



Malta-EU Steering & Action Committee

# JUSTICE AND HOME AFFAIRS



06.03.09

## Application of the Schengen *acquis*

**COM (2009) 105** - Proposal for a Council Decision on the establishment of an evaluation mechanism to monitor the application of the Schengen *acquis*

**COM (2009) 102** - Proposal for a Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen *acquis*

The above two proposals on a revised mechanism for Schengen evaluation supplement the current mechanism used for the monitoring and verification of the application of the Schengen rules in the Member States.

The Commission proposed two legal instruments – a Regulation and a Decision. The two instruments create an evaluation mechanism designed to ensure both mutual trust between Member States and the capacity to effectively and efficiently apply the Schengen provisions. 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. The new mechanism enhances the current system of periodic on-the-spot inspections in the Member States as well as introducing unannounced visits to ensure the Schengen rules are applied correctly at all times.



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**Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters**

**COM (2009) 100 - Proposal for a Council Decision amending Decision 2006/326/EC to provide for a procedure for the implementation of Article 5(2) of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters**

Pursuant to the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in Title IV of the EC Treaty, and as a consequence Community instruments adopted in the field of judicial cooperation in civil matters are not binding upon or applicable in Denmark. However, the application of certain Community instruments has been extended to Denmark by way of the international agreements between the European Community and Denmark concluded on the basis of Article 300 of the EC Treaty. The relevant international agreements are:

- (1) the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- (2) the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

These parallel agreements provide (in Article 5(2)) for the European Community's agreement to be given in cases where Denmark intends to enter into international agreements which may affect or alter the scope of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters or Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). Neither the Council Decisions on the conclusion of these parallel agreements nor the parallel agreements themselves stipulate how the Community should take a decision on such agreement. The objective of the proposal is to lay down the procedure for the implementation of Article 5(2) of both parallel agreements, by amending the Council Decisions on their conclusion.



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**Schengen**

**COM (2009) 90 - Proposal for a Council Regulation amending the Convention Implementing the Schengen Agreement as regards long stay visa and alerts in the Schengen Information System**

In accordance with the current Schengen acquis, a third-country national holding a national long-stay visa ("D visa") for stays exceeding three months is allowed to stay only in the territory of the Member State which issued the visa and, pursuant to Article 18 of the Convention Implementing the Schengen Agreement (the Schengen Convention) as amended by Regulation 1091/2001 is allowed to transit through the territories of the other Member States only in order to reach the State which issued the visa.

Thus, according to present Community law, D visa holders are not allowed to travel to the other Member States during their stay and nor are they allowed to transit through the other States when returning to their country of origin, as this is not provided for by the Schengen Convention.

This proposal aims at facilitating the circulation within the Schengen area without internal borders of third-country nationals legally residing in one of the Member States on the basis of a long-stay "D" visa issued by that Member State. It extends the principle of equivalence between a residence permit and short-stay visas to long-stay D visas; hence a long-stay visa would have the same effects as a residence permit as regards circulation in the Schengen area.

A third-country national holding a long-stay D visa issued by a Member State could travel to the other Member States for three months in any half year, under the same conditions as the holder of a residence permit.

**Annual Policy Strategy**

**COM (2009) 73 – Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Annual Policy Strategy for 2010**

This Annual Policy Strategy paves the way for establishing a policy agenda for 2010 and launches the interinstitutional dialogue on the priorities for next year.

In the area of freedom, security and justice, 2010 will be the first year of implementation of the Stockholm Programme. Drawing on initiatives to be presented in 2009, work will advance on combating terrorist threats and



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organised crime in a bid to improve citizens' security. Another field of work will be the development of the European area of justice, notably through the e-Justice portal, the improvement of mutual recognition in criminal and civil matters and the granting of further procedural rights.

The protection of fundamental rights will remain at the core of EU activity, in particular as regards vulnerable groups such as children. Action will be pursued to promote citizenship and to simplify the life of citizens when travelling to countries outside the EU. New initiatives may be required to meet the privacy challenge in a globalised world.

The European Pact on Immigration and Asylum provides the framework for EU immigration and asylum policies in the coming years. Taking its lead from a Commission report, the European Council will hold its first annual debate on implementation of the Pact in June 2010. On integration, the initiatives identified in the 2008 Vichy Ministerial Conference will have to be implemented.

In the area of borders, the new Schengen evaluation mechanism should be put into practice. Early in 2010, the Commission may table proposals for the establishment of an entry/exit system, a registered traveller programme and amendments to the mandate of the Frontex Agency. 2010 should also see progress towards the establishment of a European border surveillance system (Eurosur). The European Common Visa policy will be strengthened, namely through the application of the principle of reciprocity of visa waivers.

Expenditure for freedom, security and justice will increase by approximately 14% in 2010 compared with 2009, thus demonstrating the high priority of Community action in this field. The Commission will make proposals designed to implement the common European asylum system, including for the setting up of a support agency, as provided for in the European Pact on Immigration and Asylum adopted by the European Council on 15-16 October 2008. This agency would be a key component of a common European policy on immigration and asylum.

The Commission also proposes to maintain the same sustained level of funding for FRONTEX (EUR 78 million) in 2010 as in 2009, which is EUR 8 million more than was originally planned in the financial programming. A decrease of EUR 30 million is proposed, given the lack of legal instruments, which would still allow



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developments in the field of border controls such as the Entry-Exit or the registered traveller systems to start in 2010 as initially planned.

**COUNCIL CONCLUSIONS**

The last Council meeting on matters on Justice and Home Affairs was held on the 26<sup>th</sup> and 27<sup>th</sup> February 2009. The following are the main results of this Council meeting:

The Council adopted conclusions on the second generation of the Schengen Information System "SIS II".

Ministers of interior discussed a new proposal for creating a European Asylum Support Office and the particular situation of illegal immigration in the Mediterranean region. They also exchanged information on the situation of Iraqi refugees.

Over lunch, ministers held an informal exchange of views on the situation in Guantanamo.

Ministers of Justice discussed on key aspects of a draft framework decision concerning prevention and settlement of conflicts of jurisdiction in criminal proceedings, and took note of progress in the implementation for the setting up of a European "e-Justice" portal. Finally they approved a negotiating mandate for a