bodies/bodies with public-service mission
- ✘ ***Shared or decentralised management***
 - ✘ with Member states
 - ✘ with Third countries
- ✘ ***Joint management with international organisations (please specify)***

Relevant comments:

6. MONITORING AND EVALUATION

6.1. Monitoring system

The proposed legislative instruments provide for the establishment of an evaluation mechanism for the correct application of the Schengen acquis. The correct application of the acquis will be assessed in the evaluation reports indicating the degree of compliance. The Commission will present a yearly report to the European Parliament and to the Council on the implementation of these instruments.

6.2. Evaluation

6.2.1. Ex-ante evaluation

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

6.2.3. Terms and frequency of future evaluation

7. ANTI-FRAUD MEASURES

In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1037/1999 shall apply without restriction to this action.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	Year 2010		Year 2011		Year 2012		Year 2013		Year n+4		Year n+5 and later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost								
OPERATIONAL OBJECTIVE No.1 ³⁰ Verification of Schengen acquis application.....																
Action 1 announced evaluation visits (MS experts +COM experts)																
Output 1: mission		0.0024	pm	pm	200	0.48	240	0.58	240	0.58						
IT equipment				pm		0.01		0.01		0.01						
Action 2.																
Unannounced evaluation visits MS experts + COM experts																
- Output 1: mission		0.0024	pm	pm	30	0.07	60	0.14	60	0.14						
TOTAL COST						0.56		0.73		0.73						

Calculation:

Action 1: Missions: 1 person/week x 2400 € x 25 missions for the first year and 30 mission for the subsequent years (8 experts per mission)

³⁰

As described under Section 5.3

IT equipment necessary for the visit on the spot (laptop etc).

Action 2: Missions: 1 person/week x 2400 € x 5 unannounced visits and 10 for the subsequent years (6 experts per mission)

This appropriation is intended to cover the expenditure on the establishment and operation of a pool of experts to check the correct application of the Schengen acquis by the Member States. This expenditure includes the travel expenses of the Commission experts as well as of the Member States experts borne in accordance with the provisions laid down in the regulations. To these costs must be added the costs for supplies needed for the visit on the spot e.g. laptop for drafting the report

8.2. Administrative Expenditure

The needs for human and administrative resources shall be covered within the allocation that can be granted to the managing DG in the framework of the annual allocation procedure in the light of budgetary constraints.

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		Year 2010	Year 2011	Year 2012	Year 2013	Year n+4	Year n+5
Officials or temporary staff ³¹ (XX 01 01)	A*/AD	1	4	6	6		
	B*, C*/AST		1	1	1		
Staff financed ³² by art. XX 01 02							
Other staff ³³ financed by art. XX 01 04/05							
TOTAL		1	5	7	7		

8.2.2. Description of tasks deriving from the action

8.2.3. Sources of human resources (statutory)

Posts currently allocated to the management of the programme to be replaced or extended (1)

- ⊗ Posts pre-allocated within the APS/PDB exercise for year 2009

Posts to be requested in the next APS/PDB procedure (2 for 2011 and 1 for 2012)

Posts to be redeployed using existing resources within the managing service (internal redeployment) (3)

- ⊗ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

³¹ Cost of which is NOT covered by the reference amount

³² Cost of which is NOT covered by the reference amount

³³ Cost of which is included within the reference amount

8.2.4. *Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1 Technical and administrative assistance (including related staff costs)							
Executive agencies ³⁴							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
Total Technical and administrative assistance							

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to 3 decimal places)

Type of human resources	Year 2010	Year 2011	Year 2012	Year 2013	Year n+4	Year n+5 and later
Officials and temporary staff (XX 01 01)	1	5	7	7		
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)						
Total cost of Human Resources and associated costs (NOT in reference amount)	0.37	0.73	0.85	0.85		

³⁴ Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

Calculation– *Officials and Temporary agents*

Calculation– *Staff financed under art. XX 01 02*

8.2.6. *Other administrative expenditure not included in reference amount*

EUR million (to 3 decimal places)

	Year 2010	Year 2011	Year 2012	Year 2013	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions							
XX 01 02 11 02 – Meetings & Conferences	p.m.	0.06	0.1	0.1			
XX 01 02 11 03 – Committees ³⁵							
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 - Information systems							
2 Total Other Management Expenditure (XX 01 02 11)	p.m.	0.06	0.1	0.1			
3 Other expenditure of an administrative nature (specify including reference to budget line)							
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	p.m.	0.06	0.1	0.1			

³⁵ Specify the type of committee and the group to which it belongs.

Calculation - *Other administrative expenditure not included in reference amount*