

EUROPEAN DATA PROTECTION SUPERVISOR

Summary of the Opinion of the European Data Protection Supervisor on the Proposal for a Council Regulation on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis

(The full text of this Opinion can be found in English, French and German on the EDPS website www.edps.europa.eu)

(2021/C 337/02)

The Schengen area is one of the most significant and most visible achievements of the European Union. Its legal framework, the Schengen acquis, comprises of various measures, including an evaluation and monitoring mechanism.

On 2 June 2021, the Commission presented a 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 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.

In his Opinion, the EDPS welcomes the particular attention in the Proposal on the respect for fundamental rights, including the correct implementation of the data protection requirements of the Schengen acquis, when carrying out Schengen evaluations. At the same time, he makes two specific recommendations, aimed at ensuring legal certainty and respecting the independence of the data protection supervisory authorities.

The EDPS believes that the envisaged Regulation should define the scope of the Schengen evaluations by laying down a non-exhaustive list of relevant policy fields, which would be subject to evaluation. In particular, the new Schengen mechanism should continue to provide for evaluations dedicated exclusively to data protection, carried out by data protection experts.

In addition, the EDPS underlines the need to clearly distinguish the competencies of the various Union agencies, offices and bodies involved in the Schengen evaluations. In this context, the independence of the European Data Protection Supervisor, pursuant to Article 55 of Regulation (EU) 2018/1725, should be fully respected.

1. Introduction and background

1. The Schengen area ⁽¹⁾ is one of the most significant and most visible 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.
2. The Schengen *acquis* comprises of the legal 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. 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) an evaluation and monitoring mechanism. The Schengen *acquis* also comprises requirements on data protection and the respects for other fundamental rights.
3. The purpose of the Schengen evaluation mechanism is to ensure a well-functioning Schengen area by guaranteeing that Member States apply Schengen rules effectively, *inter alia* by maintaining a high level of mutual trust among participating Member States. The current Schengen evaluation and monitoring mechanism was established by Council Regulation (EU) No 1053/2013 ⁽²⁾, which became operational in 2015.

4. To address the challenges faced by the Schengen area, Commission President von der Leyen announced in her 2020 State of the Union address a Strategy on Schengen. One of the initiatives in this context is the revision of the Schengen evaluation and monitoring mechanism. Consequently, on 2 June 2021, the Commission presented a 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 ⁽¹⁾. The 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*.
5. Pursuant to Article 42(1) of Regulation (EU) 2018/1725, the Commission has to consult the EDPS following the adoption of a proposal for a legislative act, where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data. The EDPS was formally consulted by the Commission on 3 June 2021. The EDPS was also consulted informally during the process of preparation of the proposal, and communicated his informal comments in May 2021. He welcomes the fact that his views have been sought at an early stage of the procedure and encourages the Commission to continue with this good practice.
6. The present Opinion is without prejudice to any future additional comments or recommendations by the EDPS, in particular if further issues are identified or new information becomes available. Furthermore, this Opinion is without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of Regulation (EU) 2018/1725.

5. Conclusions

19. The EDPS welcomes the particular attention in the Proposal on the respect for fundamental rights, including the correct implementation and application of the data protection requirements of the Schengen *acquis*, when carrying out Schengen evaluations.
20. Regarding the scope of the Schengen evaluations, the EDPS believes that the future Regulation should define it by laying down a non-exhaustive list of relevant policy fields, which would be subject to evaluation. In particular, the new Schengen mechanism should continue to provide for evaluations dedicated exclusively to data protection, carried out by data protection experts.
21. Finally, the EDPS underlines that the competencies of the various Union agencies, offices and bodies involved in the Schengen evaluations should be clearly distinguished. In particular, the Proposal should ensure that the independence of the European Data Protection Supervisor, pursuant to Article 55 of Regulation (EU) 2018/1725, is fully respected.

Brussels, 27 July 2021.

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

⁽²⁾ 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).

⁽³⁾ COM(2021) 278 final.