



Fact sheet - Schengen Evaluation Mechanism (legal basis)

Concerning the decision of the Council to change the legal basis of the proposal on the Schengen Evaluation Mechanism, the Danish Presidency wishes to underline three facts:

- 1) The decision of the Council to change the legal basis was based on a purely legal assessment of the substance of the compromise text. The Council has no desire to exclude the European Parliament from its legitimate rights according to the Treaties.**

At the Council meeting (Justice and Home Affairs) on 7 June 2012, the Council agreed on a compromise text on the Schengen Governance package. An element in the agreement was a unanimous decision to change the legal basis of the proposal on the Schengen Evaluation Mechanism from Article 77 (2) (e) to Article 70 TFEU.

The substance of the proposal on the Schengen Evaluation Mechanism has been negotiated in Council since the proposal was presented by the Commission in September 2011.

On the basis of the developments in the negotiations on the substance, the Council Legal Service delivered an opinion on the question of the legal basis on 29 May 2012. According to this opinion, Article 70 is considered to be the correct legal basis for the proposal.

The discussions in Council have clearly demonstrated, that it would not be possible to obtain the necessary support for a proposal with a content that could be accommodated under Article 77 (2) (e) TFEU. The change of legal basis was therefore a prerequisite for making the desired progress towards a stronger Schengen Evaluation Mechanism.

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- Information from the Commission to the European Parliament on a regular basis on the evaluations and recommendations.
- Yearly reports from the Commission to the Council and the European Parliament on the evaluations that have been carried out. These reports are made public.

It should also be noted that the political sensitive provisions on the reintroduction of the internal border control were moved from the Schengen Evaluation Mechanism proposal to the proposal on the Schengen Borders Code in order to ensure co-decision on these important key provisions.

The Danish Presidency is strongly committed to continuing the close dialogue between the Council and the European Parliament in regard to all elements of the Schengen Governance package.

3) The European Parliament will continue to be closely involved

The discussions at the Council meeting on 7 June 2012 clearly demonstrated that it was central to all Member States that the change of legal basis should not result in depriving the European Parliament of influence on the proposal in the final stages of the negotiations.

The Council stated in a declaration very clearly that the Council will consult the European Parliament in accordance with Article 19(7) (h) of the Council's Rules of Procedure, in order to ensure that the opinion of the European Parliament to the fullest extent possible is taken in to consideration by the Council in all aspects before the Council moves to adoption of a final text.