Introductory remarks

Mr. Chairman, Commissioner, members of the Committee,

Firstly I would like to thank the Committee for its kind invitation to participate in this hearing. Hearings of this kind provide an important opportunity for assessing developments across broad and complex policy areas and for looking to the future. I am sure that the sessions today and tomorrow will make a valuable contribution to the debate on the current functioning and future direction of the Schengen agreement. In line with the focus of this afternoons session, I am going to concrete my remarks on particular issues to do with the functioning, governance and enlargement of the Schengen area.

Schengen, like cooperation in JHA matters more generally, has evolved rapidly in a relatively short period of time. It is less than 20 years – 26 March 1995, to be exact – since the lifting of border controls between Belgium, Luxembourg, the Netherlands, France, Germany, Spain and Portugal was achieved, thus putting into effect the commitment first made in the Schengen Agreement signed by five of those states in 1985 and then further elaborated in the Convention Implementing the Schengen Agreement signed on 19 June 1990.

The Schengen area has grown rapidly in the years since 1995 and it now encompasses 22 Member States of the Union and four associated States. As a result, border – free movement within the Schengen area is now a daily reality for more than 500 million
European citizens, as well as the many nationals of third countries who are legally present in the Schengen area as residents or visitors.

As is so often said, the Schengen area represents a flagship achievement in the project to deepen European co-operation and integration. It is perhaps the most tangible, and certainly one of the most valued, products of this ongoing process. Politically speaking, it has played a very significant part in engendering the deepened trust and collegiality between neighbouring States that characterise 21st century Europe. For participating States it provides a boon in tourism and other economic activity. For businesses it facilitates and supports cross-border commercial endeavours. And it makes life easier for ordinary citizens who wish to travel between States whether for work, leisure or family reasons.

It is for all of these reasons, and more, that it is so important to protect the integrity of the Schengen area and ensure that it continues to function smoothly. This means ensuring that free movement is guaranteed to the greatest extent possible and that internal border are not re-imposed on the basis of, for example, undue political pressures or an overreaction to events. Such controls must be re-imposed only on the rarest and most extenuating circumstances and for the shortest possible periods.

On the other side of this coin are the ‘compensatory’ or ‘flanking’ measures that enable internal border controls to be lifted in the first place, such as the Schengen visa system, measures to ensure the security of external borders and specially structured arrangements for police and judicial co-operation and for the exchange of information between law enforcement authorities. It is vital that all of these obligations are not only properly implemented but are seen to be so. This necessitates a thorough, consistent and highly professional approach to the monitoring and appraisal of each participating State.
Current dossiers

The measures that regulate all of this activity, and the technological and other systems that enable it to operate, have grown and evolved greatly over the years. This legal, administrative and technological infrastructure must be kept under continual review, and needs to be refined and modified from time to time to ensure that it remains robust enough to withstand the challenges that the Schengen area is sure to face from time to time. This is well illustrated when considering the range of Schengen-related dossiers that the Irish Presidency is dealing with, including the proposed amendments to the Visa Regulation of 2001, the Eurosur proposal and the new Smart Borders package which aims to harness cutting-edge technology to enhance the management of the Schengen external borders.

One major development that looks set to happen during our Presidency is the long awaited transition to the second generation Schengen Information System, known as SIS II. This has now been given the green light to take place on 9 April and, when in force, it will enable a much more effective and integrated platform for the information-sharing between national police forces that is so essential to the security of the Schengen area.

Schengen Governance Package

In 2011, the European Council agreed that there was a need to revise the existing legal framework when it called for the enforcement of common rules through the Schengen Evaluation mechanism to be further improved and deepened in conjunction with the establishment of a mechanism to respond to exceptional circumstances putting the overall functioning of Schengen co-operation at risk. On foot of this mandate, the Commission in September in 2011 presented what is known as the Schengen Governance Package of proposals. As everyone here today will be aware discussions are continuing towards a resolution of the key outstanding issues. While the Presidency believes that progress is being made in these discussions, they are of a sensitive natures and I hope you will agree that it is better to await their outcome rather than to engage in a parallel public debate on these issues here today. For now, may I simply say that the Presidency greatly appreciates the constructive engagement of the rapporteurs, Mr. Coelho and Ms. Weber – and indeed
that of the entire Committee – on these very important dossiers. Our Presidency aim is to reach agreement on the Package and we remain hopeful that this can be achieved in the time remaining to us.

**Bulgarian and Romanian accession to Schengen**

The enlargement of the Schengen area to include Bulgaria and Romania is, of course, another matter that fell to the Irish Presidency to address. It was unfortunately not possible for the JHA Council, at its meeting earlier this month, to proceed to the adoption of the Council Decision that would have established a framework for the full application of the Schengen Acquis to Romania and Bulgaria. Nevertheless, we were encouraged by the level of engagement from the stakeholders. It seems clear that all parties would like to see progress at the earliest feasible opportunity, and that continued constructive engagement on the issues of concern will help in finding an answer to this problem. In this context, the JHA Council has decided to address this issue again by the end of 2013 with a view to considering the way forward on the basis of a two step approach.

**General functioning of the Schengen area – free movement**

Returning to the theme of Schengen Governance, I should say that this is not about merely refining the existing evaluation mechanism. It is also about ensuring the necessary political guidance and oversight, something else which the European Council underlined in 2001. In this context I would like to offer some remarks on the current functioning of the Schengen area, and in particular its integral provisions on free movement.

You recall that in March 2012 the JHA Council adopted conclusions regarding guidelines for strengthening political governance of Schengen co-operation in which it welcomed the Commission’s intention to present regular reports to both the European Parliament and to the Council on the functioning of the Schengen cooperation and the application of the Schengen acquis. The Commission has since presented two such reports which have provided a very useful reference point for the necessary political oversight and appraisal by both the Council and the Parliament.
Those reports formed the basis for an exchange of views in the mixed committee formation of the JHA Council under the Danish and Cyprus Presidencies, respectively. The Irish Presidency intends to maintain that approach and we have scheduled the next such debate for the June JHA Council.

The Commission’s reports provide a helpful overview of developments relating to the application of the Schengen acquis, including instances of temporary re-imposition of internal border controls. I know that members of the Parliament have in the past expressed concerns about Schengen States making extensive use of their powers in this respect. In this context, it is worth considering the Commission’s statistics on the number of times this power has been exercised and the reasons for same. In the four years between October 2006 when the Borders Code came into force and October 2010, this power was invoked only 22 times. Moreover, in the following two years the frequency with which this power was exercised actually fell significantly, with only 7 occurrences between October 2010 and October 2012. A unilateral re-imposition of border controls has never lasted for more than 30 days, and has usually been for much shorter periods. As the Commission reported in its communication on Schengen Governance in September 2011, this power has been used primarily to enable police authorities to manage the security implications of major sporting events, political demonstrations, or high–profile political meetings.

These facts and figures provide a useful sense of perspective and help to demonstrate that free movement in the Schengen area is much alive and well. And, when adopted, the proposed Regulation to amend the Schengen Borders Code to provide for common rules on the temporary reintroduction of internal border controls will further increase transparency and accountability in this regard.

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1 Commission Communication on ‘Schengen governance – strengthening the area without border control’, 16 September 2011.
2 Commission biannual reports on the functioning of the Schengen area, (1) November 2011 to April 2012 and (2) May to October 2012.
There have been allegations of *de facto* internal border controls in the guise of mobile surveillance and vehicle checks by law enforcement authorities in certain Member States. It is important to remember that measures taken by Member States in this regard are subject to judicial review by national courts as well as the European Court of Justice. In cases where the Commission believes that the Schengen Borders Code has been infringed, it may bring infringement proceedings against the Member State concerned. These provide important safeguards against breaches of the Borders Code as well as providing a means of impartial and authoritative adjudication where allegations of such breaches arise. Indeed, in recent years there have been a number of important rulings by the Court of Justice which have helped to clarify the law in this area.

Again, it is important that their actions of Member States be put into context. The abolition of internal border controls cannot be viewed in isolation from measures to protect the Schengen area and its constituent States from illegal cross-border movements and other actions. It should also be remembered what is intended by the laws on free movement, whether within the Schengen area or under the Freedom of Movement Directive. These rights apply to citizens of the EU and of the European Economic Area, and third country nationals legally admitted to the territory of the Union, who are going about their lawful business. Free movement is clearly not intended to facilitate those engaged in cross-border crime, or who may be on the run from another jurisdiction, or who are otherwise illegally entering the territory of any State.

Ultimately, it must be borne in mind that the architecture of the Lisbon Treaty seeks to create an area of freedom, security and justice. The Treaty recognises that these three vital principals are interdependent and mutually reinforcing. Nowhere is this better exemplified than in the area of free movement. Without robust counter-balancing measures to ensure its security, the Schengen area simply cannot survive.
Concluding remarks

Clearly a system as vast and complex as the Schengen acquis is never going to operate perfectly at all times, although legislative and technological reforms such as those I have mentioned can help to ensure that it runs ever more efficiently and transparently. Yet, even as things stand, it seems perfectly reasonable to conclude that Schengen is working well. The Commission noted in 2011 that the Schengen arrangements enable “more than a billion journeys within the EU every year, and [that] public opinion consistently ranks freedom to travel as among the most important benefits brought about by the Union”. 3

The Schengen area has undoubtedly faced some challenges in the past few years, and in this context the Council identified a need for legislative reforms which are currently being negotiated with the Parliament. In the meantime, the Schengen agreement has shown its resilience and has withstood the pressures it faced. The overwhelming majority of travellers within the Schengen area continue to enjoy a smooth, efficient and entirely border-free experience.

It is from this perspective – and taking into account the imperative of keeping the Schengen area secure – that we should evaluate the challenges and controversies that may occur from time to time. Thanks to Schengen, Europe very much remains an area of border-free travel.

Thank you for your attention, and I look forward to the discussion to follow.

ENDS

3 Commission communication on ‘Schengen governance – strengthening the area without border control’, 16 September 2011. bbb