

Meijers Committee

standing committee of experts on international immigration,
refugee and criminal law

To Matthias Oel
DG for Migration and Home Affairs
European Commission

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Subject Follow-up on workshop 'Schengen Evaluation and Monitoring Mechanism'
on 8 January 2021

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Dear Mr. Oel,

The Meijers Committee much appreciated the opportunity to participate in the workshop with civil society of 8 January 2021 on the revision of the Schengen evaluation and monitoring mechanism. Following up on that workshop we would like to emphasise that an effective Schengen Evaluation and Monitoring Mechanism serves not merely to foster mutual trust between Member States, but also citizens confidence in the well-functioning of the Schengen area. Transparency of the evaluation process and its result is essential for that confidence and for the legitimacy of the Schengen.

If the Commission were to consider amending Regulation (EU) 1053/2013, we would recommend this to be done on the basis of article 77(2)(e) TFEU, so as to ensure the active involvement of the European Parliament through the ordinary legislative procedure.

At the same time we would like to reiterate that important improvements could already be made under the current system, hence without the immediate need for legislative amendment. Four additional points serve to support this argument.

1. In its report of November 2020, the Commission observes that the follow-up and implementation of the action plans generally is slow and that peer pressure is limited (COM(2020)779, p. 15). It is rightly concluded that to increase peer pressure it is required "that the identified deficiencies be sufficiently communicated at the political level" (p. 17).

We suggest that a more effective involvement of the European Parliament and the national parliaments could mobilise the necessary attention and debate at political level. Although all reports, recommendations and other documents are sent to the European Parliament and the national parliaments, in practice access to these files is hampered by cumbersome security rules, due to their classification as EU RESTRICTED

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or LIMITE.¹

Moreover, there is the needle in the haystack problem. If members of parliament do not receive tailored and specific information on the serious deficiencies or non-implementation of the action-plans, they do not know where they should look for and why due to an information overload. Therefore, if the Commission is keen on involving the European and national parliaments, it should be prepared to rethink the way in which it provides information to the MEPs and MPs.

2. Member State practice and Commission guidance could improve the functioning of the evaluation process, paving the way if necessary for legislative changes.

As a way to make the unannounced visits more effective, the Commission could ask Member States to voluntarily waive the 24-hour advance notice. If some Member States set an example, a good practice could develop which could ultimately facilitate amendment of the relevant provision of the Regulation.

In addition, the effectivity of unannounced visits could possibly be enhanced by learning from the long experience of the Committee for the Prevention of Torture with such visits.

In the 2020 ICMPD report commissioned by the European Parliament, the recommendation is made to include a definition of “serious deficiencies”.² It is suggested that in the short term, the Commission already provides for a working definition in a guidance document, drafted in consultation with the Council and European Parliament.

3. It is not for a want of reference or mentioning of fundamental rights in EU legislation, that fundamental rights concerns arise. The problem rather lies at the level of implementation and application at Member State level. This calls for more stringent fundamental rights monitoring, which in turn requires a thorough preparation of visits, based also on the input of independent EU and Member State actors.

The Commission should ask the Fundamental Rights Agency, the European Ombudsman, EASO and UNHCR to indicate concrete issues or questions that should be included in the evaluation for a specific Member State. Moreover, national ombudsmen and official human rights bodies in the Member State under review should be asked to provide similar information in advance. The Commission could ask the official human rights body to mention the national NGOs qualified to provide similar information on the policy fields under review. This involvement of national bodies in the Commission’s preparatory work could also assist in stimulating political debate on the outcome of the evaluation process.

¹ These barriers have been discussed in detail in E. Guild a.o., *An Analysis of the Schengen Area in the Wake of Recent Developments*, Brussels (CEPS) 2016, pp. 35-37.

² *The state of play of Schengen governance - An assessment of the Schengen evaluation and monitoring mechanism in its first multiannual programme* (ICMPD) 2020, p. 75.

[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658699/IPOL_STU\(2020\)658699_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658699/IPOL_STU(2020)658699_EN.pdf)

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4. The Schengen Evaluation and Monitoring Mechanism does not preclude in any way the Commission from using its enforcement powers under art. 258 TFEU more actively, in particular in case of a pattern of non-compliance with the Schengen acquis and more specifically the respect for fundamental rights. This would also include a more consistent evaluation of the reinstatement of border checks by Member States.

We thank you for your time and attention to the above and as always remain at your disposal for further information.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'A.B. Terlouw'.

Prof. dr. A.B. Terlouw
Chairwoman