

## SCHENGEN GOVERNANCE PACKAGE

### I. BACKGROUND INFORMATION

On the 16 September 2011, the Commission presented a package made of *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions – Schengen Governance – strengthening the area without internal border control*, along with two legislative proposals:

- *Proposal for a regulation of the Council on the establishment of an evaluation 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.*

This is the third proposal of the Commission regarding the assessment mechanism, as the other two, which were launched on 9 March 2009 and 16 November 2010, were rejected by the European Parliament.

The proposal concerning Schengen Governance was born in the context of a great migratory pressure on the external borders of the Schengen area and in the context of reintroduction of internal border control by certain Member States (France, Denmark), action considered abusive by the European Commission.

Moreover, on 23-24 June 2011, the European Council has established the fact that the Schengen assessment mechanism should be improved and that a proper mechanism should be introduced in order to meet the requirements of extraordinary situations, which would endanger the Schengen area.

In comparison with the initial version, rejected by Member States, the European Commission accepted some compromise, as the present text is characterized by a certain balance and a delegation of responsibility among the Commission and the Member States.

At the **JHA Council of 7 June 2012**, the Danish presidency presented the 2 compromise texts of the Regulations which compose the Schengen Governance Package, which have been accepted. According to the Council's Conclusions:

- The texts of the two regulations composing the Schengen Governance Package – the one referring to the evaluation mechanism and the one referring to the reintroduction of internal border control – have been politically accepted by the Council;
- The legal base which will govern the Schengen evaluation mechanism has substituted art. 77.2.e. of the Treaty regarding EU functioning with art. 70 of TFUE.

On the occasion of the JHA reunion, which took place in Luxembourg between 6 and 7 June 2013, the Presidency informed the Member States on the negotiation status with the European Parliament and the European Commission with regard to the Schengen Governance Package – that is reaching a unanimous agreement also over the procedural steps to follow in order to formally adopt the two legislative proposals.

**The Schengen Governance package has been adopted during the reunion of the Justice and Home Affairs Council, on 7-8 October 2013.**

### II. THE CURRENT SITUATION

Both regulations have been published in OJ L 295 of 6<sup>th</sup> of November 2013.

*Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013 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 and Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen will enter into force from 26 November 2013.*

### III. DETAILED INFORMATION

#### A. SCHENGEN EVALUATION MECHANISM<sup>1</sup>

New aspects of the Schengen evaluation mechanism are:

- Placing the Commission and the Member States on equal positions in the matter of the implementation of the evaluation mechanism;
- The global coordinating role of the Commission;
- Development of a multiannual program over a 5 year time period based, among other things, on the risk analysis given by FRONTEX;
- Introduction of the possibility to invite Frontex, Europol, Eurojust to act as observers during the evaluation missions;
- Inclusion in the evaluation process of all the fields covered by the Schengen acquis, as well as the judiciary cooperation regarding criminal matters, lack of control at the internal border, functioning of institutions which apply the Schengen acquis;
- Organization of unannounced visits to both the external and internal borders;
- Inclusion of the aforementioned aspects in the evaluation reports according to the following categories: compliant and points of particular interests; compliant, but improvement is necessary; non-compliant;
- Approval of the evaluation report by the Commission and of the recommendations by the Council;
- Monitoring the fulfilment of recommendations based on an action plan monitored by the European Commission. EC can decide the organization of re-evaluation visits in order to check the situation on site. If this situation indicates severe deficiencies, the Commission, from its own initiative or at the solicitation of some Member State, will inform the Council and the Parliament.

#### B. TEMPORARY REINTRODUCTION OF BORDER CONTROL AT INTERNAL BORDERS IN EXCEPTIONAL CIRCUMSTANCES

The Regulation amending the Schengen Border Code (Regulation No 562/2006) is part of the Schengen Governance Package.

The Commission targets, mainly, the following:

- Take-over the decision to reintroduce control at internal borders by the Commission from the Member States, those having the ability, at the moment, to adopt such decisions in exceptional circumstances, because of public order and security reasons;

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<sup>1</sup> Compared to the initial version, rejected by the Member States, the European Commission agreed to several compromises, the present text is characterized by a certain balance and a delegation of responsibility among the Commission and the Member States.

- **Coordinating the situation in which a Member State does not respect, on a regular basis, its obligation to efficiently control its external border section.**

Following the negotiations, **the European Commission abandoned the intention to overtake, from the Member States, the prerogative to reintroduce the border control at internal borders in exceptional circumstances.**

The present form, agreed by the Member State on the 7 June 2012, sets the following **rules for the reintroduction of border controls:**

- In the case of **a serious threat to the internal security and public order**, a Member State can reintroduce in exceptional circumstances the control at internal borders, for a period of 30 days, which can be prolonged for renewed periods of time by another 30 days;
- For **situations which require the adoption of an urgent action**, a Member State can reintroduce in exceptional circumstances and with immediate effect the control at internal borders, with the notification of the other Member States and the Commission, for a period of time which should not exceed 10 days. If the serious threat continues, the measure can be prolonged for successive periods of 20 days which should not exceed 2 months.
- **In exceptional circumstances, in which the functioning of the area without controls at internal borders is subject to risks due to severe deficiencies to the external border control**, the border controls can be reintroduced for 6 months, with the possibility of 3 successive extensions of 6 months each.

At the Commission's proposal, the Council can recommend the reintroduction of the control at the borders of the Member States which are incapable to effectively fight the severe threats identified and the extension of this measure. Member States can request the Commission to propose this measure to the Council.

### III. IMPACT

The **Regulation on the establishment of the Schengen evaluation mechanism** specifies that **it is not applicable to Romania and Bulgaria as candidate countries**, taking into consideration the fact that these states have already completed the evaluation procedures.

Thus, the following text is clearly stated in the introduction of the Regulation: *“considering the fact that, in the case of Bulgaria and Romania, the verification according to Schengen evaluation procedures applicable has already been finalized according with art.4 para.(2) of the accession Act of 2005, the verification of the two Member States will not take place anymore, according to art.1 para.(1)(b) of the Regulation”*. Furthermore, it is also stated that *“experts from Cyprus, Bulgaria, Romania and Croatia will participate in the evaluation of all the parts of the Schengen acquis”*.

Regarding the **reintroduction of the control at the internal borders in exceptional circumstances**, it must be underlined the fact that Regulation 562/2006 (Schengen Borders Code) is directly applicable to all the Member States and it is fully mandatory, but, **in the case of Romania and Bulgaria, this provisions are by no means implemented, since a decision has not been adopted towards the removal of border control at internal borders for the two states.**