

1. Following questions about the practical implementationof the obligations contained in Regulation 1053/2013 on the new Schengen evaluation mechanism regarding the (handling of) draft recommendations and the provision and transmission of information to national parliaments, the former and current Presidency, GSC and Commission held an informal exchange of views about the possible legal and practical implications, as this will have a considerable impact on the upcoming work of the Schengen Matters Working Party - Evaluation (hereafter 'WP').

2. The evaluation reports constituting the basis for the (proposal for) recommendations to be adopted by the Council, are classified *restreint UE* (Article 17). The points that need to be clarified are the following: how to deal with proposals for recommendations (*restreint* *UE* or public), to whom and how these proposals will be transmitted, and how the Council will handle them, as this will have implications for the WP's work.

3. Article 15(2) determines that "*The Commission shall submit a proposal to the Council to adopt the recommendations referred to in paragraph 1*.", i.e. the Regulation provides that the Commission submits the proposal for recommendations to the Council only, not to the European Parliament ('EP') nor to the national parliaments ('NP') .

It should be noted that in case the Commission does not classify its proposal for recommendations, it will nevertheless transmit the draft recommendations to the EP for information, because the EP also receives all classified reports that form the basis for the recommendations. The Commission will however not transmit the draft recommendations (classified or otherwise) to the NP's.

4. Article 15(3) provides that "*the Council (…) shall transmit the recommendations, once adopted, to the European Parliament and to the national parliaments*". This obligation does not pose a problem if the proposal has not been classified, so it is already public and stays public once adopted. Maintaining a document classified *restreint* *UE* however would entail significant problems because there are no procedures in place for the transmission of such documents by the Council to NP.

5. Summing up, any decision :

a) on the transmission of draft proposals for recommendations by the Commission, and of adopted recommendations by the Council, to the EP and to the NP's, and

b) on classification (ranking) of these documents,

might have unexpected consequences, unless some practical guidelines and working methods can be construed/agreed beforehand, based on the assumption that it is preferable to keep documents and procedures as simple and transparent as possible, whilst respecting both the Commission's and the Council's powers / room for manoeuver in relation to the handling of recommendations.

6. According to the Presidency, three possible scenarios could be envisaged:

a.) The proposal for recommendations is not classified and contains no sensitive details, i.e. the wording is kept very general. In this case, the Council can eventually adopt the proposal as such and transmit the recommendations to the EP and NPs.

b.) The proposal for recommendations is not classified but contains sensitive elements and details indicated by way of a reference to the respective parts in the report (which itself remains *restreint UE*). In this case the Council can also eventually adopt the proposal as such and transmit the recommendations to the EP and NPs*.*

c.) The proposal for recommendations is classified *restreint* *UE* because it contains sensitive elements and details which are clearly spelled out in detailed wording. In this case, the Council will, in light of its obligation to transmit the (adopted) recommendations to the EP and NP's, have to modify the text in such a way that it no longer contains any sensitive details upon adoption. This can be done either by wording it very generally (option a. above) or by referring to the respective parts in the report (which itself remains *restreint UE*) in relation to sensitive elements and details (option b. above). During the handling stage in the Council, the proposals will of course be dealt with in accordance with the existing procedures on the handling of classified *restreint* *UE* documents.

The following points are important to consider in relation to all three options:

- Is the content of the (proposal for) recommendations sufficiently clear?

- Is the Council sufficiently informed to enable it to take a meaningful decision?

- What is the risk that a (too) general wording will adversely affect the efficiency / effectiveness of the evaluation system as such?

- When drafting recommendations cf. Article 15, the Member States’ experts and the Commission should take into account the possible classification requirements.

7. The Schengen Matters Working Party will convene on 8 July (SIS & Evaluation), 18 September (Evaluation), 19 November (Evaluation) and 27 November 2015 (SIS). The Presidency has decided to designate the afternoon of the 8 July meeting to "Evaluation" (15h) in order to discuss (inter alia) the issues listed above. To prepare the discussion of 8 July, delegations are requested to **briefly outline their views** on the points mentioned under 6. andsend them to theGSC by **Monday 6 July 2015, 12h00 noon**.