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EUROPEAN COMMISSION

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COM(2010) 624 final

2010/0312 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on the establishment of an evaluation mechanism to verify application of the Schengen**  
***acquis***

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Grounds for and objective of the proposal

The objective of the proposed Regulation is to establish a legal framework for evaluating correct application of the Schengen *acquis*. This evaluation mechanism is designed to maintain mutual trust between Member States in their capacity to apply, effectively and efficiently, the accompanying measures making it possible to maintain 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*, while also reflecting the changes in the legal situation after integration of the Schengen *acquis* into the framework of the European Union.

The 2004 Hague Programme — the multiannual programme for justice and home affairs — 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*’.

In response to this request and in order to incorporate the Schengen evaluation mechanism into the EC legal system and to remedy the weaknesses identified in the current system, in March 2009 the Commission adopted two proposals<sup>1</sup> on a revised mechanism for Schengen evaluation. Two separate legal instruments (a ‘first pillar’ Regulation and a ‘third pillar’ Decision) were needed to cover the whole area of Schengen cooperation in a coherent framework. In October 2009 these proposals were rejected by the European Parliament, which argued that the Commission should have involved it in adoption of the proposals by co-decision.

With the entry into force of the Lisbon Treaty, the ‘third pillar’ proposal is now obsolete. It was withdrawn in the ‘Omnibus Communication’ of December 2009<sup>2</sup>.

The Stockholm Programme<sup>3</sup> adopted by the European Council in December 2009 ‘considers that the evaluation of the Schengen area will continue to be of key importance and that it therefore should be improved by strengthening the role of Frontex in this field’.

This new proposal is therefore being put forward now. At the same time, the remaining previous proposal (the ‘first pillar’ Regulation) is withdrawn.

This new proposal takes account of the discussions held in the Council on the March 2009 proposals. In particular, it proposes an increased role for Member States in the evaluation mechanism, in order to maintain mutual trust and provide greater flexibility in implementation of the mechanism. Co-decision is proposed as the legislative procedure, the European

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<sup>1</sup> COM (2009) 102 and COM (2009) 105.

<sup>2</sup> COM (2009) 665 final.

<sup>3</sup> Council document 17024/09, adopted by the European Council on 10/11 December 2009.

Parliament (EP) being a full participant in the area of justice and home affairs. To enhance transparency, regular reporting to the Council and EP is proposed on evaluations carried out, conclusions drawn from evaluations and follow-up measures taken by the Member States concerned.

- **General context**

The area without internal borders set up by the Schengen *acquis* — the Schengen area — was developed within an intergovernmental framework in the late '80s and early '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 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 to abolish them in order to achieve the objective of free movement of persons (Article 14 of the EC Treaty). Over the years, however, all the 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 1999<sup>4</sup>.

The Schengen area is based on mutual trust between the Member States in their capacity fully to implement the accompanying measures allowing the lifting of internal border controls. For example, 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 they have crossed the external borders of the Schengen area.

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

This mechanism thus draws 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. Second, mutual trust then needs to be maintained by checking correct implementation of the *acquis*. In the intergovernmental phase of Schengen, specific provisions for verifying correct implementation were needed.

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<sup>4</sup> To this end, it was necessary to define the Schengen *acquis* (Council Decision 1999/435/EC, OJ L 176, 10.7.1999, p. 1) and to determine the legal basis in the Treaties for each provision or decision forming part of this *acquis* (Council Decision 1999/436/EC, OJ L 176, 10.7.1999, p. 17). Each provision of the *acquis* was given a legal basis under either 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 come under the third pillar. All amendments to this *acquis* must have an appropriate legal basis under the Treaties.

The Schengen *acquis* was integrated into the European Union framework without being renegotiated. The Standing Committee and its 1998 mandate were thus taken over unchanged, except that the Standing Committee became the Schengen Evaluation Working Group (SCH-EVAL) in the Council.

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 is still a logical approach for the first part of the mandate, as there is nothing similar in the EU justice and home affairs *acquis* to this distinction between ‘putting into effect’ and ‘implementation’. Moreover, in the 2004 and 2007 enlargements, the decision-making procedure for lifting internal border controls and for full application of the Schengen *acquis* was laid down in the accession treaties, i.e. in primary law. The Acts of Accession provided for a Council Decision after consultation of the European Parliament. No right of initiative is envisaged for the Commission.

However, this approach is less logical for the second part of the mandate. Consequently, at the time of integration of the *acquis* already, 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/Comex (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. The Commission will continue to participate fully as an observer in these evaluations.

However, these different responsibilities do not lead to different standards of evaluation, but just reflect the different institutional realities. The Council may also decide to use the proposed structure in order to evaluate Member States before internal border controls are lifted.

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

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 correct application of the *acquis* after the lifting of internal border controls. The following main weaknesses have been identified:

- (1) The current evaluation mechanism is inadequate. The rules on consistency and frequency of evaluations are unclear. No unannounced on-site visits are conducted.
- (2) There is a need to develop a method for priority-setting based on risk analysis.
- (3) Consistently high-quality 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 could 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 to recommendations made after the on-site visits needs to be improved, as the measures taken to remedy

deficiencies and 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 Treaties is not reflected in the current evaluation system.

The following points are intended to address the weaknesses identified in the current mechanism:

### **Evaluation method and role of Frontex**

This proposal introduces 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 overall correct application of the *acquis*. All parts of the Schengen *acquis* can be subject to evaluation.

This evaluation can be based on replies to questionnaires, on-site visits or a combination of the two.

In recent years, Member States have seen no need to carry out on-the-spot evaluations of judicial cooperation in criminal matters or on 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, but can cover all parts of the Schengen *acquis*, including the provisions for lifting controls at internal borders. However, as far as weapons are concerned, when the *acquis* was integrated into 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 weapons<sup>5</sup>. Verification of correct transposition of this Directive was entrusted to the Commission in accordance with the Treaty. As Member States have never seen the need to carry out evaluations on the spot, there is no need to include verification of correct transposition of this Directive in this proposal.

In addition, wherever existing EU law already provides for a specific evaluation, there is no need for an additional evaluation within the context of this mechanism, but merely for application of the Schengen *acquis*.

In particular, in the case of data protection, which, beyond being a part of the Schengen *acquis*, applies horizontally to all policy areas, the evaluation should focus on the data protection aspects related to the SIS and be carried out in the context of SIS evaluations, in order to harness the existing synergies.

The specific 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 together with 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.

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<sup>5</sup> OJ L 256, 13.9.1991, p. 51.

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 may be adapted if need be.

### **Expertise of the Member States**

Member States' experts are also involved in verifying correct application in other fields of EU law, e.g. on aviation and maritime security. As correct implementation of the accompanying measures allowing the lifting of internal border controls is fundamental for the internal security of Member States, experts from the Member States will continue to play a key role in the evaluation process. They will participate in both announced and unannounced visits and be involved in drafting the multiannual and annual evaluation programmes and also in the visits on the spot, the reporting and the follow-up via a committee procedure. In order to guarantee a high quality of expertise, Member States must ensure that the experts have appropriate qualifications, including solid theoretical knowledge and practical experience in the areas covered by the evaluation, plus sound knowledge of the principles, procedures and techniques for on-site visits.

Appropriate training should be provided by the relevant bodies (e.g. Frontex) and funds should be made available to Member States for specific training in evaluation of the Schengen *acquis* (e.g. by training on the priorities for Union action adopted in accordance with the rules established by the External Borders Fund)<sup>6</sup>.

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

Since correct implementation of measures to ensure the free movement of persons in accordance with Article 26 of the Treaty on European Union does not affect the internal security of other Member States, evaluation of abolition of internal border controls can be fully entrusted to the Commission. It should be added that verification of abolition of internal border controls is not covered by the intergovernmental mandate.

### **Follow-up to the evaluation**

In order to address effectively the weaknesses and shortcomings identified, each finding in the report should be classified into one of three categories: compliant, compliant but improvement necessary or non-compliant. Within two weeks, the Member State concerned should provide its comments on the report and, within one month after adoption of the report, an action plan to remedy the weaknesses. The Member State will also be under an obligation to report within six months on implementation of its action plan. Depending on the weaknesses identified, announced or unannounced on-site visits may be scheduled in order to verify correct implementation of the action plan. In the event of serious deficiencies, the Commission has to inform the Council without delay.

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<sup>6</sup> OJ L 144, 6.6.2007, p. 22.

This in no way affects 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. if it refuses entry to persons 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 Union law.

### **Integration of the Schengen *acquis* into the European Union framework**

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

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

- **Existing provisions in the area covered by 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 on '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 that these visits run smoothly. The frequency and method 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 identified by the Commission. While the Member States acknowledged the need to change the current mechanism, some expressed doubts about the institutional role of the Commission in a new Schengen evaluation mechanism.

The March 2009 proposals were discussed in the relevant Council Working Group during three meetings on the general approach and three more on substance<sup>7</sup>. The European Parliament rejected the proposals on 20 October 2009<sup>8</sup>, arguing that the Commission should have involved it in adoption of the proposals by co-decision. In the meantime, the Schengen Evaluation Group has also been working further towards improving the current working methods. This new proposal takes account of the discussions held in the Council and the European Parliament on the March 2009 proposals.

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<sup>7</sup> Docs 11076/09, 11087/09, 13831/1/09 and 13832/09.

<sup>8</sup> A7-0034/2009.



### **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 integration of the Schengen *acquis* into the European Union framework.

- **Legal basis**

- Article 77(2)(e) of the Treaty on the Functioning of the European Union (TFEU).

Article 77 provides for abolition of internal border controls as the final objective of an area of free movement of persons within the European Union, as laid down in Article 26 of the TFEU. The abolition of internal border controls must be accompanied by measures in the field of external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters and drugs policies. Correct application of these measures makes it possible to maintain an area without internal border controls. Evaluation of correct application of these measures therefore serves the ultimate policy objective of maintaining the area free of internal border controls.

- Subsidiarity and proportionality

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

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

- **Choice of legal instrument**

By its very nature, an evaluation mechanism to ensure correct application of EU law cannot require any action by Member States to transpose it into national law. For this reason, the instrument chosen is a Regulation.

### **4. BUDGETARY IMPLICATIONS**

A financial statement is annexed to this proposal. 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 States' experts will also be reimbursed.

## 5. ADDITIONAL INFORMATION

### **Consequences of the various protocols annexed to the Treaties and of the Association Agreements concluded with non-EU countries**

The legal basis for this proposal is in Title V, Part Three of the Treaty on the Functioning of the European Union. The ‘variable geometry’ system provided for in the protocols on the position of the United Kingdom, Ireland and Denmark and in the Schengen protocol therefore applies.

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

**United Kingdom and Ireland:** This proposal provides for an evaluation mechanism in order to maintain an area without internal border controls, 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 will not participate in adoption of this Regulation and will not be bound by it or subject to application thereof.

**Denmark:** Under the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption by the Council of measures under Title V of Part Three of the Treaty on the Functioning of the European Union, 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*. Under Article 4 of the Protocol, Denmark must ‘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 V of Part Three of the Treaty on the Functioning of the European Union] ... whether it will implement this decision in its national law’.

### **Consequences for Bulgaria, Cyprus and Romania of the two-stage procedure for implementing instruments building on the Schengen *acquis*:**

Article 3(1) of the 2003 Act of Accession<sup>9</sup> and Article 4(1) of the 2005 Act of Accession<sup>10</sup> state that the provisions of the Schengen *acquis* and the acts building upon it or otherwise related to it, listed in Annex I and Annex II to these Acts respectively, will be binding on and applicable in the Member States concerned from the date of accession. Provisions and acts not referred to in the Annexes, while binding on these Member States from the date of accession, will apply in them only 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,

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<sup>9</sup> OJ L 236, 23.10.2003, p. 33.

<sup>10</sup> OJ L 157, 21.6.2005, p. 29.

specifically those linked intrinsically to 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 correct implementation of the *acquis* is to be ensured after the internal border controls are lifted.

**Norway and Iceland:** As regards Norway and Iceland, this proposal develops provisions of the Schengen *acquis*, as provided for by 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*<sup>11</sup>.

**Switzerland:** As regards Switzerland, this proposal develops provisions of the Schengen *acquis* within the meaning 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*<sup>12</sup>.

**Liechtenstein:** As regards Liechtenstein, this proposal develops 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*<sup>13</sup>.

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<sup>11</sup> OJ L 176, 10.7.1999, p. 36.

<sup>12</sup> OJ L 53, 27.2.2008, p. 52.

<sup>13</sup> OJ L 83, 26.3.2008, p. 3.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and in particular Article 77(2)(e) thereof,

Having regard to the proposal from the Commission,

After transmission of the draft legislative act to the National Parliaments,

Acting in accordance with the procedure laid down in Article 294 of the Treaty,

Whereas:

- (1) The Schengen area without internal border controls relies on effective and efficient application by the Member States of accompanying measures in the areas of external borders, visa policy, the Schengen Information System, including data protection, police cooperation, judicial cooperation in criminal matters and drugs policies.
- (2) By decision of the Executive Committee of 16 September 1998<sup>14</sup>, a Standing Committee on the evaluation and implementation of Schengen was set up. The Standing Committee was given the mandate, first, to establish whether all the preconditions for lifting internal border controls with a candidate State have been fulfilled and, second, 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 application of the Schengen *acquis* is necessary given the need to ensure high uniform standards in application of the Schengen *acquis* in practice and to maintain a high level of mutual trust between those Member States that form part of an area without internal border controls. Such a mechanism should build upon close cooperation between the Commission and those Member States.
- (4) The Hague Programme<sup>15</sup> 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’.

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<sup>14</sup> OJ L 239, 22.9.2000, p. 138.

<sup>15</sup> OJ C 53, 3.3.2005, p. 1 (point 1.7.1).

- (5) The Stockholm Programme<sup>16</sup> ‘considers that the evaluation of the Schengen area will continue to be of key importance and that it therefore should be improved by strengthening the role of Frontex in this field’.
- (6) 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.
- (7) The experience gathered during previous evaluations demonstrates the need to maintain a coherent evaluation mechanism covering all areas of the Schengen *acquis* except those where a specific evaluation mechanism already exists within EU law.
- (8) Member States should be closely involved in the evaluation process. Measures for implementation of this Regulation should be adopted by the management procedure, as provided for in Article 4 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.
- (9) The evaluation mechanism should set up transparent, efficient and clear rules on the method to be applied for the evaluations, the use of highly qualified experts for on-site visits and the follow-up to the findings of the evaluations. In particular, the method should provide for unannounced on-site visits to supplement the announced on-site visits, notably with regard to border controls and visas.
- (10) 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.
- (11) The evaluation should pay particular attention to respect of fundamental rights when applying the Schengen *acquis*.
- (12) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union<sup>17</sup> (hereinafter referred to as ‘Frontex’) should support 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.
- (13) 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 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 evaluation of the Schengen *acquis* from the existing financial instruments and by development thereof.

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<sup>16</sup> Council document 17024/09, adopted by the European Council on 10/11 December 2009.

<sup>17</sup> Council Regulation (EC) No 2007/2004 of 26 October 2004 (OJ L 349, 25.11.2004, p. 1).

- (14) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in adoption of this Regulation and is therefore not bound by it or subject to application thereof. Given that this Regulation builds upon the Schengen *acquis*, under Title V of Part Three of the Treaty on the Functioning of the European Union, Denmark should, in accordance with Article 4 of that Protocol, decide within six months after adoption of this Regulation whether it will implement it in its national law.
- (15) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which the United Kingdom is not participating, 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*<sup>18</sup>. The United Kingdom is therefore not taking part in adoption of this Regulation and is not bound by it or subject to application thereof.
- (16) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which Ireland is not participating, in accordance with 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*<sup>19</sup>. Ireland is therefore not taking part in adoption of this Regulation and is not bound by it or subject to application thereof.
- (17) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by 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*<sup>20</sup>.
- (18) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement 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*<sup>21</sup>.
- (19) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by 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*<sup>22</sup>.
- (20) As regards Cyprus, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 3(2) of the 2003 Act of Accession.

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<sup>18</sup> OJ L 131, 1.6.2000, p. 43.

<sup>19</sup> OJ L 64, 7.3.2002, p. 20.

<sup>20</sup> OJ L 176, 10.7.1999, p. 36.

<sup>21</sup> OJ L 53, 27.2.2008, p. 52.

<sup>22</sup> OJ L 83, 26.3.2008, p. 3.

- (21) As regards Bulgaria and Romania, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 4(2) of the 2005 Act of Accession.
- (22) Experts from Cyprus, Bulgaria and Romania should nevertheless participate in evaluation of all parts of the Schengen *acquis*,

HAVE ADOPTED THIS REGULATION:

### *Article 1*

#### Purpose and scope

This Regulation establishes an evaluation mechanism to verify application of the Schengen *acquis* in the Member States to which the Schengen *acquis* applies in full.

Experts from the Member States which, in accordance with the relevant Act of Accession, do not yet fully apply the *acquis* shall nevertheless participate in evaluation of all parts of the *acquis*.

### *Article 2*

#### Definitions

For the purpose of this Regulation,

‘Schengen *acquis*’ means the provisions of the Schengen *acquis*, as integrated into the European Union framework by the Protocol annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, together with the acts building upon it or otherwise related to it.

### *Article 3*

#### Responsibilities

1. The Commission shall be responsible for implementation of this evaluation mechanism in close cooperation with the Member States and with the support of European bodies, as specified in this Regulation.
2. Member States shall cooperate with the Commission to allow it to carry out the tasks conferred on it by this 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

Evaluations may consist of questionnaires and on-site visits. Both may be supplemented by presentations by the evaluated Member State on the area covered by the evaluation. On-site visits and questionnaires may be used either independently or in combination in relation to specific Member States and/or specific areas. On-site visits may be announced or unannounced.

## Article 5

### Multiannual programme

1. A multiannual evaluation programme covering a period of five years shall be established by the Commission, in accordance with the procedure referred to in Article 15(2), not later than six 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 in which the Member States are to be evaluated shall be based on a risk analysis taking into account the migratory pressure, internal security, the time which has elapsed since the previous evaluation and the balance between the different parts of the Schengen *acquis* to be evaluated.
3. The multiannual programme may be adapted, if necessary, in accordance with the procedure referred to in paragraph 1.

## Article 6

### Risk analysis

1. By not later than 30 September each year, Frontex shall submit to the Commission a risk analysis taking into account migratory pressure and making recommendations for priorities for evaluations in the next year. The recommendations shall refer to specific sections of the external borders and to specific border crossing-points to be evaluated in the next year under the multiannual programme. The Commission shall make this risk analysis available to the Member States.
2. By the same deadline as stated in paragraph 1, Frontex shall submit to the Commission a separate risk analysis making recommendations for priorities for evaluations to be implemented in the form of unannounced on-site visits in the next 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

### Questionnaire

1. The Commission shall send a standard questionnaire to the Member States to be evaluated in the next year by not later than 15 August of the previous year. The standard questionnaires shall cover the relevant legislation and the organisational and technical means available for implementation of the Schengen *acquis* and statistical data on each field of the evaluation.
2. Member States shall provide their replies to the questionnaire to the Commission within six weeks of communication of the questionnaire. The Commission shall make the replies available to the other Member States.

## Article 8

### Annual programme

1. Taking into account the risk analysis provided by Frontex in accordance with Article 6, the replies to the questionnaire referred to in Article 7 and, where appropriate, other relevant sources, an annual evaluation programme shall be established by the Commission by not later than 30 November of the previous year. The programme may provide for evaluation of:
  - application of the *acquis* or parts of the *acquis* by one Member State, as specified in the multiannual programme;and, in addition, where relevant:
  - application of specific parts of the *acquis* across several Member States (thematic evaluations);
  - application of the *acquis* by a group of Member States (regional evaluations).
2. The first section of the programme, adopted in accordance with the procedure referred to in Article 15(2), shall list the Member States to be evaluated in the next year in accordance with the multiannual programme. This section shall list the areas to be evaluated and the on-site visits.
3. The Commission shall draw up the second section of the programme, which shall list the unannounced on-site visits to be carried out in the next 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 paragraphs 2 and 3.

## *Article 9*

### List of experts

1. The Commission shall compile a list of experts designated by Member States for participation in on-site visits. The list shall be communicated to the Member States.
2. Member States shall indicate the 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 10(5).
4. The experts shall have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation mechanism, along with sound knowledge of evaluation principles, procedures and techniques, and shall be able to communicate effectively 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 in order to continue to comply with these requirements.

## *Article 10*

### 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 9 and Commission officials. The Commission shall ensure the geographical balance and competence of the experts in each team. Member States' experts may not participate in an on-site visit to the Member State where they are employed.
2. The Commission may invite Frontex, Europol, Eurojust or other relevant European bodies to designate a representative to take part as an observer in a visit concerning an area covered by their mandate.
3. The number of experts (including observers) participating in evaluation visits may not exceed eight persons for announced on-site visits and six persons for 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 four 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 Member States whose experts have been 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 leading experts for on-site visits shall be a Commission official and an expert from a Member State, who shall be appointed prior to the on-site visit jointly by the members of the team of experts.

### *Article 11*

#### 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. The Member State concerned shall be notified:
  - at least two months before an announced on-site visit is due to take place;
  - at least 48 hours before an unannounced on-site visit takes place.
3. The members of the on-site visit team shall each carry identification authorising them to conduct on-site visits on behalf of the European Union.
4. The Member State concerned shall ensure that the team of experts can directly address relevant persons. It shall ensure that the team has access to all areas, premises and documents required for the evaluation. It shall ensure that the team is able to exercise its mandate to verify the activities in the areas to be evaluated.
5. The Member State concerned shall, by any means within its legal powers, assist the team in performing 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 in 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 travel and accommodation arrangements for their experts. The travel and accommodation costs for experts participating in the visits shall be reimbursed by the Commission.

### *Article 12*

#### Verification of the free movement of persons at internal borders

Notwithstanding Article 10, 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 appropriate.

- (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 and ensuring its integrity and quality. In case of disagreement, the team shall endeavour to reach a compromise. Dissenting opinions may be included in the report.
2. The report shall analyse the qualitative, quantitative, operational, administrative and organisational aspects, as appropriate, and shall list any shortcomings or weaknesses established during the evaluation. The report shall contain recommendations for remedial action and deadlines for implementing them.
3. One of the following classifications shall be given to each finding in the report:
  - (a) compliant;
  - (b) compliant but improvement necessary;
  - (c) non-compliant.
4. The Commission shall communicate the report to the Member State concerned within six weeks of the on-site visit or of receipt of the replies to the questionnaire, as appropriate. The Member State concerned shall provide its comments on the report within two weeks.
5. The Commission expert shall present the report and the reply from the Member State to the committee established in accordance with Article 15. Member States shall be invited to comment on the replies to the questionnaire, the report and the comments by the Member State concerned.

The recommendations addressing the classification of the findings referred to in paragraph 3 shall be adopted by the Commission in accordance with the procedure referred to in Article 15(2).

Within one month after adoption of the report, the Member State concerned shall provide the Commission with an action plan to remedy any weaknesses identified.

After consulting the team of experts, the Commission shall present its assessment of the adequacy of the action plan to the committee established in accordance with Article 15. Member States shall be invited to comment on the action plan.

6. The Member State concerned shall report to the Commission on implementation of the action plan within six months of receipt of the report and shall thereafter continue to report every three months until the action plan is fully implemented. Depending on the severity of the weaknesses identified and the measures taken to remedy them, the Commission may schedule announced visits in accordance with the procedure referred to in Article 15(2) to verify implementation of the action plan. The Commission may also schedule unannounced on-site visits.

The Commission shall inform the committee established in accordance with Article 15, on a regular basis, about implementation of the action plan.

7. 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, the Commission, on its own initiative or at the request of a Member State, shall inform the Council and the European Parliament 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*

##### Committee

1. The Commission shall be assisted by a committee made up of representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, Articles 4, 7 and 8 of Decision 1999/468/EC shall apply.

#### *Article 16*

##### Transitional provisions

1. The first multiannual programme in accordance with Article 5 and the first annual programme in accordance with Article 8 shall be established six months after this Regulation enters into force. The starting dates for both programmes shall be one year after this Regulation enters into force.
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 this Regulation enters into force.
3. Member States shall designate their experts in accordance with Article 9 not later than three months after this Regulation enters into force.

#### *Article 17*

##### Information of the European Parliament

The Commission shall inform the European Parliament of the recommendations adopted by the Commission in accordance with Article 13(5).

### *Article 18*

#### Reporting to the European Parliament and the Council

The Commission shall present a yearly report to the European Parliament and the Council 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, and
- the conclusions drawn from each evaluation and the state of play with regard to remedial action.

### *Article 19*

#### Repeal

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 with effect from one year after the entry into force of this Regulation.

### *Article 20*

The Council may decide to carry out the Schengen evaluations referred to in Acts of Accession concluded after the entry into force of this Regulation in accordance with this Regulation.

### *Article 21*

#### Entry into force

This Regulation shall enter into force on the twentieth 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 on the Functioning of the European Union.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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

**1. NAME OF THE PROPOSAL**

Proposal for a Regulation of the European Parliament and of the Council on the establishment of an evaluation mechanism to verify application of the Schengen *acquis*

**2. ABM/ABB FRAMEWORK**

Policy area: Area of freedom, security and justice (Title 18)

Activities: Solidarity — External borders, return, 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, return, visa policy and free movement of people), creation of an Article 18 02 07 — entitled ‘Schengen evaluation’\*

*\*Budget line created in the DB for 2011*

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

The action is scheduled to start in 2011 or 2012. It will be permanent.

**3.3. Budgetary characteristics**

Budget line	Type of expenditure		New	Contributions from Schengen associated countries	Contributions from applicant countries	Heading in financial perspective
See 3.1	Non-comp	Diff <sup>23</sup>	YES	YES	NO	No [3A]

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<sup>23</sup> 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 2011	2012	2013	2014	n + 4	n + 5 and later	Total
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#### Operational expenditure<sup>24</sup>

Commitment appropriations (CA)	8.1.	a	p.m.	0.562	0.730	0.730			
Payment appropriations (PA)		b							

#### Administrative expenditure within reference amount<sup>25</sup>

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

<b>Commitment appropriations</b>		a+ c	p.m.	0.562	0.730	0.730			
<b>Payment appropriations</b>		b+ c	p.m.	0.562	0.730	0.730			

#### Administrative expenditure not included in reference amount<sup>26</sup>

Human resources and associated expenditure (NDA)	8.2.5.	d	0.122	0.610	0.854	0.854			
Administrative costs, other than human resources and associated costs, not included in the reference amount (NDA)	8.2.6.	e	p.m.	0.065	0.097	0.097			

#### Total indicative financial cost of intervention

<b>TOTAL CA, including cost of human resources</b>		a+ c+ d+ e	0.122	1.237	1.681	1.681			
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<sup>24</sup> Expenditure that does not fall under Chapter xx 01 of Title xx.

<sup>25</sup> Expenditure within Article xx 01 04 of Title xx.

<sup>26</sup> Expenditure within Chapter xx 01 other than Articles xx 01 04 or xx 01 05.



<b>TOTAL PA, including cost of human resources</b>		b+ c+ d+ e	0.122	1.237	1.681	1.681			
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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 providing 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 programming<sup>27</sup>. **If necessary, financial appropriations for 2011 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 Agreement<sup>28</sup> (i.e. flexibility instrument or revision of the financial framework).

#### 4.1.3. Financial impact on revenue

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

This proposal builds upon the Schengen *acquis*, as defined in Council Decision 1999/437/EC. Non-EU countries associated with the Schengen *acquis*, Iceland and Norway<sup>29</sup> and also Switzerland<sup>30</sup> and Liechtenstein<sup>31</sup> therefore contribute to the costs.

<sup>27</sup> The evaluation mechanism will continue to be implemented after the 2013 financial year.

<sup>28</sup> See points 19 and 24 of the Interinstitutional Agreement.

<sup>29</sup> 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 those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176 , 10.7.1999, p. 36).

EUR million (to one decimal place)

Budget line		Revenue	Prior to action [Year n-1]	Situation following action					
				2011	2012	2013	2014	[n+4]	[n+5] <sup>32</sup>
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 will be covered from the allocation granted to the managing service in the framework of the annual allocation procedure.

Annual requirements	Year 2011	2012	2013	2014	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 course of the evaluations is borne by the national budgets of the Member States whose experts participate in the evaluations. After the integration of the Schengen *acquis* into the framework of the European Union, it is necessary also to provide a legal framework in which these evaluations can be carried out. Consequently, the costs incurred in connection with this mechanism, in particular related to the participation of the experts from the Member States (reimbursement of travel expenses and accommodation during the on-the-spot visits) will be borne by the EU budget. The

<sup>30</sup> Second paragraph of Article 11(3) 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).

<sup>31</sup> 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).

<sup>32</sup> Additional columns should be added if necessary, i.e. if the duration of the action exceeds six years.

daily allowances of the Member States' experts will continue to be covered by the budget of the Member State concerned.

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

Maintaining the Schengen area as an area of free movement without internal border controls depends on an effective and efficient mechanism for evaluation of the accompanying measures. It is indispensable to adapt the intergovernmental Schengen evaluation to the EU framework, where the Commission, as guardian of the Treaties, will take over its responsibilities while fully ensuring the participation of Member States' experts in order to maintain mutual trust.

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

The overall objective is correct application of the Schengen *acquis* in all areas covered by the accompanying measures, thereby making it possible to maintain an area without internal border controls.

Action 1: Evaluation, either by means of on-the-spot visits or based on questionnaires, covering the following policy areas: external borders, visas, police cooperation at internal borders, Schengen Information System, data protection, drugs and judicial cooperation in criminal matters.

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

Action 2: Evaluation by means of unannounced on-the-spot visits.

Indicator: Assessment of correct application of the *acquis* in order to remedy specific shortcomings. A report will be established after each visit indicating the compliance with EU 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 Article 185 of the Financial Regulation

national public-sector bodies/bodies with public-service missions

### ***Shared or decentralised management***

with Member States

- with non-EU countries
- Joint management with international organisations (please specify)*

Relevant comments:

## **6. MONITORING AND EVALUATION**

### **6.1. Monitoring system**

The proposed Regulation provides for the establishment of an evaluation mechanism to verify correct application of the Schengen *acquis*. 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 implementation of this Regulation.

### **6.2. Evaluation**

6.2.1. *Ex-ante evaluation*

6.2.2. *Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experience 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, Regulation (EC) No 1037/1999 will apply without restriction to this mechanism.

## 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)

	Type of output	Av. cost	Year 2011		Year 2012		Year 2013		Year 2014		Year n+4		Year n+5 and later		TOTAL	
			No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost	No of outputs	Total cost
OPERATIONAL OBJECTIVE No 1 <sup>33</sup> Verification of application of the Schengen <i>acquis</i>																
<b>Action 1</b>  <b>Announced evaluation visits</b> (MS experts + COM experts)																
Output 1: mission		0.0024	p.m.	p.m.	200	0.480	240	0.576	240	0.576						
IT equipment				p.m.		0.010		0.010		0.010						
<b>Action 2</b>  <b>Unannounced evaluation visits</b> (MS experts + COM experts)																
Output 1: mission		0.0024	p.m.	p.m.	30	0.072	60	0.144	60	0.144						
<b>TOTAL COST</b>						2		0.730		0.730						

<sup>33</sup>

As described under Section 5.3.

Calculation:

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

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

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

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

## 8.2. Administrative expenditure

The needs for human and administrative resources will be covered from the allocation that can be granted to the managing DG in 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 ( <b>number of posts/FTEs</b> )					
		Year 2011	Year 2012	Year 2013	Year 2014	Year n+4	Year n+5
Officials or temporary staff <sup>34</sup> (XX 01 01)	A*/AD	1	4	6	6		
	B*, C*/AST		1	1	1		
Staff financed <sup>35</sup> by Article XX 01 02							
Other staff <sup>36</sup> financed by Article XX 01 04/05							
<b>TOTAL</b>		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 2010
- Posts to be requested in the next APS/PDB procedure (2 for 2012 and 1 for 2013)
- 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 for the year in question

Given the budgetary constraints linked to current Commission's commitment not to ask for new posts until 2013, the human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG,

<sup>34</sup> Cost of which is NOT covered by the reference amount.

<sup>35</sup> Cost of which is NOT covered by the reference amount.

<sup>36</sup> Cost of which is included within the reference amount.



together with any additional allocation which may be granted to the managing DG under the annual allocation procedure.

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
<b>1 Technical and administrative assistance (including related staff costs)</b>							
Executive agencies <sup>37</sup>							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
<b>Total technical and administrative assistance</b>							

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 2011	Year 2012	Year 2013	Year 2014	Year n+4	Year n+5 and later
Officials and temporary staff (XX 01 01)	1	5	7	7		
Staff financed by Article XX 01 02 (auxiliary, END, contract staff, etc.)  (specify budget line)						
<b>Total cost of human resources and associated costs (NOT in reference amount)</b>	<b>0.122</b>	<b>0.610</b>	<b>0.854</b>	<b>0.854</b>		

<sup>37</sup> Reference should be made to the specific legislative financial statement for the Executive Agency or Agencies concerned.

Calculation — *Officials and temporary agents*

Calculation — *Staff financed under Article XX 01 02*

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

EUR million (to 3 decimal places)

	Year 2011	Year 2012	Year 2013	Year 2014	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 — Missions							
XX 01 02 11 02 — Meetings and conferences							
XX 01 02 11 03 Committees <sup>38</sup> (Management procedure)	p.m.	0,065	0,097	0,097			
XX 01 02 11 04 — Studies and consultations							
XX 01 02 11 05 — Information systems							
<b>2 Total other management expenditure (XX 01 02 11)</b>	p.m.	0.065	0.097	0.097			
<b>3 Other expenditure of an administrative nature</b> (specify including reference to budget line)							
<b>Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)</b>	p.m.	0.065	0.097	0.097			

<sup>38</sup> Specify the type of committee and the group to which it belongs.

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

Way of calculation: 27 members (1 per MS)\* 600 EUR/person\* 4 meetings for the first year and 6 meetings for subsequent years.