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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Proposal for a

COUNCIL REGULATION

on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing Regulation (EU) No 1053/2013

{SEC(2021) 225 final} - {SWD(2021) 119 final} - {SWD(2021) 120 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• General context

The Schengen area[1] is one of the most significant achievements of the European Union. It has enhanced the freedom of movement by enabling more than 420 million people to move without being subject to internal border controls, as well as facilitating the cross-border delivery of goods and services, bringing significant social and economic benefits to our societies.

The Schengen cooperation, which started between five Member States under an intergovernmental framework with the signing of the 'Schengen Agreement' on 14 June 1985, has considerably expanded since it was first established. For the last 35 years, the EU has witnessed a continuous evolution towards the establishment of a well-functioning area without internal border controls and a reinforced sense of mutual trust among Member States. Today, it faces a different reality and different challenges than when it was established. Instability in Europe's neighbourhood and beyond, the 2015 refugee crisis and its consequences, the persistent terrorist threat and the COVID-19 pandemic have put considerable strain on Schengen and even led to some Member States reintroducing internal border controls for a protracted period.

To address the challenges faced by the Schengen area, Commission President von der Leyen announced a strategy on Schengen in her 2020 State of the Union address[2]. In the New Pact on Migration and Asylum[3], the Commission indicated that the Schengen Strategy would combine legislative and operational initiatives aimed at ensuring a stronger, more resilient area without internal border controls, while reinforcing its governance and monitoring structures. One such initiative is the revision of the Schengen evaluation and monitoring mechanism (hereinafter: 'the Schengen evaluation mechanism' or 'the Mechanism').

The Schengen area is supported by a significant body of measures that compensate for the absence of controls at internal borders, facilitate free movement, and ensure a high level of security and justice. The Schengen *acquis* comprises the provisions integrated into the framework of the Union in accordance with Protocol No 19 annexed to the Treaty on European Union (TEU) and to the Treaty on the functioning of the European Union (TFEU), together with the acts building upon them or otherwise related to them. The *acquis* thus includes (1) measures at the external borders (external border management), (2) compensatory measures (common visa policy, police cooperation, return policy and the Schengen Information System), and (3) a robust evaluation and monitoring mechanism. The Schengen *acquis* also comprises requirements on data protection and the respects for other fundamental rights. The above-mentioned three essential and complementary pillars underpin Schengen and make the area without controls at internal borders possible. The overall stability

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1 Beyond Member States, the Schengen area covers also Iceland, Norway, Switzerland and Liechtenstein (so-called 'Schengen Associated Countries'). Ireland is not part of the Schengen area but it applies the Schengen acquis in part since 1 January 2021. Bulgaria, Croatia, Cyprus and Romania are bound by the Schengen acquis, however, internal border controls have not yet been lifted in respect of these Member States.

2 State of the Union Address by President von der Leyen at the European Parliament Plenary, 16 September 2020.

3 COM(2020) 609 final of 23.9.2020, pp. 14-15.

of this complex architecture depends on the strength of each individual pillar and on the coherence and cohesion of the whole system.

A well-functioning Schengen area depends on the correct and efficient implementation of the common rules, i.e. the Schengen *acquis* and, in more general terms, on mutual trust among Member States. A deficiency or lack of implementation in one Member State can affect all others and subsequently put the Schengen area at risk. The monitoring of how Member States implement the Schengen *acquis* and the follow-up based on commonly agreed recommendations for improvement are a core element of the governance structures of Schengen. Already in 1998, the contracting parties of the Schengen Convention set up a Standing Committee with a mandate to identify shortcomings in the implementation of the Schengen *acquis* and to propose solutions[4]. Following the integration of the Schengen *acquis* into the EU legal framework, the Decision setting up the Standing Committee was replaced by Council Regulation (EU) No 1053/2013[5] (hereinafter: 'the Regulation') which currently provides the legal basis for the Mechanism. The Regulation became operational in 2015.

The purpose of the Schengen evaluation mechanism is to maintain a high level of mutual trust among participating Member States and thereby contribute to a well-functioning Schengen area by guaranteeing that Member States apply Schengen rules effectively. The Mechanism should achieve these goals by impartial and objective evaluations that are able to identify deficiencies in the application of the legislation in practice and ensure that those deficiencies are swiftly addressed.

Although the Mechanism can legally cover the entire Schengen *acquis*, the practice is that the specific policy areas for evaluation are decided for each multiannual evaluation cycle by the Commission together with the Member States. Based on this practice, the first and the second multiannual evaluation cycles covered specific evaluations to assess the implementation of measures in the areas of external border management, return, common visa policy, police cooperation, the Schengen Information System (SIS), data protection and the absence of controls at the internal borders. Other policy areas falling under the Schengen *acquis* in the future could be part of the Mechanism if so decided in the multiannual evaluation programme established by the Commission. In this context and based on this practice, the Mechanism also covers, but only with a view to concluding whether a Member State is ready to apply all or parts of the Schengen legal framework, judicial cooperation in criminal matters, legislation on firearms, and drugs policy.

According to the Regulation, the Commission is responsible for the overall coordination and organisation of the evaluation and monitoring, while keeping the European and national Parliaments informed on the results of evaluations. In accordance with Article 70 TFEU, the Mechanism remains a shared responsibility: the Commission carries out evaluations jointly with experts from the Member States and supported by Union bodies, offices and agencies. This peer-to-peer approach is crucial to ensure accountability, ownership of results, and mutual trust. Member State experts check what their peers are doing, recommending solutions and urging for action if the Member State does not implement them. Furthermore, the Council is associated in the decision-making process when it comes to adopting recommendations upon a Commission proposal.

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4 Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/ Com-ex (98) 26 def.), OJ L 239, 22.09.2000, p 138.

5 Council Regulation (EU) No 1053/2013 of 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, OJ L 295, 6.11.2013, p. 27.

- **Reasons for and objectives of the proposal**

Given the challenges faced by the Schengen area in recent years and the role of the Mechanism in the governance of Schengen, it is important that the Mechanism remains fit for purpose and reaches its full potential to be able to adapt to recent legislative developments, address new challenges and include new Member States that are fully or partly applying the Schengen *acquis*.

Article 22 of the Regulation required the Commission to undertake a review of the operation of the Regulation within six months of the adoption of all evaluation reports under the first multiannual evaluation programme (2015-2019). The Commission presented its review in a report[6] and accompanying staff working document[7] on 25 November 2020, covering all the elements of the Regulation, including the functioning of the procedures for adopting acts under the Mechanism.

The review concludes that the Mechanism has brought about tangible improvements. Member States are, overall, implementing the Schengen *acquis* adequately and serious deficiencies have been duly addressed. It confirms that the Mechanism as such provides a solid framework for evaluating and monitoring the implementation of the Schengen *acquis*.

However, the review identifies significant shortcomings in the cumbersome process of the Mechanism, with the evaluation process and follow-up and implementation of the action plans taking an excessive amount of time. The Council recommendations have also not proved to be a sufficiently effective tool to ensure that Member States take rapid action, as the technical nature of the process has not generated sufficient political pressure to act. While evaluations identified serious deficiencies in 10 evaluation visits[8], ministerial discussion only took place once, in the case of Greece's serious deficiencies in the external border management.

The Mechanism also does not appear to be generating enough trust amongst Member States, given that several Member States have for the last five years continued to prolong internal border controls, despite positive evaluations in external border management, police cooperation and the Schengen Information System, and an overall assessment that Member States are implementing the Schengen *acquis* adequately. In addition, the review finds that the current rigidity of the Mechanism does not allow it to adapt to new circumstances and new operational and legislative developments.

The review concludes that a number of shortcomings prevent the Mechanism from working as effectively as it could and should, undermining its full potential. These shortcomings are:

(1) the excessive length of the evaluation process (10-12 months) and the time for Member States to implement recommendations (2 years);

(2) insufficient capacity of Member States to contribute an adequate number of experts for the evaluations, with 5 Member States providing one third of all experts and with chronic deficit of experts in specific policy fields;

(3) suboptimal use and efficiency of unannounced visits as well as of the other evaluation and monitoring tools, in particular thematic evaluations;

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6 Report from the Commission to the European Parliament and the Council on the Functioning of the Schengen Evaluation and Monitoring Mechanism pursuant to Article 22 of Council Regulation (EU) No 1053/2013. COM(2020)779 final.

7 SWD (2020)327 final.

8 As indicated by the five-year Review, the Mechanism identified serious deficiencies in ten evaluations in three fields: external border management (Greece, Iceland, Spain and Sweden); common visa policy (Finland and the Netherlands); Schengen Information System (Belgium, France, Spain and UK).

(4) slow follow-up and implementation of the action plans and lack of a comprehensive and consistent approach to monitoring the implementation; and

(5) apart from the evaluation of the right to protection of personal data, the assessment of the respect for fundamental rights in the implementation of the Schengen *acquis* is not sufficiently integrated in the Mechanism.

The review indicated that some of these shortcomings could be addressed at operational level, but others would require legislative changes.

The European Parliament and the Council have both stressed the need to reform the Mechanism. The European Parliament, in its 2017 resolution[9], and the Council, already through the consultation launched by the Finnish Presidency in 2019[10], invited the Commission to act. More recently, the Council adopted Conclusions on the Mechanism[11] inviting the Commission to put forward initiatives for improvement of the overall efficiency of the Mechanism and to ensure it remains flexible, adaptable to the evolving circumstances and developments of the Schengen *acquis* in order to address new challenges and to adapt to new realities.

Following the conclusions of the 5-year review, the Commission concluded that the above-mentioned shortcomings could be summarised as **three interlinked challenges**:

– Limited strategic focus and significant fragmentation, preventing an overview of the functioning of the Schengen area as a whole that could otherwise facilitate political discussion;

– Insufficient capacity to identify, adapt and quickly react or adapt to new circumstances, legislative and operational developments ; and

– Slow adoption and implementation of remedies, with a peer-to-peer system that does not exert the expected pressure.

On the basis of the input gathered from relevant stakeholders in the accompanying impact assessment, the Commission identified several policy options summarised under section 3 aimed at increasing the effectiveness of the Mechanism and thereby ensuring a more transparent, effective and consistent implementation of the Schengen *acquis*.

To address the above-mentioned problems, this proposal intends to: (1) increase the strategic focus of the Mechanism and ensure a more proportionate use of the different evaluation tools; (2) shorten and simplify the procedures to make the process more effective and efficient, and increase peer-pressure; (3) optimise the participation of Member State experts and the cooperation with Union bodies, offices and agencies; and (4) strengthen the evaluation of the respect for fundamental rights under the Schengen *acquis.* These objectives will be met notably by the following approach:

(1) Increase the strategic focus of the Mechanism and ensure a more proportionate and strategic use of the different evaluation and monitoring tools

– **Increasing the flexibility to adapt the scope of the specific evaluations and evaluation priorities to the new realities in the Schengen *acquis*** by removing the current list of specific policy fields to be evaluated and establishing a procedure to decide on the priority fields at the beginning of each evaluation cycle. Under the

[9] Report on the annual report on the functioning of the Schengen area (2017/2256(INI)).
[10] Council doc. 13244/2019.
[11] Council doc. 7939/21.

current Regulation, each Member State has been evaluated in six policy fields through six individual evaluations that result in six evaluation reports and six sets of recommendations. However, those policy fields are no longer fully adapted to the new realities. For example, a new series of IT systems will become operational in 2023 and complement the Schengen Information System. As the security *acquis* develops, evaluations will need to take into account additional elements, particularly in police cooperation. Various policy areas, given legislative developments, are becoming increasingly interlinked and interdependent (for example Schengen Information System and return or Schengen Information System and police cooperation). Therefore, the articulation of evaluations into specific policy field evaluations might not be the most appropriate way to assess these interconnected activities. By removing the list of policy fields, the proposal increases flexibility to articulate evaluations differently, and evaluate different aspects or possible new elements, allowing the Mechanism to adapt quickly to the dynamic nature of the Schengen *acquis*. At the same time, it creates legal certainty as to the procedure to agree on the priorities for evaluation at the beginning of each evaluation cycle.

– **Creating a flexible programming.** In addition, the proposal creates a flexible legislative framework for programming. It adapts the rules on the multiannual and annual programming to be able to react more rapidly to emerging problems and challenges, by reducing the details that are currently included in the multiannual and annual evaluation programmes, and reducing the need for amendments.

– **Moving progressively towards fully risk-based evaluations.** The proposal creates an obligation to take into account the results of previous evaluations as well as other Union and national evaluation and monitoring mechanisms (e.g. the vulnerability assessment of Frontex or the European Multidisciplinary Platform Against Criminal Threats (EMPACT)). In addition (as explained below), it creates additional obligations to request risk assessments and situational awareness from Union bodies, agencies and offices, where relevant. The new flexible framework and additional obligations would make it possible, over time, for example, to carry out a comprehensive risk-based Member State evaluation covering only the elements identified through risk analysis and situational awareness, with a single evaluation per Member State covering all relevant policy areas in a single evaluation report. It would also allow the concurrent evaluation of several Member States facing the same challenges.

– **Ensuring there are no gaps when evaluating the implementation of the Schengen *acquis* in a Member State**. As the Schengen legal framework evolves and becomes more complex, Member States are resorting to other actors to support them in the implementation of tasks that are under their responsibility. This is for example the case of private companies in the field of visa policy (e.g. the external service providers) or external borders (e.g. airlines or airports managed by private companies). It is also the case of Union bodies, agencies and offices that in recent years have seen their mandates strengthened to provide support to Member States, for example in carrying out border checks or surveillance, or second-line security checks. As the Mechanism strives to provide an overview of the situation in a Member State, the proposal clarifies that the Mechanism can support the verification of the activities of Union bodies, offices and agencies in so far as they perform functions on behalf of the Member States to assist in the operational application of provisions of the Schengen *acquis*. The objective is therefore not to evaluate these bodies, offices and agencies *per se*. The verification of these activities will be

embedded in the evaluation of the Member States, similarly to the current situation when, for instance, during the evaluations in the field of common visa policy, the teams check the activities of those private companies (external service providers) that are involved in the reception of visa applications; or at the external borders when the teams check the infrastructure of an airport managed by a private company. This aspect of the evaluations will be carried out without prejudice to and in full respect of the responsibilities attributed to the Commission and to the relevant governing bodies of the agencies, offices and bodies concerned. Should evaluations identify deficiencies in relation to activities fulfilled or supported by Union bodies, offices and agencies, the Commission will inform the relevant governing bodies.

– Extending the **evaluation cycle from five to seven years** allowing for Member States to be evaluated at least twice during the seven-year cycle. This would also allow for a more balanced, flexible and strategic use of all available evaluation and monitoring tools, ensuring a closer and more targeted monitoring of Member States.

– **Strengthening the forms and methods of evaluation and monitoring activities**. Programmed periodic visits remain the primary method of evaluations but it will be possible to increase the proportion of unannounced visits. Evaluations and monitoring activities by remote means (e.g. via videoconference) will become possible. 'Thematic evaluations' will have an increasing role with an obligation to carry out at least one thematic evaluation per year. Thus far only two thematic evaluations have been carried out (one related to national integrated border management strategies and one regarding Local Schengen cooperation in the field of the common visa policy). Provisions on monitoring activities (revisits and a new tool called 'verification visits') are made clearer and more flexible.

– **Unannounced evaluations would, as a general rule, not require any prior notification.** This would ensure better use of unannounced evaluations, in particular for evaluations to take place for the purpose of investigate compliance with obligations under the Schengen *acquis,* in particular in response to indications of problems that have a significant impact on the functioning of the Schengen area, or serious allegations of fundamental rights violations. Limited prior notification will remain applicable for unannounced visits, the purpose of which is to carry out a 'random health check' of the Member States' implementation of the Schengen *acquis*. Unannounced visits will not be subject to programming and they can be organised at short-notice depending on the circumstances.

– **The yearly reports on the results of the evaluations carried out and state of play regarding the remedial actions taken by Member States foreseen under this Regulation should be part of the yearly 'State of Schengen Report'**. It is crucial that political discussion comprehensively covers all elements of the complex architecture supporting the proper functioning of Schengen. To this end, the Commission will relaunch the adoption of the 'State of Schengen Report' to serve as a basis for discussions at the recently created Schengen Forum. The Schengen evaluations, the situation as regards the absence of internal border checks and the state of implementation of recommendations will be an important part of that report.

(2) Shorten and simplify the procedures to make the process more effective and efficient and increase peer-pressure

– **Significant acceleration of the evaluation process, with clear procedural deadlines.** As a general rule, the Commission will adopt the evaluation reports and

the recommendations in a single act **within four months** of the evaluation activity (and even faster in case the evaluation identifies a serious deficiency). This would not only ensure more clarity as regards the causal link between the findings in the report and recommendations, but also accelerate the process. It would avoid any delays in adopting recommendations, which now occurs in a two-step decision-making process (i.e. evaluation reports adopted by the Commission and recommendations adopted by the Council). The Council's full involvement in the evaluation process and recommendations remains ensured through the examination procedure (positive opinion of the Schengen Committee in which all Member States participate and vote on the single act that comprises both the evaluation findings and recommendations).

– **Increasing the peer-pressure by focusing the Council's decision-making powers on politically relevant cases and by increasing its role in the follow-up and monitoring of the implementation of recommendations.** While the current two-step procedure was intended to promote political discussion at Council level and exert peer-pressure in case of serious deficiencies or when a Member State is not implementing the recommendations, experience to date has clearly shown that the use of this approach in all cases and for all reports did not achieve the intended objective, but added considerably to the length and complexity of the process, compromising its effectiveness.

Member States are already heavily involved in the evaluation process (carrying out evaluations with the Commission, co-drafting the evaluation reports and draft recommendations) and in the adoption process of the evaluation report through the Committee examination procedure. In addition, most issues identified during the evaluations are of a technical rather than political character. The heavy workload in the Council (examination of 40 reports a year and resulting Council implementing decisions with hundreds of recommendations), and the very detailed and localised nature of recommendations prevented any real discussion. The 5-year review has shown the fact that the Council adopts the recommendations in every case did not generate the expected peer pressure, and the Mechanism did not provide the basis for a political discussion on the state of Schengen. Even when the Mechanism identified serious deficiencies, discussions on findings reached the ministerial level only once. Moreover, the Council has a very limited role in the follow-up and monitoring of the implementation of Member States' action plans.

The proposed revision seeks to remedy these shortcomings by ensuring that the Council adopts recommendations in cases considered to have the biggest added value and impact to steer political discussion on matters of general interest for the functioning of the Schengen area. These cases are the following: thematic evaluations, 'first-time evaluations' (when deciding if a Member State is ready to apply the Schengen *acquis* in full or a specific area) as well as in the case of a serious deficiency with a view to increasing peer-pressure and political discussion at Council level. At the same time, procedures are proposed to be simplified for cases of more technical nature.

The proposal also significantly increases the role of the Council in the follow-up and progress monitoring of these cases providing as well for an escalation mechanism in case of lack of progress. In particular, in case of a serious deficiency, the Council will set time limits for the implementation of the recommendations and the Council will specify the frequency of the progress reports by the Member State concerned,

which will have to submit these progress reports to both the Commission and the Council. The Council will be required to express its position on the Commission report following the revisit as well as on the closure of action plans. Similar provisions apply for the closure of action plans related to 'first time evaluations'.

Furthermore, an increased role will be provided, in all cases, for the Council in the monitoring phase: the proposal provides that the Commission will inform the European Parliament and the Council at least twice a year about the state of implementation of the action plans. Besides, the Commission will also adopt annually a comprehensive report on the evaluations carried out which should be discussed by the Council in view of adopting conclusions on the matter. Finally, the Commission will inform the Council when a Member State is not making adequate progress in the implementation of the action plan.

– Strengthening and accelerating the provisions related to cases where evaluations identify **a serious deficiency: a fast-track procedure** for a serious deficiency is introduced to ensure that the deficiencies identified are addressed promptly. The proposal incorporates into the normative text the definition of serious deficiencies currently in the Schengen evaluation guidelines to increase legal certainty and ensure a common understanding of the concept. **The evaluated Member State will have to start immediately implementing actions** to remedy the deficiency even before the report is adopted and will have to inform the Commission and Member States without delay of the measures taken. In case of serious deficiency the recommendations should be adopted by the Council **within 2 and a half months from the end of the evaluation activity**; a revisit to verify the implemention of remedial actions will take place no later than one year after the evaluation (it could be earlier depending on the deadlines for implementing remedial actions set by the Council); the Commission will immediately inform the Council and the European Parliament of the existence of a serious deficiency, for closer political scrutiny, as shown in the point above.

– **Removing and simplifying provisions that create unnecessary procedural obstacles**. The proposal would no longer require that the evaluation reports are to be treated as 'EU Restricted' documents. This change will 'increase transparency, simplify and speed-up the procedure by allowing quicker handling of reports and facilitating their transmission to the national Parliaments and the European Parliament[12]. Evaluation reports would nevertheless be treated as 'sensitive'[13] and Member States would retain the possibility to ask for their classification. The proposal would simplify the **adequacy assessment** of Member State action plans: the Commission will no longer adopt a Communication on the assessments, but it would still inform the Member State concerned (and the Council) about its observations for example, through an administrative letter. Finally, a reduced **frequency of follow-up reports** (Article 16(3) and (4)), by requiring, a progress report every six months instead of the current three months, would decrease the overall administrative burden for Member States.

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12 The European Parliament and NGOs called for easier access to the evaluation reports.

13 Particularly in relation to the application of Regulation (EC) No 1049/2001 on access to document.

(3) Strengthen the evaluation of the respect for fundamental rights under the Schengen acquis

– Further **strengtening the evaluation of fundamental rights when implementing the Schengen *acquis*** (in addition to data protection which is evaluated as a specific policy field) throughout the Mechanism, including increased submission of risk analyses by the European Union Agency for Fundamental Rights; strengthening the reference to fundamental rights in the provision on training and including a specific provision in the Regulation regarding the use of the **evidence supplied by third parties**, including national monitoring mechanisms, as well as the possibility to carry out unannounced evaluations without prior notice, if there are indications of serious fundamental rights violations.

(4) Optimise the participation of Member State experts and the cooperation with Union bodies, offices and agencies, as well as synergies with other evaluation and monitoring mechanisms, for more targeted, strategic and tailored evaluations

– **Creation of a pool of experts.** Currently, the Commission issues invitations to nominate experts ahead of each and every evaluation (three months ahead of the specific evaluation). This is a very time-consuming exercise and the Member States are not always able to designate sufficient numbers of qualified experts as the current procedure offers them very little time to plan. In such cases, the Commission has to extend the calls for experts several times for evaluations. In addition, there is a chronic deficit of experts in specific policy fields.

  This system will be replaced by an annual call to designate experts to a pool. Member States will have to designate at least an expert per policy field identified in the multiannual evaluation programme (e.g. visa, external border management, return, data protection) per year and ensure their availability for evaluations. The Commission will confirm the selection of experts to the pool and keep a list of the members of the pool up to date. The pool will then provide the main source of Schengen evaluators for specific evaluations (i.e. establishing teams for specific evaluations) and will also greatly facilitate the organisation of unannounced visits. When establishing the teams, due account will be taken of the capacity of the national administrations as well as the need to ensure geographical balance. The fact of being designated in the pool does not mean that every expert in the pool will be needed at all times. The pool will ensure that the teams are established in a less cumbersome way and will also provide more predictability and flexibility both for the Commission and the Member State experts also as the planning for evaluations will be distributed to all Member States well in advance. Ahead of each evaluation, the Commission can directly turn to individual members in the pool to set up teams, making the process considerably faster and simpler. When setting up the specific teams, the Commission should also ensure as far as possible geographical balance. If for a specific evaluation, a particular profile is needed and is not possible to mobilise an expert from the pool, the Commission can still resort to specific calls for experts. The creation of a pool of experts would in the long-term allow an interdisciplinary team to be set up to evaluate all relevant areas of the Schengen *acquis*.

– **Strengthening the cooperation with Frontex, eu-LISA, Europol, the European Union Agency for Fundamental Rights and the European Data Protection Supervisor.** The proposal provides that cooperation should be reciprocal so that those agencies and bodies can also make use of the information gathered through the

evaluation process. The Commission will also be able to obtain a broader variety of information and risk analysis products from the bodies and agencies.

The proposal also **increases the synergies with the evaluation and monitoring mechanisms** implemented by Union agencies and bodies. In recent years, other quality control and monitoring mechanisms have been established at EU and national levels that can complement the Mechanism. The proposal provides for increased coherence and synergies with the activities of Frontex and the process of vulnerability assessment in particular. The vulnerability assessment carried out by Frontex is a complementary instrument to the Schengen evaluation and monitoring mechanism for guaranteeing quality control at EU level and ensuring constant preparedness at both European and national levels to respond to any challenges at the external border. The vulnerability assessment offers a snapshot of a Member State's operational capacity in the area of external borders with a view to identifying potential weaknesses in the system. It is a future oriented approach aimed at preventing crisis. The Commission is already sharing the results of the vulnerability assessment process with the team of Member State experts ahead of an evaluation in accordance with Article 33 of Regulation (EU) 2019/1896[14] and has established formal channels for information exchange with Frontex. To further increase synergies, the proposal provides for specific provisions to maximise the information gathered through the vulnerability assessment process with a view to establishing an improved situational picture on the functioning of the Schengen area. The aim is also to avoid, to the extent possible, duplication of efforts and conflicting recommendations.

Relevant examples, in other policy fields where increased synergies will be possible under the new provisions foreseen in the proposal are the European Multidisciplinary Platform Against Criminal Threats ('EMPACT') or the oversight conducted by the Commission with the support of eu-LISA as regards the preparation of the Member States for the implementation of relevant IT systems. National quality control mechanisms (encouraged under Regulation (EU) 2019/1896) could become similarly important in the future and the proposal lays down the basis for ensuring synergies and information exchange. In addition, results of the independent monitoring mechanism developed under the proposal introducing a screening of third country nationals at the external borders would also be taken into account in evaluations.

The proposal provides an ambitious deadline for the full application of the Regulation (from [1 September 2022]).

The analysis of the Commission, which is provided in the impact assessment[15] accompanying this proposal and summarised in section 3 is the basis for this proposal for a comprehensive review of the Regulation.

- **Consistency with existing policy provisions in the policy area**

This proposal accompanies the Communication on 'A strategy towards a fully functioning and resilient Schengen area'[16] which puts forward a comprehensive approach to make the area of freedom, security and justice stronger and more resilient to any future challenges and threats.

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14 OJ L 295, 14.11.2019, p. 1.
15 SWD (2021) 119 final.
16 COM(2021) 277 final.

The Mechanism should provide a robust legal framework to cover the entirety of the evolving legislation underpinning the functioning of the Schengen area. In this context, one of the specific objectives of the proposal is to increase strategic focus in the evaluation and monitoring process. This requires **ensuring consistency with existing and future provisions forming part of the Schengen *acquis***. To that end, the Mechanism should be adapted to the evolving scope of the relevant EU law. Over the past few years, the Union has undertaken several initiatives to make the Schengen area stronger and more resilient. These changes include several new elements, in particular in relation to the management of the external borders. In addition to the Schengen Information System and the Visa Information System, by the end of 2023, the management of the external borders will be supported by new IT-systems, such as the Entry and Exit System[17] and the European Travel Information and Authorisation System[18]. In addition, interoperability[19] will be ensured between relevant databases. Furthermore, the adoption, later in 2021, of a proposal for an EU Police Cooperation Code under the EU Security Union Strategy[20] as well as the adoption of the proposal for an amendment to the Schengen Borders Code[21] to address lessons learnt from Covid-19 as well as from the negotiations on the 2017 proposal for the amendment of the Schengen Borders Code will be important initiatives to increase security and re-establish the integrity of the Schengen area.

The role of EU agencies involved in the implementation of the Schengen *acquis* has also gained further importance. In 2019, the creation of the European Border and Coast Guard, including the set-up of a 10 000 standing corps by 2027, was a key step towards the genuine European control of the external borders and the progressive establishment of a common EU system for returns. Europol's mandate is in the process of being upgraded following a proposal by the Commission of 9 December 2020[22].

As described in above, some of the legal acts in the various policy areas covered by the Mechanism contain their own **evaluation and monitoring tools at European or national levels**. Therefore, **creating and ensuring synergies to avoid duplications** and to make the best use of sectorial monitoring tools is necessary. Maintaining and fine-tuning this interplay is an important element of this proposal. In this regard, the proposal provides provisions to further increase coherence in particular with the activities of Frontex and the process of vulnerability assessments. The Mechanism and its recommendations should complement those under the vulnerability assessment process. Relevant examples, in other policy fields where increased synergies will be possible are EMPACT (priority actions in the field of police cooperation), or the fundamental rights officer at Frontex (monitoring of compliance with fundamental rights at external borders by Frontex). National quality control mechanisms (encouraged under Regulation (EU) 2019/1896), which are 'national' Schengen evaluation and monitoring mechanisms, could become similarly important in the future. In addition, results of the national independent monitoring mechanism developed under the proposal introducing a screening of third country nationals at the external borders[23] would also be taken into account in evaluations.

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17 Regulation (EU) 2017/2226, OJ L 327, 9.12.2017, p. 20.
18 Regulation (EU) 2018/1240, OJ L 236, 19.9.2018, p. 1.
19 Regulation (EU) 2019/817, OJ L 135, 22.5.2019, p. 27.
20 COM(2020)605 final of 24.7.2020.
21 Regulation (EU) 2016/399, OJ L 77, 23.3.2016, p. 1.
22 COM(2020) 796 final.
23 COM(2020) 612 final. See Article 7.

The proposal was developed to be consistent with existing provisions in the policy area (i.e. policy areas covered by the Schengen *acquis*), and due account has also been taken of ongoing and envisaged initiatives which are not yet in force. In broader terms, by better linking the different policy fields, the initiative may reinforce the effectiveness of the holistic approach proposed by the Commission's strategies and reinforce the complementarity of all tools developed as part of new legislative efforts.

- **Consistency with other Union policies**

The proposal is consistent with the objectives and initiatives envisaged under the EU Security Union Strategy that go beyond the Schengen *acquis*, such as the proposal to reinforce the automated exchange of important data categories under the Prüm Council Decisions[24] and with future initiatives under the EU Strategy to tackle Organised Crime 2021-2025[25]. It is equally consistent with the initiatives included in the New Pact on Migration and Asylum[26].

Looking beyond the area of freedom, security and justice, the Schengen area contributes to the functioning of the Single Market and its creation has brought social and economic benefits to European society[27] in many fields from trade to employment, education, culture, tourism, transport and beyond. Measures aimed at increasing the effectiveness of the Mechanism and thus the better functioning of the Schengen area are, by nature, also coherent with the objectives of these policy fields. The disruption caused by the Covid-19 pandemic has shown better than any crisis before, how important it is to preserve Schengen's integrity. A well-functioning Schengen is essential for the post-Covid economic recovery. A robust and effective Mechanism will contribute to that and thus to the positive economic and social impacts that Schengen brings to citizens and businness across Europe.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of the proposal is Article 70 Treaty on the Functioning of the European Union. Article 70 provides specifically for the competence of the Council to adopt, on a proposal from the Commission, measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies by Member States' authorities in the area of freedom, security and justice. The proposal repeals and replaces Regulation (EU) No 1053/2013, which is also based on this provision of the Treaty.

In line with the statement[28] from the European Parliament, the Council and the Commission accompanying the Regulation, the proposal is to be submitted to the consultation of the European Parliament in order to take into consideration its opinion before the adoption of a final text. However, it is to be adopted in accordance with a special legislative procedure.

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24 Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA.

25 SWD(2021) 74 final of 14.4.2021.

26 COM(2020)605 final.

27 In 2016, it was estimated that the full reestablishment of internal border controls would generate immediate direct costs between EUR 5 and 18 billion annually, COM(2016) 120 final, p. 3.

28 OJ L 295, 6.11.2013, p. 37.

- **Subsidiarity (for non-exclusive competence)**

Article 70 TFEU provides the legal basis for measures whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies by Member States' authorities in the area of freedom, security and justice. While this proposal brings about many changes, it does not fundamentally alter the objectives and scope of the Mechanism. The proposal is within the limits set by Article 70 TFEU.

The objective of the proposal is to further develop, improve and render the already existing Mechanism more efficient. The review of the Regulation carried out in 2020 confirmed the need to have a robust mechanism at EU level. It remains the case that the EU added-value of the Mechanism stems foremost from sharing the responsibilities between the Commission and the Member States. This creates a strong basis to generate mutual trust. Evaluations carried out at EU level can ensure the timely identification of deficiencies that arise from asymmetries, divergences and incorrect implementation of the Schengen *acquis* that may otherwise put at risk the integrity of Schengen. Furthermore, the peer pressure exercised at EU level creates the necessary incentive to ensure that Member States swiftly remedy the deficiencies particularly in the case of serious deficiencies.

In addition, the initiative takes due account of the subsidiarity principle by laying down the basis for improved coordination with evaluations carried out under national quality control and monitoring mechanisms. One of the objectives is to shift the focus of the Mechanism to shortcomings that may have adverse effects on the well-functioning of the Schengen area as a whole. Issues of limited scope should rather be dealt with at national level. This approach is also consistent with Regulation (EU) 2019/1896, which encourages the development of national quality control mechanisms under the European integrated border management components.

In conclusion, to effectively deal with the shortcomings identified by the review and analysed further in the impact assessment legislative changes are required.

- **Proportionality**

Article 5(4) of the Treaty on European Union provides that the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. The form chosen for this action must enable the proposal to achieve its objective and be implemented as effectively as possible.

The Mechanism was established in 2013 by means of a Regulation since this specific Mechanism which is implemented at EU-level and coordinated by the Commission requires clear rules regarding the responsibilities and procedures. The proposed initiative constitutes a revision of a Regulation and must therefore also take the form of a Regulation.

As to the content, the proportionality of the main new aspects were examined in the accompanying impact assessment (section 7.3).

Amongst other things, the proposal is intended to streamline the evaluation process by simplifying the current two-step decision-making process, so that, as a general rule, the Commission would adopt not only the evaluation reports but also the recommendations by means of a single implementing act (currently the Commission adopts the report and a proposal for Council Recommendations). The experience of the past years has shown that the adoption of the recommendations by the Council makes the procedure considerably longer (2-3 months average) while the excessive workload limits the power of the Council to exert the required peer pressure and have general discussions on the state of Schengen. The revised approach seeks to remedy in a proportionate way these shortcomings by ensuring the Council

recommendations are adopted in the cases considered to have the biggest added value and impact to steer political discussion on matters that are of general interest for the functioning of the Schengen area, namely first-time evaluations and serious deficiencies as well as thematic evaluations, while simplifying the procedure in cases of a more technical nature. The proposal also significantly increases the role of the Council in the follow-up and progress monitoring of these cases, providing as well for an escalation mechanism in case of lack of progress.

In conclusion, none of the changes proposed in this initiative go beyond what is needed to achieve the objectives outlined in section 1 and thus the proposal respects the proportionality principle. In fact, several elements of the proposal will reduce the administrative burden on Member States and the Commission.

- **Choice of the instrument**

Given that the proposed initiative is intended to revise and update an existing evaluation mechanism established by a Regulation (Regulation (EU) No 1053/2013), it will also take the form of a Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

In accordance with Article 22 of Regulation (EU) No 1053/2013, the Commission reviewed the operation of the Regulation and presented a report and accompanying staff working document on 25 November 2020[29]. As explained in section 1, this was the starting point of drafting the proposal.

- **Stakeholder consultations**

The consultation of interested parties is covered in detail in the impact assessment[30] accompanying this proposal. Stakeholders are generally supportive of strengthening the Mechanism to increase its effectiveness and to ensure that it is able to adapt to recent legislative developments and address new challenges.

- **Impact assessment[31]**

Based on available data and the results of a broad stakeholder consultation, the Commission drew up four policy options each containing a series of measures to achieve the objectives. Option 1 only contains operational measures to align the implementation with current needs. Option 2 is targeted legislative amendments to the Regulation to clarify the scope of specific provisions to increase legal certainty about the obligations of the different actors involved, and streamline and simplify existing procedures. Option 3 is a more ambitious approach that would bring the simplifications of the first two options and important changes to the functioning of the Mechanism. Option 4 is a combined approach bringing elements from the various options depending on the area of intervention. These options build on each other being in most cases cumulative rather than alternative, depending on the degree of ambition. The preferred policy package (Option 4) combines a series of measures from options 1, 2 and 3.

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29 See footnotes 6 and 7.

30 See, in particular Annex 2 of the impact assessment.

31 The summary sheet of the impact assessment and the positive opinion of the Regulatory Scrutiny Board are available at: https://ec.europa.eu/transparency/documents-register/?lang=en.

Specific objective 1: *Avoid gaps in the evaluation findings and increase strategic focus*

The preferred option is to keep the current scope covering all aspects of the Schengen acquis, while adapting the priorities (policy fields) to the new realities with a more flexible programming and extending the evaluation cycle from five to seven years. Enlarging the scope of the Mechanism to cover issues beyond the Schengen acquis (e.g. to the field of asylum policy) was discarded for mainly legal reasons but equally for political reasons, such an option not retaining the support of many Member States. The current articulation of evaluations per policy fields will also be maintained but it would be made more flexible. Moving to one all-encompassing evaluation per Member State was not found to be feasible in practice immediately (but aimed at in the medium term). However, ambitious legislative changes are proposed as regards the forms and methods of evaluations and monitoring activities to broaden the range of tools available and clarify the criteria and conditions for their use: systematic thematic evaluations, two types of unannounced visits with or without a 24-hour notice depending on the purpose and two types of revisits ('serious deficiencies revisits' and 'verification visits').

Specific objective 2: *Rationalise the roles and distribution of responsibilities and simplify processes and procedures*

The preferred policy package contains amendments to accelerate processes and simplify procedures as well as ambitious legal changes to modify the decision-making procedure. The declassification of evaluation reports, as a rule, setting legal time limits for the adoption of the evaluation reports and recommendations, the simplified assessment of the action plans by the Commission and the reduced frequency of reporting obligations for the Member States will speed-up and ease the procedures and they are broadly supported by stakeholders. As regards the proposed change in the decision-making procedure, according to which the Commission adopts both the evaluation reports and recommendations (while maintaining the role of the Council in most politically relevant cases), Member States will continue to be fully involved in the adoption of the evaluation reports and recommendations via the examination procedure.

Specific objective 3: *Strengthen the implementation of fundamental rights safeguards under the Schengen acquis*

The preferred option is to introduce changes to increase legal certainty on elements relevant for fundamental rights and highlight their importance. It is proposed to include a reference to the regular submission of risk analyses by the European Union Agency for Fundamental Rights, strengthen the reference to fundamental rights in the provision on trainings, increase the European Union Agency for Fundamental Rights' participation in evaluation visits, and include a specific article regarding the use of evidence provided by third parties.

In addition to the above-mentioned elements, the proposal contains several technical changes to increase the effectiveness and efficiency of the Mechanism. Each, individually, only brings a rather limited positive impact (and that is why they were not subject of the impact assessment), but the overall impact of these measures is positive.

Specific objective 4: *Optimise the participation of Member State experts and the involvement of Union bodies, offices and agencies*

The preferred policy package contains legal amendments to change the process of designating experts by creating a yearly permanent pool of experts managed by the Commission while providing flexibility in the determination of the size of the teams. In addition, the proposed changes maximise the input and improve the coordination with Union bodies, offices and agencies and other quality control mechanisms by improved risk analysis, enhanced

coordination and strengthened participation with new legal obligations. These measures found broad support among stakeholders.

- **Regulatory fitness and simplification**

Several elements of the proposal will reduce the administrative burden on Member States, the Commission, and the Council especially in the decision-making phase (as the Council would not need to issue recommendations in all cases) and in the monitoring phase, by less frequent reporting requirements on the implementation of the action plans and the simplified assessment of those action plans by the Commission. Simplified and faster procedures are proposed also for the evaluation phase as regards the evaluation methods and tools, the establishment of the teams and the adoption of the evaluation reports. Quantified estimates, to the extent possible, were provided in the impact assessment.

- **Fundamental rights**

This proposal respects the fundamental rights set out in the Charter of Fundamental rights of the European Union and it introduces specific legislative changes to ensure that fundamental rights obligations are clearly covered by the Mechanism.

4. BUDGETARY IMPLICATIONS

A financial statement is annexed to this proposal. Annually it costs approximately EUR 2 million for the Commission to run the Mechanism. This level of spending will be maintained; the proposal does not require an increase of the human and financial resources that are already allocated for the Commission. This is primarily due to the series of changes resulting in decreasing the administrative burden on the Commission and the provisions allowing for more targeted (and even shorter) evaluations with smaller teams. During the work on the impact assessment, the Commission was guided by the principle that the efficiency and effectiveness of the Mechanism should be increased without requiring additional human and financial resources.

Costs incurred by the Member States' experts will continue to be reimbursed and no increase is expected in this regard either. Due to the proposed changes more will be done in a more efficient manner with the same resources.

5. OTHER ELEMENTS

- **Monitoring**

The Commission will review the operation of the Regulation and submit a report to the Council and the European Parliament within 6 months of the adoption of all evaluation reports regarding the evaluations covered by the first seven-year multiannual evaluation cycle under the new Regulation.

As part of the impact assessment and in line with better regulation rules, a non-exhaustive list of qualitative and quantitative indicators have been developed that will be used for the review. In addition, the Commission is in the process of developing a new IT tool to modernise the monitoring of the implementation of the action plans by the Member States. This tool is expected to become operational already in 2021.

- **Consequences of the various protocols annexed to the Treaties and of the association agreements concluded with third countries**

Because the legal basis for this proposal is to be found in Title V of Part Three of the TFEU, the system of 'variable geometry', as provided for in the protocols on the position of Denmark and Ireland and the Schengen protocol, applies. The proposal is a development of the Schengen *acquis*. The consequences for the various protocols and Schengen association agreements therefore have to be considered with regard to Denmark and Ireland; Iceland and Norway; and Switzerland and Liechtenstein. Likewise, the consequences for the various Acts of Accession must be considered. The detailed situation of each of the States concerned is set out in the final recitals of this proposal.

- **Detailed explanation of the specific provisions of the proposal**

Article-by-article comparison with the provisions of the current Regulation:

Article 1 – Subject matter and scope

The article remains essentially unchanged, but it clarifies the purpose of the Mechanism ('ensure that Member States apply the Schengen acquis effectively, thereby contributing to a well-functioning area without internal border controls'). Paragraph 3 has moved to Article 15 ('Member State experts').

Article 2 – Definitions

A number of new definitions have been added to provide legal clarity and to increase the readability of the Regulation. The definition of 'serious deficiency' is added to increase legal certainty and ensure a common understanding of the concept . The definition relies on the one currently used in the 'Schengen Evaluation Guide' of the Commission. The article also provides definitions for 'first time evaluation', 'periodic evaluation', 'unannounced evaluation', 'thematic evaluation', 'visit', 'revisit', 'verification visit', 'evaluation activity' and 'team'.

Article 3 – Responsibilities and duty of cooperation

No significant changes are introduced. The new paragraphs 4 and 5 have been moved here from Article 13 as they essentially contain responsibilities for the Member States and the Commission.

Article 4 – Forms of evaluations

To provide clarity, the article compliments the definitions by listing the forms of evaluations and specifies the conditions for unannounced evaluations and thematic evaluations.

Article 5 – Forms of monitoring activities

To provide clarity, the article lists the forms of monitoring activities.

Article 6 – Evaluation and monitoring methods

Similarly, to provide clarity, the article lists the methods to be used for evaluations and monitoring activities, i.e. visits (announced or unannounced), questionnaires or other remote methods, e.g. videoconferences. It specifies that they may be used independently or in combination with one other.

Article 7 - Cooperation with Union bodies, offices and agencies

This new article reinforces the importance of establishing close cooperation for the purposes of this Regulation with relevant Union bodies, offices and agencies which are involved in the

implementation of the Schengen *acquis* (in particular Frontex, eu-LISA and Europol). It explicitly refers to the need to reinforce cooperation also with the European Union Agency for Fundamental Rights. On the basis of the article the Commission will (continue to request) relevant information, statistical data and risk analyses from these bodies, offices and agencies. The information sharing will be reciprocal: a subsequent article (Article 10) provides that Commission may share with them details of evaluation reports, action plans and updates on the implementation of the action plans to increase the synergies and to avoid the duplication of efforts.

Article 8 - Cooperation with Frontex

The article is an adapted version of Article 7 of the current Regulation, taking into account the evolution of the Regulation on the European Border and Coast Guard.

Article 9 – Cooperation with Europol

Based on the Commission proposal[32] to amend the Europol Regulation, the article provides a cross-reference to Article 4(1)(s) of Regulation (EU) 2016/794[33], according to which Europol will have to support the implementation of this Regulation with expertise, analysis, reports and other relevant information. The text is pending the adoption of the proposal.

Article 10 – Synergies with other evaluation and monitoring activities

In order to increase the strategic focus and more targeted evaluation design, the article requires increasing synergies with the relevant mechanisms and platforms operated by EU agencies and national administrations, e.g. the European Multidisciplinary Platform Against Criminal Threats ('EMPACT') or the oversight conducted by eu-LISA as regards the preparation of the Member States for the implementation of relevant IT systems as well as the findings of the national quality control mechanisms or independent monitoring mechanisms. The article also provides that the bodies and agencies should not only be providers of inforrmation, but also beneficiaries and thus, the Commission should be able to share with them details of evaluation reports, action plans and updates on the implementation of the action plans.

Article 11 – Information from third parties

The article provides a legal basis for the use of information provided by third parties (e.g. ombudspersons, authorities monitoring the respect of fundamental rights, non-governmental and international organisations) to increase the efficiency of the programming and implementation of evaluation activities. Such information could be particularly useful to evaluate the respect of fundamental rights in the implementation of the Schengen *acquis*.

Article 12 - Multiannnual evaluation programme

In order to be in a position to carry out all the required evaluations in the most effective manner, to be able to react to emerging challenges, to make more flexible and balanced use of all available tools, and to provide for closer and more targetted monitoring, the term of the multiannual programme is extended from five to seven years. The article outlines the content of the multiannual evaluation programme which will identify the specific priority areas to be covered by the periodic evaluations. It will also set out a provisional list of Member States to be subject to periodic evaluations in a given year. A simplified procedure is also introduced to adjust the programme, according to which adjustments necessitated as a result of *force majeure* events and circumstances, may not require an amendment to the programme, i.e. the

[32] COM(2020) 796 final of 9.12.2020.
[33] OJ L 135, 24.5.2016, p. 53.

implementing act concerned. Experience of the past years have clearly shown the need for such flexibility. Due to the Covid-19 pandemic, the 2020 annual evaluation programme had to be amended. In addition, evaluations in the field of common visa policy are prone to unforeseen events given that they are taking place in third-countries. Such events have also resulted in amending the programme which is a time-consuming exercise.

Article 13 – Annual evaluation programme

No major changes compared to the corresponding current article (Article 6). The annual evaluation programme will contain proposals for periodic evaluations of Member States as specified in the multiannual evaluation programme; first time evaluation of a Member State (if necessary) and at least one thematic evaluation. It will include a provisional time-schedule of these evaluations, but not necessarily the sites to be visited / evaluated. Unannounced evaluations will no longer be programmed but organised on short-notice as needed. This has no impact on the Member States but it will facilitate internal planning and procedures in the Commission and increase flexibility and capacity to react to new circumstances. Similarly to the multiannual programme, a simplified procedure is introduced for the adjustment of the programme necessitated as a result of *force majeure* events and circumstances.

Article 14 – Standard questionnaire

No substantial changes compared to the corresponding current article (Article 9). It will not be required to adopt a new standard questionnaire due to the adoption of the new Regulation (Article 31). The current one should continue to be in use. The deadline for sending out the questionnaire and for receiving the replies from the Member States has been adjusted ensuring that the bulk of the work on the Member States' side should not (necessarily) be done during the summer holiday period. In addition, it is specified that on request of the Commission, Member States should update their replies to the standard questionnaire and answer, if requested, complimentary questions before specific evaluations, as well as provide the findings of national quality control mechanisms and internal audits. This provision ensures that the teams will have all relevant and up to date information at their disposal to efficiently carry out specific evaluations.

Article 15 – Member State experts

No substantial changes compared to the current article (Article 12). Paragraph 2 has been moved here from the current Article 1.

Article 16 – Training of experts

It was considered desirable to reinforce the provision on training by introducing a specific article on the matter; highlighting the importance of all relevant fundamental rights considerations in training courses and the systematic involvement of the Fundamental Rights Agency in this respect. A specific reference is made to the need for keeping the initial training curricula up to date and organising refresher training. In addition, each evaluation team may include an 'observer' either from a Member State or the Commission. These 'junior' experts will experience evaluations before they actually participate in them as fully-fledged team members. As observers, they could be tasked to provide technical assistance (as specified in Article 18) but they should not be involved in the core work of the teams (assessment of findings and drafting). However, the costs will be borne by the Commission in accordance with Article 3.

Article 17 – Pool of Member State experts

This new article, as already explained in detail under section 1, aims at ensuring that a sufficient number of experienced experts are participating in evaluation and monitoring

activities and that the teams are established in a faster and less burdensome way. The pool will provide more predictability and also greater flexibility. The article provides detailed rules and deadlines regarding the establishment of the pool and defines the obligations for the Commission and the Member States. It is expected that the members of the pool as well as national authorities respond positively to specific invitations; turning them down should be based on serious professional or personal reasons only.

Article 18 – Establishment of the teams

The article merges and amends the corresponding current Articles 10 and 11. It provides, as a general rule, that the team members will be selected from the newly established pool of experts (see Article 17) taking into account the capacity of smaller national administrations. Issuing a call for all Member States, which is the current way of getting experts, is nevertheless maintained as a supplementary possibility for cases the Commission is not able to get sufficient number of experts from the pool. Flexibility will be provided as regards the number of experts in the teams. The Commission will define the size of the teams depending on the needs and challenges related to each evaluation and monitoring activity. When setting up the teams, geographical balance and rotation will be ensured by the Commission and account will be taken of the capacity of national administrations and the need for a variety of profiles. The article also provides rules for designating and selecting the lead experts and outline their main responsibilities.

Article 19 – Conduct of visits

The main change compared to the corresponding current article (Article 13) is that as a general rule, unannounced on-site visits will take place without any prior notification to the Member State concerned. This is particularly the case when the purpose of the visit is to evaluate practices at internal borders (as it is currently the case); if the Commission becomes aware of emerging or systemic problems having a potential significant negative impact on the functioning of the Schengen area; or if a Member State is allegedly seriously neglecting its obligations under the Schengen *acquis*, including serious allegations of potential fundamental rights violations related to the implementation of the Schengen *acquis*. A 24-hour advanced notice will be an exception for the cases when the main purpose of the unannounced visit is a routine verification of the implementation of the Schengen *acquis*. The article also makes clear that the detailed programme of visits may include visits to and meetings with national authorities and bodies, non-governmental and international organisations as well as other entities, agencies and bodies involved in, participating in or concerned by the implementation of the Schengen *acquis* while cooperating with the evaluated Member State.

Article 20 –Remote methods

The article states that the Commission in cooperation with the Member States may establish guidelines for conducting evaluation and monitoring activities by questionnaire or other remote methods (e.g. videoconferences). Although guidelines exist for conducting visits, no such guidelines exist for conducting evaluations by questionnaire or remote methods. A similar provision already exists (and is maintained in Article 19) as regards conducting unannounced visits.

Article 21 - Evaluation reports

Important changes are introduced to speed up and increase the efficiency of the procedure, notably by providing s shorter and new deadlines and by requiring that the reports are adopted no later than four months of the evaluation.

Evaluation reports will be more focused, containing substantial findings; chiefly, either best practices or non-compliant ones. The category of ‘compliant but improvement necessary’ is

nevertheless maintained, not the least because it proved to be a useful tool to raise the level of implementation of the Schengen *acquis* to high standards while also ensuring further harmonisation. The reports, as a general rule, will also contain recommendations and they will continue to be adopted as implementing acts under the examination procedure. Further explanation is provided in this regard under section 2 ('Proportionality') and exceptions from the general rule are set out in Articles 23, 24 and 25 (see below).

Article 22 – Follow up and monitoring

Several substantial changes are introduced, first and foremost to ensure that the deficiencies are remedied quicker and also to reduce the administrative burden that currently flows from the frequency of the reporting obligation. All evaluation reports will be followed up by an action plan. The Commission services will provide observations to the action plans through for example administrative letters as opposed to formal Communications from the Commission which is the case under the current Regulation. If the Commission services do not consider the action plan adequate, the Member State shall submit a revised action plan within one month of the receipt of the observations. As a general rule, the frequency of the follow-up reporting will be reduced from three to six months. However, as a new element the follow-up reports should not only be submitted to the Commission, but to the Council as well. As part of its monitoring activities, the Commission may organise revisits and verification visits. In terms of the organisational and reporting requirements, these visits will be lighter than evaluation visits. The role of the European Parliament and the Council will be reinforced in the monitoring phase: the Commission will inform them at least twice a year about the state of implementation of the action plans, the outcome of revisits and verification visits as well as if it observes considerable lack of progress in the implementation of an action plan.

Article 23 – Specific provisions in case of a serious deficiency identified by the evaluation report

This article provides specific provisions where the evaluation identifies a serious deficiency. A closer involvement of the Council, faster procedures and tighter deadlines are provided. The evaluation report is adopted by the Commission while the recommendations will be adopted by the Council separately from the evaluation report. Strict deadlines will be imposed both on the Commission (to adopt the report) and on the Council (to adopt the recommendations). Stricter procedural rules will apply in the monitoring phase: the Member State shall start implementing remedial actions immediately after being informed of the serious deficiency and shall inform the Commission and the Member States without delay. The Member State will be required to provide its action plan within one month and the Commission shall organise a revisit that is to take place no later than one year from the date of the evaluation activity. Following the revisit, the Commission shall present a revisit report to the Council that shall express its position on the report. The Commission will inform the European Parliament and the Council of its intention to close the action plan and the Council will be invited to express its position on the proposed closure. For serious deficiencies at the external borders, Article 21 and 29 of the Schengen Borders Code may apply.

Article 24 – Specific provisions for first time evaluations

Specific rules are also necessary for first time evaluations. Similar to cases when the evaluation identifies a serious deficiency, a closer involvement of the Council, fast procedures and tigh deadlines (but not as tight as the ones in Article 23) are provided as well as stricter rules in the monitoring phase.

Article 25 – Specific provision for thematic evaluations

Closer involvement of the Council is provided for in thematic evaluations, similar to first time evaluations. For the monitoring phase, specific provisions were not found to be necessary.

Article 26 – Sensitive information

Evaluation and revisit reports will, in principle, no longer be classified as 'EU Restricted' documents. Their status shall be determined in accordance with the applicable security rules. Classification also remains possible upon a duly justified request of the evaluated Member State.

Article 27 – Conditions for the participation of Ireland

The article follows the corresponding current article (Article 18) without mentioning the United Kingdom.

Article 28 - Reporting to the European Parliament and to the Council

The article follows the corresponding current article (Article 20). The yearly comprehensive report complements the reinforced reporting obligations under Article 22. The Council shall discuss the report and adopt conclusions.

Article 29 – Committee procedure

The article follows, to a large extent, the corresponding current article (Article 21).

Article 30 – Review

The article follows the corresponding current article (Article 22).

Article 31 – Repeal

The article repeals Regulation (EU) No 1053/2013 with effect from the entry into application of the new Regulation.

Article 32 – Transitional provisions

The article provides a transitional provision for the adoption of a new multiannual programme, which would be established by 1 November 2022 and it would commence on 1 January 2023. These dates can be adapted depending on the pace of negotiations on the proposal.

Given that the ongoing multiannual programme would be terminated mid-way (in January 2023), the provision specifies that the new multiannual programme should take into consideration the evaluations already carried out under the second multiannual programme adopted under the current Regulation. In practice it means that the new seven-year multiannual programme would start with the evaluation of Member States that have not been evaluated under the current cycle while the ones already evaluated between 2020 and the entry into force of the new rules will be added at the end of the new evaluation cycle.

The article also clarifies that the standard questionnaire adopted under the current Regulation will be used until the standard questionnaire provided for under Article 14 of this Regulation has been established.

Article 33 – Entry into force and application

In order to utilise all efficiency gains of the new Regulation at the earliest, the article sets an ambitious deadline for the application of the new Regulation (from [1 September 2022]), which can be adjusted during the course of the negotiations on the proposal.

2021/0140 (CNS)

Proposal for a

COUNCIL REGULATION

on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing Regulation (EU) No 1053/2013

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 70 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[34],

Having regard to the opinion of the European Data Protection Supervisor,

Acting in accordance with a special legislative procedure,

Whereas:

(1) The Schengen area without border control at internal borders relies on the effective and efficient application by the Member States of the Schengen *acquis*. That *acquis* comprises measures in the area of external borders, compensatory measures for the absence of controls at internal borders and a strong monitoring framework, which together facilitate free movement and ensures a high level of security, justice and protection of fundamental rights, including the protection of personal data.

(2) A peer-to-peer evaluation and monitoring of the application of that *acquis* has been a core element of the Schengen area since 1998 as a tool to maintaining a high level of accountability and ownership of results as well as to strengthening mutual trust among Member States.

(3) A specific Schengen evaluation and monitoring mechanism was established by Council Regulation (EU) No 1053/2013[35], which became operational in 2015.

(4) In order to increase its effectiveness and efficiency, the Schengen evaluation and monitoring mechanism should be enhanced. The revised evaluation and monitoring mechanism should aim at maintaining a high level of mutual trust among Member States by guaranteeing that Member States apply the Schengen *acquis* effectively

[34] OJ C , , p. .

[35] Council Regulation (EU) No 1053/2013 of 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 (OJ L 295, 6.11.2013, p. 27).

following the agreed common standards, fundamental principles and norms, thereby contributing to a well-functioning Schengen area.

(5) The evaluation and monitoring mechanism should achieve these goals through objective and impartial evaluations that are able to quickly identify deficiencies in the application of the Schengen *acquis* that could disrupt the correct functioning of the Schengen area, ensure that these deficiencies are swiftly addressed, and provide the basis for a dialogue on the functioning of the Schengen area as a whole. This requires close cooperation between the Member States and the Commission, a balanced distribution of shared responsibilities and maintaining the peer review nature of the system. It also requires a closer involvement of the European Parliament. Given the extent of the changes, Regulation (EU) No 1053/2013 should be repealed and replaced by a new Regulation.

(6) The evaluation and monitoring mechanism may cover all areas of the Schengen *acquis* - present and future - except those where a specific evaluation mechanism already exists under Union law. The evaluation and monitoring mechanism should encompass all relevant legislation and operational activities contributing to the functioning of Schengen area.

(7) The correct functioning of the authorities that apply the Schengen *acquis* should be taken into account in all the evaluations in line with the European Council conclusions of 1 and 2 March 2012. The evaluation should also cover the practices of private entities, such as airlines or external service providers, as far as they are involved in or affected by the implementation of the Schengen *acquis* while cooperating with the Member States. Equally, given the increasing role of Union bodies, offices and agencies in the implementation of the Schengen *acquis,* the evaluation and monitoring mechanism should support the verification of the activities of these Union bodies, offices and agencies in so far as they perform functions on behalf of the Member States to assist in the operational application of provisions of the Schengen *acquis*. Verification of these activities in this regard should be embedded into the evaluation of the Member States and carried out without prejudice to and in full respect of the responsibilities attributed to the Commission and to the relevant governing bodies of the agencies, offices and bodies concerned by their establishing regulations and their own evaluation and monitoring procedures therein. Should evaluations identify deficiencies in relation to functions fulfilled or supported by Union bodies, offices and agencies, the Commission should inform their relevant governing bodies.

(8) Evaluation and monitoring activities should be targeted, taking into account the results of previous evaluations and the results of national quality control mechanisms. They should be supported by reinforced cooperation with Union bodies, offices and agencies, their systematic involvement in Schengen evaluations and by improved risk analyses and information sharing. This cooperation and involvement concerns in particular the European Border and Coast Guard Agency ('Frontex'), the European Union Agency for the Operational Management of Large-Scale IT Systems (eu-LISA), the Union Agency for Law Enforcement Cooperation (Europol), the European Agency for Fundamental Rights and the European Data Protection Supervisor. The cooperation should also become more reciprocal and the agencies should not only be contributors, but also benefit from being involved in the evaluation and monitoring mechanism.

(9) The vulnerability assessment carried out by Frontex is a complementary mechanism to the evaluation and monitoring mechanism established by this Regulation for

guaranteeing quality control at Union level and ensuring constant preparedness at both Union and national levels to respond to any challenges at the external border. Both mechanisms constitute a component of the European Integrated Border Management. Synergies between the vulnerability assessment and the evaluation and monitoring mechanism should be maximised with a view to establishing an improved situational picture of the functioning of the Schengen area, avoiding, to the extent possible, duplication of efforts and conflicting recommendations. For that purpose, regular exchange of information between Frontex and the Commission on the results of both mechanisms should take place. Increasing the strategic focus and more targeted evaluation design also requires increasing synergies further with the relevant mechanisms and platforms operated by Union agencies and national administrations, such as the European Multidisciplinary Platform Against Criminal Threats ('EMPACT') or the oversight conducted by the Commission with the support of eu-LISA as regards the preparation of the Member States for the implementation of relevant IT systems as well as the findings of the national quality control mechanisms.

(10) During the evaluation, particular attention should be paid to verifying respect for fundamental rights in the application of the Schengen *acquis* in addition to the evaluation of the correct implementation and application of the data protection requirements of the Schengen *acquis* carried out by separate evaluations. To increase the capacity of the evaluation and monitoring mechanism to identify violations of fundamental rights in relevant policy areas, additional measures should be implemented. Schengen evaluators should be properly trained in this regard, relevant information from the European Agency for Fundamental Rights should be better utilised and its experts better involved in the design and implementation of evaluations. Furthermore, evidence which is made public or provided through independent monitoring mechanisms or by relevant third parties at their own initiative such as ombudspersons, authorities monitoring the respect of fundamental rights, non-governmental and international organisations, should be taken into account in the programming, design and implementation of evaluations.

(11) The evaluation and monitoring mechanism should set up transparent, efficient and clear rules on the forms and methods to be applied for the evaluation and monitoring activities, the use of highly qualified experts and the follow-up to the findings of the evaluations.

(12) The forms of evaluations and methods should be made more flexible to increase the efficiency of the evaluation and monitoring mechanism and its capacity to adapt to new circumstances and legislative developments and to streamline the use of the resources of the Member States, Commission and the Union bodies, offices and agencies. Periodic evaluations through visits should be the primary means of evaluation. The proportion of unannounced visits and thematic evaluations should be gradually increased to ensure a more balanced use of available tools. The forms of evaluation should be clearly defined. Depending on the policy area and the nature of the evaluation and monitoring activity, the evaluation and monitoring mechanism should allow the evaluation of several Member States at the same time and conduct entirely or partly remote evaluations as well as to combine the evaluation of policy fields. The evaluation and monitoring mechanism should strive towards drawing comprehensive Member State evaluation reports assessing the Member State's overall performance in the application of the Schengen *acquis*.

(13) Thematic evaluations should be used more frequently to provide a comparative analysis of Member State practices. They should take place to assess the

implementation of major legislative changes as they start to apply and of new initiatives, as well as to assess issues across policy areas or practices of Member States facing similar challenges.

(14) Unannounced visits, being one of the most effective tools to verify Member States practices should, depending on their purpose, take place without prior notification to the Member State concerned or with only short prior notification. Unannounced visits without prior notification should take place for 'investigative' purposes in order to verify compliance with obligations under the Schengen *acquis*, including, in response to indications as regards the emergence of systemic problems that could potentially have a significant impact on the functioning of the Schengen area or to fundamental rights violations, in particular allegations of serious violations of fundamental rights at the external borders. In such cases, the provision of advance notice would defeat the objective of the visit. Unannounced visits with a 24-hour advance notice should take place if the main purpose of the visit is to carry out a random check of the Member State's implementation of the Schengen *acquis*.

(15) Programming the activities carried out under this Regulation via multiannual and annual evaluation programmes has already proven its added value to ensure predictability and certainty. Therefore, the Commission, in cooperation with the Member States should adopt multiannual and annual evaluation programmes. These programmes should also provide the necessary flexibility to be able to adapt to the dynamic nature of the Schengen *acquis* over time. In the event of *force majeure* adjustments to the programmes should be made in agreement with the Member States concerned without the need for a formal amendment of the programmes. The multiannual evaluation programme, adopted for seven years, should identify the specific priority areas to be covered by the periodic evaluations. This approach should allow for more flexibility, better prioritisation and a more balanced and strategic use of all tools available. The extension of the multiannual evaluation programme from five to seven years should also lead to an increased, closer and more targeted monitoring of the Member States without reducing the level of scrutiny.

(16) Evaluation and monitoring activities should be carried out by teams consisting of Commission representatives and experts designated by Member States. These representatives and experts should have appropriate qualifications, including a solid theoretical knowledge and practical experience. In order to ensure the participation of sufficient number of experienced experts in a faster and less burdensome way, a pool of experts should be established and maintained by the Commission in close cooperation with the Member States. The pool should be the primary source of experts for evaluation and monitoring activities.

(17) More flexibility should be provided as regards the size of the evaluation and monitoring teams in order to increase the efficiency and to reduce administrative burden. Therefore, the Commission should define and adapt the size of the teams depending on the needs and challenges related to each evaluation and monitoring activity. When setting up the teams, geographical balance and rotation should, to the extent possible, be ensured by the Commission and account should be taken of the capacity of national administrations and the need for a variety of profiles. The principle of shared responsibility, predictability and the commitment taken when nominating experts to the pool implies that the experts invited for specific evaluations and their national authorities should respond positively to invitations; turning the invitations down should be duly justified on serious professional or personal grounds only.

(18) The operational costs related to the evaluation and monitoring activities (travel, accommodation and food) should be borne by the Union budget. Any additional daily allowances of national experts participating in evaluation and monitoring missions and the staff costs of those replacing these experts during their absence could be covered by the national programmes of the Member States under the relevant Union Funds, in accordance with the objectives and applicable rules of those Funds.

(19) Evaluation reports should be concise and succinct. They should focus on deficiencies with significant impact and highlight areas where important improvements could be made. Minor findings should not form part of the reports. The team should nevertheless communicate these findings to the evaluated Member State at the end of the evaluation activity, including to the authorities responsible for the relevant national quality control mechanism. The team should actively seek to identify best practices which should be added to the reports. In particular, new and innovative measures that significantly improve the implementation of the common rules and that could be put in practice by other Member States should be highlighted as a best practice for the purposes of the report.

(20) Evaluation reports should, as a rule, contain recommendations on how to remedy deficiencies identified (including fundamental rights violations) and be adopted in a single act by the Commission by means of implementing acts through the examination procedure in accordance with Article 5 of Regulation (EU) No 182/2011[36]. The consolidation of the report and recommendations within a single document and subject to a single adoption procedure reinforces the intrinsic connection between the evaluation findings and recommendations. In addition, the accelerated publication of the recommendations should enable Member States to address the deficiencies faster and more efficiently. At the same time, the use of the examination procedure should ensure Member State's engagement in the decision-making process leading to the adoption of the recommendations.

(21) Nevertheless, given the crucial role of the Council in exerting peer-pressure and the need for political discussion, the Council should adopt recommendations in cases of political importance and general interest for the functioning of the Schengen area. Such cases should be considered to arise where an evaluation concludes that there exists a serious deficiency, in cases of thematic evaluations, or in cases where an evaluation take places for the purposes of verifying whether a Member State bound by the Schengen *acquis* and for which internal border controls have not been lifted fulfils the conditions to apply the Schengen *acquis* in full or, in the case of a Member State not bound by the Schengen *acquis* and that has opted in to apply parts of the Schengen *acquis*, to verify whether the Member State fulfils the conditions to apply the Schengen *acquis* in part.

(22) In addition, where evaluations identify a serious deficiency, specific provisions should apply to ensure the prompt adoption of remedial measures. Given the risk posed by such deficiency, as soon as the evaluated Member State is informed about a serious deficiency, the evaluated Member State should start immediately implementing actions to remedy the deficiency including, where necessary, mobilising all available operational and financial means. Remedial action should be subject to tighter deadlines and closer political scrutiny and monitoring throughout the process. In this regard, the Commission should immediately inform the Council and the European

[36] OJ L 55, 28.2.2011, p. 13.

Parliament when an evaluation establishes the existence of a serious deficiency and organise a 'serious deficiency' revisit no later than one year from the date of the evaluation to verify whether the Member State has remedied the shortcomings concerned. The Commission should present a revisit report to the Council following the revisit.

(23) The identification of a serious deficiency requires a thorough case-by-case assessment on the basis of clear criteria regarding the nature, scale and potential impact of the problems, which may be different for each policy area. Different key elements for the effective implementation of the Schengen *acquis* and different combination of factors could lead to the classification of a finding as a serious deficiency. However, if it is considered that a shortcoming identified is or in a short-term has the potential of putting the overall functioning of the area without internal border control at risk, or have a significant negative impact on the rights of individuals, such shortcoming is to be regarded as a serious deficiency. Where a serious deficiency in the carrying out of external border control is identified in an evaluation report, Articles 21 and 29 of Regulation (EU) 2016/399 of the European Parliament and of the Council[37] may apply.

(24) The evaluation and monitoring mechanism should comprise a robust follow-up and monitoring component which should be ensured by the Commission, in close cooperation with the Council and the European Parliament, without creating a disproportionate burden for the actors involved. Evaluations should be followed up by action plans. While drawing up the action plans, the evaluated Member States should fully take into consideration the funding possibilities provided by the Union and make the best use of these resources. To speed up the process, the Commission should provide observations on the adequacy of the action plans for example in the form of a letter. In order to ensure a timely follow up, if the Commission services do not consider the action plan adequate, the Member State concerned should be required to submit a revised action plan within one month from the receipt of the observations. The frequency of the follow-up reporting by the Member State to the Commission and the Council on the implementation of the action plans should, as a rule, be six months.

(25) As part of its monitoring activities, it should be possible for the Commission to organise revisits and verification visits. Revisits should be organised to monitor the progress of the implementation of an action plan following an evaluation that identified serious deficiency or following an evaluation which preceeds the full Schengen accession of a Member State ('first time evaluation') and concluded that the evaluated Member State did not fulfil the necessary conditions to apply the Schengen *acquis* in the respective evaluated policy area. The revisit report should be limited to present the progress made to implement the recommendations. Otherwise, verification visits may be carried out to monitor the implementation of an action plan, following an evaluation that did not identify serious deficiency where deemed necessary. Verification visits should always be organised before the closure of an action plan following a first time evaluation. In terms of the organisational and reporting requirements, verification visits should be lighter than evaluation visits. In particular, they should comprise smaller teams and should not lead to new findings or require the adoption of a separate report. The Council should be more actively involved in the

[37] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

monitoring phase and should express its position on the proposed closure of action plans.

(26) It is essential and desirable that the European Parliament and the Council regularly hold discussions at political level in order to raise awareness of the importance of the implementation of the Schengen *acquis*, hold Member States who persistently breach the common rules accountable, and increase pressure on them to remedy the deficiencies identified. The Commission should provide adequate input to facilitate these discussions including through the adoption of a comprehensive annual report covering the evaluations carried out during the previous year and state of implementation of recommendations, which would be part of the 'State of Schengen' report. The European Parliament is encouraged to adopt resolutions and the Council should adopt conclusions to increase pressure on Member States making insufficient progress. The 'Schengen Forum', as a unique stage to discuss Schengen at high level with representatives of the European Parliament, Member States and the Commission should provide a platform for informal discussions aiming at better implementation of the Schengen *acquis*.

(27) The evaluation and monitoring mechanism established by this Regulation should fulfil a complementary function of monitoring the effectiveness of the practical implementation of Union policies through peer review. The general power of the Commission to oversee the application of Union law under the control of the Court of Justice of the European Union through infringement procedures should not be affected.

(28) The classification status of the evaluation and revisit reports should be determined in accordance with the applicable security rules set out in Commission Decision (EU, Euratom) 2015/444[38]. The evaluated Member State should nevertheless retain the possibility to request the classification of all or parts of the report in accordance with the applicable security rules.

(29) In view of the particular role entrusted to the European Parliament and to the national parliaments under the last sentence of Article 70 of the Treaty on the Functioning of the European Union (TFEU), as underlined in Article 12, point (c), of the Treaty on European Union (TEU) as regards the national parliaments, the Council and the Commission should fully inform the European Parliament and the national Parliaments of the content and results of the evaluations. In addition, should the Commission submit a proposal to amend this Regulation, the Council would, in accordance with Article 19(7), point (h), of its Rules of Procedure[39], consult the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before adopting a final text.

(30) Regulation (EU) 2016/679 of the European Parliament and of the Council[40] applies to the processing of personal data by the Member States when carrying out their responsibilities under this Regulation. Regulation (EU) 2018/1725 of the

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38 Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

39 Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325 11.12.2009, p. 35).

40 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

European Parliament and of the Council[41] applies to the processing of personal data by the institutions, bodies, offices and agencies of the Union when carrying out their responsibilities under this Regulation.

(31) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt the multiannual and annual evaluation programmes, to establish and update a standard questionnaire and to adopt evaluation and revisits reports. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[42].

(32) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a serious deficiency, imperative grounds of urgency so require.

(33) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, as annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(34) Ireland is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the TEU and to the TFEU, and Article 6(2) of Council Decision 2002/192/EC[43].

(35) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC[44].

(36) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A of

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41 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

42 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

43 Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

44 Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[45].

(37) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[46].

(38) As regards Cyprus, Bulgaria, Romania and Croatia, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.

(39) Given that the verification in accordance with the applicable Schengen evaluation procedures concerning Bulgaria, Cyprus, Romania and Croatia, has already been completed pursuant to their respective Act of Accession, the verification under Article 1(2)(b) of this Regulation should not be relaunched in respect of those Member States,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation establishes an evaluation and monitoring mechanism for the purpose of ensuring that Member States apply the Schengen *acquis* effectively, thereby contributing to a well-functioning area without internal border controls.

2. The mechanism established shall provide for objective and impartial evaluations and monitoring activities aimed at:

   (a) verifying the application of the Schengen *acquis* in the Member States to which it applies in full as well as in Member States to which, in accordance with the relevant Protocols annexed to the TEU and to the TFEU, the Schengen acquis applies in part;

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45 Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

46 Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

(b) verifying that the necessary conditions for the application of all relevant parts of the Schengen *acquis* have been met in those Member States in respect of which a Council decision stating that the provisions of the Schengen *acquis* are to apply in full or in part has not been taken;

3. Evaluations may cover all aspects of the Schengen *acquis* and take into account the functioning of the authorities that apply the Schengen *acquis.*

Article 2

Definitions

For the purpose of this Regulation:

(a) 'Schengen *acquis*' means the provisions integrated into the framework of the Union in accordance with Protocol No 19 annexed to the TEU and to the TFEU, together with the acts building upon them or otherwise related to them;

(b) 'first time evaluation' means an evaluation to verify whether a Member State bound by the Schengen *acquis* and for which internal border controls have not been lifted fulfils the conditions to apply the Schengen *acquis* in full or, in the case of a Member State not bound by the Schengen *acquis* and that has opted in to apply parts of the Schengen *acquis*, to verify whether the Member State fulfils the conditions to apply the Schengen *acquis* in part;

(c) 'periodic evaluation' means an evaluation included in the multiannual evaluation programme and annual evaluation programmes to verify the application of the Schengen *acquis* by a Member State with a view to assessing the Member State's overall performance in the application of the Schengen *acquis;*

(d) 'unannounced evaluation' means an evaluation, which is not included in the multiannual and annual evaluation programmes, to verify the application of the Schengen *acquis* by one or more Member States in one or more policy fields;

(e) 'thematic evaluation' means an evaluation aimed at providing a comparative analysis of Member States' legislation or practices, or the application of specific parts of the Schengen *acquis* across several Member States;

(f) 'visit' means a visit to a Member State or to its consulates for the purposes of carrying out an evaluation or a monitoring activity;

(g) 'revisit' means a visit carried out to monitor the progress of the implementation of an action plan following an evaluation that identified a serious deficiency or following a first time evaluation which concluded that the evaluated Member State did not fulfil the necessary conditions to apply the Schengen *acquis;*

(h) 'verification visit' means a visit, other than a revisit, carried out to monitor the progress of the implementation of an action plan;

(i) 'serious deficiency' means one or more deficiencies which concern the effective application of key elements of the Schengen *acquis* and which individually or in combination, have, or risk to have over time, a significant negative impact on the rights of individuals or on the functioning of the Schengen area;

(j) 'evaluation activity' means a specific visit, questionnaire-based or other remotely conducted evaluation;

(k) 'team' means a group comprising experts designated by Member States and Commission representatives who carry out evaluations and monitoring activities.

Article 3

Responsibilities and duty of cooperation

1. The Member States and the Commission shall be jointly responsible for the implementation of the evaluation and monitoring mechanism, with the contribution of the relevant Union bodies, offices and agencies in accordance with their respective mandates.

2. The Commission shall be responsible for the establishment of the annual and multiannual evaluation programmes, the drafting of questionnaires, the setting of schedules of visits, the conducting of visits and the drafting of evaluation reports and recommendations. It shall also ensure the follow-up and monitoring activities.

3. The Member States and the Commission shall cooperate fully at all stages of evaluations in order to ensure the effective implementation of this Regulation.

4. The Member States shall take all measures, general or particular, to support and assist the Commission and the teams in the implementation of evaluation and monitoring activities.

   They shall ensure that the Commission and the teams carrying out evaluation and monitoring activities are able to perform their tasks effectively, in particular by granting the possibility to the Commission and the teams to address directly relevant persons and by providing full and unimpeded access to all areas, premises and documents to which access has been requested, including national and internal guidelines and instructions, also classified ones.

5. The Commission shall be responsible for making the necessary travel arrangements to and from the visited Member State for the Commission representatives and Member State experts in the teams.

   The Commission shall bear the travel and accommodation costs for experts and the observer referred to in Article 16(2) participating in the visits.

   The visited Member State shall be responsible for providing the necessary transport on location.

Article 4

Forms of evaluations

1. Evaluations may take any of the following forms:

   (a) first time evaluations;

   (b) periodic evaluations;

   (c) unannounced evaluations;

   (d) thematic evaluations.

2. The Commission may organise unannounced evaluations, in particular:

   (a) to evaluate practices at internal borders;

   (b) when it becomes aware of emerging or systemic problems that could potentially have a significant negative impact on the functioning of the Schengen area;

(c) when it has grounds to consider that a Member State is seriously neglecting its obligations under the Schengen *acquis* including allegations of serious fundamental rights violations at the external borders.

3. The Commission may organise thematic evaluations in particular to assess the implementation of significant legislative changes, as they start to apply, and of new initiatives, or to assess issues across policy areas or practices of Member States facing similar challenges.

Article 5

Forms of monitoring activities

Monitoring activities may include any of the following:

(a) the review of action plans and follow-up reports submitted by the evaluated Member States;

(b) revisits;

(c) verification visits.

Article 6

Evaluation and monitoring methods

Evaluations and monitoring activities referred to in Articles 4 and 5 may be carried out by means of announced or unannounced visits, and questionnaires or other remote methods.

Each evaluation and monitoring method may be used independently or in combination with one other, as appropriate.

Article 7

Cooperation with Union bodies, offices and agencies

1. The Commission shall cooperate with relevant Union bodies, offices and agencies which are involved in the implementation of the Schengen *acquis* as well as with the European Union Agency for Fundamental Rights.

   The Commission may enter into arrangements with the Union bodies, offices and agencies to facilitate the cooperation.

2. The Commission may request Union bodies, offices and agencies referred to in paragraph 1 in accordance with their respective mandates to provide information, statistical data or risk analyses to improve situational awareness within the meaning of Regulation (EU) 2019/1896 regarding the implementation of the Schengen *acquis* by the Member States.

Article 8

Cooperation with Frontex

1. By 31 August each year, Frontex shall submit to the Commission and the Member States a risk analysis in view to the annual evaluation programme referred to in Article 13 of this Regulation.

2. The risk analysis referred to in paragraph 1 shall cover all relevant aspects related to integrated border management and it shall also contain recommendations for unannounced visits in the following year, irrespective of the order of Member States

to be evaluated each year, as established in the multiannual evaluation programme in accordance with Article 12.

Those recommendations may concern any region or specific area and shall contain a list of at least ten specific sections of the external borders and at least ten specific border crossing-points, specific sites relevant for evaluating compliance with Directive 2008/115/EC[47], and other relevant information.

Article 9

Cooperation with Europol

In accordance with Article 4(1), point (s), of Regulation (EU) 2016/794 of the European Parliament and of the Council[48], Europol shall provide expertise, analysis, reports and other relevant information to support the implementation of this Regulation.

Article 10

Synergies with other evaluation and monitoring activities

1. The Commission shall use the results of relevant mechanisms and instruments, including evaluation and monitoring activities of Union bodies, offices and agencies which are involved in the implementation of the Schengen *acquis* and of the European Union Agency for Fundamental Rights as well as of independent national monitoring mechanisms and bodies and other national quality control mechanisms in preparing the evaluation and monitoring activities, to improve awareness on the functioning of the Schengen area and to avoid the duplication of efforts and conflicting measures.

2. Recommendations under this Regulation shall be complementary to recommendations made pursuant to Article 32(7) of Regulation (EU) 2019/1896 under the vulnerability assessment.

3. The Commission may share with relevant national and Union bodies, offices and agencies referred to in paragraph 1 in a secure and timely manner details of evaluation reports, action plans and updates on the implementation of the action plans.

   The information sharing shall take place in accordance with the mandates of the Union bodies, offices and agencies concerned.

Article 11

Information from third parties

In the programming and implementation of the evaluations and monitoring activities, the Commission shall take into account information provided by third parties, including independent authorities, non-governmental organisations and international organisations.

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[47] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

[48] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

CHAPTER II

PROGRAMMING

Article 12

Multiannual evaluation programme

1. The Commission, where appropriate after consulting the relevant Union bodies, offices and agencies, shall establish a multiannual evaluation programme covering a period of seven years at least six months before the beginning of the following seven-year period.

   In each multiannual evaluation cycle, each Member State shall undergo one periodic evaluation and at least one unannounced evaluation or thematic evaluation.

2. The Commission shall adopt the multiannual evaluation programme by means of an implementing act. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(3). The Commission shall transmit the multiannual evaluation programme to the European Parliament and to the Council.

3. The multiannual evaluation programme shall identify the specific priority areas to be covered by the periodic evaluations and shall include a provisional time-schedule of those evaluations.

   It shall set out a provisional list of Member States to be subject to periodic evaluations, without prejudice to adjustments made under paragraph 4, in a given year. The provisional order in which the Member States are to be subject to a periodic evaluation shall take into account the time which has elapsed since the previous periodic evaluation. It shall also take into account the outcome of previous evaluations, the pace of implementation of the action plans and other relevant information at the Commission's disposal as regards the practices of the Member States.

4. In the event of *force majeure* preventing the conduct of evaluations in accordance with the provisional time-schedule established pursuant to paragraph 3, the Commission may, in agreement with the Member States concerned, make adjustments to the time-schedule for the evaluations concerned.

   The Commission shall inform the European Parliament and the Council about such events and of their anticipated impact on the scheduling of evaluations under the multiannual evaluation programme without delay.

Article 13

Annual evaluation programme

1. The Commission shall establish, by means of an implementing act, an annual evaluation programme by 15 November of the year preceding that to which the programme relates, based on in particular the risk analyses and other information obtained by the Commission in accordance with Articles 7, 8, 9, 10 and 11. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(3).

2. The annual evaluation programme shall include a provisional time-schedule of the following evaluations:

(a) periodic evaluations of Member States as specified in the multiannual evaluation programme;

(b) first time evaluation of a Member State following its declaration of readiness to be evaluated;

(c) at least one thematic evaluation.

3. The Commission shall transmit the annual evaluation programme to the European Parliament and to the Council.

In the event of force majeure preventing the conduct of evaluations in accordance with the provisional time-schedule established pursuant to paragraph 2, the Commission may, in agreement with the Member States concerned, make adjustments to the time-schedule for the evaluations concerned.

The Commission shall inform the European Parliament and the Council about such events and of their anticipated impact on the scheduling of evaluations under the annual evaluation programme without delay.

Article 14

Standard questionnaire

1. The Commission shall by means of an implementing act, establish and update a standard questionnaire.

In drawing up the questionnaire, the Commission may consult relevant Union bodies, offices and agencies referred to in Article 7.

2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 29(2).

3. The standard questionnaire shall cover the implementation of the relevant legislation and the organisational and technical means available for the implementation of the Schengen *acquis*, including the ones referred to in Handbooks, the Schengen catalogues and relevant statistical data.

4. By 1 August each year, the Commission shall send the standard questionnaire to those Member States which are to undergo periodic evaluations in the following year in accordance with the annual evaluation programme.

Those Member States shall provide the Commission with their replies within three months from the receipt of the standard questionnaire.

The Commission shall make the replies available to the other Member States.

5. On the request of the Commission, the evaluated Member States shall update their replies to the standard questionnaire and answer, if requested, complementary questions before specific evaluations, as well as provide the findings of national quality control mechanisms and internal audits.

CHAPTER III

COMMON PROVISIONS FOR EVALUATIONS AND MONITORING ACTIVITIES

Article 15

Member State experts

1. The Member State experts participating in evaluation and monitoring activities shall have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation and monitoring mechanism, along with sound knowledge of evaluation principles, procedures and techniques, and shall be able to communicate effectively in a common language.

2. Experts from the Member States, which, in accordance with the relevant Act of Accession, are bound by but do not yet fully apply the Schengen *acquis* may participate in evaluation and monitoring activities of all parts of the Schengen *acquis*.

Article 16

Training of experts

1. The Member States and the Commission, in cooperation with relevant Union bodies, offices or agencies, shall ensure that Member State experts and Commission representatives receive adequate training to become Schengen evaluators.

   The training courses for Schengen evaluators shall include fundamental rights components developed with the participation of the European Union Agency for Fundamental Rights.

   The Commission, in cooperation with relevant Union bodies, offices or agencies, shall keep up to date the initial training curricula and where needed provide follow-up and refresher training.

2. For training purposes, each team carrying out periodic evaluations may include an 'observer' either from a Member State or the Commission.

Article 17

Pool of Member State experts

1. The Commission, in cooperation with the Member States, shall establish every year a pool of experts whose professional background cover the specific priority areas set out in the multiannual evaluation programme.

2. In parallel to the establishment of the annual evaluation programme in accordance with Article 13(1), on the invitation of the Commission, Member States shall designate at least one qualified expert per each specific area determined in the multiannual evaluation programme for next year's pool of experts.

3. Depending on the evaluations included in the annual evaluation programme, the Commission may further specify in the invitation the professional requirements for the experts to be designated.

4. Member States shall designate experts within four weeks of receiving the invitation referred to in paragraph 2.

5. Member States shall ensure that the experts designated fulfil the conditions referred to in Article 15 and the specific requirements set out in the invitation for establishing the pool.

6. Experts who have received appropriate trainings referred to in Article 16 shall be designated for the pool of experts established for the year following that in which they received the respective training course.

7. The Commission may also invite respective Union bodies, offices and agencies referred to in Article 7 to designate experts to the pool.

8. The Commission shall assess the experts designated and confirm the selection of the experts to the pool within one week.

9. Where none of the experts for the specific areas fulfils the requirements referred to in paragraph 3, the Commission shall invite the Member State concerned to designate a new expert for the specific priority area concerned.

10. Member States shall ensure that the designated experts are available for evaluations.

    If an expert is no longer available for the pool, the Member State concerned shall designate a replacement without delay.

11. The Commission shall keep the list of experts of the pool up to date and inform Member States about the number of experts and their profiles designated per Member State.

Article 18

Establishment of the teams

1. The Commission shall define the number of Member State experts and Commission representatives participating in a team based on the particularities and needs of the evaluation or monitoring activity. The Commission shall select experts from the pool of experts to become members of a team.

2. In selecting experts, the Commission shall have regard to the profiles needed for a particular evaluation or monitoring activity taking account of the need to ensure geographical balance, balance as regards professional experience and the capacity of national administrations.

   Member State experts shall not participate in a team carrying out an evaluation or monitoring activity of the Member State where they are employed.

3. The Commission shall invite the selected experts immediately after the date of the evaluation or monitoring activity is set and no later than 10 weeks before the evaluation or monitoring activity is scheduled to commence. Invited experts shall respond within one week of receiving the invitation, in agreement with their designating authorities.

4. In the case of unannounced visits, the Commission shall send the invitations no later than two weeks before the visit is scheduled to commence. Experts shall respond within 72 hours of receiving the invitation, in agreement with their designating authorities.

5. The Commission may invite respective Union bodies, offices and agencies referred to in Article 7 to designate a representative with relevant professional and field experience to take part as an observer in an evaluation or monitoring activity. The deadlines set out in paragraphs 3 and 4 shall apply for the invitation and the response.

6. If a Member State wishes to designate an observer for training purposes referred to in Article 16(3), it shall communicate that to the Commission at least six weeks before the evaluation is scheduled to commence.

7. The observers referred to in paragraphs 5 and 6 shall support the team as requested by the lead experts, but they shall not participate in the internal decision-making process of the team.

8. If the Commission fails to obtain confirmation of the participation of the required number of experts from the pool at least six weeks before the evaluation or monitoring activity is scheduled to commence, or at least one week in case of unannounced visits, the Commission shall without delay invite all Member States to nominate qualified experts outside from the pool for the missing places.

9. Member States shall respond within 72 hours of receipt of that invitation.

The Commission shall designate a Commission lead expert and propose the Member State lead expert. The Member State lead expert shall be appointed by the members of the team as soon as possible after the team has been set up.

The lead experts shall be responsible in particular for the overall planning, preparatory activities, organising the team, carrying out the evaluation, coordination of drafting the evaluation report, quality check and follow-up and relevant monitoring activities as appropriate.

Article 19

Conduct of visits

1. The teams shall undertake all necessary preparatory activities in order to ensure that the visits are efficient, accurate and consistent.

2. The detailed programme for the visits in a Member State or in its consulates shall be established by the Commission in close cooperation with the lead experts and the Member State concerned.

It may include visits to and meetings with national authorities and bodies, non-governmental and international organisations as well as other entities, agencies and bodies involved in, participating in or concerned by the implementation of the Schengen *acquis* while cooperating with the Member State subject to the evaluation or monitoring activity.

3. For announced visits, the Commission shall consult and notify the Member State concerned of the timetable and detailed programme at least four weeks before the visit is due to take place. It shall provide in advance the names of the members of the team and the observers. The Member State concerned shall designate a contact point for making the practical arrangements for the visit.

4. Unannounced visits shall take place without prior notification to the Member State concerned. By way of exception, the Commission may notify the Member State concerned at least 24 hours before such visit is to take place when the main purpose of the unannounced visit is a random verification of the implementation of the Schengen *acquis*.

The Commission shall establish the detailed programme for unannounced visits. Where Member States have been notified, the Commission may consult the timetable and detailed programme with the Member State concerned.

5. The Commission, in close cooperation with the Member States, may establish and update Guidelines for conducting unannounced visits.

Article 20

Remote methods

The Commission, in cooperation with the Member States, may establish guidelines for conducting evaluation and monitoring activities by questionnaire or other remote methods.

Article 21

Evaluation reports

1. The team shall draft an evaluation report following each evaluation.

   The Commission shall adopt the evaluation report by means of an implementing act in accordance with the examination procedure referred to in Article 29(3). The evaluation report shall be adopted no later than four months after the end of the evaluation activity.

   The Commission shall transmit the evaluation report to the national Parliaments, the European Parliament and the Council.

2. In preparing the evaluation report, the teams shall take account of the replies to the standard questionnaire, any additional information obtained in accordance with Articles 7, 8, 9, 10 and 11 and the findings of the evaluation activity. The evaluation reports may include documentary and digital material to support the findings. Where an evaluation is carried out by means of a visit, the team shall draft the evaluation report during the visit.

   The teams shall take overall responsibility for drafting the evaluation report and ensuring its integrity and quality. In case of disagreement, the team shall endeavour to reach a compromise.

3. The evaluation report shall analyse the qualitative, quantitative, operational, administrative and organisational aspects and shall list the deficiencies, areas of improvement and best practices identified during the evaluation.

4. Findings may be assessed as one of the following:

   (a) best practice;

   (b) compliant but improvement necessary;

   (c) non-compliant.

5. The evaluation report shall contain recommendations for remedial actions aimed at addressing the deficiencies and areas for improvement identified during the evaluation and give an indication of the priorities for implementing them. The evaluation report may set deadlines for the implementation of recommendations. Where the evaluation identifies a serious deficiency, the specific provisions set out in Article 23 shall apply.

6. The Commission shall transmit the draft evaluation report to the evaluated Member State within four weeks of the end of the evaluation activity. The evaluated Member State shall provide its comments on the draft evaluation report within two weeks of its receipt. A drafting meeting shall be held at the request of the evaluated Member State, no later than five working days from the receipt of the comments from the evaluated Member State. The comments of the evaluated Member State may be reflected in the draft evaluation report.

Article 22

Follow-up and monitoring

1. Within two months of the adoption of the evaluation report, the evaluated Member State shall submit to the Commission and the Council an action plan to implement all the recommendations included in the evaluation report.

2. After consulting the team, which has carried out the evaluation activity, the Commission shall provide observations on the adequacy of the action plan and, within one month from its submission, shall inform the evaluated Member State about its observations. The Council may invite Member States to provide comments on the action plan.

   If the Commission does not consider that all the recommendations have been sufficiently addressed, the evaluated Member State shall submit a revised action plan within one month of the receipt of the observations.

3. The evaluated Member State shall report to the Commission and the Council on the implementation of its action plan every six months from the adoption of the evaluation report until the Commission considers the action plan fully implemented. Depending on the nature of the deficiencies and the state of implementation of the recommendations, the Commission may require the evaluated Member State a different reporting frequency.

   Where the Commission considers the action plan implemented, it shall inform the evaluated Member State about the closure of the action plan.

   The Commission shall inform the European Parliament and the Council at least twice a year about the state of implementation of the action plans. The Commission shall in particular provide information about its observations on the adequacy of the action plans referred to in paragraph 2, the outcome of revisits and verification visits and whether it observes considerable lack of progress in the implementation of an action plan.

CHAPTER IV

SERIOUS DEFICIENCY AND SPECIFIC FORMS OF EVALUATION

Article 23

Specific provisions in case of a serious deficiency identified by the evaluation report

1. The rules laid down in paragraphs 2 to 7 shall apply in relation to evaluations that identified a serious deficiency.

2. At the end of the evaluation activity, the Commission and the Member State lead experts, on behalf of the team, shall inform the evaluated Member State that a serious deficiency was identified.

   The evaluated Member State shall take immediate remedial actions including, where necessary, mobilising all available operational and financial means. The evaluated Member State shall inform without delay the Commission and the Member States about the immediate remedial actions taken or planned. In parallel, the Commission shall inform the respective Union bodies, offices and agencies referred to in Article 7 of the serious deficiency in view of their possible support to the evaluated Member State. The Commission shall also inform the Council and the European Parliament.

3. The evaluation report drafted in accordance with Article 21(2), (3) and (4) shall focus on the findings that lead to the determination of a serious deficiency. It shall not contain recommendations. The Commission shall transmit the draft evaluation

report to the evaluated Member State within two weeks of the end of the evaluation activity.

The evaluated Member State shall provide its comments on the draft evaluation report within five working days of its receipt.

On duly justified imperative grounds of urgency relating to the serious deficiency, the Commission shall adopt the evaluation report no later than six weeks after the end of the evaluation activity by means of an implementing act in accordance with the procedure referred to in Article 29(4).

4. In light of the findings, the team shall draft recommendations for remedial actions aimed at addressing the serious deficiency identified in the draft evaluation report.

The Commission shall submit a proposal to the Council to adopt the recommendations concerned.

5. The Council shall adopt recommendations within two weeks of receipt of the proposal.

It shall transmit the recommendations to the European Parliament and to the national parliaments.

The Council shall set time limits for the implementation of the recommendations related to a serious deficiency and specify the frequency of the reporting by the evaluated Member State to the Commission and the Council on the implementation of its action plan.

6. The evaluated Member State shall submit to the Commission and the Council its action plan within one month of the adoption of the recommendations. The Commission shall transmit that action plan to the European Parliament.

The Commission shall provide the evaluated Member State observations on the adequacy of the action plan within two weeks from its submission. The Commission shall transmit its observations to the Council and the European Parliament.

7. To verify the progress made in the implementation of the recommendations related to the serious deficiency, the Commission shall organise a revisit that is to take place no later than one year from the date of the evaluation activity.

The Commission shall adopt, by means of an implementing act a revisit report in accordance with the examination procedure referred to in Article 29(3). The Commission shall submit the revisit report to the Council.

8. The Council shall express its position on the report.

9. The Commission shall inform the European Parliament and the Council of its intention to close the action plan.

The Commission shall invite the Council to express its position on the proposed closure.

In deciding whether to close the action plan, the Commission shall take into account that position.

10. If the serious deficiency is deemed to constitute a serious threat to public policy or internal security within the area without internal border controls, or a serious and systematic fundamental rights violation, the Commission, on its own initiative or at the request of the European Parliament or of a Member State, shall immediately inform thereof the European Parliament and the Council.

Article 24

Specific provisions for first time evaluations

1. The rules laid down in paragraphs 2 and 3 shall apply in relation to first time evaluations.

2. The evaluation report drafted in accordance with Article 21(2), (3) and (4) shall not contain recommendations. In light of the findings, the team shall draft recommendations for remedial actions identified in the draft evaluation report. The timelines in Article 21(1) and (6) shall apply.

   The Commission shall submit a proposal to the Council to adopt the recommendations concerned.

3. The Council shall adopt recommendations within two months of receipt of the proposal.

   It shall transmit the recommendations to the European Parliament and to the national parliaments.

   The Council may set time limits for the implementation of specific recommendations.

   The Commission shall organise a revisit in case the evaluation report concluded that the evaluated Member State did not fulfil the conditions necessary to apply the Schengen acquis. The Commission shall adopt, by means of an implementing act the revisit report in accordance with the examination procedure referred to in Article 29(3). The Commission shall submit the revisit report to the Council.

4. The Commission shall carry out a verification visit before the closure of the action plan.

   The Commission shall inform the European Parliament and the Council of the outcome of the verification visit and its intention to close the action plan.

5. The Commission shall invite the Council to express its position on the proposed closure.

   In deciding whether to close the action plan, the Commission shall take into account that position.

Article 25

Specific provision for thematic evaluations

Article 24(2) and (3) shall apply to thematic evaluations.

If the thematic evaluation identifies a serious deficiency, Article 23 shall apply.

CHAPTER V

FINAL PROVISIONS

Article 26

Sensitive information

1. The teams shall regard as confidential any information they acquire in the course of performing their duties.

2. The classification status of the reports shall be determined in accordance with Decision (EU, Euratom) 2015/444. They may also be classified as 'EU RESTRICTED/RESTREINT UE' on a duly justified request of the evaluated Member State.

3. The transmission and handling of classified information and documents for the purposes of this Regulation shall take place in compliance with the applicable security rules. Such rules shall not preclude information being made available to the European Parliament and to relevant Union bodies, offices and agencies referred to in Article 7.

Article 27

Conditions for the participation of Ireland

1. Experts of Ireland shall only participate in the evaluation of the part of the Schengen *acquis* in which Ireland has been authorised to participate.

2. The evaluations shall only cover the effective and efficient application by Ireland of the part of the Schengen *acquis* in which it has been authorised to participate.

3. Ireland shall only take part in the adoption of the recommendations by the Council as regards the part of the Schengen *acquis* in which it has been authorised to participate.

Article 28

Reporting to the European Parliament and to the Council

The Commission shall submit annually a comprehensive report to the European Parliament and to the Council on the evaluations carried out pursuant to this Regulation. That report shall be made public and shall include information on the evaluations carried out during the previous year, on the conclusions drawn from them and on the state of play with regard to remedial actions taken by the Member States. The Commission shall transmit that report to the national Parliaments. The Council shall discuss the report and adopt conclusions.

Article 29

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 30

Review

The Commission shall undertake a review of the application of this Regulation and submit a report to the Council within six months of the adoption of all evaluation reports regarding the

evaluations covered by the first multiannual evaluation programme adopted in accordance with this Regulation. Such review shall cover all the elements of this Regulation, including the functioning of the procedures for adopting acts under the evaluation mechanism. The Commission shall submit that report to the European Parliament.

Article 31

Transitional provisions

1. The first multiannual evaluation programme under this Regulation shall be established by [1 November 2022] and it shall start on [1 January 2023].

   That programme shall take into account the evaluations already carried out under the second multiannual programme adopted under Regulation (EU) No 1053/2013 and shall be drawn up as a continuation of that programme.

2. The standard questionnaire adopted under Regulation (EU) No 1053/2013 shall be used until the standard questionnaire provided for under Article 14 of this Regulation has been established.

Article 32

Repeal

Council Regulation (EU) No 1053/2013 is repealed from [1 September 2022].

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex.

Article 33

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [1 September 2022].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a COUNCIL REGULATION on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing Regulation (EU) No 1053/2013 of 7 October 2013

1.2. Policy area(s) concerned

Heading 4 - Migration and Border Management

1.3. Title 11 - Border Management

The proposal/initiative relates to:

☐ **a new action**

☐ **a new action following a pilot project/preparatory action**[49]

☑ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

A significant body of measures that compensate for the absence of controls at internal borders and effectively guarantee a high level of security supports Schengen. The general objective of this proposal is to ensure that the Member States implement fully, correctly and effectively this set of legislation known as Schengen *acquis* that make possible the proper functioning of the Schengen Area.

The Schengen *acquis* includes the following three pillars:

(1) measures at the external borders (external border management),

(2) compensatory measures (common visa policy, police cooperation, return policy and the Schengen Information System), as well as requirements for the protection of personal data and fundamental rights, and

(3) a robust monitoring mechanism.

The general objective of this initiative is to improve the Schengen evaluation and monitoring mechanism representing the third pillar. The proposal aims to make the mechanism more effective by making more flexible to ever-changing realities and faster so that it can be adapted to address them timely and properly without the need of frequent subsequent amendments.

1.4.2. Specific objective(s)

In line with the Commission Work Programme 2021, this proposal is part of the Policy Objective on Promoting our European Way of Life, in particular, Initiative 34 Schengen package, point b) Amendment of the Regulation establishing the Schengen Evaluation Mechanism.

[49] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

In line with Article 22 of Council Regulation (EU) No 1053/2013, the Commission carried out a review of the operation of the Regulation within six months of the adoption of all evaluation reports under the first multiannual evaluation programme (2015-2019). The review covered all the elements of the Regulation, including the functioning of the procedures for adopting acts under the Mechanism. The Commission presented its review in a report[50] and accompanying staff working document[51] on 25 November 2020. The review found that the mechanism has already brought about tangible improvements in the implementation of the Schengen *acquis* by the Member States. It has, however, identified several shortcomings that should be addressed:

(1) the excessive length of the evaluation process (10-12 months) and the time for Member States to implement recommendations (2 years);

(2) the shortage of sufficient number of experts to participate in the evaluations with 5 Member States providing one third of all experts and with chronic deficit of experts in specific policy fields;

(3) suboptimal use and efficiency of unannounced visits as well as of the other evaluation and monitoring tools, in particular thematic evaluations;

(4) slow follow-up and implementation of the action plans and lack of a comprehensive and consistent approach to monitoring the implementation;

(5) apart from the evaluation of data protection requirements, the assessment of the respect for fundamental rights in the implementation of the Schengen *acquis* is not sufficiently integrated in the Mechanism.

The report indicates that some of these shortcomings could be tackled at operational level, but others would require the need for legislative changes to clarify and to reinforce existing rules and procedures with a view to making the mechanism fully fit for purpose.

As a follow-up and in line with the conclusions of the First Schengen Forum of 30 November 2020, the Commission undertook a series of technical consultations with stakeholders and prepared an impact assessment accompanying this proposal.

Based on the outcomes of these initiatives and on conclusions of the Schengen report, the Commission identified the following specific objectives to be addressed with the current proposal:

1. Specific objective no 1: ***Increase the strategic focus of the Mechanism and ensure a more proportionate and strategic use of the different evaluation and monitoring tools:*** This is expected to be achieved by maintaining the scope of the evaluations while improving its adaptability to new and ever changing realities, by providing for more flexible programming rules and an extended duration of the evaluation cycle.

2. Specific objective no 2: ***Shorten and simplify the procedures to make the process more effective and efficient and increase peer-pressure*** to address the excessive length of the procedures and the administrative burden linked to them.

[50] Report from the Commission to the European Parliament and the Council on the Functioning of the Schengen Evaluation and Monitoring Mechanism pursuant to Article 22 of Council Regulation (EU) No 1053/2013. COM(2020)779 final.

[51] SWD (2020)327 final.

They bring about revised decision-making focusing the Council's role in the most politically relevant cases, improved follow-up rules, as well as significant simplifications (e.g. declassification of evaluation reports as a rule, reduced frequency of reporting obligations by Member States, certain binding time limits to speed up the process).

3. Specific objective no 3: ***Strengthen the evaluation of the respect for fundamental rights safeguards under the Schengen acquis*** by introducing targeted measures to better integrate and streamline the protection of fundamental rights in the Mechanism responding to the long-standing calls of stakeholders.

4. Specific objective no 4: ***Optimise the participation of Member State experts and the cooperation with Union bodies, offices and agencies, as well as synergies with other evaluation and monitoring mechanisms, for more targeted, strategic and tailored evaluations:*** This is necessary to address the shortage of qualified experts for evaluations and imbalance regarding Member States' contributions as well as to make better use of the resources available at the EU and national levels, and to enhance synergies with other instruments. The proposal establishes a yearly permanent pool of experts managed by the Commission, provides flexibility on the size of the teams, and increases incentives for participation. The proposed changes maximise the input and improve the coordination with Union bodies, offices and agencies and other quality control mechanisms by improved risk analysis, enhanced coordination, and strengthened participation with new legal obligations.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Free movement is intrinsic to our European Way of Life, and to preserve it, the EU needs to ensure that Member States apply correctly and fully the Schengen *acquis*.

During the last years, the Schengen area of free movement has been put to a test by a series of challenges of various character involving migratory crisis, terrorist threats and the consequences of the spread of COVID-19. The new realities it has been confronted with have highlighted the need to improve the governance structure and the tools available to make Schengen work smoothly. To address these challenges, Commission President von der Leyen announced in the 2020 State of the Union address[52] a new Strategy on Schengen to ensure a fully functioning area of free movement. The Commission indicated in the New Pact on Migration and Asylum that the Strategy would combine legislative and operational initiatives aimed at creating a stronger and more resilient Schengen. Such legislative initiative is the revision of the Mechanism.

The Commission work programme for 2021[53] confirms that to preserve and improve the functioning of the Schengen area, new rules need to be put in place. Under the policy objective Promoting our European Way of Life, it commits the Commission to present a Schengen package (action 34) having as one of its components the Amendment of the Regulation establishing the Schengen Evaluation Mechanism, to be adopted in the second quarter of 2021.

[52] https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655.
[53] COM(2020) 690 final.

The current proposal is a core element of the Commission's new Schengen Strategy. It aims to ensure that Member States apply Schengen rules effectively, which would improve mutual trust among them and contribute to the well-functioning of the area of free movement.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

A non-exhaustive list of qualitative and quantitative indicators has been developed to monitor the achievement of the proposed changes and will be used for the review of the Regulation.

To measure the areas of administrative simplification, the following indicators are put forward:

- Number of amendments of the evaluation programme
- Number of calls for experts
- Number of Commission proposals for recommendations
- Number of Council recommendations
- Number of Assessment Action Plans (Commission Communications)
- Number of Progress reports

To measure the success per specific objective, to which an operational objective corresponds, the following indicators have been developed:

- Number of unannounced and thematic evaluations (yearly average over the cycle) – specific objective 1
- Discussion at Ministerial level of findings or state of play of the recommendations - specific objective 1
- Average length of the evaluation process – specific objective 2
- Deficiencies identified by the Schengen evaluation mechanism pending to be remedied at the end of year – specific objective 2
- Number of FRA observers in Schengen Evaluations – specific objective 3
- Number of experts trained on fundamental rights – specific objective 3
- Average number of experts required per evaluation visit – specific objective 4
- Ratio designated/required experts – specific objective 4
- Number of risk analysis or other reports – specific objective 4

In addition, the Commission is in the process of developing a new IT tool to modernise the monitoring of the implementation of the action plans by the Member States. This tool is expected to become operational already in 2021.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The overall objective of the Schengen evaluation and monitoring mechanism is to verify the correct application of the Schengen *acquis* and, where necessary, to recommend improvements and ensure their implementation.

Maintaining the Schengen area as an area of free movement without internal border controls depends on an effective and efficient mechanism for the evaluation of the measures to be implemented at the EU's external borders and compensatory measures aiming to ensure freedom of movement and a high level of security and justice in an area without internal border controls.

The Schengen area is based on mutual trust between the Member States in their capacity fully to implement certain measures at the external borders and compensatory measures within their territories, which allow the lifting of internal border controls. The origins of the Schengen evaluation and monitoring mechanism have an intergovernmental character dating back to the 1990s when the evaluations were entirely in the hands of the Member States, with the Commission participating as an observer. Schengen *acquis* became part of the European Union framework with the entry into force of the Amsterdam Treaty in 1999, which opened the possibility for adopting the legal basis of the mechanism currently in force by transferring the responsibility for its coordination and overall organisation to the Commission.

Since the adoption of the Regulation on the Schengen evaluation and monitoring mechanism[54] in 2013, the EU has faced a series of new challenges. It has experienced an unprecedented migratory crisis the repercussions of which have brought about new realities as well as a series of terrorists attacks. It was confronted with the COVID-19 pandemic that is still on-going and blocking the normal functioning of everyday life of citizens. All these have revealed that the rules currently in place are not adequate enough to help Schengen cope with new emerging pressures. As a result, the EU adopted a significant number of initiatives, including legislation, in the area of home affairs to help address effectively new emerging necessities.

The Schengen evaluation and monitoring mechanism, however, has remained unchanged and its capacity to take into account recent legislative and policy developments has been challenged.

In line with Article 22 of Council Regulation (EU) No 1053/2012, the Commission carried out an analysis of the functioning of the Schengen Evaluation and Monitoring Mechanism. The outcomes of this review[55] concluded that the Mechanism has already demonstrated its significant added value and contributed to improving the implementation of the Schengen *acquis* by the Member States. It confirmed that Member States are, overall, implementing the Schengen *acquis* adequately and serious deficiencies have been promptly addressed. Despite this progress, the report concluded that there are still certain shortcomings and many divergent practices across Member States, which could have an impact on the integrity and functioning of the Schengen area in the future.

Following up on the announcement of President von der Leyen to present a new Schengen strategy and the discussions at high political level at the First Schengen Forum of 30 November 2020, the Commission carried out an in-depth impact assessment and comprehensive consultations with stakeholders. Results have concluded that the positive impacts of the Mechanism can definitively be confirmed and its added value proven. They suggested, though, that to make the Mechanism more effective and efficient, it should be revised in a way that makes it fit to address

[54] Council Regulation (EU) No 1053/2012.
[55] COM(2020) 779 final.

emerging challenges and to adapt to new realities Certain procedural aspects to improve its practical functioning have also been identified as a result of the experience of the first 5-year cycle of evaluation.

On this basis, the Commission is taking the initiative to put forward the current proposal. The proposed Regulation is to be adopted under a special legislative procedure in accordance with Article 70 of the TFEU.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

The EU added-value of the initiative stems foremost from the coordinated participation of Member States, directly and through the Council, which creates a strong basis to generate mutual trust among Member States compared to evaluations at the Member State level. Evaluations coordinated at EU level facilitate a comparison of the implementation practices across Member States and an assessment of the combined effects of the implementation in different Member States. They make it possible to identify deficiencies that arise from asymmetries and divergences in the implementation of the Schengen *acquis* that may put at risk the integrity of Schengen. The peer pressure resulting from the Mechanism may create an additional incentive for correct implementation of the Schengen *acquis*. The initiative reduces the risk of few Member States carrying a disproportionate burden for the functioning of the Mechanism.

The proposal aims to shift the focus of the Mechanism to shortcomings that may have adverse effects on Schengen's well-functioning as a whole. Issues of limited scope should be dealt with at the national level.

The measures proposed do not go beyond what is needed to achieve the general and specific objectives taking into account the subsidiarity principle by laying down the basis for improved coordination with evaluations carried out under national quality control mechanisms.

1.5.3. Lessons learned from similar experiences in the past

This proposal draws on the lessons learn of the implementation of Council Regulation (EU) No 1053/2013, which provides for carrying out Schengen evaluations based on a 5-year evaluation cycle. Following the first evaluation cycle covering the period 2014-2019, the Commission took stock of the progress made and shortcomings identified and presented the outcomes in a Schengen report[56]. In preparing the current proposal, the Commission takes into account the conclusions and recommendations of this review as well as the view of stakeholders consulted following the 1st Schengen Forum. It also takes into account the recently adopted Council conclusions[57] on the functioning of the Schengen evaluation and monitoring mechanism (Council Regulation (EU) No 1053/2013) of 19th April 2021, which confirm the crucial role of the the Mechanism for ensuring the effective and efficient application of the Schengen *acquis* and a high level of mutual trust between the

[56] COM(2020) 779 final.
[57] https://data.consilium.europa.eu/doc/document/ST-7939-2021-INIT/en/pdf

Member States in the area of free movement. These conclusions also call on the Commission to put forward initiatives for improvement of the overall efficiency of the Mechanism while ensuring its flexibility.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The Commission presents this proposal as an essential element of the Schengen Strategy that also includes a political Communication on Schengen, among other documents. It follows up on the New Pact on Migration and Asylum of September 2020.

Representing the third pillar of the Schengen governance, this proposal does not affect the legislation relevant for Schengen's first two pillars (external borders and compensartory measures) but aims to contribute to their better implementation by the Member States.

In the past years, the role of Union bodies and agencies involved in the implementation of the Schengen *acquis* has gained further importance. To reflect this development, the proposal provides for the evaluation and monitoring, to a certain extent, of the activities of the relevant Union bodies, offices and agencies, as far as their staff is exercising activites on behalf of Member States.

The Mechanism provides a robust legal framework that is also flexible to cover the entirety of the ever-changing legislation on the functioning of the Schengen area. As this legislation has recently undergone dynamic developments that could be expected to continue in the future, this proposal is designed in a way that makes the Mechanism adaptable to prospective evolution of the Schengen *acquis* without the need to subsequently amend the rules for its evaluation and monitoring.

Some of the legal acts in the policy areas covered by the Mechanism contain their own evaluation and monitoring tools. Ensuring synergies to avoid duplications and to make the best use of sectorial monitoring tools is provided for in the proposal.

The actions having financial implications that are pertinent to this proposal are fully in line with the Multiannual Financial Framework. These actions include financing of the evaluations visits for experts from the Member States and the Commission. The evaluation visits under Council Regulation (EU) No 1053/2013 have so far been financed with the Internal Security Fund/ Borders and visas Union actions. Once the proposed Regulation enters into force, the evaluation visits organised within its remit will be eligible for funding with the Thematic Facility of the Border Management and Visa Instrument. Moreover, Member States have the obligation to use resouces from their programmes under the BMVI in implementing the recommendations to address adequately any vulnerabilities or risks identified following a Schengen evaluation. Finally, by extending the evaluation cycles from 5 to 7-year periods, the mechanism provides for apotential to ensure better synergies with the Multiannual Financial Framework.

The proposal does not involve any increase of financing needed as compared to the financing of evaluation visits under Council Regulation (EU) No 1053/2013. It proposes new rules that aim to improve efficiency and effectiveness with a view to achieving better results with unaltered financial resources.

1.5.5. Assessment of the different available financing options, including scope for redeployment

The reform intends to make the Mechanism more efficient for all parties involved (Member States, Commission, relevant Union bodies, offices and agencies). The underlying objective from a resource point of view is to make a better use of the available resources while remaining within the existing human and budgetary resources. It is crucial to clarify that the Mechanism is not a costly instrument. In fact, it costs approximately up to EUR 2 million per year for the Commission to organise evaluation and monitoring visits. Proposed new rules for carrying out evaluation and monitoring visits include an extension of the evaluation cycles from 5 to 7 years as well as reductions of the average length of the visits and of the average size of the evaluation and monitoring teams. These changes are expected to reduce the overall costs of the visits. The Commission estimated that the costs of the announced evaluations (the most expensive ones due to their duration and number of experts involved) will be reduced by around one third as compared to the state of play owing to the combined effect of reduced duration of the visits, reduced number of experts (flexibility of the team size) and the lower number of announced evaluations (extension of the evaluation cycle). It should also be taken into account that the new Mechanism is designed in a way to evaluate new developments of the Schengen *acquis*, which has undergone significant evolution during the recent years. The efficiency of the new Mechanism will thus be further enhanced as it will evaluate more legislative obligations for the Member States with reduced costs as compared to the currently functioning Mechanism. Mechanism.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☑ **unlimited duration**

Implementation with a start-up period from the entry into force, followed by full-scale operation.

1.7. Management mode(s) planned[58]

☑ **Direct management** by the Commission

– ☐ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

[58] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx.

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

The Commission will be responsible for the overall management of the actions having financial implications and directly linked to the operational implementation of the Regulation. These involve mainly financing the organisation of evaluation and monitoring visits such as travel and accommodation costs for experts from the Member States and the Commission, including for those experts having an observer status.

The level of spending as compared to resources used for carrying out evaluation and monitoring visits under Council Regulation (EU) No 1053/2013 is estimated to remain unchanged.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The rules for monitoring and reporting are provided for in Article 28 and Article 30 of the proposal.

The Commission commits to preparing every year to the European Parliament and to the Council a comprehensive report on the evaluations carried out during the previous year, on the conclusions drawn from them and on the state of play with regard to remedial actions taken by the Member States. This report is to be communicated to the national Parliaments.

The newly poposed Schengen evaluation and monitoring mechanism will work on the basis of 7-year multi-annual evaluation cycles. Once the first cycle is completed and six months after all evaluation reports under that cycle have been adopted, the Commission will undertake a review on the operation of the Regulation.

As part of the impact assessment and in line with better regulation rules, a non-exhaustive list of qualitative and quantitative indicators have been developed that will be used for the review of the Regulation. In addition, the Commission is in the process of developing a new IT tool to modernise the monitoring of the implementation of the action plans by the Member States. This tool is expected to become operational already in 2021.

2.2. Management and control system(s)

2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

Building on the successful experience in the implementation of the Schengen evaluation and monitoring mechanism and its financing under Union Actions of the Internal Security Fund/ Borders and visas via direct management, the Commission envisages to maintain the principles of financing of the new mechanism. In line with the new MFF, it will be supported by the Thematic Facility of the Boder Management and Visa Instrument via direct management.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

DG HOME has established an internal control system tailored to its particular characteristics and circumstances and regularly assesses its implementation and overall functioning.

DG HOME has not been facing important risks of errors in its spending programmes. This is confirmed by the recurrent absence of significant findings in the annual reports of the Court of Auditors.

Through direct management, the Commission supports actions that contribute to the common policy objectives of the Union. One of these objectives is the correct, timely, and effective implementation of the Schengen *acquis* by the Member States that is ensured by the Schengen evaluation and monitoring mechanism.

Financing of the current mechanism has been covered by Union actions of the Internal Security Fund/ Borders and visas for the period 2014-2020. As of 2021, it is to be covered by the Thematic Facility of the Border Management and Visa Instrument via direct management. The future revised Mechanism will continue to be financed via direct management under the new Thematic Facility.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The Commission strives to achieve the highest standards of financial management. DG HOME has put in place rigorous controls and clear chains of accountability to ensure that resources have been used in accordance with the principles of sound financial management, and that the cost-effective controls give the necessary guarantees on the legality and regularity of underlying transactions. To demonstrate its commitment to the best use of financial resources, the Commission sets a very low error rate as one of its strategic goals. To meet this goal, DG HOME has put in place measures to ensure sound financial management throughout the management of transactions.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

DG HOME has developed and implements its own antifraud strategy on the basis of the methodology provided by OLAF and in line with the Commission's Anti-Fraud Strategy (CAFS). It will aim to ensure that its internal anti-fraud related controls are

fully aligned with the CAFS and that its fraud risk management approach is geared to identify fraud risk areas and adequate responses.

DG HOME 2019 AAR concluded that the fraud prevention and detection processes worked satisfactorily and therefore contributed to the assurance on the achievement of the internal control objectives.

DG HOME's Anti-Fraud Strategy is currently undergoing a revision aimed at aligning it with the Commission's updated Anti-Fraud Strategy, while better tailoring anti-fraud controls to the DG's policy areas and operations, and thereby increasing their effectiveness and efficiency

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[59]	from EFTA countries [60]	from candidate countries[61]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
4	11 02 01 - Border Management and Visa Instrument (BMVI)	Diff.	NO	NO	YES	NO

Comment: It should be noted that appropriations requested in the context of the proposal are covered by appropriations already foreseen in the LFS underlying the BMVI Regulation. No additional financial or human resources are requested in the context of this legislative proposal.

59 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
60 EFTA: European Free Trade Association.
61 Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☑ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	4	Migration and Border Management

DG: HOME			2021	2022	2023	2024	2025	2026	2027	**TOTAL**
• Operational appropriations										
Budget line[62] 11 02 01 Border Management and Visa Instrument (BMVI)	Commitments	(1a)			2,005	2,005	2,005	2,005	2,005	10,025
	Payments	(2a)			2,005	2,005	2,005	2,005	2,005	10,025
	Commitments									
	Payments									
Appropriations of an administrative nature financed from the envelope of specific programmes[63]										
N/A		(3)								
TOTAL appropriations for DG HOME	Commitments	=1a+1b +3			2,005	2,005	2,005	2,005	2,005	10,025
	Payments	=2a+2b +3			2,005	2,005	2,005	2,005	2,005	10,025

62 According to the official budget nomenclature.

63 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations underHEADING 4 of the multiannual financial framework	Commitments	=4+ 6			2,005	2,005	2,005	2,005	2,005	10,025
	Payments	=5+ 6			2,005	2,005	2,005	2,005	2,005	10,025

• TOTAL operational appropriations (all operational headings)	Commitments	(4)			2,005	2,005	2,005	2,005	2,005	10,025
	Payments	(5)			2,005	2,005	2,005	2,005	2,005	10,025
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)								
TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6			2,005	2,005	2,005	2,005	2,005	10,025
	Payments	=5+ 6			2,005	2,005	2,005	2,005	2,005	10,025

Heading of multiannual financial framework	7	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	TOTAL
DG: HOME									
• Human resources		N/A		2,488	2,488	2,488	2,488	2,488	**12,440**
• Other administrative expenditure		**N/A**							
TOTAL DG HOME	Appropriations	N/A							

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	N/A		2,488	2,488	2,488	2,488	2,488	**12,440**

EUR million (to three decimal places)

TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments			4,493	4,493	4,493	4,493	4,493	22,465
	Payments			4,493	4,493	4,493	4,493	4,493	22,465

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate			**2021**	**2022**	**2023**	**2024**	2025	2026	2027	**TOTAL**

objectives and outputs ⇩	OUTPUTS																	
	Type[64]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[65] Avoid gaps and increase strategic focus																		
- Output	Discussion at Ministerial level per year of findings or state of play of the recommendations		1															
- Output	Commission reporting on the mechanism per year		1															
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 Rationalise the distribution of tasks and responsibilities, and simplify and accelerate process and procedures																		
- Output	Average length of evaluation process - adoption of evaluation report within 4 months of the evaluation visit		4 months															

64 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

65 As described in point 1.4.2. 'Specific objective(s)…'

- Output	Number thematic evaluations per year	0,142		-		-	1	0,142	1	0,142	1	0,142	1	0,142	1	0,142	5	0,710
- Output	Number of experts participating in announced visits and revisits	0,005				-	338	1,601	338	1,601	338	1,601	338	1,601	338	1,601	1.687,5	8,005
- Output	Follow up procedure – Member States to submit an action plan to address recommendations 2 months following the adoption of the evaluation report		2 months															
Subtotal for specific objective No 2								1,743		1,743		1,743		1,743		1,743		8,715
SPECIFIC OBJECTIVE No 3 Strengthen the implementation of fundamental rights safeguards under the Schengen acquis																		
- Output	Number of risk analysis or other reports per year	4																
- Output	Number of trainings on fundamental rights per year	1																
Subtotal for specific objective No 3																		
SPECIFIC OBJECTIVE No 4 Optimise the participation of																		

Member States' experts and the involvement of EU bodies, offices, and agencies ...																		
- Output	Ratio designated/required experts	1 or more																
- Output	Koel IT tool	0,110					1	0,110	1	0,110	1	0,110	1	0,110	1	0,110	1	0,550
- Output	Number of trainings, incl on fundamental rights per year	0,012		-		-	1	0,012	1	0,012	1	0,012	1	0,012	1	0,012	5	0,060
- Output	Visa Training	0,140		-		-	1	0,140	1	0,140	1	0,140	1	0,140	1	0,140	5	0,700
Subtotal for specific objective No 4								0,262		0,262		0,262		0,262		0,262		1,310
TOTALS								**2,005**		**2,005**		**2,005**		**2,005**		**2,005**		**10,025**

3.2.3. *Summary of estimated impact on administrative appropriations*

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☑ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2021[66]	2022	2023	2024	2025	2026	2027	**TOTAL**
HEADING 7 of the multiannual financial framework			2,488	2,488	2,488	2,488	2,488	12,440
Human resources								
Other administrative expenditure								
Subtotal HEADING 7 of the multiannual financial framework			2,488	2,488	2,488	2,488	2,488	**12,440**
Outside HEADING 7[67] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 7 of the multiannual financial framework								
TOTAL			2,488	2,488	2,488	2,488	2,488	**12,440**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

66 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

67 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– ☑ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		2021	2022	2023	2024	2025	2026	2027
• Establishment plan posts (officials and temporary staff)								
20 01 02 01 (Headquarters and Commission's Representation Offices)				14.7	14.7	14.7	14.7	14.7
20 01 02 03 (Delegations)								
01 01 01 01 (Indirect research)								
01 01 01 11 (Direct research)								
Other budget lines (specify)								
• External staff (in Full Time Equivalent unit: FTE)[68]								
20 02 01 (AC, END, INT from the 'global envelope')				3	3	3	3	3
20 02 03 (AC, AL, END, INT and JPD in the delegations)								
XX 01 xx **yy zz** [69]	- at Headquarters							
	- in Delegations							
01 01 01 02 (AC, END, INT - Indirect research)								
01 01 01 12 (AC, END, INT - Direct research)								
Other budget lines (specify)								
TOTAL				**17.7**	**17.7**	**17.7**	**17.7**	**17.7**

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	AD staff: To define, implement and co-ordinate policy, legislative and operational developments regarding the Schengen evaluation mechanism, the management of the External Borders and Schengen governance and the implementation of the Schengen acquis in the relevant policy areas. AST staff: To take care of the operational and administrative support as well as manage business and planning for the Schengen evaluation SC staff: To provide operational and administrative support to the unit and to assist the Head of Unit
External staff	To define, implement and co-ordinate policy, legislative and operational developments regarding the Schengen evaluation mechanism, the management of the External Borders and Schengen governance and the implementation of the Schengen acquis in the relevant policy areas.

68 AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

69 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

– ☑ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

– ☐ requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

The proposal/initiative:

– ☑ does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[70]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								

[70] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

TOTAL appropriations co-financed								

3.3. Estimated impact on revenue

– ☑ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

(2) please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[71]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[71] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.