

POSSIBILITIES OF IMPROVEMENT THE PREPAREDNESS OF OFFICERS OF THE BORDER CONTROL AND IMMIGRATION CONTROL STRUCTURAL UNITS OF THE STATE BORDER GUARD FOR SCHENGEN EVALUATION ON-SITE VISITS

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Abstract. *The aim of the research is evaluation of the present situation in Latvia concerning the preparedness of officers of the border control and immigration control structural units of the State Border Guard for Schengen evaluation on-site visits, examination of its legal regulation and practical aspects. In the research the scientific information about the Schengen evaluation historical development is summarised, its principles and mechanisms are reviewed, as well as its significance in the state border security is defined. The topicality of the theme is defined by the fact that in Latvia the regular Schengen acquis application evaluation started in July 2012 and it completed in May 2013. In practice the Member States' evaluations are implemented on the basis of multiannual and annual evaluation programme. The next planned evaluation is foreseen in 2018. The new evaluation mechanism gave the possibility of organisation of unannounced evaluation on-site visits aiming at getting clearer picture of the present situation and working out recommendations for further actions to remedy any deficiencies in the external border control. It is obvious that the largest responsibility in Schengen acquis application enters the scope of competences of the institutions subordinate to the Ministry of the Interior, namely, the State Police and the State Border Guard. The issues of the research indicate how important and necessary is the complex approach to ensuring of Schengen evaluation on-site visits – both announced and unannounced – implementing the integrated border management in the general context of the European Union and contributing to the common state security in the European Union. In the research it was concluded that the State Border Guard implements a range of actions in accordance with its competence in the field in question, thus ensuring realisation of requirements on the corresponding level.*

Keywords: *Schengen acquis, evaluation, unannounced on-site visits, training, preparedness.*

Introduction

In order to ensure efficient, consistent and transparent application of the Schengen *acquis*, as well as to verify its implementation, the evaluation and monitoring mechanism was established, which at the same time

enables to maintain a high level of mutual trust between the Member States. The evaluation mechanism includes all aspects of the Schengen *acquis*, including management of external borders, visa policy, operation of the Schengen Information System, data protection, judicial cooperation, as well as absence of border control at the internal borders and cooperation of the institutions responsible for Schengen *acquis* application.

With the purpose to prevent criminal offences and to strengthen state internal security, SBG continue intensive work in introduction of standards defined by the EU and Schengen *acquis* related to work capacity of its structural units, particularly – officers' competence both in fulfilling everyday duties and in professional education. Therefore the given research reviews and evaluates the legal basis regulating the previously mentioned evaluations, their practical organisation in the Member States, and preparedness of the State Border Guard's officers to receive representatives of the on-site team.

The aim of the research is to examine the legal basis and practical issues of the evaluation mechanism, State Border Guard's border control and immigration control's structural units' preparedness aspects regarding the Schengen evaluations, as well as to define activities for its improvement.

Tasks of the research include review and analysis of laws and regulations, by means of a questionnaire – the evaluation of the preparedness of officers working in the State Border Guard in the field of border control and immigration control, summarisation, analysis and evaluation of the results, bringing proposals on the topic of the research.

The method of the theoretical research is selection, review and analysis of the scientific (legal) literature; for designing the theoretical part of the thesis selection, review and analysis of laws, rules and documents regulating the State Border Guard's activity were done; data processing mathematically statistical method was used for visual representation of the results (tables, diagrams); the historical method was applied for study of the legal regulation development in the historical context.

Hypothesis of the research: the obstructing factor for preparedness of the State Border Guard's border control and immigration control structural units for evaluation visits is officers' insufficient knowledge about the scope of activities of the evaluation commission and in the fields to be evaluated.

Novelty of the research: the research may be used for official service needs, implementing practical training for officers of the structural units of the State Border Guard's border control and immigration control and for preparation for the evaluation on-site visits.

Historical development of the Schengen evaluation mechanism

In accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council (after 12 April 2016 – No 399/2016), which established a Community Code on the rules governing the movement of persons across borders, border control is in the interest not only of the Member States at whose external borders it is carried out, but of all Member States, which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.

The Schengen Agreement defined **internal borders**, which are the Parties' common land borders, exclusively for their internal flights and regular internal ferry connection or to the Parties' territories, not calling at any ports situated outside the territory of the Member States, and defined the **external borders**, which are the Member States' land and sea borders, as well as airports and ports, provided that they are not internal borders.

In 1986 the Single European Act was signed with the objective to establish the internal market in Europe defining that the internal market comprises "**an area without internal borders**", in which the free movement of goods, persons, services and capital, i.e. the movement of four freedoms is ensured. On 7 February 1992 the Maastricht Treaty was signed, which established the EU and the EU citizenship institution, which vested rights in any of its citizen to circulate, receive education, work and travel to any EU country. However, only in 1999 the EU leaders agreed upon some specific activities to develop the EU as a common freedom, security and justice area, granting the fundamental rights to EU citizens and fair treatment of third country nationals who reside legally in EU (Gaveika A., 2014).

It is necessary to observe that in the beginning the EU political activity in the process of Europe integration was focused on the economic aspect of the circulation freedom and free labour force mobility, without highlighting the significance of internal and external border control. Since the middle of the 20th century the legal basis of free people movement has been included in many EU primary and secondary regulations, but only the Schengen Agreement and the Convention implementing the Schengen Agreement started affecting the concept of external and internal borders, touching the basis of the concept of the state border – the state border regime in its main part, regulating border crossing by persons.

When the right of any EU citizen for free movement through the entire EU area, the cross border mobility has significantly increased, thus the necessity of abolition of the persons' border control at the internal borders

has become more topical. In 1997 the Member States signed the Amsterdam Treaty, which foresaw to remove the remaining obstacles to free circulation and to ensure security in the Member States' area: "to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers".

The Amsterdam Treaty contains the idea of *Schengen acquis communautaire* (French: accumulated Schengen legislation), which should be adopted by each Member State. In 1999 the European Council defined the concept of the Schengen *acquis* as the Schengen Agreement, the Convention, accession treaties, decisions and declarations of the Schengen Executive Committee, decisions of the Central Group.

According to the State Border Integrated Management Concept of the Latvian Republic for 2013 to 2018, the State Border Guard together with other public institutions (institutions subordinate to the Ministry of the Interior – State Police, Security Police, Office of Citizenship and Migration Affairs; institutions subordinate to the Ministry of Finance – State Revenue Service, State joint-stock company "State Real Estate"; the Food and Veterinary Service, as well as the Ministry of Foreign Affairs and the Ministry of Defence) develop, implement and coordinate the state policy in the field of state border security and the issues related to the control of meeting the requirements to foreigners' entry, residence, departure and transit, implementing the EU five level state border integrated management model. Thus application of Schengen *acquis* in the state security processes realised by the State Border Guard of the Latvian Republic is directed to its complete application increasing Schengen's evaluation essence in all related processes.

The Standing Committee on the evaluation and implementation of Schengen was established in 1998 by the Decision of the Executive Committee (16 September 1998) setting up the Standing Committee on the evaluation and implementation of Schengen (*SCH/Com-ex (98) 26 def.*). Its purpose was, firstly, to verify that all necessary conditions have been met by the candidate state for implementation of the Convention implementing the Schengen Agreement, and secondly, to ensure appropriate application of the Schengen *acquis* in the states, which are already realising the Convention, especially highlighting problems and proposing solutions.

During the years of EU existence it became necessary to improve the evaluation processes and as a result the *Council Regulation (EU) No 1053/2013 (7 October 2013) establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen* was accepted creating a new evaluation system. The European Parliament, the

Council and the Commission emphasise that the new evaluation system is an EU mechanism, it will concern all Schengen *acquis* aspects and it will involve experts of the Member States, Commission and relevant EU agencies.

The layout scheme of the legal basis development of the Schengen evaluation is shown in Figure 1.

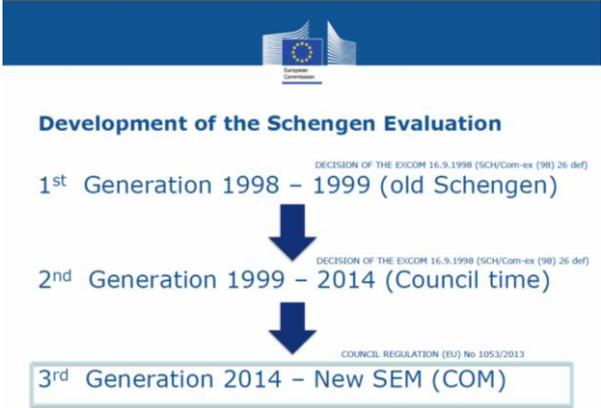


Fig.1. The layout scheme of development of the Schengen evaluation (Niemenkari A., 2013).

When the new regulation came in force, the European Parliament, the Council and the Commission expressed satisfaction about the regulation on creation of the evaluation and monitoring mechanism to verify application of the Schengen *acquis*. The mentioned institutions believe that the new mechanisms is an adequate solution to the call of the European Council in its Conclusions of 24 June 2011 for an enhancement of the cooperation and the mutual trust between the Member States in the Schengen area and for an effective and reliable monitoring and evaluation system in order to ensure the enforcement of common rules and the strengthening, adaptation and extension of the criteria based on the EU *acquis*, while recalling that Europe’s external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and increased practical cooperation.

It is important to note the increased role of the new mechanism in comparison with the previous regulation – the European Commission as an independent executive institution of the European Union was authorized to verify and supervise the evaluation reports (Holzhacker R., Luif P., 2014). Furthermore, in order to make the evaluation mechanism more efficient, some aspects of its implementation are conferred to the Commission, and some duties – to the Council. The Commission is authorised to prepare and plan the process of evaluation and accept evaluation reports. In order to strengthen mutual trust between the Member States, to ensure their better

coordination at Union level and to reinforce peer pressure amongst them, the implementing power to adopt the recommendations for remedial action aimed at addressing any deficiencies identified in the evaluation reports, are conferred on the Council.

One more novelty deserves attention in the evaluation methods – taking into account that the evaluation mechanism should set up transparent, efficient and clear rules on the method to be applied for the evaluation, the use of highly qualified experts for on-site visits and the follow-up to the findings of the evaluation, in particular, the method of *unannounced on-site visits* should be used, especially with regard to border control and visas.

It is possible to conclude that the innovation defined high preparedness standards for institutions of the Member States, which are responsible for border control and immigration control, in particular being aware of the fact that evaluation and monitoring mechanisms are directed to covering all Schengen *acquis* aspects – both the efficiency of border controls at external borders and the absence of border controls at internal borders.

The conclusion can be drawn that recognizing the Schengen free circulation area as a unique achievement, more attention is paid to its protection. New regulations help to prevent and to abolish unnecessary obstacles for free movement, at the same time struggling for a harmonised, clear and transparent action. The European Commission in cooperation with all Member States' qualified experts, is conferred the principal role in monitoring of these processes. Thus Schengen *acquis* will be appropriately observed.

Evaluation of the State Border Guard's officers' preparedness for evaluation on-site visits

Nowadays the external borders of the European Union are strongly protected; however free circulation of goods and persons is an important phenomenon of EU, and its significance is growing in development of various globalisation forms and ways. The present frontiers between the EU countries exist not for preservation of trade, production or services, but to help to implement specific regulations and standards related to people or goods border crossing. Therefore the State Border Guard's structural units' competences are very important determining the implementation of the border control according to the Schengen *acquis* requirements, which is also acknowledged by the State Border Guard.

After summarising the competence of the structural units of border control, border supervision and immigration control, it is possible to

conclude that the realisation of the Schengen *acquis* is an integral part of the everyday duties in ensuring the state security. Therefore in order to ensure the state border control, officers of these structural units must possess extensive theoretical knowledge and practical skills in Schengen *acquis*, which would guarantee achievement of the definite goals.

The regulations, which constitute the Schengen external border *acquis*, which is based in the primary *acquis*, included into the EU Law system by the Amsterdam Treaty, make part of various activities. They can be divided into approximately five categories (Neville, D., 2015): Schengen Borders Code, Internal Security Fund – border and visas, Schengen Information System, Visa Information System and *Eurodac* system, and finally actions, which are directed to operational cooperation in border management; the keystone of this cooperation is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

Taking into account the defined fields, it is possible to determine the principle directions of the evaluation on-site teams, i.e. relevant spheres to be evaluated with regard to officers' knowledge, skills and competences. In order to evaluate officers' opinion about the preparedness of the State Border Guard's border control and immigration control for Schengen evaluation on-site visits, including unannounced on-site visits at the internal borders, a questionnaire was drafted on the basis of the standard questions included into the Schengen evaluation questionnaire, dividing it into several parts.

37 officers-volunteers of structural units of the State Border Guard's border control and immigration control took part in the survey. In order to define if there is a difference in officers' opinions with practical experience, the respondents were asked to answer the question: "Have you ever been involved in the Schengen evaluation (in Latvia)?" The results show that 40.5% gave a positive answer to this question, thus indicating that in addition to theoretical knowledge the officers have also practical experience in the sphere. But 59.5% of the respondents did not take part in the evaluation.

In order to ensure the high level of preparedness in the investigated field, officers of the State Border Guard should possess knowledge about the nature of the evaluation – goals, objectives and mechanism. In order to clarify the situation, the respondents were asked the question: "Do you know about the Schengen evaluation commission goals, objectives, mechanisms?" According to the results, 24.3% gave the positive answer, but 75.7% indicated that they only partly know about the evaluation commission's goals, objectives and mechanisms or know nothing about it, which can be classified as a negative answer.

In relation to preparedness for the real Schengen evaluation, the questionnaire contained the question: "Do you know the spheres to be checked by the Schengen evaluation commission?" 43.2% of the survey participants replied that they know it, but 56.8% answered that they do not know the spheres to be evaluated or partly know about them.

Analysing the results, it is possible to confirm the assumption about the necessity of additional training for the State Border Guard's officers in this sphere. In order to confirm or deny the assumption, the respondents were asked the appropriate question; 54% confirmed the necessity of additional courses, but 46% indicated that additional training is not necessary.

The questionnaire included also **self-rating** – evaluation of own knowledge and competences (from 1 to 5 points) – in the areas of evaluation:

- knowledge about the Schengen *acquis*;
- knowledge about the integrated border management model;
- knowledge about CIRAM (common integrated risk analysis model);
- knowledge about databases used in the border control and immigration control;
- knowledge about organisation of cooperation at your structural unit.

Analysing the replies, it is seen that the higher rating received the question about the ability to use databases applied at the state border protection (4.16 points of 5) and about organisation of cooperation principles at the structural unit (4.24 points of 5). Lower rating concerned knowledge about the Schengen *acquis* requirements (3.35 point of 5), knowledge about the integrated border management model (3.05 points of 5), and finally – knowledge about the risk analysis system (2.92 points of 5).

Comparing the respondents' answers according to the characteristic – possession of practical experience in previous evaluations – it is possible to draw the conclusion that within the framework of the common tendencies, the officers who already took part in the evaluations, evaluate their knowledge and skills higher than the officers without such experience.

Taking into account scientists' opinion about training processes – with development of employees' competences, the work results, quality, efficiency are growing, and on the basis of the main components of the study system (defining, identifying the need; defining theoretical and practical goals; programme planning; choice of the external or internal supervisor; realisation process; evaluation of the results; corrections), the author suggests the several stage mechanism for increasing the preparedness of the State Border Guard's structural units' officers.

Conclusions and suggestions

After the analysis of the legal regulation and practical aspects of the Schengen evaluation, after reviewing aspects of preparedness of the State Border Guard's border control and immigration control structural units' officers for Schengen evaluation on-site visits, the following conclusions can be made:

1. The principal documents regulating the Schengen evaluation process is the European Parliament and the Council's Regulation (EU) No 1053/2013 (7 October 2013) establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen and the General guidelines for practical organisation of unannounced on-site visits at internal borders;
2. In accordance with the new mechanism the European Parliament's role was strengthened – information is provided during the entire process, including the information about the evaluation programme, Frontex risk analyses, Member States' replies to questionnaires, evaluations reports, follow-up, recommendations, action plan to remedy any deficiencies and its implementation;
3. With appearance of the new regulation, the Schengen *acquis* concept was defined in the evaluation mechanism – the recommending nature of the Schengen Catalogue changed into mandatory for application, and it must be taken into account by institutions performing evaluation at the external and internal borders;
4. The State Border Guard has implemented a range of activities to ensure preparedness for evaluation on-site visits – defining local communication on the central and regional level in case of unannounced on-site visits; the specification of the national contact point; delegating officers to the European Commission's and Frontex organised experts' trainings, etc.

The following suggestions should be realised to improve the preparedness of the State Border Guard's border control and immigration control structural units' officers for Schengen evaluation on-site visits:

1. In order to prepare qualitative, uniform replies to the questionnaire of the regular evaluation in Latvia in 2018, as well as to ensure the joint approach in summarisation of statistical data, the management of the State Border Guard should consider

- the possibility of creating a short-term work group comprising State Border Guard's officers who took part in the Schengen experts' training courses;
2. In order to observe the equality principle and the joint standardised approach understanding for the State Border Guard's border control and immigration control structural units' officers, who in their turn increase the efficiency of evaluation visits, the State Border Guard College should consider the possibility of drafting a training course, including research into the Schengen evaluation legal instruments, as well as on the basis of the results obtained in the practical research.
 3. The senior officers of the Administrative Board of the Central Board of the State Border Guard should delegate to the Schengen evaluation courses those officers who are appointed as responsible persons for local communication and who have not taken part in the relevant training.

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