

Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* (COM(2011)559 final)

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 (COM(2011)560 final)

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 (COM(2011)561 final)

FINAL DOCUMENT (Doc. XVIII, No. 54)

The Committee for Constitutional Affairs, for the Presidency of Council of Ministers and for Internal Affairs of Italy's Chamber of Deputies;

having examined, pursuant to Rule 127 of the Rules of the Chamber of Deputies:

- a) the 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 (COM(2011)561 final);
- b) the amended Proposal for a Regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* (COM(2011)559 final);
- c) the 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 (COM(2011)560 final);

having regard to the opinion of the Committee on European Union Policies of the Chamber of Deputies,

taking note that:

the Proposal for a Regulation (COM(2011)559) marks the transition from the current intergovernmental system for evaluating the implementation of the Schengen *acquis* to a new system that assigns primary responsibility for the same to the European Commission, albeit with the involvement also of experts from Member States and Frontex;

an additional innovation appears in article 4 of the Proposal for a Regulation specifying that for the purposes of evaluating the application of the Schengen *acquis*, on-site visits may be made to borders without prior notification of the States involved;

the Proposal for a Regulation COM(2011)560 aims at a radical overhaul of the rules on the temporary reintroduction of controls at internal borders as set forth in articles 23-31 of Regulation (EC) no. 562/2006 (Schengen Borders Code). The current rules allow Member States to reinstate their border controls for a limited period of no more than 30 days, but renewable for a further 30 days, in case of a serious threat to public policy or internal security. The amendments envisaged in

the Proposal for a Regulation would transfer the power to reintroduce controls from Member States to European institutions;

that power would remain in the hands of Member States only in exceptional circumstances demanding immediate action, in which case, according to article 25 of the Proposal for a Regulation, the duration of the reintroduced control at internal borders may not exceed five days;

Article 26 of the Proposal provides for a specific procedure for prolonging border control at internal borders by decision of the European Commission if the evaluation of the application of the Schengen *acquis* should reveal that the external border control of a Member State suffers from such persistent serious deficiencies as to constitute a serious threat to public policy or internal security at the Union or national level;

whereas:

the proposal to transfer the aforementioned functions, which are currently the responsibility of national authorities, to the European Commission was negatively received by some Member States, and several national parliaments of EU Member States adopted reasoned opinions stating that the proposal was in breach of the principle of subsidiarity, and argued that individual countries were better placed to evaluate the existence of threats to public policy and internal security, and better able to take the ensuing decisions;

the measures suggested in the proposals under consideration are designed to address phenomena such as illegal immigration and cross-border organised crime that exceed the scope and capacities of response of individual Member States;

combating such phenomena must therefore necessarily be coordinated at the level of the European Union and actively involve not only the relevant national but also and especially European institutions and bodies, so that Member States such as Italy which, by virtue of their geography, are most exposed to migratory inflows, may rely on the concrete solidarity of European institutions and on an equitable distribution of responsibility, including financial responsibility;

the legal bases used by the European Commission for the adoption of the two proposals are the best suited for the purposes of guaranteeing adequate democratic control over such fundamental rights as the free movement of persons;

it is important to take action in the appropriate forums, also taking note of the measures contained in the recent Proposal for a Regulation of the European Parliament and of the Council COM(2011)750 final, which established the instrument of “Borders and Visas”, so that the European Union may take on a fair share of the costs borne by countries such as Italy resulting from their exposure to the external borders of the European Union,

this final document, accompanied by the text of the opinion issued by the Committee on European Union Policies, shall be transmitted to the European Commission as part of the informal political dialogue, as well as to European Parliament,

expresses a favourable opinion on the documents under consideration, with the following observations:

- a)* with specific regard to COM(2011)559, the Committee expresses the hope that the evaluation visits be carried out in a spirit of cooperation and seek to resolve problems rather than impose penalties;
- b)* for the same reason, it needs to be made clear how often each Member State may be subject to evaluation visits over the planned five-year period;
- c)* as regards the Proposal for a Regulation COM(2011)560, a clearer definition is needed of the situations related to public policy and internal security requiring the reintroduction of border control. In particular, for the sake of avoiding uncertainties that might give rise to disagreement and disputes, reference should be made to situations that, for example, are characterised by their close association with cases of organised crime or terrorism;
- d)* a longer period than the five days envisaged by the Proposal for the unilateral reintroduction of border controls by Member States is to be recommended, given the considerable organisational and administrative effort and human resources that this action requires;
- e)* with a view to guaranteeing adequate democratic control over fundamental rights such as the free movement of persons, the legal bases used by the European Commission for the adoption of the two proposals should be maintained.