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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

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Glossary

Term or acronym	*Meaning or definition*
DPA	Data Protection Authority
EASO	European Asylum Support Office
ECRIS-TCN	European Criminal Records Information System
EDPS	European Data Protection Supervisor
EES	Entry / Exit System
ETIAS	European Travel Information and Authorisation System
eu-LISA	EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice
EURODAC	European Asylum Dactyloscopy Database
Europol	European Union Agency for Law Enforcement Cooperation
EUROSUR	European Border Surveillance System
FRA	Fundamental Rights Agency
Frontex	European Border and Coast Guard Agency (EBCG)
Schengen Committee	Committee assisting the Commission [within the meaning of Regulation (EU) No 182/2011]
SCH-EVAL	Schengen Evaluation And Monitoring Mechanism
SCH-EVAL working party	Council Working Party for Schengen Matters – Schengen Evaluation
SIS	Schengen Information System
TFEU	Treaty on the Functioning of the European Union
VIS	Visa Information System

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

1.1. A New Strategy for Schengen

Schengen is one of the most significant achievements of the European integration. It is an area where more than 420 million people, as well as goods and services, can circulate freely without being subject to border controls. Schengen contributes to the functioning of the Single Market and its creation has brought social and economic benefits to the European society[1].

The area without internal borders controls relies on Member States[2] applying effectively and efficiently the Schengen legal framework. It requires common efforts to maintain a high level of mutual trust between Member States and ultimately on a correct and efficient implementation of the Schengen legal framework. Deficiencies in one Member State (e.g. in the external border management) can affect all others and subsequently put Schengen at risk. The Schengen Evaluation and Monitoring Mechanism (hereafter 'SCH-EVAL' or 'the Mechanism') is essential for the effective functioning of Schengen by identifying and remedying problems and improving Member State implementation of the legal framework. As a peer-to-peer instrument, the Mechanism supports the building of mutual trust among Member States.

For the last 35 years, Schengen has been subject to continuous revisions to reinforce this trust. Today, it faces a different reality and 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 led to some Member States reintroducing internal border controls. In some cases, controls have been renewed several times since 2015.

These developments have highlighted the need to improve the governance structure and the tools available to make Schengen work. To address the challenges faced by the Schengen area, Commission President von der Leyen announced a Strategy on Schengen in her State of the Union address[3]. In the New Pact on Asylum and Migration[4], the Commission indicated that the 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 Schengen. One such initiative is the revision of the Mechanism.

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1 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 of 4.3.2016, p. 3.

2 Beyond EU Member States, Schengen covers also Iceland, Norway, Switzerland and Liechtenstein (so-called 'Schengen Associated Countries'). Ireland is not part of the area without internal border controls but it will apply the Schengen *acquis* in part as of 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. This impact assessment refers to all these countries as Member States. State of the Union Address by President von der Leyen at the European Parliament Plenary, 16 September 2020.

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

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

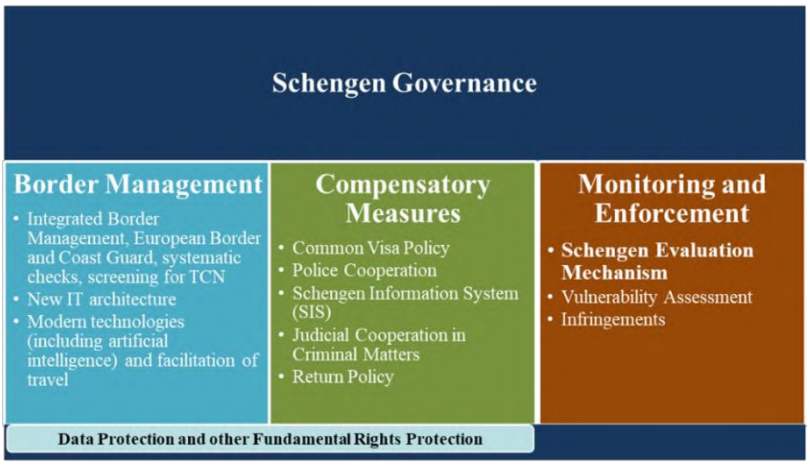
Other EU institutions stressed the need to reform the Mechanism. Both the European Parliament, in its 2017 resolution[5], and the Council, already through the consultation launched by the Finnish Presidency in 2019[6], invited the Commission to act. More recently, the Council adopted conclusions on the Mechanism inviting the Commission to put forward initiatives, in its proposal for the revision of SCH-EVAL, to streamline and clarify where necessary the evaluation process, and, in particular, asked to ensure that the Mechanism is adaptable to the evolving circumstances and developments of the Schengen *acquis* in order to address new challenges and to adapt to new realities[7].

The objective of the revision is to ensure that SCH-EVAL becomes a fully effective tool for evaluating the functioning of Schengen and for ensuring that the recommendations stemming from the evaluations are effectively implemented by Member States.

1.2. Schengen Governance and the role of the Schengen Evaluation and Monitoring Mechanism

Schengen is supported by a significant body of measures that compensate for the absence of controls at internal borders and effectively ensure a high level of security. The so-called Schengen *acquis* includes (1) measures at the external borders (external borders management), (2) compensatory measures (common visa policy, police cooperation, return policy and the Schengen Information System), and (3) a robust monitoring mechanism. These measures include the respect for data protection requirements and other fundamental rights. These three essential and complementary pillars of Schengen form the **'Schengen Governance'** and make the area without controls at internal borders possible (see Figure 1). The stability of this complex architecture depends on the strength of each individual pillar and on the coherence and cohesion of the whole system.

Figure 1 – Schengen Governance



In the last years, a number of initiatives have reinforced the legislative framework in the first and second pillars. For the field of external border management, the initiatives included the development of a new IT architecture (such as EES[8], ETIAS[9]), and the interoperability of the various IT systems underpinning the functioning of Schengen. Recent reforms also included systematic

5 Report on the annual report on the functioning of the Schengen area (2017/2256(INI)), (the 'European Parliament 2017 resolution').
6 Council doc. 13244/2019.
7 Council doc. 7939/21, p. 3 and 4 (the '2021 Council conclusions').
8 Entry and Exit System (EES). Regulation (EU) 2017/2226, OJ L 327, 9.12.2017, p. 20.
9 European Travel Information and Authorisation System (ETIAS). Regulation (EU) 2018/1240, OJ L 236, 19.9.2018, p.1.

checks of EU citizens against relevant databases at external borders[10], the adoption of the Frontex[11] Regulation in 2016[12], and its subsequent review in 2019[13] (which reinforced the mandate and competences of the agency with the inclusion of revised provisions on EUROSUR[14]), as well as the gradual development of an integrated system for managing the EU's external borders (the European integrated border management). More recently, the Commission put forward a proposal for a pre-entry screening[15] applicable to all third-country nationals who cross the external borders without authorisation.

Recent crises have shown that the EU is not sufficiently equipped to foresee, prepare and react in a coordinated and rapid manner to threats that may have an impact on the functioning of Schengen and require the adoption of measures of last resort. The Commission plans to strengthen Schengen's architecture further by setting up a mechanism to tackle concrete and immediate threats to the Schengen area in a coordinated manner[16] under the Schengen Borders Code[17]. To enhance the security of Schengen, the Commission intends to replace the Directive[18] on the obligation of carriers to communicate Advance Passenger Data (API).

New developments have been introduced under the second pillar and further changes are expected. The legislative package adopted in 2018[19] has widened the scope and functionalities of the Schengen Information System (SIS)[20]. The implementation of the revised Visa Information System (VIS) is planned to be completed by the end of 2021. The Commission has put forward proposals for a recast Return Directive[21] and a revision of the Europol[22] mandate[23], and is planning to strengthen police cooperation via an EU Police Cooperation Code.

Any legislation is only as good as its implementation. 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. It is therefore crucial to have an effective monitoring mechanism to verify how countries implement the

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10 Regulation (EU) 2017/458, OJ L 74, 18.3.2017, p. 1, amending Regulation 2016/399 as regards the reinforcement of checks against relevant databases at external borders.

11 European Border and Coast Guard Agency (EBCG), also known as Frontex.

12 Regulation (EU) 2016/1624, OJ L 251, 16.9.2016, p. 1 (the '2016 Frontex Regulation'). Repealed in 2019 by Regulation (EU) 2019/1896, OJ L 295, 14.11.2019, p. 1 (the '2019 Frontex Regulation').

13 The 2019 Frontex Regulation introduced expanded tasks and powers for the agency, which will benefit of new resources. 10 000 standing corps will be deployed starting from 2021 and will carry out executive task under the authority and control of the host Member State.

14 European Border Surveillance System (EUROSUR). Regulation (EU) 1052/2013, OJ L 295, 6.11.2013, p. 11. Repealed and replaced by Regulation (EU) 2019/1896.

15 COM(2020) 612 of 23.9.2020.

16 Regulation (EU) 2016/399, OJ L 77, 23.3.2016, p. 1, as amended.

17 The initiative to amend the Schengen Borders Code is subject to a separate Impact Assessment. Inception Impact Assessment (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12827-Amendment-of-the-Schengen-Borders-Code).

18 Council Directive 2004/82/EC, OJ L 261, 6.8.2004, p. 24–27.

19 Regulation (UE) 2018/1860, OJ L 312, 7.12.2018, p. 1–13, Regulation (UE) 2018/1861, OJ L 312, 7.12.2018, p. 14–55, and Regulation (UE) 2018/1862, OJ L 312, 7.12.2018, p. 56–106.

20 The implementation of the revised Schengen Information System is expected to be concluded by the end of 2021.

21 COM(2018) 634 final of 12.9.2018.

22 European Union Agency for Law Enforcement Cooperation (Europol).

23 COM(2020) 796 final of 9.12.2020.

Schengen *acquis* and recommend improvements to its implementation[24]. In its origins, the Mechanism was intergovernmental and remained in the hands of the Council. In 2013, the Council and the Parliament adopted the '**Schengen Governance package**'. This package included a Council Regulation[25] establishing the current 'Schengen Evaluation and Monitoring Mechanism'. The Regulation transferred the responsibility for the coordination and overall organisation of the Mechanism to the Commission.

However, under Article 70 TFUE[26], the Mechanism remains a shared responsibility, with the Commission carrying out evaluations jointly with Member State experts and supported by EU agencies and bodies. The Regulation introduced a five-year evaluation cycle and new tools so that the Mechanism can better respond to new challenges and provide an overview of horizontal issues affecting Schengen's functioning.

Within the Schengen Governance architecture, the **purpose** of SCH-EVAL has remained unchanged i.e. to maintain a high level of accountability, ownership of results and mutual trust among participating Member States. It contributes to a well-functioning Schengen by guaranteeing that Member States apply the Schengen *acquis* effectively following the agreed common standards, fundamental principles and norms. **SCH-EVAL is supposed to achieve these goals by objective and impartial evaluations** that are able to:

- quickly identify deficiencies in the application of the Schengen legal framework that could disrupt Schengen;
- ensure these deficiencies are swiftly addressed (to prevent these disruptions and ensure correct application of the Schengen *acquis*); and
- provide the basis for a political dialogue on the functioning of Schengen as a whole.

Thanks to the peer-to-peer element, Member States can get direct knowledge of the situation in other Member States by their experts' participation in the evaluation visits. Member State experts check what their peers are doing, recommending solutions and urging action if the Member State does not implement them.

This all-encompassing mutual trust element and its intergovernmental origin explain some of the key features of the Mechanism and current institutional balance:

- The Mechanism covers all areas of the Schengen *acquis* (pillars one and two of Schengen governance);
- Evaluation teams are composed by Commission and Member State experts (80% of the team is made of national experts and the remaining 20% of Commission's representatives; the representatives from EU agencies and bodies, although observers, are not formally part of the team);
- While the Commission is responsible for adopting reports, these are co-drafted and agreed by the evaluation team and must be discussed with the evaluated Member

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24 In 1998, the contracting parties, as part of the Schengen Convention, set up a Standing Committee with the mandate to identify shortcomings in the implementation of Schengen and propose solutions within an intergovernmental framework. See 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, as part of the 1985 Schengen Agreement (OJ L 239, 22.9.2000, p. 13) and the 1990 Schengen Convention (OJ L 239, 22.9.2000, p. 19)). The Council took over the coordinating role and evaluations were carried out at regular intervals by teams of Member State experts accompanied by a Council's representative and a Commission's observer.

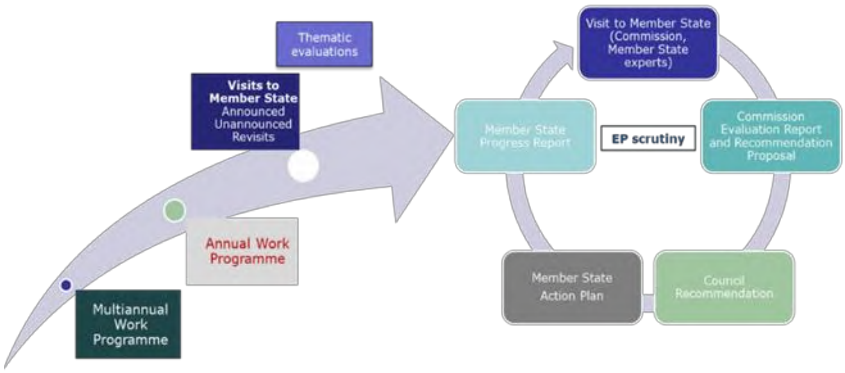
25 Council Regulation (EU) No 1053/2013, OJ L 295, 6.11.2013, p. 27 (the 'Regulation').

26 Treaty on the Functioning of the European Union (TFEU).

State, and receive the positive opinion of the Schengen Committee, in which Member States are represented;

- The Council adopts recommendations for remedial action upon a Commission proposal; The Commission is responsible for the monitoring of how Member States are addressing deficiencies while keeping the Council and the European Parliament informed; and
- The findings are discussed only between Member States and the Commission with little transparency vis-à-vis other actors, i.e. reports are EU RESTRICTED.

Figure 2 – SCH-EVAL evaluation cycle



The significant legislative developments under the two first pillars of the Schengen architecture require effective implementation by the Member States. Despite the substantial reinforcement of pillars one and two, SCH-EVAL remained unchanged[27] in the last years, which affected its capacity to keep up with the legislative developments. For a stronger and resilient Schengen, it is important that the Mechanism remains fit for purpose and reaches its full potential in order 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*. However, as shown in section 1.3, the current Mechanism has shortcomings that need remediation for the Mechanism to become a fully effective tool for evaluating the functioning of Schengen and for ensuring that recommendations stemming from the evaluations are effectively implemented.

1.3. Shortcomings of SCH-EVAL

In line with its reporting obligations to the Council and European Parliament, the Commission undertook a comprehensive review of the Mechanism's functioning presenting information on the effectiveness and relevance of the Regulation.[28] The five-year review[29], building of the six policy areas currently under evaluation[30] provides a state of play of the implementation of the Schengen *acquis* and it serves as basis for reflection on how to improve the Mechanism. For this exercise, the Commission collected and analysed data on

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27 The third pillar was reinforced with the 2019 Frontex Regulation, which established the Vulnerability Assessment process which offers a snapshot of Member States operational capacity in external borders management with a view to identifying potential weaknesses in the system.

28 Articles 20 and 22 of the Regulation.

29 COM(2020) 779 final of 25.11.2020 (the 'five-year review').

30 As indicated in the five-year review, the Mechanism currently evaluates six policy areas: external boder management, common visa policy, police cooperation, Schengen Information System, data protection and return.

the first five-year cycle and took into consideration information from relevant actors about the most critical aspects of this Mechanism.

This Impact Assessment builds on the data[31] collected in the framework of the five-year Review and its results (see Annex 3)[32]. It covers the overall functioning of the Mechanism and the problem analysis is not limited only to shortcomings related to the substance of the evaluation, i.e. six policy areas.

Overall, the five-year review confirmed that the Mechanism has **led to substantial and concrete improvements in the implementation of the Schengen *acquis*, proving its added-value** in ensuring Schengen's efficient functioning. The more than 200 evaluations carried out helped identify a number of serious deficiencies and address them swiftly. It also brought about tangible improvements in all policy fields, and made an essential contribution to the further development of the Schengen *acquis*[33].

The **added-value and necessity** of having an evaluation and monitoring mechanism of the Schengen *acquis* is recognised by the Council which considered that '*[w]hile fulfilling its core role of monitoring the proper application of the Schengen acquis, the evaluation process has brought further benefits in most Member States, including by strengthening national coordination, increasing expertise and exchanges via the experts participating in the evaluations, and feeding recommendations into national plans and strategies.*'[34] The European Parliament stressed the '*great value [of] the renewed Schengen evaluation mechanism as it promotes transparency, mutual trust and accountability between the Member States by scrutinising the way they implement the different fields of the Schengen acquis*'.[35]

However, the five-year review also identified a number of shortcomings that prevent the Mechanism from working as effectively as it could and should, undermining its full potential. This finding was in line with the 2017 report by the European Parliament, the Member States' consultation under the Finnish presidency in 2019 and the 2019 report of the Court of Auditors[36]. The study carried out in 2020 on behalf of the European Parliament[37] and the stakeholders' consultation supporting this impact assessment reinforced this conclusion.

Box 1 – Shortcomings of SCH-EVAL

Main shortcomings identified in the functioning of SCH-EVAL following the review of the first five-year Multiannual Evaluation Programme

- The excessive length of the evaluation process, even in cases of serious deficiencies;
- The high resource intensity for Member States, the Commission and EU agencies and bodies;
- The excessive focus of evaluations (and then recommendations) on very specific and numerous details rather than the core elements of the Schengen *acquis*;

31 Some of the data presented in the Impact Assessment may slightly differ from the information indicated in the five-year review, given that, by the time of adoption of the Impact Assessment, additional data was available on the first five-year cycle and taken into consideration.

32 A full *ex-post* evaluation of the Regulation was not possible due to the length of the evaluation procedure under SCH-EVAL and the fact that a relevant number of Member States were only at the beginning of their evaluation process at the end of 2019. Sufficient evidence was nevertheless available substantiating the urgent need for reform of SCH-EVAL.

33 See COM(2020) 779 final of 25.11.2020.

34 Council doc. 13244/2019.

35 The European Parliament 2017 resolution.

36 Court of Auditor, Special Report 20/2019.

37 The state of play of Schengen governance: An assessment of the Schengen evaluation and monitoring mechanism in its first multiannual programme, 2020 ('The state of play of Schengen governance').

- The lack of horizontal findings about the state of Schengen and the interplay among various policy fields;
- Unannounced visits not being as effective as originally conceived and little strategic use of thematic evaluations;
- Slow follow-up and implementation of the action plans to remedy identified deficiencies and the monitoring generally not being comprehensive and consistent;
- Insufficient effectiveness of recommendations as a tool to ensure that Member States take rapid action with deficiencies in the expected peer-to-peer pressure;
- Lack of triggering political discussions on the state of Schengen in relevant fora, and the irregular involvement of the European Parliament;
- Member States' contribution in terms of experts' participation not always matching the needs;
- Duplications with other EU mechanisms, notably Frontex Vulnerability Assessment; and
- Drawbacks in the integration of fundamental rights in the evaluations of external borders management.

Thus, the five-year review concluded that the Mechanism had succeeded in identifying many deficiencies and addressing them, driving towards the higher harmonisation of Member States practices according to high standards. However, it had failed to do so at the **speed** that the Member States and the European Parliament considered needed, given the current challenges and **new realities**, and in the **areas that matter**. It has also failed to provide for the basis that would facilitate a **political discussion** on the state of Schengen and its functioning.

Several unforeseen changes to material conditions and great uncertainty marked the beginning of the new evaluation cycle (2020-2024) as the COVID-19 pandemic spread throughout Schengen. The Commission had to postpone repeatedly a number of evaluations scheduled in the annual programme[38]. Covid-19 brought to the fore the rigidities of the Mechanism and its unsuitability to account for changing conditions. To address these shortcomings, the five-year review indicated possible operational measures to improve the Mechanism but it highlighted that, for the instrument to work fully effectively, it is essential to complement them with legislative changes.

2. PROBLEM DEFINITION

2.1. What are the problems?

Recent challenges have revealed a fragile trust among Member States that has manifested in several ways. The most notable was the prolonged reintroduction of internal border checks by six Member States[39]. SCH-EVAL is a technical instrument that aims at facilitating political dialogue. External political factors will always influence even the best-designed and most effective instruments. In the past five years, the visibility of SCH-EVAL's results and its capacity to build trust and promote political discussion has not been optimal. Evidence of this is that despite positive evaluations in external borders management, police cooperation and the Schengen Information System, and an overall assessment that Member States are implementing the Schengen *acquis* adequately, Member States continue prolonging internal border controls based on, among other reasons, weaknesses at the external borders. Furthermore, as shown in section 2.1.1, even when SCH-EVAL identified serious

[38] C(2015)4827 final of 23.7.2015.

[39] In the period between 2006 and 2014, internal border controls were only reintroduced 35. Since 2015, such border controls were reintroduced 212 times and overwhelmingly for the same three reasons: migratory flows, terrorism and COVID-19 pandemic, as recalled also by a citizen during the consultation.

deficiencies, discussions on the findings hardly reached the ministerial level. SCH-EVAL identified serious deficiencies in 10 evaluation visits[40]. However, SCH-EVAL triggered ministerial discussion only in the case of Greece's serious deficiencies in the external border management.

Given SCH-EVAL's role in the overall Schengen Governance architecture, it is important that the Mechanism is fit for purpose and deploys its full potential, while being more manageable from a resource point of view. The Impact Assessment analyses the problems affecting the functioning of the Mechanism. These problems (as well as drivers and policy options) were identified based on the conclusions of the five-year review of the implementation of the current Regulation, the recommendations collected during the stakeholders' consultation organised for this Impact Assessment as well as studies carried out on the functioning of the Mechanism and information from Council documents and European Parliament resolutions.

The shortcomings identified in the first five-year cycle can be summarised as **three interlinked problems**:

- Limited strategic focus and significant fragmentation, preventing an overview of the functioning of Schengen as a whole that would otherwise facilitate political discussion;
- Insufficient capacity to identify and quickly adapt and react to new circumstances, legislative developments and trends, particularly violations of fundamental rights at the external borders; and
- Slow adoption and implementation of remedies, with a peer-to-peer system that does not exert the expected pressure.

2.1.1. Problem 1 – Limited strategic focus and significant fragmentation preventing an overview of the functioning of Schengen as a whole that would otherwise facilitate political discussion

The Regulation clearly states that SCH-EVAL should contribute to '*political discussions at ministerial level on the correct functioning of Schengen, including discussions in situations where evaluation reports have shown serious shortcomings …*[and] *should assist the Council in taking decisions… to ensure the efficient functioning of Schengen*' (Recital 11). To do so, it is important to verify that Member States are correctly applying the various elements of the Schengen *acquis.*

However, in the first five-year cycle, the limited strategic focus and significant fragmentation of the evaluations prevented the Mechanism from providing an overview of the functioning of Schengen, limiting political discussion (e.g. how well Schengen was working, common problems to all Member States and best practices).

Given the substantial number of policy fields and legal acts that sustain Schengen (around 200 acts), it is impossible to focus on the implementation of all provisions. The Mechanism should ensure that Member States properly implement the core elements and have a helicopter view across different policy fields. The actors involved (the Member States and the Commission in the Schengen Committee[41]) 'pre-selected' six priority policy fields that

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40 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).

41 See Article 21 of the Regulation and Box 9.

should be evaluated in the first five-year cycle, which they also confirmed for the second cycle. These fields include external border management, common visa policy, police cooperation, Schengen Information System, data protection, and return[42]. In theory, the Mechanism also developed a method for identifying more targeted evaluations for each Member State, based on risk analysis submitted by relevant EU agencies and bodies.

However, in the attempt to cover as many provisions as possible, SCH-EVAL has mainly focused on the correct transposition and implementation of all the provisions of the Schengen *acquis* in these six policy fields (about 25 legal acts). This focus resulted in voluminous detailed reports with numerous findings that produced equally numerous and punctual recommendations, often related to local issues, without assessing their overall impact on Schengen. From the shade of blue in the signposting of the border crossing points to the insufficient light in the booths, evaluations, reports and recommendations focused on too many issues that, although linked to specific obligations under the Schengen *acquis,* did not necessarily have an impact on the functioning of Schengen.

This focus on details, while instructive, has meant that evaluations have not been used to identify system-based deficiencies across Member States or to draw conclusions on how well a Member State applies the legal framework overall. Even a Member State with a robust system could still receive 40 recommendations in one single policy field, 15 related to material problems limited to specific airports[43]. In one year, the Mechanism evaluates about 6-8 Member States in each of the six policy fields. A single Member State could receive hundreds of recommendations to implement through a minimum of six action plans. For the Commission, it has meant drawing conclusions about the state of Schengen from as many as 1 000 findings and recommendations. Because of this focus on details, it has become almost impossible to identify potential problems generated by the interplay between policy fields.

Box 2 – Links between policy fields

With the entry into force of the new legal basis for using the Schengen Information System (SIS), SIS will become a key element to support return systems by recording entry bans issued under the Return Directive. Since these entry bans prohibit entry into the territory of all Member States, not only into the territory of the issuing Member State, its timely issuance and upload into the SIS is particularly important. If country X does not systematically issue and register in SIS these entry bans, the evaluation reports on the Schengen Information System and in the field of return for that country might not consider it as a key deficiency, since in isolation these are not core elements of the SIS or of the return system. However, without the alert in SIS, the European dimension of the measure will not be effective. It would not be possible for another Member State to prohibit the entry into Schengen territory of a person subject to an entry ban somewhere else. These deficiencies may go unnoticed amid other deficiencies. However, suppose a Member State with a significant flow has one or both of these deficiencies or these deficiencies are present in many Member States. This scenario could impact Schengen's functioning[44].

As the Mechanism focused on these detailed regular evaluations in the six policy fields, it failed to utilise thematic evaluations, created partly to help the system identify common challenges and trends. Only two thematic evaluations took place in five years, respectively on

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42 The previous Mechanism did not evaluate return. In 2015, the actors involved agreed that judicial cooperation was no longer a priority. Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States does not qualify as Schengen *acquis* although it replaced provisions on extradition in the Schengen Convention. Such provisions apply only in relation to Switzerland and Liechtenstein as well as between all associated countries.

43 See Council doc. 12869/20.

44 This link will become even more important in the future, as SIS's use will be further extended in the field of return. See Regulation (EU) 2018/1860, OJ L 312 of 7.12.2018, p. 1.

local Schengen cooperation in the area of visa policy and on the national strategies for integrated border management. The use of thematic evaluations (which aim at verifying the application of specific parts of the Schengen *acquis* across several Member States) could have been more strategically use to obtain an overview of Member States' performance in specific areas of the Schengen *acquis*.

The five-year review highlighted that the localised nature of recommendations has also discouraged discussion in the Council. There were too many detailed reports (about 35-40 a year) and thus they were rarely discussed in the Schengen Committee, the SCH-EVAL working party[45] or at political level. As a result, in the past five years, Ministers have only once discussed SCH-EVAL findings. It was Greece's serious deficiencies on external border management, which led to the reintroduction of internal border controls[46]. Even when a later evaluation considered that Greece had addressed those deficiencies, the Mechanism failed to trigger Ministerial level discussions.

The lack of strategic focus and political discussion on results emerged during the stakeholders' consultation as one of the main problems. Several Member States (during the consultation and the 2021 Council conclusions[47]) stressed the need to foster political discussion on the deficiencies identified during the Schengen evaluations. Some DPAs[48] and EDPS[49] highlighted the lack of visibility of the Mechanism and its results at the national level. Some civil society organisations indicated that SCHEVAL should guarantee proper political discussion on the state of Schengen and put pressure on Member States to adopt remedial actions.

A recent study conducted on behalf of the European Parliament also highlighted the lack of strategic focus and resulting lack of overview of Schengen's functioning as one of the main criticisms: '*[SCH-EVAL] does not leverage its findings for broader aims such as the further development of national or EU/Schengen policies*'. '*[I]t provides a snapshot-style evaluation of specific Schengen policy area(s) in a particular country but does not provide the instruments to extract from those findings Schengen-wide conclusions of a more strategic nature*'.[50] During the stakeholders' consultation, the European Parliament echoed that the Mechanism's current design and functioning prevented it from having an overview on Schengen as a whole[51].

As further clarified in the section on drivers, the limited political discussion of the evaluation findings derives from the significant number of reports (due to the fragmentation of the instrument into six policy fields) and sets of very detailed recommendations as well as from the complicated decision-making process. All this led to reports remaining at the technical level. In addition, the Council's involvement in all the different procedures have limited the

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45 Council Working Party for Schengen Matters - Schengen Evaluation.

46 Council Implementing Decision (EU) 2016/894, OJ L 151, 8.6.2016, p. 8.

47 The 2021 Council conclusions, p. 3, indicate: '*The Council [...] invites the Council and the Member States to regularly address, at the appropriate political level, the identified deficiencies, their impact on the overall functioning of the Schengen area without border control at internal borders and the measures taken to remedy them…*'.

48 Data Protection Authorities (DPAs).

49 European Data Protection Supervisor (EDPS).

50 The state of play of Schengen governance, pp. 53 and 18.

51 During the workshop, the European Parliament recommended to ensure more flexibility when using all the tools currently available and dedicate more time to horizontal findings and to have a better overview of the Schengen area as a whole.

Council's capacity to exert the aimed-for peer pressure and focus on the most politically relevant aspects that could have an impact on the functioning of Schengen. On the Commission's side, the regular adoption of the annual SCH-EVAL report[52] would have also helped bringing political attention to evaluation results and progress made by Member States.

Table 1 – Problem 1 and corresponding Drivers

Problems	Drivers	Area of intervention
Limited strategic focus and significant fragmentation preventing an overview of Schengen	***Primary drivers***	
	• A broad scope with gaps and not adapted to new realities (**Driver 1.1**), which does not entirely ensure a fully efficient evaluation of Schengen's functioning and limits the Mechanism's strategic focus.	**Material and temporal scope**
	• A fragmented articulation of evaluations into six policy fields that are not adapted to new legislative developments and needs (**Driver 1.2**), which leads to a significant number of reports / recommendations per Member State and limits the Mechanism's strategic focus and its capacity to provide an overview of a Member State performance overall and of Schengen's functioning.	
	• A too limited temporal scope to allow for a flexible use of available tools (**Driver 1.3**), limiting the Mechanism's strategic focus and its capacity to react to new circumstances.	
	• Unbalanced & underused sources of information and expertise (**Driver 4.1**) and limited coordination and synergies with other instruments (**Driver 4.2**) when designing specific evaluations, the combination of which does not allow for targeted and strategic evaluations and leads to very technical and numerous recommendations, leading to fragmentation thereby limiting the Mechanism's strategic focus.	**Evaluation design / implementation – actors & synergies**
	Secondary drivers	
	• Inadequate criteria underlying evaluation and monitoring tools (**Driver 2.2**), in particular thematic evaluations and revisits, which does not allow for the Mechanism to make the best and most strategic use of the tools available.	**Evaluation & monitoring tools**
	• Complex decision making evaluation process (**Driver 3.1**) and a potential disproportionate institutional balance (**Driver 3.3**) with too much Member State/Council supervision, which reduces the capacity of the Council to have a political discussion on the state of Schengen and the areas that matters (serious and recurrent deficiencies), thereby reducing the Mechanism's strategic focus.	**Decision-making & institutional balance**

2.1.2. Problem 2 – Insufficient capacity of the Mechanism to identify and quickly adapt and react to new circumstances, legislative developments and trends, particularly violations of fundamental rights at the external borders

The Regulation introduced multiannual and annual evaluation programmes to create certainty in evaluations' consistency and frequency. The Mechanism considered these **'periodic evaluations'** as the main tools to ensure an overall correct application of the *acquis*. It also introduced the possibility of *ad-hoc* evaluations in the form of **unannounced visits** and **revisits** (which can be announced or unannounced) particularly in the case of serious

[52] Article 20 of the Regulation.

deficiencies. It foresaw **thematic evaluations** for the application of specific parts of the Schengen *acquis* across several Member States.

Despite these new tools, the Mechanism was not sufficiently capable to identify quickly deficiencies, react to new circumstances, i.e. emerging problems not identified in a risk analysis, or to new legislative changes intervening in the middle of the evaluation cycle. It also failed to adjust to new types of violations. In addition, it underutilised the new tools.

- **Insufficient capacity to quickly react to new circumstances**

One year often passes between programming an evaluation and carrying it out. Even unannounced visits, which should be the most flexible tool, must be programmed one year in advance based on a risk analysis concluded one year before the visits take place. By the time of the visit, operational circumstances might have changed and the information received in the risk assessment might be outdated. In the first five-year cycle, this was clearly the case. The 2015 migration crisis dramatically changed the circumstances under which Member States operated, making evaluations more urgent. It took, however, disproportionately long to organise an evaluation visit. The Commission cancelled one unannounced evaluation, as, by the time it was due to take place, the circumstances justifying it were no longer present.

- **Insufficient capacity to adapt to new legislative developments that occurred in the middle of the cycle**

Pertinent legislation was also amended and brought new requirements that Member States need to implement. The Mechanism found it challenging to evaluate Member States' compliance with the numerous new legal requirements that entered into force in the middle of the cycle and respect equal treatment among Member States. As a rule, the Mechanism evaluates Member States only once in five years in the six policy fields. If new measures enter into force after the cycle has begun, the Mechanism is unable to assess their implementation in the Member States that have already been subject to an evaluation in the policy field concerned.

A more systematic use of thematic evaluations to assess new legal requirements as they entered into force would have helped address this issue. As this tool aims at verifying the application of specific parts of the Schengen *acquis* across several Member States, it could have offered a snapshot of Member States' compliance with new requirements at once, identifying trends and common shortcomings in their implementation. SCH-EVAL only used thematic evaluations to this end once: the evaluation of national strategies for integrated border management.

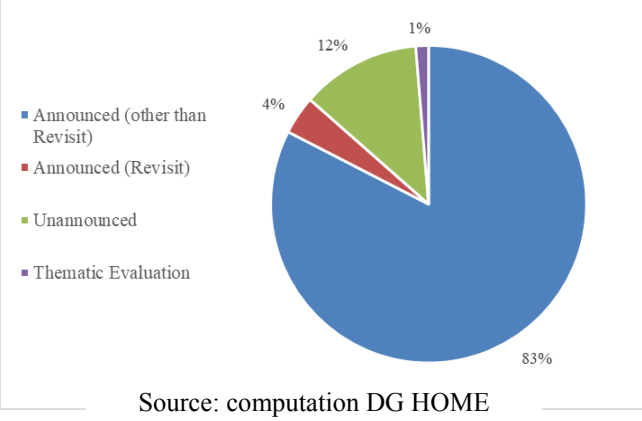
Box 3 – Thematic evaluation of national strategies for integrated border management

In 2016, the EBCG Regulation defined the elements for integrated border management and required Member States to establish national strategies. Given the strategic importance of ensuring all Member States have robust and harmonised strategies, in 2017 the Commission proposed to carry out a thematic evaluation of the national strategies. The Council, supporting this view, in its Conclusions of 4 and 5 June 2018, invited the Commission to carry out this thematic evaluation in 2019-2020. The exercise resulted in the evaluation in parallel of the strategic approach to border management in 25 Member States[53]. This is an example of SCH-EVAL using available tools to adapt to legislative changes while ensuring equal treatment and draw horizontal findings relevant to the entire Schengen area[54].

[53] All Member States applying in full the Schengen *acquis* and that are part of the area without internal border controls, except Liechtenstein that has no external borders.

[54] C(2020) 8000 final of 17.12.2020.

Figure 3 – Evaluations under the first five-year cycle



Source: computation DG HOME

In conclusion, the first five-year cycle focused on periodic, comprehensive and predictable evaluations per Member State and per policy field rather than based on risk analysis. In the first five-year cycle, only 29 unannounced evaluation visits, 2 thematic evaluations and 9 revisits took place. Overall, 83% of the visits were announced evaluations (see Figure 3). The stakeholders interviewed during the preparation of the study requested by the European Parliament noted that SCH-EVAL, being designed as an instrument to evaluate effectively the performance of an individual Member State at a specific point of time, '*cannot keep pace with fluid policy and legal developments and evolving situation on the ground*'.[55]

- **Insufficient capacity to adapt to new types of violations of fundamental rights at the external borders**

The Mechanism was notably unable to adjust to new type of violations that emerged since 2015 in the area of fundamental rights.

For a long time, in the context of Schengen, fundamental rights protection mainly focused on data protection due to the prominent role of information exchange under the Schengen *acquis*. However, apart from evaluating how Member States apply data protection requirements, the Regulation recalls that '*[d]uring the evaluation and monitoring particular attention to respect for fundamental rights in the application of the Schengen acquis should be paid*'.[56] The Schengen *acquis* includes a wide and diversified range of safeguards for the protection of fundamental rights[57]. These safeguards come on top of those stemming directly from Member States' general obligation to respect the EU Charter of Fundamental Rights[58] while implementing EU law[59].

Fundamental rights are mainstreamed in all policy fields. Fundamental rights is also a particular area of attention in the return field, where procedural rights and material detention conditions are core elements of the evaluation. The Mechanism has also proved effective in detecting deficiencies related to procedural rights in external border management. According to FRA's latest report[60], each of the evaluations conducted between 2015 and 2019 to assess border management led to one or more fundamental rights-related recommendations, producing more than 150 recommendations in total. A large share relates to shortcomings identified at individual border-crossing points, focusing on issues arising during the border

55 The state of play of Schengen governance, p. 71.
56 Recital 14 of the Regulation.
57 See, for example, Article 4 Schengen Borders Code.
58 OJ C 326, 26.10.2012, p. 391.
59 Article 51 of the Charter of Fundamental Rights.
60 Fundamental Rights Agency (FRA), Migration: Fundamental rights issues at land borders, 2020 (https://fra.europa.eu/en/publication/2020/migration-fundamental-rights-issues-land-borders).

check procedure. Deficiencies include the right to privacy, lack of language skills of the border guards and unavailability of interpretation, or the lack of information giving reasons for second-line checks or for refusal of entry.

However, migration flows increased and allegations of mistreatment at the external borders grew in several Member States. Since the 2015 migration crisis, the number of migrants arriving irregularly increased the pressure on front line Member States to protect the external borders. The measures adopted to ensure the security of the external borders and return migrants became stricter to meet unprecedented challenges. The protection of third country nationals' fundamental rights turned to a reason of concern, leading to an increased reporting of violations of fundamental rights at the external borders (violence and pushbacks).

The Mechanism proved less effective in detecting, reacting and addressing those claims and material breaches. Member States have an obligation to refuse entry to third-country nationals not fulfilling the Schengen Borders Code requirements and to return them to their countries of origin, while respecting the fundamental right of third-country nationals to apply for asylum and to be treated with dignity. At the same time, the principle of *non-refoulement*[61] forbids returning asylum seekers to a country in which they would be in likely danger of persecution. Determine whether there are fundamental rights violations becomes very difficult. Detecting them also requires reacting as soon as information is available with an element of surprise.

Several stakeholders, in particular the European Parliament and the consulted civil society organisations stressed the Mechanism's limited capacity in this regard. Some EU bodies / agencies pointed out the limited evaluation of fundamental rights' aspects across all policy fields (with the exception of data protection).

Box 4 – European Parliament's assessment of SCH-EVAL shortcomings to detect and react fundamental rights violations (other than data protection violations)

'From a fundamental rights perspective, recommendations are of a more general nature (related to e.g. staff training) and the persistent fundamental rights violations that exist, such as *non-refoulement*, **are not picked up by the [SCH-EVAL]** due to the nature of the evaluation visits and the restrictive approach to considering evidence. The understanding is that the [SCH-EVAL] cannot be expected to detect fundamental rights issues (e.g. *refoulement* and push-backs) due to the orchestrated nature of announced visits and the fact that, for unannounced visits to external borders, the host state must be informed 24 hours in advance. In addition, it is not designed to respond and react in a speedy way to possible violations.'[62]

In its latest report, FRA notes that '*[r]ecommendations to Member States relating to the issue of refoulement and push-backs have so far not been adopted, despite the number of reported incidents in different Member States in recent years*'.[63]

As further explained in the section 2.2, the Mechanism's limited capacity to detect such fundamental rights violations at the external borders originates from failures in the Mechanism's design (rigidity of programming and conditions for unannounced visits). It also derives from failures in the Mechanism's implementation (insufficient experts with the right profile, inadequate risk analysis, insufficient use of sources of information from third parties,

61 *Non-refoulement* is a core principle of international law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation.

62 The state of Schengen governane, p.51.

63 2020 FRA Report, p. 35.

not sufficient involvement of the Fundamental Rights Agency in external borders evaluations[64]).

Table 2 – Problem 2 and corresponding Drivers

Problems	Drivers	Area of intervention
Insufficient capacity to identify and quickly adapt and react to new circumstances, particularly violations of fundamental rights at the external borders	***Primary drivers***	
	• Rigid evaluation programming (**Driver 2.1**) planned a year ahead the evaluation takes place (including for unannounced evaluations), with too many details and requiring a cumbersome procedure for amending it, that does not allow the Mechanism' to quickly react to new information / circumstances, new legislative developments, or specific allegations of fundamental rights violations at the external borders.	**Programming Evaluation & Monitoring tools**
	• Inadequate criteria and conditions underlying evaluation and monitoring tools (**Driver 2.2**) including unannounced evaluations (which must be planned a year in advance and require a 24h notice), revisits (which become new evaluations), and thematic evaluations (which do not have a clear purpose), limiting the Mechanism capacity to react and adapt to new circumstances and legislative developments or specific allegations of fundamental rights violations at the external borders.	
	• Unbalanced and underused sources of information and expertise (**Driver 4.1**), in particular third party information, which is not systematically considered as source of information across policy fields, which undermines the capacity of the Mechanism to react to specific violations of fundamental rights at the external borders.	**Evaluations design / implementation – actors & synergies**
	• Limited coordination and synergies with other instruments (**Driver 4.2**) – information which is provided a year ahead the evaluations are taking place – which reduces the quality of the specific evaluation's design and the capacity of the Mechanism to quickly adapt and react to new circumstances.	
	• Qualification and size of evaluation teams and unbalanced contribution of experts (**Driver 4.3**), with experts not always having the necessary expertise, in particular to detect violations of fundamental rights at the external borders, short-notice given to mobilise experts for specific evaluations (including unannounced evaluations) and heavenly relying on five Member States (which provide 1/3 of all experts). All this limits the capacity of the Mechanism to react to new developments and violations of fundamental rights at the external borders.	
	Secondary drivers	
	• A too limited temporal scope to allow for a flexible use of available tools (**Driver 1.3**). In particular, it does not allow the Mechanism to use thematic evaluations (which would help adapting when legislative changes happening in the middle of the cycle while ensuring equal treatment among Member State) and organise more unannounced evaluations and revisits to react to new circumstances and emerging issues.	**Scope**

[64] The five-year review, p. 16, indicates: *'[…] during the evaluation and follow-up, the respect for fundamental rights in the implementation of the Schengen acquis needs particular attention.[…] wider participation of the Fundamental Rights Agency in the evaluations […] could be beneficial in this regard'.*

2.1.3. Problem 3 – Slow adoption and implementation of effective remedies

A third problem of the Mechanism, as shown in the five-year review, is the slow adoption and implementation of remedial actions by Member States, which derives in part from the excessive length of the evaluation and follow-up process. The data collected for the five-year review indicated that, between 2015 and 2019, it took on average about one year from the end of the evaluation visit until the adoption of the recommendations, with some cases taking up to 18 months, if not longer (seeFigure 4).

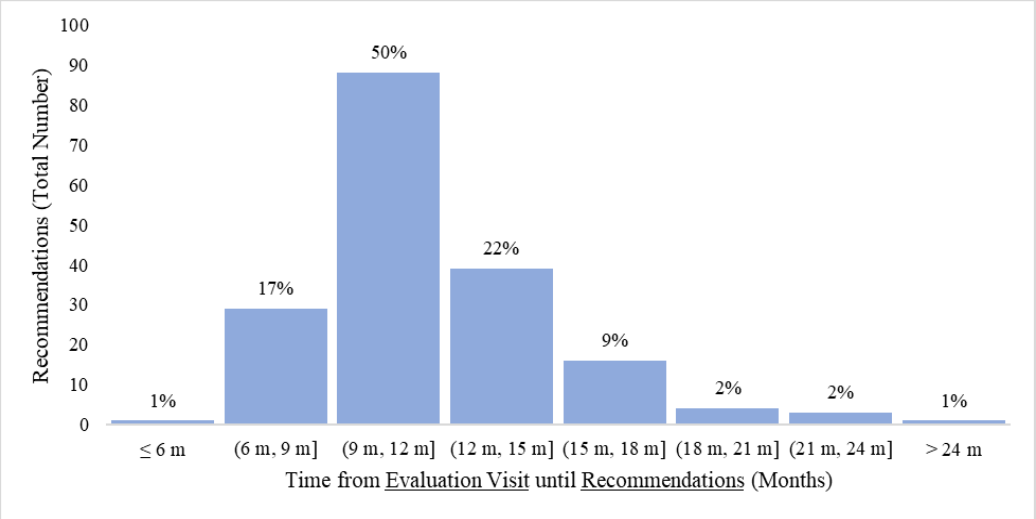
The length of the evaluation process delayed the capacity of the Mechanism to bring about concrete changes swiftly, as the adoption of the recommendations is what triggers the Member States' obligation to start addressing the deficiencies by adopting remedial actions. This delay risks undermining the results of the whole evaluation and monitoring process.

Box 5 – Length of the process in cases of 'serious deficiencies'

Since 2015, in ten cases, evaluation reports identified '*serious deficiencies'*. While the Regulation sets shorter time limits for monitoring such cases in the follow-up due to their urgency, in the first phase of the process the time for adopting the recommendations (425 days) was even longer than the average adoption length, undermining the benefit of shorter time limits in the follow-up. Only in one case was the evaluation report adopted swiftly, within 3 months. Data on the length of the process do not indicate any significant correlation with the number of priority recommendations either. **Overall, the process's length was not shorter, but sometimes even longer in the most problematic cases.**

Since SCH-EVAL started operating in 2015, Member States have made significant progress in improving the application and implementation of the Schengen *acquis*. Yet, for several Member States, the fulfilment of the recommendations was slow. The process was so slow that, at times, recommendations were no longer relevant or Member States had presented several progress reports[65] before the Commission had finalised its assessment of the action plan. The length was also variable with a third of the cases taking over a year. This variability was also not linked to the case's urgency or priority (see Box 5).

Figure 4 – Length of the evaluation process

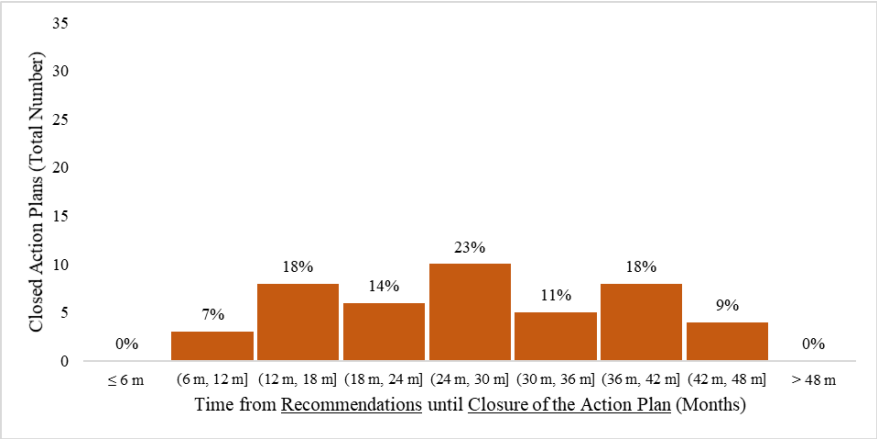


Source: five-year review

[65] In a recent case, a Member State had already submitted its fourth progress report by the time the Commission formally adopted the assessment of the action plan.

The Court of Auditors highlighted that '[*F*]*rom the time a shortcoming is detected, it could take almost two years before a [Member] State starts to report on the corrective action it has taken*.'[66] The five-year review confirmed that on average it took over 2 years to close the action plan from its submission. A relevant number of recommendations remained open for years. At the end of the five-year cycle, the Commission has formally closed only about 25% of the procedures. The action plans of the first five-year cycle are still open even for Member States evaluated in 2015-2016 and which are undergoing evaluations for the second time in 2020.

Figure 5 – Formally closed procedures



Source: five-year review

All stakeholder groups (notably, the majority of Member States, the European Parliament, some EU bodies / agencies and civil society organisations) indicated the delays in the adoption and implementation of remedies as one of the main shortcomings affecting the Mechanism's effectiveness.

Table 3 – Problem 3 and corresponding Drivers

Problems	Drivers	Area of intervention
Slow adoption and implementation of remedies	***Primary drivers***	
	• Complex decision making evaluation process (**Driver 3.1**) with a two-step approach (Commission adopts reports and the Council recommendations) and with no time-limits, which makes the evaluation process too long (between 10 and 12 months between the visit and the adoption of recommendations even for cases of serious deficiencies– adoption of the recommendations being what triggers Member States obligations to address deficiencies).	**Decision-making & institutional balance**
	• Cumbersome and inadequate monitoring and follow up process (**Driver 3.2**) – e.g. too many steps required, too formalistic, excessive reporting obligations and with no timelines (or deadlines) for implementing recommendations –, undermining the capacity of the Mechanism to put pressure on Member State to implement remedies promptly.	
	• A potential disproportionate institutional balance (**Driver 3.3**) with excessive supervision by Member States and Council, which affects the length of the procedure, and which undermines the capacity of the Mechanism to put pressure on Member State to implement remedies promptly (the Council is involved in all reports and all	

66 Court of Auditor, Special Report 20/2019, p. 21.

Problems	Drivers	Area of intervention
	recommendations even with minor findings).	
	Secondary drivers	
	• Inadequate criteria underlying evaluation and monitoring tools (**Driver 2.2**), in particular revisits, which become new evaluations adding even more recommendations rather than focusing on exerting pressure on the Member State to implement existing ones.	**Evaluation & Monitoring tools**

2.2. What are the problem drivers?

The drivers relate to failures in the Mechanism's design and in its implementation (see Table 4). Drivers are interlinked, reinforcing each other, and relate to one or more of the problems. All three problems concern directly:

- The substance of the evaluations, i.e. the scope of evaluations, meaning the legislative provisions falling under the Mechanism (the Schengen *acquis*), and the articulation of announced evaluations into specific policy fields (Driver 1); the way individual evaluations for the specific policy field and Member State are designed (Driver 4);
- The evaluation process i.e. the way evaluations are programmed and the types of tools used (Driver 2) and the way evaluations are carried out (Driver 4); and
- The Mechanism governance, i.e. decision-making and institutional balance (Driver 3).

However, it is not possible to limit the problems entirely to these three elements substance of the evaluations (scope and evaluation design), the process (programming) and the Mechanism's governance (decision-making). Given the multitude of drivers, the Impact Assessment groups the shortcomings around the main areas of intervention based on how SCH-EVAL is constructed:

- Scope of evaluations (too fragmented, articulated around policy fields but with gaps in its coverage and too limited temporal scope to allow for an optimal use of all tools available - Driver 1)
- Programming (too rigid and formalistic so the Mechanism cannot adapt and react - Driver 2);
- Evaluation and monitoring tools (criteria for their use not adapted to the needs / purpose, resulting in some tools being underutilised - Driver 2);
- The evaluation and the follow-up procedures and processes (decision-making too complex and bureaucratic, with no clear timelines, it takes too long for both evaluations and follow up. and heavily relies on Member States supervision - Driver 3);
- Specific evaluations design and implementation – the actors involved and synergies with other instruments (the inadequate and insufficient use of information and risk analyses and synergies with other instruments to identify what needs to be evaluated concretely for each Member State in the main policy fields, and a deficit of experts with the right profile from specific Member States and for specific policy fields - Driver 4).

Table 4 – Failures in the design and implementation of the Regulation

Problems	***Problem Drivers***			***Specific Objectives***
	Drivers	*Regulation design*	*Regulation implementation*	
Limited strategic focus and significant fragmentation preventing an overview of Schengen	**Driver 1: Material and temporal scope** 1.1. A scope with gaps 1.2. Fragmented articulation of evaluations in policy fields not adapted to new legislative developments and needs 1.3. A too limited temporal scope to allow for a flexible use of available tools	• Exclusion of provisions relevant for the functioning of Schengen not belonging to the Schengen *acquis*; • Legislative elements that lead to fragmentation (Article 4 lists the specific policy fields); • Evaluation cycle length.	• Strict articulation per policy field (six policy fields evaluated); • Policy fields currently evaluated not adapted to recent developments and needs (does not cover new legislative developments or EU agencies activities).	**Avoid gaps in the evaluation findings and increase strategic focus**
Insufficient capacity to identify and quickly adapt and react to new circumstances, legislative developments and trends (including specific fundamental rights violations at external borders)	**Driver 2: Rigid evaluation programming and inadequate criteria underlying evaluation and monitoring tools** 2.1. Rigid programming 2.2. Inadequate conditions and criteria underlying evaluation and monitoring tools	• Conditions and timeframe to programme evaluation visits; • Absence of (clear) criteria for the use of unannounced and thematic evaluations, and revisits; • Advance notice limiting the effectiveness of unannounced evaluations.	• Limited use of risk analysis and information from other monitoring tools in the organisation of the evaluations; • Underuse of unannounced and thematic evaluations, and revisits.	**Rationalise the distribution of tasks and responsibilities, and simplify and accelerate processes and procedures**
Slow adoption and implementation of remedies	**Driver 3: Inadequate articulation of processes and procedures with a portential disproportionate institutional balance** 3.1. Complex decision-making for evaluation process 3.2. Cumbersome and inadequate process for monitoring and follow up 3.3. A potential disproportionate institutional balance	• Multi-steps decision making process; • Absence of a clear time-line; • Legal form of the action plans' assessment (Commission Communications); • Disproportionate reporting obligations on the Member States (one report every three months); • Heavy supervision by Member States and limited involvement of the European Parliament.	• Slow processing of the files (inside Commission but also in the continuous ping-pong with the evaluated Member State to finalise the report ahead of its presentation at the Schengen Committee); • Use of revisits as new evaluations (due to different interpretations of the legal act).	
Insufficient capacity to identify and quickly adapt and react to news circumstances, legislative developments and trends (including specific fundamental rights violations at external borders)	**Driver 4: Inadequate and insufficient participation of relevant actors in the design and implementation of evaluations / synergies with other instruments** 4.1. Unbalanced and underused sources of information and expertise 4.2. Limited coordination and synergies with other instruments 4.3. Qualification and size of the evaluation team and unbalanced contribution of experts	• Standardised evaluation team size; • Short term calls for designations of experts; • Absence of provisions on the coordination between SCH-EVAL and other mechanisms and actors; • Legal obstacles to the exchange of information about SCH-EVAL evaluations with actors other than Member States.	• Limited use of third parties sources; • Unbalanced Member States experts' contribution (5 Member States provide 1/3 of experts); • Absence of trainings in certain areas and limited trainings in fundamental rights; • Limited exchange of information with EU bodies and agencies.	**Strengthen the implementation of fundamental rights safeguards under the Schengen *acquis***
Limited strategic focus and significant fragmentation preventing an overview of Schengen				**Optimise the participation of MS experts and the involvement of EU bodies and agencies / synergies with other instruments**

2.2.1. Driver 1 - Material and temporal scope of evaluations: the substance of evaluations and the temporal scope of the SCH-EVAL cycle

2.2.1.1. Driver 1.1. A scope with gaps and which is not adapted to new realities thereby not ensuring a fully efficient evaluation of Schengen's functioning limiting the Mechanism's strategic focus

The scope of SCH-EVAL falls at times short in covering all elements needed to ensure an efficient and effective implementation of the Schengen *acquis*. Article 4 sets that 'evaluations may cover all aspects of the Schengen *acquis*, including their effective and efficient application by Member States'.

The most notable gap regards the impossibility of addressing effectively issues linked to the **implementation of provisions that do not belong to the Schengen *acquis*,** even if this may significantly affect **the functioning of Schengen**. Police cooperation offers striking examples. The *Prüm* Decision[67], a keystone of cross-border cooperation, does not qualify as development of the Schengen *acquis*, which precludes its evaluation under SCH-EVAL. Nonetheless, the correct implementation of the *Prüm* Decision may have a strong influence on the information exchange under Schengen (see Box 6), which is a key element for its well-functioning. The evaluation team cannot directly evaluate whether a Member State is compliant or non-compliant with the *Prüm* Decision. Any issues identified – even when directly affecting Schengen – may only lead to a finding of need for improvement. This restricts the means to require remedies from the Member State[68].

Box 6 – The *Prüm* Decision

A terrorist attack happens in Country X. The terrorist manages to escape but leaves behind a DNA sample. Country X forensic service uploads the sample to the national system after which the automated comparison of DNA profiles through *Prüm* is carried out. A match occurs in Country Y. However, since Country Y's forensic service did not properly adopt the evaluation procedure as foreseen in the *Prüm* Decision, the evaluation does not take place, preventing the identification of the terrorist. The police cooperation evaluation under the Regulation, which took place in Country Y the previous year, had not evaluated issues with the *Prüm* Decision implementation since it is not considered part of the Schengen *acquis*.

Article 4's specific reference to 'by Member States' also created a situation where evaluations did not cover new relevant activities of EU agencies properly, even though they were traditionally Member States' responsibility. This created an asymmetry as the Mechanism does cover the activities that are implemented by private entities on behalf of a Member State (e.g. external service providers in the field of visa policy or airlines under external border management). This limitation applies to Frontex, which deploys operational staff at the external borders, carries out return operations and can be fully responsible temporarily on behalf of the Member State concerned for the surveillance of segments of the external border. It also applies to Europol as it carries out second-line security checks. It may also apply in the future to additional Europol activities (related to Schengen Information

[67] Council Decision 2008/615/JHA, OJ L 210 of 6.8.2008. p. 1.

[68] Under Article 14(3), one of the following assessments shall be given to each finding in the evaluation report: '*compliant*', '*compliant but improvement necessary*' or '*non-compliant*'. In case of 'improvement necessary', Member States are not strictly obliged to report to the Commission on the fulfilment of the recommendations (Article 16(8)).

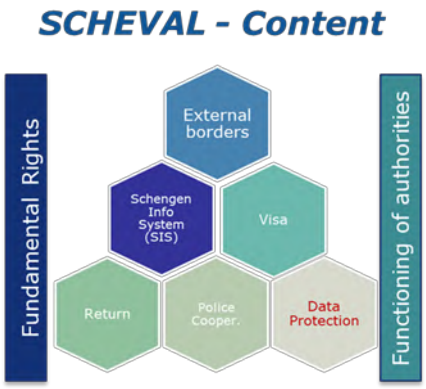
System). With these limitations, there is the risk of gaps and the Mechanism cannot provide the overall picture for example of external borders management, particularly as Member States under pressure rely increasingly on EU agencies and private companies to support the implementation of the Schengen *acquis*. Member States, the Council[69] and the European Parliament stressed this limitation, pointing out the opportunity for the reform to address it.

Box 7 – EU agencies and the establishment of hotspots

The hotspot concept[70] established in the 2016 by the Frontex (ECBG) Regulation entails an integrated migration management process comprising identification, fingerprinting, registration, screening and debriefing of migrants at the border segments under heavy migratory pressure. The 2019 review of Frontex has increased EU agencies' involvement in external border management. EU agencies already provide significant support on the ground by working directly together with and under the supervision of national authorities. For example, Frontex fingerprints, identifies and registers migrants, and carries out debriefing activities. Europol carries out security screening and second-line checks. This type of activities are covered in the evaluation of a Member State. If SCH-EVAL cannot verify how the agencies are helping country X in the surveillance of its external borders or to carry out border control, the overview on the functioning of the external borders in country X would be incomplete.

2.2.1.2. Driver 1.2. A fragmented articulation of evaluations into individual policy fields not adapted to new legislative developments and needs, and limiting the capacity of the Mechanism to provide an overview of a Member State performance overall and of Schengen's functioning, thereby limiting the Mechanism's strategic focus

Figure 6 – Currently evaluated policy fields



Article 4[71] of the Regulation leaves *a priori* wide flexibility in defining the scope of the evaluations as evaluations may cover all aspects of the Schengen *acquis*. However, as Article 4 specifically lists external borders, visa policy, the Schengen Information System, data protection and police cooperation, it creates an expectation that these are **the policy fields** to be evaluated. As a result, the Mechanism evaluates Member States in the six policy fields (as indicated in Figure 6) individually within a two-month period. Evaluations in six policy fields require six different evaluation reports and six different sets of recommendations for each

69 The 2021 Council conclusions, p. 4, indicate: '*The Council [...]invites the Commission to ensure in its announced proposal that the SEMM remains a flexible mechanism, adaptable to the evolving circumstances and developments of the Schengen acquis, such as [...] the increasing operational activities of Frontex and other relevant EU agencies in the implementation of the acquis, in order to address new challenges and to adapt to new realities*'.

70 Article 2 (23) of the 2019 Frontex Regulation reads: '*hotspot area means an area created at the request of the host Member State in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders*'.

71 Article 4 reads: '*Evaluations may cover all aspects of the Schengen acquis, including the effective and efficient application by the Member States of accompanying measures in the areas of external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters, as well as the absence of border control at internal borders*'.

Member State, creating a significant fragmentation. As the 2020 study put it, '*[a] single evaluation on specific Schengen policy area(s) has the clear disadvantage that it does not show the overall performance of a Member State on managing Schengen'*.[72]

Apart from limiting the overview on single Member States, the current functioning of the Mechanism risks restricting significantly the possibility to draw conclusions on the overall state of Schengen, considering that, between 2015 and 2019, the Commission adopted around 200 evaluation reports (35-40 per year). During the consultation, the European Parliament confirmed this risk, as it stressed the need to dedicate more time to horizontal findings and to have a better overview of the Schengen area as a whole. Several Member States also indicated the limited coherence among the various policy fields and evaluation reports with a couple of Member States requesting a single report per Member State.

In addition, there have been **significant developments in the Schengen *acquis*** in recent years **that make these traditional policy fields inadequate**. 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 need to take into account additional elements, particularly in police cooperation. Various policy areas, given legislative developments, are becoming more and more interlinked and interdependent (for example SIS and return or SIS and police cooperation) or implementing authorities have extended powers (for example the supervision system in data protection). During the consultation activities, several stakeholders' categories broadly supported the possibility for SCH-EVAL to cover new IT tools[73]. This was also indicated in the 2021 Council conclusions[74].

2.2.1.1. Driver 1.3. A too limited temporal scope to allow for a flexible use of available tools limiting the Mechanism's strategic focus and its capacity to react to new circumstances

Currently, the Mechanism works according to a five-year cycle. Given the large number of Member States, it is only possible to carry out the programmed 'periodic' evaluations (around 35-40 in a year). There are almost no resources for thematic evaluations to help draw horizontal conclusions across policy fields or across countries subject to similar challenges. There is also little space for unannounced evaluations or revisits, by which the Commission could monitor activities and react to emerging issues (e.g. allegations of mistreatment at the external borders).

2.2.2. Driver 2 – Rigid evaluation programming and inadequate criteria underlying evaluation and monitoring tools

The Regulation includes a comprehensive set of evaluation and monitoring tools, but the procedural and material conditions for their use lead to an underutilisation of flexible tools

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72 The state of play of Schengen governance, p. 53.

73 Member States indicated that the scope of SCH-EVAL should be adjusted to include the new IT systems other than the Schengen Information System such as Entry-Exit system and ETIAS; the European Parliament proposed to include the assessment of new information systems and their interoperability; DPAs / EDPS suggested that SCHEVAL should provide for the possibility to evaluate the new IT-systems like EES and ETIAS including in relation to their data protection requirements.

74 The 2021 Council conclusions, p. 4, indicate: *'The Council […] invites the Commission to ensure in its announced proposal that the SEMM remains a flexible mechanism, adaptable to the evolving circumstances and developments of the Schengen acquis, such as the implementation of the new IT architecture and interoperability framework in this area […] in order to address new challenges and to adapt to new realities'*.

such as unannounced and thematic evaluations, and revisits. This driver undermines the capacity of the Mechanism to quickly react and adapt to new circumstances (problem 2). It also undermines its strategic focus (problem 1) and its capacity to put pressure on Member States to accelerate the implementation of remedies (problem 3).

2.2.2.1.Driver 2.1 A rigid programming not providing the Mechanism with capacity to quickly adapt and react to new circumstances

The Regulation introduced a **multiannual programming** system over a five-year cycle that defines the Member States' order for evaluation in the pre-defined set of policy fields (largely those listed in Article 4 of the Regulation). Article 6 requires the Commission to adopt by 31 October[75] each year an **annual programme** with all evaluations to occur in the following year. This procedure concerns equally announced ('periodic') evaluations, thematic evaluations and unannounced evaluations. It includes the Member States to be evaluated, but also whether evaluations will be carried out on a questionnaire only or through on-site visits and the specific sites that the evaluation team should visit as a minimum. The Commission should base the programming on the information collected from the replies provided by Member States to the standard questionnaire and risk analyses prepared already in the summer the year before (August n-1) by Frontex and other EU bodies and agencies. Any change to the evaluation programme requires a formal amendment through a cumbersome procedure that needs the Schengen Committee's positive opinion.

Although it creates predictability and helps Member States to prepare, this rigid long-term planning is difficult to reconcile with the rapidly changing threat landscape. For instance, it might limit the scope of the evaluations, keeping out new legislative developments that require adjusting the articulation of policy fields. It might exclude from the evaluations new emerging issues, which are not included in the risk analysis, and that might need adjustments to the evaluations' programmes, i.e. visiting alternatives sites. As a result, the annual programme needs amendments regularly with the additional administrative burden[76]. In 2020, it was particularly difficult to cope with the uncertainty surrounding the Covid-19 pandemic. By the time the Commission had amended the annual programme, new changes were already needed.

Box 8 – Frequent amendments to the annual programme

In 2020, the evaluation of Germany in the field of visa policy was to take place in the German consulate in Teheran. As the political situation became unstable in January 2020, the Commission in agreement with Germany identified an alternative location. This alternative required an amendment of the annual evaluation programme (proposal of the Commission to be presented to the Schengen Committee two weeks in advance after which it can initiate the adoption process within the Commission). The amendment was adopted in March, when the Covid-19 crisis began, which required new amendments to the annual programme.

This rigid procedure also applies to unannounced evaluations. The Commission must plan them one year in advance based on risks assessments provided in the year before the evaluation, making it impossible to respond to new unforeseen circumstances, and defeating their purpose. The rigidity of the programming for unannounced evaluations undermines the possibility for the Mechanism to react quickly to allegations of serious breaches (i.e. Member States breaching relevant legislation) and of fundamental rights' violations by organising visits swiftly as soon as the allegations emerge. Although the Mechanism is not an investigate

[75] The annual programme is an implementing decision. The Commission should adopt the second section of the annual programme with the unannounced evaluations at the latest at the end of the previous year.

[76] See Annex 4.

instrument designed specifically to spot the practice of push-backs, the current set-up limits the efforts of SCH-EVAL to respond to this challenge emerging increasingly at the external borders.

2.2.2.2.Driver 2.2. Inadequate criteria and conditions to use the various evaluations and monitoring tools limiting the Mechanism capacity to react and adapt to new circumstances and legislative developments, and reducing its strategic focus and capacity to quickly implement remedies

Contrary to the rigid programming, the Regulation is quite flexible regarding the **criteria and conditions to use the various evaluations and monitoring tools**. This would seem like an advantage at first sight. However, this flexibility has created confusion and underutilisation of the new tools available. An EU agency explicitly remarked the need to '*clarify the scope, aim and main differences between thematic evaluations, announced and unannounced visits.*'

Thematic evaluations addressing specific issues in several Member States aim to contribute to strengthening the strategic focus of the Mechanism. However, the potential of this type of evaluations was not sufficiently exploited during the first five-year cycle in part because of the insufficient clarity and general / vague character of the rules for carrying out these evaluations. The Regulation simply specifies that *thematic evaluations* have to be programmed and may cover the application of specific parts of the Schengen *acquis* across several Member States. There is no clarity as to what can trigger the need for a thematic evaluation or what its scope should be.

The lack of definition of the conditions and scope for thematic evaluations contributed to only two thematic evaluations carried out with significantly varying topics and outcomes. One was extremely localised looking at visa cooperation between Member State consulates in Ankara (Turkey) and New Delhi (India). The second covered a major horizontal theme across all Member States (national strategies for integrated border management). The Commission included the first in a regular evaluation, while the other was proposed by the Commission, supported by the Council conclusions, and subsequently programmed. One did not lead to any recommendations; the other led to far-reaching horizontal recommendations addressed to all Member States.

Similarly, for *revisits*, the Regulation only specifies that they can be considered depending on the degree of seriousness of deficiencies to verify the action plan's implementation. Revisits help to monitor progress made and to put pressure on Member States to implement quickly the remedies provided for in the recommendations. Although a monitoring tool under Article 16(5) of the Regulation, revisits in practice became a re-evaluation requiring an evaluation report and triggering new Council recommendations and action plans. Ultimately, the administrative burden linked to those procedures (see section 2.2.3.2) limited the use of this tool.

For *unannounced* evaluations, the Regulation explains at length how to carry out the evaluation visit. However, it does not set any criteria for the situation that would trigger an unannounced evaluation. Recital 12 states that it is a tool conceived '*to supplement announced on-site visits, in particular with regard to border controls and visas*.' Its purpose is not clear (random 'health' check or detection of serious breaches?) particularly as the

Commission must inform the Member State 24 hours before an unannounced visit occurs[77], which many stakeholders[78] believe may defeat its purpose. The European Parliament and consulted civil society organisations particularly criticised the 24-hour notice.

2.2.3. Driver 3 – Inadequate articulation of processes and procedures with a potential disproportionate institutional balance

The cumbersome decision-making processes and procedures in place led to the slow adoption and implementation of remedies by Member States (problem 3). The Council's involvement in all the different procedures limited the Council's capacity to exert the aimed-for peer pressure to accelerate the implementation of remedies. This Impact Assessment focuses on those aspects that emerged as the most problematic during the consultation: the decision-making process for adopting evaluation reports and recommendations, and the monitoring and follow-up process. In both cases, the absence of clear time limits exacerbates inherent issues.

2.2.3.1. Driver 3.1 – Complex decision-making for the evaluation process affecting the length of the procedure

Under **Articles 14** and **15**, the decision-making process includes two distinct and subsequent steps involving the Commission and Member State representatives (in the Schengen Committee and in the Council):

- The evaluation team prepares **the draft evaluation report** within six weeks from the visit. The evaluated Member State can provide comments within two weeks from receiving the draft report. A drafting meeting between the team and the evaluated Member State, at the Member State's request, may occur after the submission of the comments and before the Commission presents the report in the Schengen Committee;
- **The Commission adopts the final evaluation report** by means of an implementing decision after the positive opinion of the Schengen Committee (see Box 9); and
- **The Council adopts the recommendations** after discussion in the SCH-EVAL Working Party, based on a Commission's proposal made after the adoption of the evaluation report (the usual practice being that the Commission adopts the report and the Commission proposal for a Council recommendation at the same time).

In the evaluation phase between the evaluation visit and the adoption of recommendations, the Regulation sets time limits only at the beginning of the procedure for the transmission of the draft report to the Member State evaluated (six weeks) and for the Member State's comments on the draft report (two weeks). There are no time limits for the drafting meeting, the transmission of the report to the Schengen Committee, or for adoption and subsequent steps. The absence of time limits increases the risks of bottlenecks and of delays in the

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[77] Only unannounced on-site visits to the internal borders shall take place without prior notification (Article 13(2) last para).

[78] The European Parliament and civil society organisations generally shared this view and requested the removal of the 24-hour notice as well as a better definition of what could trigger an unannounced visit (see Annex 2). Instead, Member States generally consider the 24-hour notice beneficial. However, a Member State indicated that '*[p]rovided that all necessary organisational aspects will be dealt with by the EC in advance of the visit, unannounced visits would benefit from abstaining of prior consultations. The MS evaluated by an unannounced visit will not have the possibility to take any influence on the evaluation results.*'

procedure. The Regulation does not foresee any specific accelerated procedure in the case of serious deficiencies, which arguably requires the most rapid action.

Each year, the Commission and the Council adopt about 40 evaluation reports and recommendations. The administrative burden is disproportionate to the human resources available[79] which, combined with a lack of clear timelines, have had a major impact on the evaluation process's length. It took on average about one year from the evaluation visit until the recommendation's adoption: **9.5 months (282 days)** to adopt the evaluation report[80] and **2.5 months (81 days)** to adopt the recommendations. The excessive length of the process limits the capacity of the Mechanism to keep up with and reflect evolving situations on the ground as the information in the reports might already be outdated and the recommendations might have become obsolete by the time of their adoption.

Box 9 – Procedure for the adoption of Commission implementing decisions

The adoption of implementing decisions by the Commission is subject to the following procedural requirements:

- Article 21 of the Regulation in combination with Articles 3 and 5 of Regulation (EU) No 182/2011 submits the adoption of the evaluation report to the **Comitology examination procedure**, hence to the positive vote of representatives of the Member States by qualified majority. The draft evaluation report has to be transmitted 14 days before the vote takes place. In duly justified cases, the chair may shorten the 14 days-time limit or obtain the committee's opinion by written procedure under simplified conditions.
- Article 21 of the Commission Rules of Procedure requires the **consultation of other departments** associated or concerned as well as of the **Legal Service** on the draft evaluation report.
- Article 3 of Regulation No 1 requires that the evaluation report be **translated** into the evaluated Member State's language.
- Article 17 of the Regulation requires that the evaluation report be treated as **classified as EU RESTRICTED/RESTREINT UE** which imposes technical restrictions on their handling (also for translations) and transmission to comply with applicable security rules.

2.2.3.2.Driver 3.2 – Cumbersome and inadequate monitoring and follow-up process undermining the capacity of the Mechanism to put pressure on Member State to implement remedies promptly

Under **Articles 16,** the follow-up procedure includes notably the following main steps:

- The **Member State** presents its **action plan** to remedy the deficiencies identified in the evaluation report to the Commission and the Council (within three months from the recommendations) and the Commission further transmits it to the European Parliament. A longer (six months) or shorter (one month) time limit applies if the evaluation reports do not include any non-compliant findings or include serious deficiencies, respectively;
- The **assessment of the action plan** takes the form of a **Commission Communication**, adopted after consulting the evaluation team as appropriate, within one month from the submission of the action plan. The Commission has had

[79] In 2020 when the number of evaluation visits started to decrease, the length of the procedure also decreased to 7 months. In 2020, evaluation reports for evaluations carried out in the second half of 2019 were on the other side delayed due to COVID-19 to an average of 11 months.

[80] It is not possible to estimate the time for the preparation of the draft report and the adoption by the Commission due to the lack of complete data on the drafting meeting and transmission by the evaluation team for adoption. However, the drafting meetings were organised often back-to-back with Schengen Committees or SCH-EVAL working parties. At times, this added one or two extra months to the procedure before the presentation to the Schengen Committee.

difficulties in providing a timely assessment of the action plan due to the excessive formalism required for this step. In 2019 and 2020, the Commission adopted on average over 20 Communications;

- The Member State concerned submits to the Commission **progress reports** every 3 months, even if the nature of the recommendations (requiring procurement of new equipment or introducing legislative changes) makes it is difficult to report any progress;
- A **revisit** can take place if required by the seriousness of the deficiencies. This revisit leads to a new report, which includes new findings resulting in new recommendations and a new action plan that the Commission should assess, as per the second bullet point, and it leads to the submission of the related progress reports. So, a Member State may end up having three sets of Council recommendations and action plans in the same policy field if, for example, it has been subject to a revisit and an unannounced visit in addition to the regularly programmed visit; and
- The Commission should **regularly inform** the European Parliament and the Council about the implementation of the action plans.

After the adoption of the recommendations, in the follow-up, the Regulation sets time limits for the presentation of the action plan by the Member State and for its assessment by the Commission. Member States are also obliged to report to the Commission every three months. No other time limits are set for the fulfilment of the action plan. Revisits added an administrative burden, including additional recommendations, rather than serving as a proper monitoring tool. Moreover, the Commission evaluation report and the Council recommendations are not legally binding instruments. As a result, if a Member State decides not to implement a recommendation or is seriously neglecting the implementation of the action plan or delaying it, the Commission has little options to make the Member State comply. In principle, peers should put pressure on the Member State concerned. In practice, they have rarely done so, as there has been little Council's involvement and discussion in the Council about Member States' follow-up.

2.2.3.3. Driver 3.3 – A potential disproportionate institutional balance undermining the capacity of the Mechanism to put pressure on Member States to implement remedies promptly and its strategic focus

According to the current institutional set up, the Commission adopts the report, the Council adopts recommendations, and the Commission monitors the follow up while informing both the Council and the European Parliament. Arguably, the Regulation created this two-step approach in favour of the Member States and the Council to ensure political discussion and peer-pressure at Council level (see Recital 11 in section 2.1.1), and to a lesser extent in the Parliament. The five-year review of the functioning of SCH-EVAL concluded that this set-up did not serve its purpose while adding to the heavy and lengthy procedure.

All evaluation procedures entail heavy involvement by Member States (and the Council). Examples include the drafting of the report by the evaluation team (composed of Member State experts in its majority), all report's adoption requiring the positive opinion of Member States in the Schengen Committee, and the adoption of all recommendations by the Council. The follow-up, that according to the Regulation is the responsibility of the Commission, also increased the Council's workload as revisits and unannounced visits become new re-evaluations requiring reports and recommendations. Member States can comment on action plans, but they hardly do. However, there was little proper involvement of

the Council in the follow up of serious cases or where a Member State was not properly implementing the action plan. The heavy workload in the Council and the very detailed and localised nature of recommendations prevented any real discussion limiting the Council's power to exert the required peer-pressure and have general discussions on the state of Schengen.

On the other hand, the European Parliament has only limited formal involvement reducing its capacity to pressure Member States to implement recommendations. The Council recommendations are transmitted to the European Parliament and the national Parliaments and are published. The evaluation report, which is a classified document, is shared with the European Parliament, while, under Article 19, the Commission merely informs the national parliaments of the evaluation's content and results. To strengthen accountability vis-à-vis the Council and the European Parliament, the Commission must regularly inform them about the action plans' implementation. In addition, the Commission shall present a comprehensive yearly report to the European Parliament and the Council on the evaluations carried out and the state of play regarding remedial action (Article 22).

2.2.4. Driver 4 – Inadequate and insufficient participation of relevant actors in the design and implementation of evaluations / synergies with other instruments

One of the drivers for the lack of strategic focus (problem 1) and its limited capacity to detect and react to new circumstances (problem 2) is the way individual evaluations are designed and implemented. This driver includes the inadequate and insufficient use of information and risk analyses and synergies with other instruments to identify what needs to be evaluated concretely for each Member State in the main policy fields, and a deficit of experts with the right profile from specific Member State and for specific policy fields.

2.2.4.1. Driver 4.1 – Unbalanced and underused sources of information and expertise

The Schengen evaluation guide[81] acknowledges that '*[t]he analysis of data collected should be based on facts and arguments from* ***several sources*** *and analysed with several methods, to avoid a one-sided approach and biased results*.' The Regulation mentions only **two sources of information explicitly**: the Member States' replies to a **standard questionnaire** and the risk analyses provided by EU bodies and agencies under Article 7 and 8 of the Regulation. Article 7 imposes an obligation on Frontex to provide two **risk analyses**[82] by 31 August of each year. FRA and Europol also provide regularly risk analyses upon request by the Commission. Eu-LISA[83] shares **statistical reports** on the functioning of SIS and VIS.

Certain stakeholders, as EU bodies / agencies, explained that the scope and timing of the information is often inadequate and stressed the importance of pre-visit information, since, by the time the visit takes place, the risk analyses' information is already outdated in most cases. The concept of risk analysis is also very restrictive and does not cover all information available to the EU bodies and agencies to develop situational awareness.

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81 Under Article 13, general guidelines on practical arrangements for such visits shall be established by the Commission in close cooperation with the Member States.

82 One risk analysis includes recommendations on the priorities for regular evaluations in the following year. The second risk analysis includes recommendations on unannounced visits in the following year, irrespective of the order of Member States to be evaluated each year.

83 EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA).

The Regulation does not prevent the evaluation team from relying on different sources. However, the fact that the Regulation does not explicitly mention the role of **third parties** has led to uneven practices across policy fields. Some policy fields strictly rely on the information covered expressly in the Regulation and only reflect what the team witnessed during the visit. Other policy fields, such as return (see Box 10), rely widely on third parties, as per the evaluation guide. Neglecting the factual importance of third parties as a source of information may impact the quality of evaluations and create distortion between interlinked policy fields.

For example, it undermines the capacity of the Mechanism to react to specific violations of fundamental rights at the external borders. As also noted in the 2020 study by the European Parliament, '*[e]vidence of push-backs and collective expulsions in violation of the principle of non-refoulement may be well documented but will never be witnessed during on-site visits, whether announced or unannounced*'. During the consultation, the European Parliament criticised the limited scope of evidence used in evaluations, particularly external sources of information, i.e. information from NGOs or national and international monitoring bodies. The consulted civil society organisations, some EU bodies and agencies, and some Member States also stressed the opportunity to expand the scope of the information sources.

Box 10 – Participation of third parties in the field of return

In the field of return, third parties play a role in two ways: their reports are used, directly or indirectly - as FRA takes into account NGOs' and International Organisations' reports in the risk analysis provided to the Commission - to set the annual programme. During the evaluation visit, when relevant and appropriate, the evaluation team meets with third parties, notably the Ombudsman (usually one of the institutions with the mandate to monitor forced returns) and the International Organization for Migration (usually for Assisted Voluntary Return and Reintegration) as well as NGOs dealing with return counselling, alternatives to detention or in charge of monitoring forced-returns.

2.2.4.2.Driver 4.2 – Limited coordination and synergies with other instruments

Both at the EU and national levels, several instruments complement SCH-EVAL in ensuring a better implementation of the Schengen *acquis*. The Vulnerability Assessment by Frontex is the most notable example. Since 2016, Frontex assesses the preparedness of the Member States to face challenges at their external borders, based on yearly evaluations. SCH-EVAL's more extensive five-yearly evaluations rather focuses on structural aspects. Relevant examples, in other policy fields are EDPS audit (data protection), the European Multidisciplinary Platform Against Criminal Threats - EMPACT (police cooperation), or the fundamental rights officer at Frontex (external borders). National quality control mechanisms (encouraged under the EBCG Regulation) could become similarly important in the future.

This variety of instruments creates the potential risk of duplications but also opportunities for significant synergies to better target evaluations under SCHEVAL. The Regulation however, disregards these instruments completely. Coordination takes place mostly on an informal basis or based on provisions under other legal acts, such as Article 33 of the EBCG Regulation in the case of the Vulnerability Assessment.

The provisions of Article 17 of the Regulation, on the sensitivity of information, impose the classification of the evaluation reports and confidentiality on other actors when participating in SCH-EVAL, making coordination even more difficult.

This situation creates an asymmetry that, as stressed by the 2020 study by the European Parliament, does not effectively prevent the risk of duplication and incoherent

recommendations to Member States[84] with the Vulnerability Assessment. The same risk is likely to materialise also for other instruments developed in the future, undermining the potential positive effects of SCH-EVAL.

2.2.4.3.Driver 4.3 – Qualification and size of the evaluation team and unbalanced contribution of experts

In line with the principle of peer review, and to ensure adequate participation of qualified experts, there is a general obligation for all Member States under the Regulation (Articles 3[85] and 10[86]) to nominate experts. Member States and the Commission, in cooperation with relevant EU bodies and agencies, shall also provide appropriate training, including on respect for fundamental rights. The experts' selection for the evaluation starts with an *ad-hoc* call by the Commission to designate experts for each evaluation at the latest **three months before the evaluation visit** takes place. The evaluation team includes all experts designated, regardless of the needs of the evaluation, with the only limitation that the **maximum** number of Member State experts in the team is **eight**[87]. If Member States' designations exceed eight, the Commission, after consulting the Member States concerned, choses the eight members of the team based on geographical balance and the experts' competences.

EU bodies and agencies experts also participate regularly in the evaluations as observers, upon Commission invitation (Article 10(5)). During the first five-year cycle, EU agencies provided trainings in all policy fields, except for common visa policy and data protection.

The five-year review found that **contribution of experts by Member States did not always match the needs** of the individual evaluations in terms of the **number or qualifications of the experts.**

According to the data collected for the five-year review, all Member States contributed experts to the Schengen evaluations, however in very different proportions. The burden was heavily unbalanced among Member States with one-third of experts provided by five Member States (see Figure 7). The contribution also differed according to the policy fields. In particular, common visa policy and data protection experienced recurrent shortages of experts and at times, the evaluation team included only four or five Member State experts. For announced evaluations, the teams generally consisted of the maximum number of eight experts. Yet, on several occasions the time limit for the designation of expert was extended (occasionally even several times) due to a limited number of designations received. Overall, 12 Member States did not contribute experts to at least one policy field, with five Member States designating experts only in three policy fields or less. In the fields of return and visa, seven Member States never designated any experts.

All this implied a disproportionate amount of work for the team members and created a significant burden on the Member States that comply with the Regulation. There is no specific obligation for each individual Member State to designate experts for evaluations. If

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84 The state of play of Schengen governance (2020), p. 28.

85 Article 3(1) reads: *'The Member States and the Commission shall be jointly responsible for the implementation of the evaluation and monitoring mechanism as specified in this Regulation, with the support of the Union bodies, offices and agencies involved in the implementation of the Schengen acquis'.*

86 Article 10(1) reads: '*A team responsible for on-site visits (the 'on-site team') shall consist of experts designated by Member States and of Commission representatives'*.

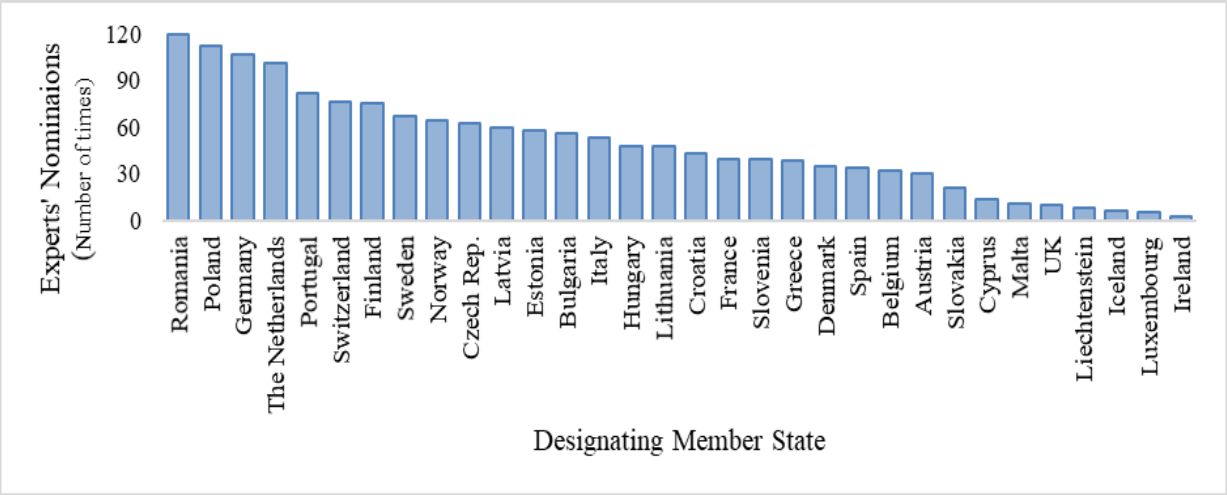
87 In unannounced evaluation, the Commission launches the call two weeks before the evaluation visit and the maximum number of experts is six.

Member States do not designate enough experts, or a given Member State does not designate any expert, the Commission cannot force Member States to do so. The Commission will renew the call for designations until a sufficient number of experts is ensured. As a result, the current rules could not guarantee the balanced contribution of experts by all Member States. In 2020, with the pandemic outbreak, it became more challenging to put together the most appropriate teams and gather an adequate number of experts even in policy fields like Schengen Information System or return where under normal circumstances there is a sufficient number of experts. At the same time, during the consultation, some Member States complained that having eight experts might be excessive, making the evaluation more difficult in certain circumstances.

The qualification of experts also represented an issue in the first five-year cycle. Member States confirmed that the appropriate profile of the experts is key. In particular, fundamental rights violations, especially the ones at the external borders, might be hard to detect in case of insufficient experts with the right profile. To ensure the identification of such violations, the European Parliament pointed out the need of including fundamental rights experts in the evaluation teams.

During the consultation, Member States mentioned three main causes for the occasional unavailability of experts: lack of training in certain policy fields (notably common visa policy and data protection), short notice (three months) given by the Commission, and perceived lack of incentives (such as financial compensation) for the experts. The heavy workload of the evaluations and the difficulty reconciling it with other commitments discourages participation.

Figure 7 – Number of experts per Member State during the first five-year cycle



Source: five-year review

2.3. How will the problem evolve?

The threat landscape and developments of the Schengen *acquis* risk amplifying the consequences of these drivers.

As a reaction to increasing challenges faced since 2015 (migratory pressure, terrorist attacks, and Covid-19), the EU has undertaken several initiatives to make Schengen more resilient such as, for instance, the proposal for an amendment of the Schengen Borders Code or for a

Regulation introducing a screening of third-country nationals at the external border[88]. Reforms are not only improvements of existing tools but brought in several new elements. In addition to SIS and VIS, Schengen will by the end of 2023 count on a new IT architecture with **new systems (ETIAS, EES)** at the external borders and **interoperability**[89] of information systems reinforcing the relation between pertinent databases (involving also non-Schengen databases such as ECRIS-TCN[90] and EURODAC[91]) (see Box 11). This will provide comprehensive information on external border management and visa processing at all stages. The adoption of an **EU police cooperation code** is planned under the EU Security Union Strategy[92].

The **role of EU agencies** involved in the implementation of the Schengen *acquis* has gained further importance. In 2016, Frontex received executive powers to support Member States in the management of the external border. In 2019, the creation of the **European Border and Coast Guard**, including the set-up of a 10 000 standing corps by 2027, has been a key step towards genuinely European protection of the external borders and the establishment of a European return system. Further reforms under negotiation aim to extend the mandate of Europol and EASO.

Four Member States (Bulgaria, Cyprus, Croatia and Romania) are also waiting to be fully integrated in the area without controls at the internal borders. Therefore, the number of Member States to be evaluated on a periodic basis is expected to increase considerably in the future.

SCH-EVAL's current limitations risk becoming even more critical. Today, SCH-EVAL is not fully effective in addressing serious situations and mainly performs its basic tasks. Without any action at the EU level to increase its effectiveness, the identified problems may only worsen, leading to the Mechanism's political and practical irrelevance for Schengen governance.

Box 11 – EES, ETIAS and Interoperability

The **Entry/Exit System (EES)** is a new automated IT system for registering travellers from third-countries, both short-stay visa holders and visa-exempt travellers, each time they cross an EU external border and will replace the current system of manual stamping of passports. **ETIAS** is also a new largely automated IT system created to identify security, irregular migration or high epidemic risks posed by visa-exempt visitors travelling to the Member States, whilst at the same time it facilitates crossing borders for the vast majority of travellers who do not pose such risks. Non-EU nationals who do not need a visa to travel to Schengen will have to apply for a travel authorisation through the ETIAS system prior to their trip. EES and ETIAS are to be operational in 2022. The **Interoperability** Regulations establish a framework for the interoperability of the six central large-scale IT systems in the field of borders, security and migration, namely EES, VIS, ETIAS, Eurodac, SIS, and ECRIS-TCN. It will be operational from 2023. If one Member State fails, the whole architecture will suffer. Speed to detect and fix deficiencies will be crucial. The current Mechanism with its cumbersome and lengthy procedures is not suited for a rapid response in case deficiencies are identified, including corrective actions in real-time.

88 COM(2002) 612 final of 23.9.2020.
89 Regulation (EU) 2019/817, OJ L 135, 22.5.2019, p. 27.
90 European Criminal Records Information System (ECRIS-TCN).
91 European Asylum Dactyloscopy Database (EURODAC).
92 COM(2020)605 final of 24.7.2020.

3. WHY SHOULD THE EU ACT?

3.1. Legal basis

The Proposal is to be based on Article 70 TFEU, which is also the legal base of Regulation No. (EU) 1053/2013, which it is amending[93].

Article 70 TFEU empowers 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 referred to in Title V by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition.

A statement from the European Parliament, the Council and the Commission, accompanying the Regulation, clarifies that any future proposal to amend the Regulation will be submitted to the consultation of the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before the adoption of a final text[94]. Accordingly, the Commission consulted the European Parliament on the main elements of the proposal before its adoption on 12 May.

3.2. Subsidiarity: Necessity of EU action

A specific evaluation and monitoring mechanism to verify the correct application and implementation of the Schengen *acquis* is necessary given the need to ensure high uniform standards in its application in practice and to maintain a high level of mutual trust between those Member States that form part of an area without border control at internal borders. Schengen created a common external border. Even though the management of the external border remains under the responsibility of Member States, the EU has to ensure that the overall governance is functioning well. In an area without internal borders, all cross-border relevant issues need to be regulated and managed at the EU level. Thus, Schengen by itself already answers the subsidiarity question. The shortcomings identified above require changes that can be made only at the EU level.

3.3. Subsidiarity: Added value of EU action

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 the 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. Herewith, it is 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 a correct implementation of the Schengen *acquis.* By ensuring equal contribution of experts by Member States and stronger

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93 Certain stakeholders submitted that the proposal should be adopted on the basis of Article 77 TFEU which, contrary to Article 70 TFEU, would allow for the participation of the European Parliament. It recalls that, in 2010, the Commission had proposed the adoption of the Schengen Evaluation and Monitoring Mechanism based on Article 77(2)(e) TFEU that provides for abolition of internal border controls as the objective of an area of free movement of persons within the European Union, as laid down in Article 26 of the TFEU. Ultimately, a preference was expressed for Article 70 TFEU as it was considered to provide an express legal basis for evaluations by Member States.

94 OJ L 295, 6.11.2013, p. 37.

participation of all Member States to the process, this initiative also strengthens SCH-EVAL as a shared responsibility of all Member States. It reduces the risk of few Member States carrying a disproportionate burden for the functioning of the Mechanism.

This initiative takes into due account the subsidiarity principle by laying down the basis for improved coordination with evaluations carried out under national quality mechanisms. One of the objectives is 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. This approach should also encourage the development of the national quality control mechanisms as referred to in the EBCG Regulation.

The measures under the policy options do not go beyond what is needed to achieve the general and specific objectives and respect herewith the proportionality principle (see section 7.3).

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1. General Objective

The initiative's general objective is to improve SCH-EVAL, to boost its effectiveness, and to strengthen the monitoring pillar of the Schengen governance to make Schengen more resilient. Figure 8 describes the intervention logic of the initiative. SCH-EVAL should be able to timely identify the most significant deficiencies and address them quickly, and allow drawing conclusions on the state of Schengen triggering political discussion.

4.2. Specific Objectives

The four specific policy objectives addressed in this Impact Assessment respond to the problems identified in section 2.1 and include initiatives that support the general objective set out in section 4.1.

Specific Objective 1 - Avoid gaps and increase strategic focus. The first specific objective is mostly linked to the first problem (limited strategic focus and significant fragmentation). It is to ensure that the evaluations assess most effectively the implementation of the Schengen *acquis* so to identify timely all relevant deficiencies and issues that may put the integrity of Schengen at risk. To this end, it is necessary to adapt SCH-EVAL's scope to verify the implementation of the Schengen *acquis* comprehensively and make more strategic use of the different tools proportionately to the different situations.

Specific Objective 2 - Rationalise the distribution of tasks and responsibilities, and simplify and accelerate process and procedures. The second specific objective is mostly linked to the second and third problems (insufficient capacity to identify and quickly adapt and react to new circumstances, legislative developments and trends; slow adoption and implementation remedies). This objective is to guarantee that the different actors involved may sufficiently fulfil their role and contribute to more efficient administrative and decision-making procedures. This specific objective is foremost about the length of the procedures. It is to shorten the overall process and reduce the heavy administrative burden while supporting a strategic use of SCH-EVAL. This requires a more proportionate institutional balance with simplified decision-making process, strengthened follow-up, and a clear timeframe for the participation of all actors involved.

Specific Objective 3 - Strengthen the implementation of fundamental rights safeguards under the Schengen acquis. The third specific objective is related to the second problem (insufficient capacity to identify and quickly adapt and react to new circumstances, legislative

developments and trends, particularly violations of fundamental rights at external borders). This objective is to adopt targeted measures to better integrate fundamental rights protection in the Mechanism, apart from the evaluation of data protection requirements, which is one of the evaluated areas. While fundamental rights protection will benefit any horizontal improvements proposed to avoid gaps and to ensure strategic focus of the Mechanism, they still deserve particular attention given their horizontal character and the specificity of the challenges at the external borders. This specific objective aims to respond to the strong call from the European Parliament, civil society organisations and some Member States to strengthen the integration of fundamental rights in the Mechanism.

Specific Objective 4 - Optimise the participation of Member State experts and the involvement of EU bodies and agencies and synergies with other instruments. The fourth specific objective is mostly linked to the first and second problems (limited strategic focus; insufficient capacity to quickly react and adapt to new circumstances, legislative developments and trends). This specific objective is to create the conditions for more optimal participation of all actors that may support the Mechanism. It is also to make better use of the resources available at the EU and national levels, to strengthen mutual trust through direct involvement and to ensure the quality of their input into the process. This specific objective also intends to enhance synergies between SCH-EVAL and other instruments that complement the Mechanism in ensuring a better implementation of the Schengen *acquis*[95]. Ultimately, the aim is to design more targeted evaluations and implement them better, making the best use of all resources available.

[95] The reduction in the number of experts was not considered as a specific objective of the initiative because it is not an aim as such, considering that the Mechanism is not a costly instrument. The revision aims to optimise the use of available resources, in particular, to ensure a sufficient number of experts with the right profile and better distribution of the burden of expert provision across all Member States.

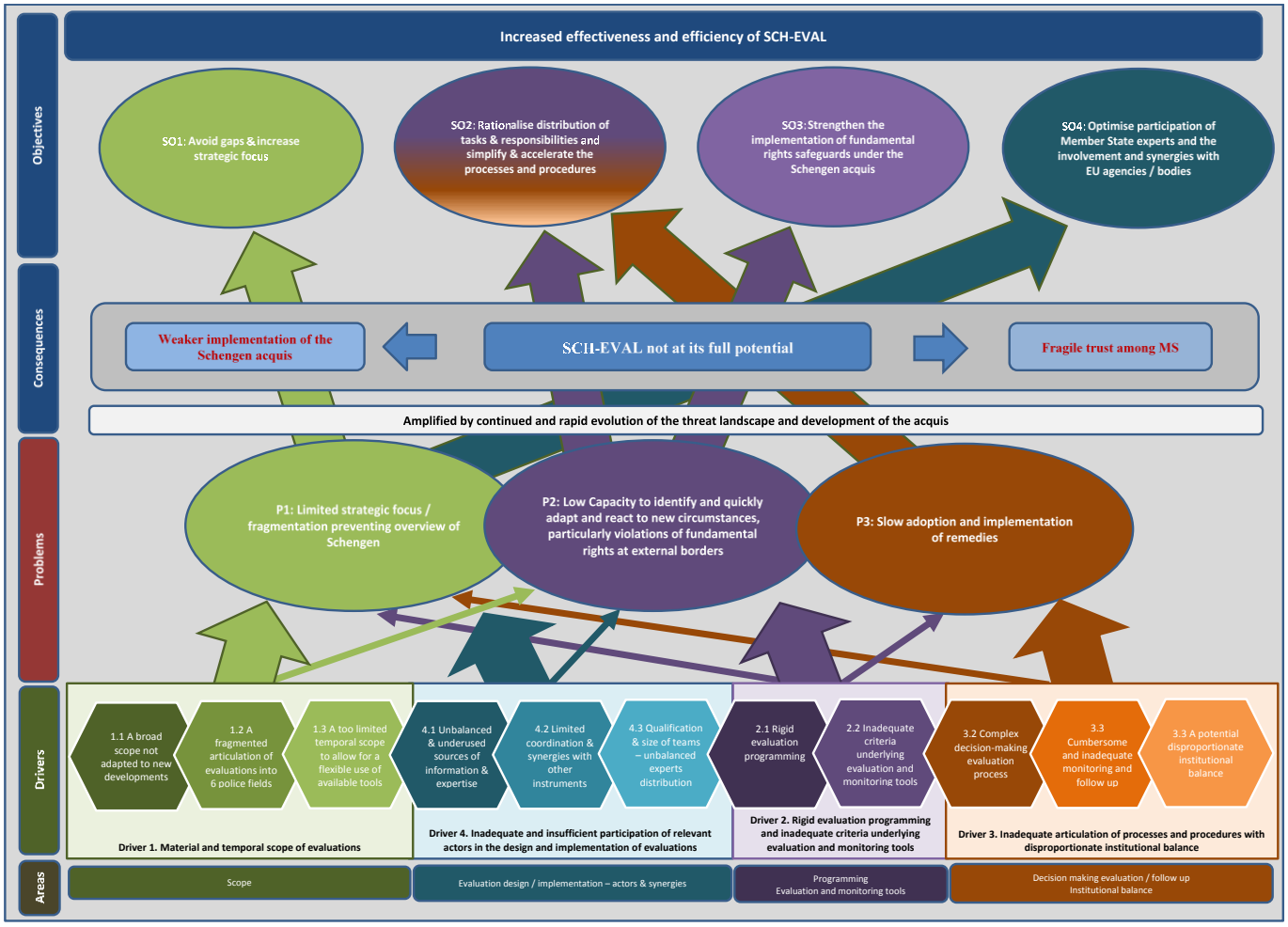

Figure 8 – Intervention logic

5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

This Impact Assessment analyses the key policy options, including the baseline scenario, to address the problems identified in section 2.1 and match the objectives set out in section 4. The Commission has developed the policy options based on all stakeholders' recommendations and on the five-year review of the implementation of the current Regulation (see Annexes 2 and 4).

The causes or drivers of the key problems described in the previous sections lie in the implementation of the Regulation and its design. It has become apparent that there is a need for more drastic changes as the five-year review indicated.

Four approaches are possible as an alternative to the baseline scenario. **Option 1** is to adopt only operational measures to align the implementation with current needs. **Option 2** is a minimalist approach to adopt targeted 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 procedures. **Option 3** is the more ambitious approach that would combine elements of the first two options with some fundamental changes to SCH-EVAL's functioning. These options build on each other being cumulative rather than alternative, depending on the degree of ambition. Option 2 largely builds on Option 1, while

Option 3 on Options 2 and 1. **Option 4** envisages a combination of measures proposed under the three options, depending on the area of intervention and level of ambition.

5.1. What is the baseline from which options are assessed?

The baseline is a 'no policy change' scenario. The Regulation would remain unchanged. Its implementation would follow the current pattern with no significant changes to the arrangements in place. However, today SCH-EVAL does not reach its full potential. It suffers from shortcomings regarding in particular the scope of the evaluations, participation of experts, the length and administrative costs of the process, and the implementation of remedial actions by the Member States (see Section 2 and Annex 3).

The Regulation imposed an obligation to carry out 164 announced periodic evaluations. This exercise required overall 184 evaluation visits[96]. For the first five-year cycle, 26 Member States applying in full the Schengen *acquis* were required to be evaluated in all (six) policy fields[97]. Ireland (data protection), Croatia (eight policy fields[98]), Cyprus (data protection) as well as the UK (Schengen Information System) were evaluated in all or selected policy fields. Between 2015 and 2019, the resources available allowed in addition for 27 unannounced (29 evaluation visits), eight announced revisits (nine evaluation visits) and two thematic evaluations[99]. In total, 201 evaluations took place, including 222 evaluation visits (see Figure 9).

The **number of evaluation visits** that would be possible to carry out in the future with the resources available would most likely not change. Regarding the **use of different evaluation tools**, the baseline scenario would diverge from the current situation reducing even more the use of tools other than announced periodic visits (which in the first five-year cycle represented 83% of all evaluation and monitoring activities).

As explained in detail in Annex 3, there is a high probability that the number of mandatory evaluations would increase to 188 (as Bulgaria, Romania, Croatia and Cyprus will need periodic evaluations in all policy fields and Ireland would be evaluated in at least three instead of one policy field), leaving virtually no space for other evaluation tools, such as thematic evaluations or unannounced visits, or monitoring tools, such as revisits. It could also be necessary to increase the number of evaluated policy fields to incorporate new legislative developments. If so, there would be no margin left to use evaluation tools other than regular announced evaluations or carry out monitoring activities properly (including revisits).

The Commission is trying in this second evaluation cycle to combine policy fields partially on an ad-hoc basis but it largely depends on the will of the individual Member State[100]. As a

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96 For some Member States, the evaluation of external border management required more than one evaluation (on-site) visit depending on the need to evaluate separately land, air and sea borders. Four evaluations were questionnaire-based only (no on-site visits).

97 Liechtenstein was not evaluated in the fields of external border management and common visa policy due to the absence of external border.

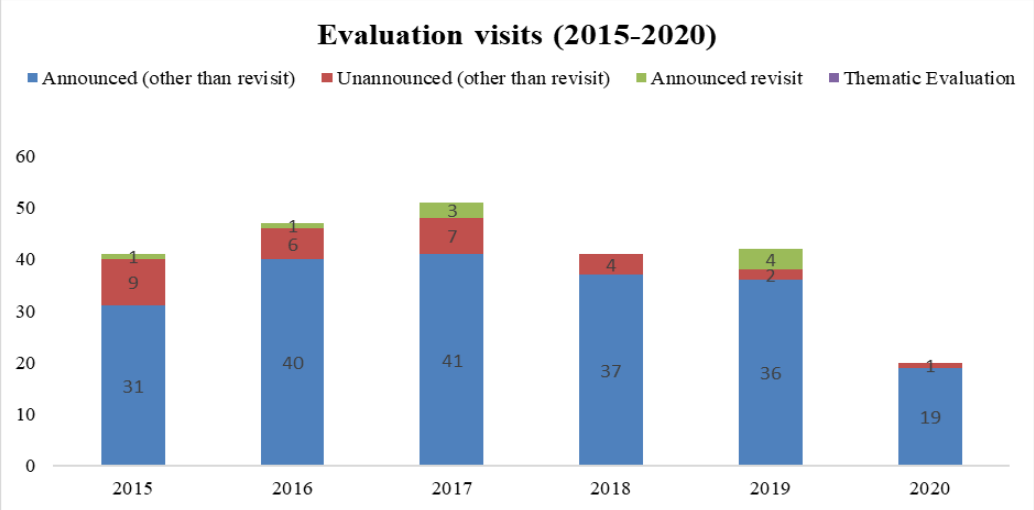
98 The Mechanism evaluated Croatia in eight policy fields: data protection, Schengen Information System, return, police cooperation, external border management, visa common policy; legislation on firearms; judicial cooperation in criminal matters.

99 The two thematic evaluations did not require any separate evaluation visits. In one case, the thematic evaluation was combined with announced evaluations and, in the second case, the thematic evaluation was a desk-review exercise.

100 For one Member State, SCH-EVAL will combine certain elements for the evaluations in the fields of Schengen Information System and police cooperation. The two evaluation teams will follow a combined online presentation in advance (while usually the presentations are given during the on-site visits in

result, so far it has only succeeded in one case. This experience shows that a more drastic intervention is required. Similarly, the Commission has made efforts with a view to designing more targeted evaluations and increasing synergies with other instruments. For instance, the Commission is organising regular meetings and structured information exchange with Frontex on the relevant products and results of both monitoring mechanisms. It has amended the Standard Schengen Questionnaire to take into account the questions asked under the Vulnerability Assessment to avoid any overlap. In accordance with Article 33 of the EBCG Regulation, the Commission is sharing the results of Vulnerability Assessments with the on-site team ahead of evaluations. Despite the efforts, there were limitations to further increase collaboration with EU agencies[101].

Figure 9 – Evaluation visits (2015-2020)



Source: DG Home data

In relation to the number of **Member State experts** designated during the first cycle, the five-year review found the availability and profile of experts did not match the needs (see Figure 10). For announced evaluations, as explained in section 2.2.4.3, the Commission had to extend the time limit for the designation of experts on several occasions due to a too low number of designations. Overall, in the first five-year cycle, the average number of experts per team was 7.3 (announced evaluations other than revisits), 7.4 (announced revisits) and 5.3 (unannounced evaluations). The number of evaluations is expected to change in the medium term given the likely increase of evaluated Member States and policy fields. Under the scenario with 31 Member States, a slight increase (by 5%) of human resources would be necessary for creating the evaluation teams, in case the same number of experts and current fragmentation remain.

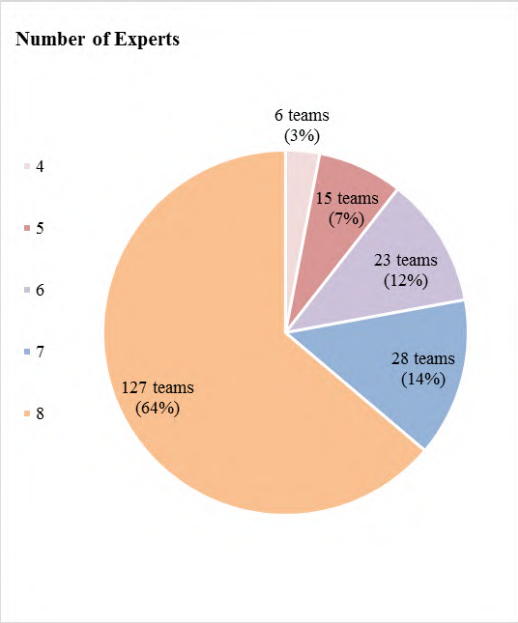
The Commission is currently preparing trainings in the area of visa, which should reduce expert deficit in that field. However, without additional intervention, in a situation of

conference rooms) and will visit the national Single Point of Contact (SPOC) at the same time. The evaluation visits will be shorter. This combination will allow enhancing synergies between the two evaluations and, on a practical level, limited savings for the Commission (reduced costs for accommodation and conference rooms) and Member States (on daily allowances for shorter visits).

101 Some EU bodies / agencies pointed out the limits to enhanced cooperation, i.e. providing additional information would have implied additional costs in certain cases and required a clarification of the legal framework.

increased number of compulsory evaluations, the asymmetries and deficits described in section 2.2.4.3 are likely to worsen.

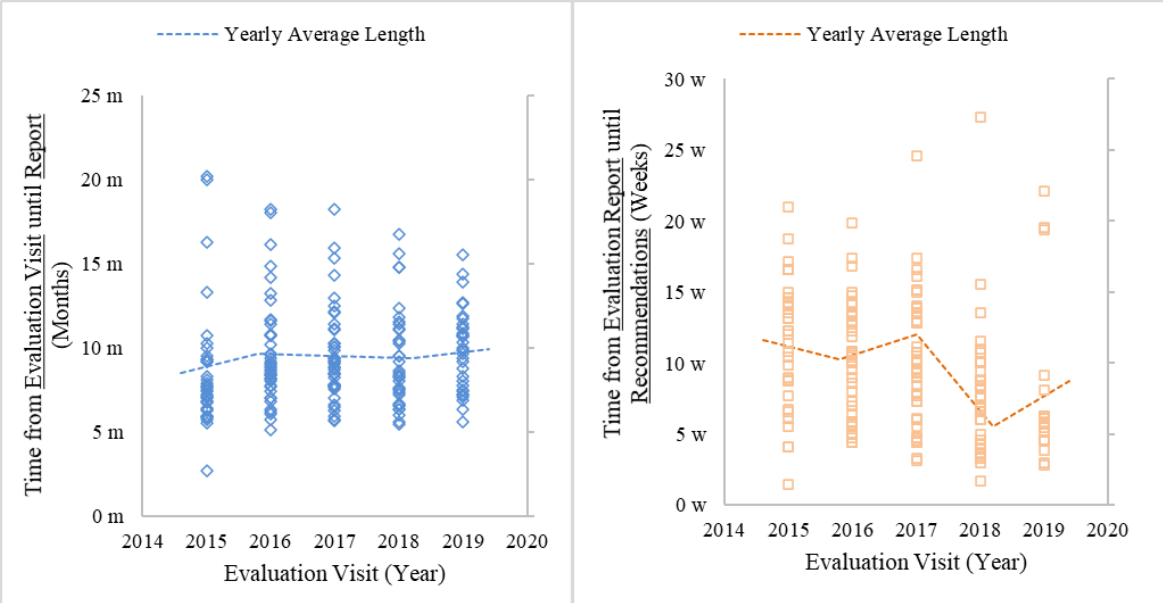
Figure 10 – Number of experts



Source: five-year review

For all stakeholders, the current **length of the process** is one of the main shortcomings of the Mechanism. In the first five-year cycle, the average length of the evaluation process was one year (357 days). The yearly average length of the evaluation process was very stable, although the length of the individual procedures was very variable, ranging from 3.5 months to over two years. The longest step was the phase from the evaluation visits until adoption of the evaluation report, on average 9.5 months, while the adoption of the recommendations took on average 2.5 additional months[102]. Based on the overall analysis of all the procedures carried out in the first five-year cycle (see Annex 3), the Commission concluded that the lack of clear timeline and the administrative burden due to the articulation and complexity of the process are the main reasons for the length in the procedure.

Figure 11 – Yearly average length of the evaluation process



Source: five-year review

For the follow-up, only a limited number of procedures could be closed at the end of the first five-year cycle, and about 25% of the action plans were closed at the end of 2020 (i.e. one year after the end of the first cycle).

[102] Due to the restrictive measures in place to limit the spread of the Covid-19 pandemic, there were delays in the adoption of the evaluation reports in 2020.

As regards the evaluation process length, the baseline scenario corresponds to the current scenario. No significant changes are predicted. It may however be reasonable to speculate that the length of the process could be even longer if the number of announced evaluation visits (due to increased number of evaluated Member States and policy fields) increases, generating additional workload. As there is no significant correlation between the number of procedures and the process length, an estimation is not possible.

Already at the end of the first five-year cycle and beginning of the second one, the Commission started addressing, as far as possible, shortcomings of the Mechanism with a number of operational measures. Despite the efforts made during the first five-year cycle, several EU bodies / agencies stressed that there are still opportunities for increased synergies and enhanced complementarity between SCH-EVAL and their work. Absent any initiative at the EU level, the issues mentioned in this section will remain and the Mechanism's effectiveness might be further undermined in view of new developments, as explained under section 2.3.

5.2. Option 1: Operational changes

This option consists of **operational measures to adjust the scope of evaluations** (but keeping current policy-field fragmentation)**, accelerate the evaluation process** while maintaining the current decision-making **and follow-up procedures, better involve Member State experts and EU bodies agencies,** and strengthen the **evaluation of fundamental rights** in SCH-EVAL.

Option 1 keeps the current **scope**, which covers all parts of the Schengen *acquis*, while adapting the current priorities (policy fields) of the evaluation to the new realities of the Schengen a*cquis.* This would allow, for instance, expanding evaluations beyond the existing assessment of the Schengen Information System to cover new IT systems; adding police cooperation measures that will emerge from the police cooperation code; and incorporating ETIAS and EES into evaluations of external borders and, possibly, of other fields like data protection, as proposed by a wide range of stakeholders (European Parliament, Member States and EU bodies and agencies)[103]; and activities of EU agencies performing tasks on behalf of a Member State.

Operational changes also **make announced evaluations more targeted and coherent** (in line with all stakeholders' suggestion[104]). The current individual policy-field evaluations are upheld but focused on the critical elements for each Member State. To attain this objective, the evaluation design abandons the current holistic approach for each policy field by better

[103] Such changes are possible in principle at an operational level without amending Article 4 as the priorities (specific policy fields) for the evaluations are not defined in the Regulation, but agreed in the Schengen Committee for each evaluation cycle. A Member State recalled that '*Article 4 stipulates that "evaluations may cover all aspects of the Schengen acquis…", while the areas listed are indicated generic (return missing from the list, but as the wording provides all aspects, the systematic interpretation was that it is not a limitative enumeration of areas)*'. Member States and the European Parliament identified the need for SCH-EVAL to incorporate the evaluation of the new IT systems, EES and ETIAS, and activities of EU bodies and agencies, particularly Frontex. The European Parliament in addition referred to the need to streamline police cooperation and consider elements going beyond Schengen *acquis* like Prüm or Eurodac.

[104] The European Parliament asked to differentiate between the most relevant parts of the Schengen *acquis* that need to be assessed regularly and other parts that might be evaluated less frequently or even ad-hoc. Member States indicated that evaluations should be more strategic and targeted, and highlighted the opportunity for enhanced coherence among evaluations of different policy fields.

integrating improved risk assessments (see below) provided by EU agencies (and third parties input) and taking into account previous evaluation findings[105]. This option could also include the possibility of carrying out evaluation visits covering more than one Member State with similar challenges, or combining evaluations of different policy fields (for instance, Schengen Information System and police cooperation). Shortening (as more targeted) the length and reducing the number of announced evaluations facilitates wider use of other evaluation tools. Such operational changes are conditional to the agreement of the Member States concerned.

To improve the quality of evaluations (and making them more targeted) and increase the **participation of EU agencies / bodies**, the Commission continue implementing measures to ensure synergies with Vulnerability Assessment by Frontex and discuss with EU bodies and agencies the revision of the current scope of their risk assessments so they are fit for purpose. The current legal framework leaves a limited margin to adopt additional measures at operational level.

As to **decision-making processes and follow-up**, the Commission implements measures to simplify the internal workflow or introduce informal time benchmarks[106]. Member States also suggested to the Commission the organisation of more frequent Schengen Committee meetings (and to the Council of more frequent SCH-EVAL working parties). A further possibility is to use video conferencing with Member States to discuss progress reports. The regular adoption of the **comprehensive annual reports** could also increase peer pressure in the follow-up and foster political dialogue on recurrent issues and deficiencies while improving the transparency of the Mechanism, as these reports are public. The Commission could also organise exchanges with relevant civil society organisations to discuss the results of SCH-EVAL.

To address some of the shortcomings related to the **designation of sufficient qualified experts**, the Commission will anticipate the call for designations to facilitate the organisation on the side of Member States (and sharing with Member States the specific dates for evaluations as early as possible). The Commission and EU bodies / agencies could establish training in those areas where it is currently lacking (visa policy and data protection[107]) and improve current ones, as requested by stakeholders. Taking into Member States' suggestions, the Commission under this option would create incentives of a non-financial nature, such as awarding certificates. Incentives of financial nature are not included under this option. The Commission explored the possibility of introducing daily allowances. According to the Financial Regulation, however, daily allowances are only paid to experts when a contract has been signed with them. This is not the case for experts participating in the implementation of this Mechanism. Member States may explore the possibilities of providing financial incentives for experts through their programmes under the new Border Management and Visa Instrument, in particular, with the options of operating support that allows them to cover staff costs.

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105 This option reflects the remarks of several Member States about the need to take in consideration the specific situation of a Member State ('*The 'peer-to-peer' system - basis for the principle of mutual trust need among MS - needs to recognise the specificity of certain countries concerning certain policy fields, such as external border or return')*.

106 The Commission intends to introduce informal time benchmarks to speed up the adoption of evaluation reports.

107 The Commission did not organise trainings for the data protection area due to limits in available resources.

As to fundamental rights, several stakeholders (the European Parliament, some Member States, some EU bodies / agencies, and civil society organisations) proposed to **increase SCH-EVAL's capacity to identify violations of fundamental rights**. Such measures include, first, wider involvement of FRA (as all stakeholders suggested) in the overall visits, notably at external borders, and broader use of its guidelines[108] by evaluation teams in preparation of and during the evaluations. Second, the evaluation team would increase the use of information gathered by EU bodies and agencies and – as suggested by the European Parliament, some Member States and civil society organisations – relevant third parties (NGOs, international organisations and independent authorities)[109]. Third, several stakeholders (some Member States, NGOs and European Parliament) suggested the incorporation of fundamental rights elements in all training for evaluators.

Table 5 – Overview of Option 1

Option 1			Area of intervention - Driver
Specific objectives	**Problems**	**Key measures proposed**	
1. Avoid gaps and increase strategic focus	1. Limited strategic focus and significant fragmentation preventing an overview of Schengen	- Adapt evaluations to cover new elements of the Schengen *acquis*, including activities of EU agencies performing tasks on behalf of a Member State; - Reduce fragmentation by merging policy fields (e.g. police cooperation and SIS); - Prepare more targeted evaluations by focusing on critical elements, making better use of improved risk analysis (in discussion with EU agencies) resulting in a reduced number of recommendations; - Adopt the annual SCH-EVAL report to have an overview of Schengen; - Increase political dialogue among EU institutions and Member States using as basis the annual report.	Scope (Driver 1) Specific evaluation design (Driver 4) Decision-making (Driver 3)
2. Rationalise the distribution of tasks and responsibilities, and simplify and accelerate process and procedures	2. Insufficient capacity to quickly react and adapt to new circumstances, legislative developments and trends 3. Slow adoption and implementation of remedies	- Accelerate the adoption of evaluation reports by simplifying the internal workflows, and introducing internal benchmarks and higher frequency of Schengen Committees; - Improve follow-up (by increasing the use of online / IT tools, i.e. bilateral VCs with Member States); - Increase peer-pressure to accelerate the implementation of remedies by adopting the annual SCH-EVAL report including an overview of Member State state of play in the implementation of recommendations.	Evaluation and follow-up procedures and processes (decision-making) (Driver 3)
3. Strengthen the implementation of fundamental rights safeguards under the Schengen *acquis*	2. Insufficient capacity to quickly react and adapt to new circumstances, particularly violations of fundamental rights at the external borders	- Increase the involvement of FRA in evaluations, and invite FRA to provide observers in external borders evaluations / visits; - Use more broadly the guidelines developed by FRA; - Make wider use of third party information (reinforcing guidelines); - Incorporate fundamental rights elements in all trainings.	Specific evaluations design and implementation / actors involved and synergies with other instruments (Driver 4)
4. Optimise	1. Limited strategic	- Increase and improve training for all policy fields, and	Specific

108 FRA, Border controls and fundamental rights at external land borders (2020), Border controls and fundamental rights at external land borders | European Union Agency for Fundamental Rights (europa.eu).

109 Stakeholders suggested to widen the scope of evidence to include third sources (European Parliament, some EU bodies / agencies and NGOs), and it is also indicated in the study, ECRE, Policy Note: Schengen – A Club where Fundamental Rights (Do Not) Matter?, 2019, p. 4.

the participation of Member State experts and the involvement of EU bodies and agencies and synergies with other instruments	focus and significant fragmentation preventing an overview of Schengen 2. Insufficient capacity to quickly react and adapt to new circumstances, particularly violations of fundamental rights at the external borders	incorporate the new legislative developments; - Introduce non-financial incentives for experts; - Anticipate calls for designation of experts and share information about the dates of evaluations early on; - Increase the use of information gathered by EU bodies and agencies and relevant third parties; - Increase request of risk analysis from EU agencies / bodies as well as revise with EU agencies / bodies the scope of risk analysis; - Improve synergies with Vulnerability Assessment of Frontex.	evaluations design and implementation / actors involved and synergies with other instruments (Driver 4)

5.3. Option 2: Targeted legislative changes

This option reinforces operational changes by building on them and increasing legal certainty while it streamlines and simplifies procedures. It consists of targeted changes to the current provisions of the Regulation to increase **flexibility** regarding the fields the Mechanism should evaluate and **its programming** (building on Option 1). It rationalises processes by **eliminating or simplifying existing procedural obligations** while keeping the same institutional balance. It creates additional opportunities for better and **more targeted mobilisation of experts and coordination with EU agencies and bodies**, and increases **legal certainty on the elements relevant for fundamental rights** mentioned under Option 1 codifying them and highlighting their prominence and political importance.

This option keeps current scope (the Schengen *acquis*) but deletes **the reference to the specific policy fields** mentioned in Article 4 of the Regulation and **codifies the Schengen Committee's current practice of agreeing on the specific policy fields** at the beginning of the evaluation cycle. By deleting the list of specific policy fields, this option increases the flexibility to take into account new developments in the Schengen *acquis* in the future (as stressed by several Member States and the European Parliament). It will offer a different starting point for the scope of the evaluations as Article 4 would not refer anymore to the current policy fields. By codifying the Schengen Committee's practice, this option ensures legal certainty as to the procedure to determine the specific policy fields that the Mechanism will evaluate in each cycle (and for a given Member State).

It also **clarifies in the legal basis** that **EU agencies fall under the Mechanism when they implement executive tasks delegated** *de facto* or *de iure* **by Member States and that qualify as implementation of the Schengen *acquis***. Given the wider responsibilities of some EU agencies today and possibly in the future, the majority of Member States and the European Parliament suggested SCH-EVAL should cover the activities of relevant agencies, especially Frontex. However, under this option, it would not be possible to issue recommendations to the EU agency concerned when shortcomings are imputable to the decisions or policy of an EU agency carrying out the delegated tasks. Article 70 of TFEU provides for the evaluation of Member States only, which represents a legal obstacle in this respect. As a possible solution, under this option the Commission will communicate the identified deficiencies to the governing body of the EU agency concerned.

Additional targeted legislative changes, supported by the majority of Member States[110], **simplify the procedure for adopting and amending the annual programme**. Article 5 is to be modified so to ensure flexibility to react flexibly to unforeseen changes to the material conditions having an impact on the programme of announced evaluations. In practical terms, it means no need for a formal amendment of the annual programme and eliminating the obligation to include in the annual programme unannounced evaluations, which the Commission could plan on a need-basis[111] at short notice.

As to the **rationalisation of procedures**, this option removes or simplifies provisions that create unnecessary procedural obstacles, as resulted from the five-year review and the feedback from stakeholders (Member States and European Parliament). Firstly, Option 2 proposes the **declassification of the evaluation reports**[112] as the rule to simplify and speed-up the procedure by allowing quicker handling of reports and facilitating their transmission to the national Parliaments and the European Parliament[113]. Evaluation reports would nevertheless be treated as confidential[114] and Member States retain the possibility to ask for their classification. Secondly, simplified **adequacy assessment** so that the Commission does not need to adopt a Communication to inform the Member State and the Council on its assessment and progress made. Finally, a reduced frequency of follow-up reports (Article 16(3) and (4)), by requiring, as a rule, a progress report every six months (instead of the current three months), reducing the administrative burden both on the Commission and Member States.

This option **introduces shorter and additional (legal) time limits** to structure procedures further, as proposed by the majority of Member States and European Parliament. The Regulation would set time limits for all procedural administrative steps, also for intermediary steps such as the drafting meeting, reducing the length of the process from current 10-12 months to **six months** at most from the evaluation visit as indicated by a majority of Member States[115]). The Regulation also refers to the possibility of setting time limits for the implementation of recommendations especially for serious deficiencies (as the Court of Auditors requested).

The **decision-making process and follow-up procedures** remain largely unchanged (the Council keeps adopting recommendations). As Option 2 includes the operational measures under Option 1, the overall transparency of the Mechanism would improve through the operational changes indicated in section 5.2. The Commission would also increase reporting

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110 The majority of Member States (77%) submitted that a more flexible approach in the adjustment of the planning of evaluations in order to be able to react to evolving circumstances would have a positive impact. In general, as explained by Member States '*[a]n evaluation visit requires a lot of advance planning and preparation; hence it is important that Member States are given sufficient notice allowing them to prepare properly*', but '*[a] more flexible approach in this area would allow to react more adequately and quickly in the light of unexpected circumstances as was this year with the COVID-19 pandemic.[…] [M]ore flexibility could help to have more effective and timely unannounced evaluations*'.

111 It is to recall that Member States are notified of the unannounced evaluations 24 hours in advance. The European Parliament supports any measure that would increase the flexibility and the surprise effect of unannounced visits.

112 Currently, the Regulation (Article 17) requires the evaluation report to be treated as EU RESTRICTED/RESTREINT UE, which creates many administrative burdens on their handling (also for translations) and transmission.

113 The European Parliament and NGOs called for wider access to the evaluation reports.

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

115 In their replies to the questionnaire, 54% of the Member States indicated that the ideal length would be up to six months and 20% up to four months.

to the Council and the European Parliament, which should lead to increase pressure to accelerate implementation of remedies.

To **increase the input of EU bodies and agencies**, this option introduces a specific coordination obligation for SCH-EVAL and a specific obligation to take their findings and actions into due account for the implementation of SCH-EVAL. This responds to the EU bodies / agencies request for clarification in the Regulation and it would increase legal certainty and the strategic focus in the evaluation's design which depends fundamentally on the information provided but the EU agencies. This obligation could be reciprocal, which would require that EU agencies have wider access to information on evaluations directly relevant for their respective tasks.

To ensure that the size and qualification of the evaluation team matches evaluation needs, legislative changes would introduce **flexibility to determine the number of experts needed per evaluation**, as mentioned by Member States and civil society organisations (as opposed to current provisions that set a maximum of 8 experts and no minimum). The Commission would indicate the team's appropriate composition, including optimal size, for each evaluation in the call for experts.

Finally, to increase legal certainty on elements relevant for **fundamental rights** and highlight their prominence and political importance, this option includes targeted legislative changes to make an explicit reference in the Regulation to submission of risk analyses by FRA. It also strengthens the reference to fundamental rights in the provision on training and includes a specific provision in the Regulation regarding the use of the evidence supplied by third parties.

Option 2 would also contribute to increase the transparency of the Mechanism. In addition to (as per Option 1) better reporting to the European Parliament and Council through the regular adoption of the comprehensive annual reports, which are public, it proposes the declassification of the evaluation reports which may facilitate the circulation within the European and national Parliaments.

Table 6 – Overview of Option 2

Option 2			Areas of intervention
Specific objectives	**Problems**	**Key measures proposed (Option 1 AND)**	
1. Avoid gaps and increase strategic focus	1. Limited strategic focus and significant fragmentation preventing an overview of Schengen	- Remove legislative elements that lead to fragmentation by deleting in Article 4 of the Regulation the current reference to the policy fields and clarify the flexible scope of the evaluations; - Clarify that EU agencies fall under the Mechanism when they carry out executive tasks *de iure* or *de facto* delegated by Member States that qualify as implementation of the Schengen *acquis*; - Codify the Schengen Committee's current practice of agreeing on the specific policy fields at the beginning of the evaluation cycle; - Specific obligation on the Commission to coordinate with EU agencies and monitoring mechanisms to increase synergies, avoid overlaps and make evaluations more targeted and focused.	Scope (Driver 1) Programming (Driver 2) Specific evaluations design (Driver 4)
2. Rationalise the distribution of tasks and responsibilities,	2. Insufficient capacity to quickly react and adapt to new circumstances,	- Simplify the procedure for adopting and amending the annual programme (i.e. it will be more general without so many details, eliminate the need of formal amendment of the annual	Programming (Driver 2)

Option 2			Areas of intervention
Specific objectives	**Problems**	**Key measures proposed (Option 1 AND)**	
and simplify and accelerate process and procedures	legislative developments and trends 3. Slow adoption and implementation of remedies	programme); - Exclude from the annual programme unannounced evaluations so they can be programmed and organised with more flexibility, and also at shorter notice as needed; - Declassify evaluation reports to allow for quicker handling; - Set up specific timelines for the various steps in the procedures for adopting evaluation reports (6 months from the evaluation visit) and for the implementation of the recommendations by the evaluated Member States; - Accelerate the communication of the assessment of the action plan by removing the obligation to adopt a formal Commission Communication in the language of procedure; - Reduce reporting obligations (2 progress reports per year instead of 4) and focus more on supporting Member Statess in the implementation of remedies.	Evaluation and follow-up procedures and processes (decision-making) (Driver 3)
3. Strengthen implementation of fundamental rights safeguards under the Schengen *acquis*	2. Insufficient capacity to quickly react and adapt to new circumstances, particularly violations of fundamental rights at the external borders	- Exclude from the annual programme unannounced evaluations so they can be programmed and organised with more flexibility, and also at shorter notice if needed. - Make explicit reference in the Regulation to submission of risk analyses by FRA; - Strengthen the reference to fundamental rights in the Regulation's provisions on trainings; - Include a specific provision in the Regulation regarding the use of the evidence supplied by third parties.	Programming (Driver 2) Specific evaluations design and implementation / actors involved and synergies with other instruments (Driver 4)
4. Optimise the participation of Member State experts and the involvement of EU bodies / agencies and synergies	1. Limited strategic focus and significant fragmentation preventing an overview of Schengen 2. Insufficient capacity to quickly react and adapt to new circumstances.	- Specific obligation to coordinate with EU agencies and monitoring mechanism to increase synergies, avoid overlaps and make evaluations more targeted and focused; - Introduce flexibility in the size of the evaluation and monitoring teams to adapt the teams to the needs; - Create (non-financial) incentives for Member State experts to work as evaluators.	Specific evaluations design and implementation / actors involved and synergies with other instruments (Driver 4)

5.4. Option 3: Ambitious legislative changes

Option 3 presents a more ambitious approach that incorporates the operational and legal improvements under Options 1 and 2 combining them with fundamental changes to the Mechanism's design and functioning. This option does away with policy-field specific evaluations as a rule, favouring **comprehensive Member State evaluations based on risk assessment and situational awareness**, while opening the possibility for a limited extension of the scope of SCH-EVAL **beyond the Schengen *acquis***. However, it increases fundamental rights focus by creating a specific '**fundamental rights' evaluation** given the shortcomings identified and retaining data protection evaluations as a particular policy field. It also extends the current five-year cycle to **seven years** to facilitate more flexible use of available tools, while **modifying the conditions and criteria** for their use, creating new and more **fit-for-purpose tools.** It **alters the current institutional balance** in the decision-making and follow-up procedures and **fundamentally changes the process to designate Member State experts**, creating a yearly permanent pool managed by the Commission. It **maximises the input and coordination with EU bodies and agencies and other quality**

control mechanisms.

The **scope** of the Mechanism would go beyond the Schengen *acquis* to cover '**all aspects related to the implementation and functioning of Schengen**'. However, this enlargement would be within the limits of the evaluations agreed under the multiannual and annual programme (per the flexibility in Option 2). The teams could evaluate provisions such as Eurodac Regulation[116] or *Prüm* Decision, as suggested by the European Parliament. This approach would necessarily require developing parallel legal acts given Schengen's variable geometry. This term refers to the differentiated integration of the Member States in Schengen: the States bound by the Schengen *acquis* are not the same group of States that are bound by provisions under EU law identified also as relevant for the functioning of Schengen (e.g. Eurodac Regulation and *Prüm* Decision). It follows that, for the Mechanism to cover the elements functionally linked to the Schengen *acquis*, it would require developing parallel legal acts covering non-Schengen aspects. It would be difficult to create a specific legal act for a very limited extension of the SCH-EVAL scope beyond the Schengen *acquis* without discussing asylum integration. A large group of Member States strongly opposes this last aspect and it is not coherent with the pending proposal that the new European Union Asylum Agency will carry out an evaluation of Member States' asylum systems.

This option **does away with specific individual policy-field evaluations as a rule** (in line with the suggestion by civil society organisations[117] and the recommendations made by the European Parliament's study[118]). **Rather, the Mechanism would carry out comprehensive risk-based Member State evaluations covering only the elements identified through risk analysis and situational awareness.** All findings would be presented in a single report per Member State. However, in the case of fundamental rights, as an alternative to Option 2, this option creates a specific evaluation focusing on **fundamental rights**, disentangling them from other policy fields. It also retains the separate evaluation on data protection, given its specificity (as preferred by DPAs). Moving to all-encompassing evaluations as per Option 3 could be difficult to implement in practice in the short-term as these evaluations imply far-reaching changes in the way they are organised and carried out. In particular, it might be difficult in the short-term to create multidisciplinary teams with the appropriate profiles given the high level of specialisation per policy field.

This option also foresees the **possibility to address recommendations directly to EU agencies in relation to all their executive tasks that qualifies as implementation of the Schengen *acquis*.** As Article 70 of TFEU limits the evaluations to Member States only, it would be necessary to amend the founding Regulations of each of the relevant EU agencies, through the adoption of separate legal acts. The adoption of such separate legal acts would specifically provide for agencies to be subject to SCH-EVAL evaluations. However, amending the Regulation of the relevant EU agencies would be practically and politically difficult as some of them have undergone major changes in recent years and, in other cases, this would require to amend proposals recently submitted at the risk of delaying their

116 Regulation (EU) 603/2013, OJ L 180, 29.6.2013, p. 1 ('Eurodac Regulation').

117 As indicated by the Meijers Committee during the stakeholders' consultation.

118 The state of play of Schengen governance, p. 76, indicates *'[…] opportunity to draw broader conclusions from evaluations by introducing instruments in the SEMM that allow it to 1) provide a national Schengen fitness check covering all Schengen policy fields within a Member State…'.*

adoption[119]. In addition, it could create duplications with monitoring activities already foreseen under those Regulations.

To make the best use of **evaluation and monitoring tools**, this option changes the conditions and criteria and / or the features of available tools to ensure a different use depending on the objective. In particular:

a) To ensure a systematic use of thematic evaluations, the Regulation includes **criteria on when a thematic evaluation should take place** (reflecting the proposals of Member States, European Parliament and EU bodies / agencies). For example, this could be when major legislative changes enter into force, to assess Member States with similar challenges, or assess a specific issue across relevant policy fields.
b) To increase the effectiveness of **unannounced visits**, the Regulation clarifies their purpose, i.e. **random 'health check'** or **investigative**, and the conditions to trigger the latter ones, for example a risk analysis by one of the relevant EU agencies or an emerging situation highlighted by reputable third parties. In support of the unannounced character and purpose of the visit, an advance notice to the Member State (currently 24h notice) should not apply in duly justified cases (e.g. investigative visits). This would allow making unannounced evaluations more effective in the case of illegal refusal of entry. This solution balances also the necessity of the 'surprise effect' with the conditions necessary for a proper organisation[120] and could be a reasonable and proportionate compromise between the position of the majority of Member States and the other stakeholders (notably the European Parliament and civil society organisations), who urged to refrain from the 24h notice.
c) To increase the use and efficiency of **revisits**, the legal basis differentiates between two situations. If an evaluation identifies serious deficiencies, the revisit would focus only on those deficiencies ('**serious deficiencies revisits**'). In other cases, the revisit would be limited to verifying the implementation of an action plan ('**verification visits'**). In this last case, the Commission does not formally adopt an evaluation report and the revisit would not trigger new Council recommendations nor require an action plan from the Member State. The monitoring team would consist of Commission and Member State leading experts and an EU agency observer in the case of verification visits.

As proposed by some Member States and the European Parliament, this option **extends the length of the multiannual evaluation cycle to seven years** to make space for a more balanced use of the different tools and closer monitoring, while absorbing the likely additional workload required to evaluate more Member States and policy fields in the coming years.

This option combines the streamlining and simplification legislative changes under Option 2 with a **new decision-making procedure that has a significant impact on the length of the process and current institutional balance.** To respond to the general call for speeding up

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119 Frontex has already undergone two major reforms in the last years and Europol's mandate is also planned to be reformed.

120 A Member State submitted: '*Due to organisational and logistical issues that may arose during unannounced on-site visits without previous notifications, ability to coordinate evaluation team and representatives of local institutions and having in mind possibility that evaluation team might not gain appropriate required information for certain reasons, it is important to have 24 hours notifications which would not consequently endanger findings on site*'. A wide majority of Member States shares this view.

the evaluation process and increased peer-pressure requested by Member States, the European Parliament and EU bodies / agencies, this option proposes that the Commission adopts both the evaluation report and recommendations in a single document using the examination procedure (Article 14(5) and 15(3)). This would ensure more clarity on the causal link between the findings in the report and the recommendations while ensuring sufficient Member States involvement in adoption of recommendations (through comitology examination procedure). It would further reduce the length of the process (from 6 months in Option 2 to **4 months**). However, for thematic evaluations, first-time evaluations as well as in the case of serious deficiencies, the Council would retain the power to adopt recommendations and in some cases to close the action plans, to increase peer pressure and focus on areas of general interest for the well-functioning of Schengen. Some Member States explicitly supported this solution while another group of Member States saw advantages from combining in a single document evaluation findings and recommendations. Civil society organisations showed support for the combined adoption of report and recommendations by the Commission.

In addition, under this option, the Regulation would introduce a **fast-track procedure** (e.g., adoption of the report and recommendations within **2.5 months** from the evaluation visit) for serious deficiencies, as it is crucial to address deficiencies swiftly in this case as stressed by all stakeholders with a significant increased involvement of the Council in the follow-up.

Furthermore, this option reinforces the **Commission's obligations to report to the Council and the European Parliament** on progress made in the implementation of recommendations by each Member State, thus responding to the Parliament's call for better reporting and information exchange. It also encourages the Council to issue yearly conclusions based on the annual SCHEVAL report. The Council's role in the follow up overall will also be significantly increased particularly in cases where Member States are not making progress in the implementation of the action plans.

As to the participation of EU agencies / bodies, under this Option, the Commission requires all relevant EU agencies / bodies to provide more comprehensive information not limited to risk analysis but including also 'other relevant information for situational awareness' with increased frequency (before the annual programme and one month before each evaluation mission). The Commission would maintain the possibility to address specific requests as needed. This would improve preparation of evaluations and experts' situational awareness of the evaluated country. The Regulation would require reducing the risk of duplications between different evaluation mechanisms by requiring coordination to strengthen synergies and prevent overlapping or conflicting recommendations.

Finally, in addition to the flexibility in the teams' size, additional training, and non-financial incentives (Option 2), Option 3 introduces a **different process to select experts** as proposed by several Member States already in 2019. This option includes an annual call for experts covering all evaluations combined with Member States' obligation to designate one expert per policy field, while taking into account the different sizes and capacities of the administrations, and the need for a variety of profiles. Based on the designation, the Commission would build and manage a pool of experts that it would use to designate experts for evaluations while ensuring geographical balance and rotation. If there were no sufficient experts with the right profile, the Commission would launch a targeted call. During the consultation, the majority of Member States, EU bodies / agencies and DPAs / EPDS supported the establishment of a pool of experts. In addition, the European Parliament's study

recommended building an expert pool for evaluation experts in the various Schengen policy areas[121].

Table 7 – Overview of Option 3

Option 3			Areas of intervention
Specific objectives	**Problems**	**Key measures proposed (Option 2 AND)**	
1. Avoid gaps and increase strategic focus	1. Limited strategic focus and significant fragmentation preventing an overview of Schengen	- Extend the scope to Schengen issues that do not strictly qualify as implementation of the Schengen *acquis* & introduce the possibility to addressed recommendations to EU agencies; - Eliminate fragmentation by carrying out a single evaluation per Member State solely based on risk analysis and situational awareness (except for fundamental rights and data protection which would be evaluated separately); - Extend cycle to 7 years for more balanced and strategic use of evaluation and monitoring tools; - Focus Council's decision-making powers on politically relevant cases; - Request risk analysis updates from EU agencies / bodies for more focused evaluations and better react to new challenges in Member States; - Clarify criteria for thematic evaluations to increase their use.	Scope (Driver 1) Decision-making (Driver 3) Specific evaluations design (Driver 4) Evaluation and monitoring tools (Driver 2)
2. Rationalise the distribution of tasks and responsibilities, and simplify and accelerate process and procedures	2. Insufficient capacity to quickly react and adapt to new circumstances, legislative developments and trends, particularly violations of fundamental rights at the external borders 3. Slow adoption and implementation of remedies	- Clarify criteria and conditions to use thematic and unannounced evaluations and revisits in line with their objective & eliminate the 24h advance notice for 'investigative' unannounced evaluations; - Combine the adoption by the Commission of evaluation report and recommendations, further introduce a time limit for the adoption of the report of 4 months from the evaluation visit. For thematic evaluations and in cases of serious deficiencies and political important cases the Council would retain possibility to adopt the recommendations and be more involved in follow-up phase to increase peer-pressure and thus accelerate the implementation of remedies by the Member State concerned; - Introduce a fast track procedure for the adoption of the reports and recommendations in case of serious deficiencies (2.5. month from the evaluation visit); - Reinforce Commission's obligations to report to the Council and the European Parliament on progress made in the implementation of recommendations by Member States & Council to issue yearly conclusions based on the annual SCHEVAL report.	Evaluation and monitoring tools (Driver 2) Evaluation and follow-up procedures and processes (decision-making) (Driver 3)
3. Strengthen implementation of fundamental rights safeguards under the Schengen *acquis*	2. Insufficient capacity to quickly react and adapt to new circumstances, particularly violations of fundamental rights at the external borders	- Introduce a specific evaluation focusing on the implementation of fundamental rights safeguards under the Schengen *acquis*; - Eliminate the 24h advance notice for 'investigative' unannounced evaluations.	Scope (Driver 1)
4. Optimise the participation of	1. Limited strategic focus and significant	- Introduce one single call for experts per year with an obligation on Member States to designate 1	Specific evaluations design and

[121] The state of play of Schengen governance, p. 75.

Option 3			Areas of intervention
Specific objectives	Problems	Key measures proposed (Option 2 AND)	
Member State experts and the involvement of EU bodies and agencies and synergies with other instruments	fragmentation preventing an overview of Schengen 2. Insufficient capacity to quickly react and adapt to new circumstances, legislative developments and trends.	expert per policy field per year; - Create a pool of experts managed by the Commission for choosing experts according to the needs of the specific evaluation or monitoring activity, including emerging issues and announced visits; - Request risk analysis updates from EU agencies / bodies for more focused evaluations and better react to new challenges in Member States and increase coordination / synergies with EU bodies / agencies.	implementation / the actors involved and synergies with other instruments (Driver 4)

5.5. Option 4: Combined approach

Option 4 is a combination of measures envisaged under the three options, depending on the intervention area and the level of ambition. It presents operational measures and legislative changes that would contribute to an extremely flexible, yet legally certain, Mechanism, which would easily adapt to future challenges and opportunities.

Based on stakeholders' positions (as indicated in the presentation of the three other options), and taking into account the legal and operational obstacles that some of the options face, Option 4 combines measures under the previous options, depending on the area of intervention.

As to the **scope of evaluations**, Option 4 keeps the current scope covering all aspects of the Schengen *acquis*. However, it removes legislative elements that lead to fragmentation by deleting in Article 4 of the Regulation the current reference to the policy fields. It also clarifies the flexible scope of the evaluations as per Option 2. By removing the specific policy fields to be evaluated, this option allows the Mechanism to quickly adapt to the dynamic nature of the Schengen *acquis*. In addition, this option **adapts the priorities** (policy fields) **to the new realities and actors** (covering EU agencies' activities delegated by Member States) and introduces **a more flexible programming** (as per Option 2) for defining the policy priorities of the cycle and the articulation of evaluations. This option has the advantage of creating a flexible legislative framework for programming and defining priorities for each cycle. The option adapts the rules on the multiannual and annual programming to be able to react faster to emerging problems and challenges, and to allow operating the Mechanism in a more efficient manner. As specific evaluations become more and more targeted, given that risk analyses improve with the changes proposed (see below), this option could achieve the same objectives as those under Option 3 in the medium term. The new flexible framework allows, for example, to carry out a single evaluation per Member State covering all relevant policy areas with a single evaluation report, or to evaluate at the same time several Member States facing the same challenges. To increase strategic focus and allow for a more balanced and strategic use of all available evaluation and monitoring tools, including closer monitoring, this option **extends the evaluation cycle to seven years** (as per Option 3).

As to the **monitoring and evaluation tools**, Option 4 proposes **ambitious legislative changes to broaden the range of tools available and clarify the criteria and conditions for their use,** as per Option 3: systematic thematic evaluations, two types of unannounced visits with or without 24h notice depending on the purpose ('random health check' or 'investigative'), and two types of revisits ('serious deficiencies revisits' and 'verification revisits'). This approach found broad support among stakeholders. The only disputed element could be changes to unannounced visits. Member States seem less keen to eliminate the 24h

advance notice but the European Parliament and civil society organisations have strong views about it. This option, as Option 3, is a compromise that looks into the purpose of the unannounced visit to determine whether the 24h advance notice would be justified.

As to the **decision-making procedures and follow up**, Option 4 proposes **amendments to accelerate processes and simplify procedures** (as per Option 2) as well as **ambitious legislative changes to modify the decision-making process, altering the current institutional balance** so that the Commission would adopt both the evaluation report and recommendations as a rule while increasing the role of the Council in most politically relevant cases (e.g. serious deficiencies, thematic evaluations and first time evaluations[122]) and follow-up, and creating fast-track procedures for serious deficiencies (as per Option 3).

Acceleration and simplification measures found broad support among stakeholders. As to decision-making, while only few Member States support explicitly the Commission's empowerment to adopt both reports and recommendations, several Member States see the advantage of having findings and recommendations in a single document and focusing the Council's work on peer pressure and on areas of general interest for the well functioning of the Schengen are. This option would attain those objectives. It combines the simplification foreseen in Option 2 with a realignment and strengthening of the roles of both the Council and the European Parliament as per Option 3, and that would also help increase the strategic focus of the Mechanism. Overall, the Option 4 would reduce the current length of the first phase of the evaluation procedure (see Annex 3) from the current 12 months to 4-6 months (ordinary procedure) and from the current 12 months to 2.5 months (for fast-track procedure in the case of serious deficiencies).

As to **Member State expert's participation**, Option 4 proposes ambitious legal amendments to **fundamentally change the process to designate experts**, creating a yearly permanent pool managed by the Commission (as per Option 3) while **increasing flexibility in the size of the teams** (as per Option 2) and **increasing non-financial incentives for participation** (as per Option 1). As to the **EU bodies and agencies' involvement**, this option maximises the input and coordination with EU agencies and bodies and other quality control mechanisms by **improved risk analyses** (as described in Option 1), **enhanced coordination and situational awareness reports** (as per Option 2) and **strengthened coordination with new legal obligations** (as per Option 3). These measures found broad support among stakeholders.

Concerning **fundamental rights integration into SCH-EVAL**, the Option 4 introduces **legislative changes to increase legal certainty on elements relevant for fundamental rights** and highlight their prominence and political importance as per Option 2. To summarise, include a reference to the regular submission of risk analyses by FRA, strengthen the reference to fundamental rights in the provision on trainings, increase FRA participation in evaluation visits, and include a specific provision regarding the use of evidence provided by third parties. These measures found broad support among stakeholders.

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[122] 'Serious deficiency' means one or more deficiencies identified during an evaluation 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. '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.

Table 8 – Overview of Option 4

Option 4			Areas of intervention
Specific objectives	**Problems**	**Key measures proposed**	
1. Avoid gaps and increase strategic focus	1. Limited strategic focus and significant fragmentation preventing an overview of Schengen	- Keep the current scope covering all aspects of the Schengen *acquis*, and remove legislative elements that lead to fragmentation by deleting in Article 4 of the Regulation the current reference to the policy fields and clarify the flexible scope of the evaluations (to cover EU-agencies) as per Option 2; - Adapt the policy fields to the new realities (as per Option 1); - Codify the Schengen Committee's current practice of agreeing on the specific policy fields at the beginning of the evaluation cycle and a more flexible programming (as per Option 2); - Extend the duration of the evaluation cycle to seven years (as per Option 3); - Broaden the range of tools available and clarify the criteria and conditions for their use (as per Option 3); - Maximise the input and coordination with EU agencies and bodies and other quality control mechanisms by improved risk analyses / situational awareness and progressively move towards risk-based evaluations (as per Option 3).	Scope (Driver 1) Programming & Evaluation and monitoring tools (Driver 2)
2. Rationalise the distribution of tasks and responsibilities, and simplify and accelerate process and procedures	2. Insufficient capacity to quickly react and adapt to new circumstances, legislative developments and trends, particularly violations of fundamental rights at the external borders 3. Slow adoption and implementation of remedies	- Introduce more flexible programming and exclude unannounced visits from programme (as per Option 2), - Introduce amendments to accelerate processes and simplify procedures, i.e. declassification of evaluation reports, time limits (as per Option 2); - Broaden the range of tools available and clarify the criteria and conditions for their use (as per Option 3); - Introduce the adoption of evaluation reports and recommendations by the Commission while focusing the Council decision-making powers on most politically relevant cases (as per Option 3); - Fast-track procedure in case of serious deficiencies (as per Option 3); - Reinforce Commission's obligations to report to the Council and the European Parliament on progress made (as per Option 3).	Programming & Evaluation and monitoring tools (Driver 2) Decision-making (Driver 4)
3. Strengthen the implementation of fundamental rights safeguards under the Schengen *acquis*	2. Insufficient capacity to quickly react and adapt to new circumstances, particularly violations of fundamental rights at the external borders	- All measures under Options 1 and 2; - Eliminate the 24h advance notice for 'investigative' unannounced evaluations (as per Option 3).	Programming & Evaluation and monitoring tools (Driver 2) Specific evaluations design and implementation / actors involved and synergies with other instruments (Driver 4)
4. Optimise the participation of Member State experts and the involvement of EU bodies and agencies and	1. Limited strategic focus and significant fragmentation preventing an overview of Schengen 2. Insufficient capacity to quickly react and	- All measures under Options 1, 2 and 3.	Specific evaluations design and implementation / the actors involved and synergies with other instruments (Driver 4)

Option 4			Areas of intervention
Specific objectives	Problems	Key measures proposed	
synergies with other instruments	adapt to new circumstances, legislative developments and trends		

5.6. Policy options discarded at an early stage

The Commission did not consider at any stage replacing SCH-EVAL by a different type of mechanism without the involvement of Member States and their experts. All stakeholders and the five-year review stressed the merit of the Mechanism in its current form in this respect.

At an early stage, the Commission discarded other options as non-viable alternatives.

Any options implying **a significant widening of the Mechanism's scope** (such as including comprehensive evaluations of the **asylum systems**) do not appear workable. First and foremost, SCH-EVAL with its peer-to-peer approach is a *lex specialis* compared to the general role of overseeing the proper implementation of the EU law which is a role attributed to the Commission as 'Guardian of the Treaties'. This naturally implies a certain prudence when it comes to reconsidering the scope of the Mechanism. Because of Schengen's variable geometry, the extension to areas not belonging to the Schengen *acquis* would also require the adoption of a separate legal act. The core of this initiative, as explained in the introduction, is to strengthen Schengen Governance and the implementation of the Schengen *acquis* needs to remain the focus of SCH-EVAL. Widening the scope to new policy fields at this stage '*could make the system more complicated and less easy to manage*', as indicated by a Member State. Politically a solid group of Member States clear oppose a comprehensive integration of the asylum systems. This possibility would also not be coherent with the proposal to set up a fully-fledged European Union Agency for Asylum with the relevant competence for monitoring the implementation of the asylum *acquis* by Member States[123].

A further option discarded at an early stage is a complete **abolishment of the evaluation cycle**, to carry out evaluations on a need basis. Several Member States submitted that it is key to maintain certain guarantees of transparency and predictability about each Member State's evaluation. The cycle seems to be the easiest and most straightforward option. Comprehensive evaluations help exchange good practices and contribute to the development of the Schengen *acquis*. A stakeholder noticed that '*[t]he cyclical nature of evaluations remains pertinent, as this can constitute a driving force for change in the Member State*'. Regular evaluations create an additional incentive for Member States to bring about improvements.

[123] COM(2016) 271 final of 4.5.2016 and COM/2018/633 final of 12.9.2018.

Table 9 – Synopsis of the policy options and key measures

Specific Objectives	*Option 1*	*Option 2*	*Option 3*	*Option 4*
	Operational changes	*Targeted legislative changes (and measures proposed by Option 1)*	*Ambitious legislative changes (and measures proposed by Option 2)*	*Combined approach*
1. Avoid gaps in the evaluation findings and increase strategic focus	• Adapt the areas of the Schengen *acquis* to be evaluated to current priorities (e.g., including IT-systems) • Reduce fragmentation by merging policy fields (e.g. police cooperation and SIS) • More flexible and strategic announced evaluations by focusing on critical elements and making better use of improved risk analysis • Adopt the annual SCH-EVAL report to have an overview of Schengen • Increase political dialogue using as a basis the annual report	• Delete in Article 4 of the Regulation the reference to the policy fields and clarify the flexible scope of the evaluations • Clarify that EU agencies fall under the Mechanism when they carry out executive tasks de iure or de facto delegated by Member States that qualify as implementation of the Schengen acquis • Codify the Schengen Committee's practice of agreeing on the policy fields at the beginning of the evaluation cycle• Obligation to coordinate with EU agencies and monitoring mechanisms to increase synergies, avoid overlaps and make evaluations more targeted and focused	• Extend the scope to Schengen issues that do not strictly qualify as implementation of the Schengen *acquis* & introduce the possibility to address recommendations to EU agencies when evaluated • Carry out a single evaluation per Member State based on risk analysis and situational awareness (except for fundamental rights and data protection which would be evaluated separately)• Extend cycle to seven years • Focus Council's powers on politically relevant cases and increase its role in follow up • Request risk analysis updates and situational awareness from EU agencies / bodies • Clarify criteria for thematic evaluations	All measures under Option 1 and 2 • Extend the duration of the evaluation cycle to seven years (as Option 3) • Broaden the range of tools available and clarify the criteria and conditions for their use, including thematic evaluations (as Option 3) • Maximise the input and coordination with EU agencies and bodies and other quality control mechanisms, progressively moving towards risk-based evaluations (as Option 3) • Request risk analysis updates from EU agencies / bodies and situational awareness. • Focus Council's decision-making powers on politically relevant cases and increase its role in follow up (as Option 3)
2. Rationalise the roles and distribution of responsibilities and simplify processes and procedures	• Simplification of the procedural steps • Informal time benchmarks for all steps and higher frequency of Schengen Committee • Improve follow-up (by increasing the use of online / IT tools)	• Simplify the procedure for adopting and amending the annual programme • Exclude from the programming unannounced evaluations • Declassify evaluation reports • Set up timelines for the steps for adopting evaluation reports (6 months from visit) and for the implementation of the recommendations	• Clarify criteria and conditions of thematic, unannounced evaluations and revisits • Eliminate the 24h advance notice for 'investigative' unannounced evaluations • Adoption by the Commission of evaluation report and recommendations • Time limit for adoption of evaluation report of 4 months from visit • Focus the Council's decision-making role on political important cases • Introduce a fast track procedure for the adoption of the reports and recommendations in case of serious deficiencies (2.5. month from visit)	All measures under Option 1, 2 and 3
	• Improve follow-up (by increasing the use of online / IT tools, i.e. bilateral VCs with Member States) • Increase peer-pressure to accelerate the implementation of remedies by adopting the annual SCH-EVAL report including an overview of	• Set up timelines for the implementation of the recommendations • Accelerate the assessment of the action plan (no need of Commission Communication) • Reduce reporting obligations (2 progress reports per year instead of 4) and focus more on	• Set up timelines for the implementation of the recommendations by the evaluated MS • Reinforce Commission's obligations to report to the Council and the European Parliament on progress made in the implementation of recommendations by	All measures under Option 1, 2 and 3

Specific Objectives	*Option 1*	*Option 2*	*Option 3*	*Option 4*
	Operational changes	*Targeted legislative changes (and measures proposed by Option 1)*	*Ambitious legislative changes (and measures proposed by Option 2)*	*Combined approach*
	MS state of play in the implementation of recommendations	support Member States in the implementation of remedies	Member States & Council to issue yearly conclusions based on the annual SCHEVAL report	
3. Strengthen the implementation of fundamental rights safeguards under the Schengen *acquis*	• Increase the involvement of FRA in evaluations, and invite FRA to provide observers in external borders evaluations / visits • Make wider use of FRA guidelines and third-party information • Incorporate fundamental rights elements in all trainings	• Exclude from the programming unannounced evaluations • Make explicit reference in the Regulation to submission of risk analyses by FRA• Strengthen the reference to fundamental rights in legislative provisions on trainings • Include a provision in the Regulation regarding evidence by third parties	• Dedicated evaluations for fundamental rights • Eliminate the 24h notice for 'investigative' unannounced evaluations	All measures under Option 1 and 2 • Eliminate the 24h notice for 'investigative' unannounced evaluations (as per Option 3)
4. Optimise the participation of MS experts and the involvement of EU bodies and agencies	• Call for designations by the Commission made as early as possible • Improved training and incorporate new legislative developments • Introduce non-financial incentives for experts	• Introduce flexibility in the size of the evaluation and monitoring teams	• Introduce one single call for experts per year with an obligation on MS to designate 1 expert per policy field per year • Create a pool of experts managed by the Commission	All measures under Option 1, 2 and 3
	• Increase the use of information gathered by EU bodies and agencies and relevant third parties • Revise scope of risk analysis and increase their request • Improve synergies with VA of Frontex	• Specific obligation to coordinate with EU agencies and monitoring mechanism	• Request risk analysis updates from EU agencies / bodies and increase coordination with EU bodies / agencies	All measures under Option 1, 2 and 3

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

This initiative is expected to have a positive impact on the application and functioning of the Schengen *acquis* and trust among Member States. By contributing to the well-functioning of the Schengen area, the range of the initiative's potential indirect impacts on the life of citizens is very wide, including positive economic and social impacts as well as a positive impact on the respect of fundamental rights. In addition, the initiative has secondary yet direct and appreciable impacts on a restricted circle of stakeholders directly affected by SCH-EVAL, which includes Member States, Commission and selected EU bodies and agencies[124].

The assessment of the size of the impacts of the initiative is however challenging.

The **impact** of a more effective SCH-EVAL on a better functioning of Schengen, which is at the core of this initiative, is only indirect. It depends eventually on the expected positive impact of the material rules building the Schengen *acquis* on the well-functioning of Schengen. It would be outside the scope of this Impact Assessment to evaluate the benefits of the Schengen *acquis* as such and even highly speculative to measure SCH-EVAL's contribution to the correct implementation of the Schengen *acquis*.

Direct benefits for, and costs on, **stakeholders immediately involved in SCH-EVAL's functioning** are as such easier to identify but are very fragmented. Most benefits highlighted by the stakeholders concerned (e.g. training of experts) are by nature not quantifiable and difficult to include under a specific category. As to the administrative and financial costs, neither European Union nor national law obliges to collect data and the stakeholders concerned were unable to provide comprehensive data covering all aspects.

An additional limitation is due however to the fact that the initiative introduces more flexibility and a risk-based approach. This means that the material implementation of the new provisions may vary depending on several variables. While it is for instance possible to forecast with a certain confidence the cost savings for announced periodic evaluations, there are no sufficient elements to predict additional costs of an increased number of *ad-hoc* evaluations (i.e. unannounced and thematic evaluations, revisit and verification visits). In a best-case scenario, it will be possible to limit the number of *ad-hoc* evaluations and in general ad-hoc evaluations are less expensive. Yet *ad-hoc* evaluations are by nature not standardised and their use will be asymmetric. Hence, it cannot be ruled out that there may be only limited cost savings for some Member States.

6.1. Economic impact

By strengthening the Schengen area, this initiative is expected to have a positive economic impact. The creation of an area without internal border controls has brought major economic benefits to citizens and business alike, including small and medium size enterpresises (SMEs). The instability of the Schengen area would deprive citizens of the huge benefits, including economic ones, deriving from the exercise of their right to free

[124] The functioning of SCH-EVAL directly affects also the European Parliament and occasionally certain third parties (NGOs and International Organisations), but do not generate any appreciable costs. Some of the options include a wider participation of the European Parliament in the follow-up and of third parties notably in relation to fundamental rights protection, which can be seen as beneficial for these actors, while there are no additional obligations for these actors. Similarly certain activities generate benefits and costs for the Council. Overall, the impact for Council, Parliament and third parties is however negligible. Therefore, it is not further assessed below.

movement (which is one of the most cherished accomplishment of the European integration), but it would also have severe consequences on the functioning of the Single Market in general. In the past, the Commission estimated that the full re-introduction of border controls to monitor the movement of people within the Schengen area would generate immediate direct costs for the EU economy in a range between EUR 5 and EUR 18 billion annually[125].

All policy options have a positive economic impact, by increasing the effective implementation of the Schengen *acquis*, although it is not possible to quantify this impact.

6.2. Social Impact

By contributing to a well-functioning Schengen area, the initiative is expected to have indirectly a positive social impact. An effective implementation of the Schengen *acquis* facilitates the exercise by EU citizens as well as non-EU citizens legally present on the territory of their freedom of movement and residence in the EU. There are 1.7 million workers in the EU crossing a border every day to go to their jobs. Border controls at the internal borders would cost commuters and other travellers between EUR 1.3 and EUR 5.2 billion in terms of time lost. More importantly, long waits at the border would discourage people from looking for cross-border opportunities in the labour market, reducing the pool of potential workers. In the same vein, the common visa policy facilitates legitimate travel to the entire Schengen area by avoiding the need for travellers to apply for visas to the individual Member States. This helps business, tourism and social contacts, while at the same time mitigating migratory and security risks[126].

An effective implementation of the Schengen *acquis* fosters the security of the Schengen area, ensuring the respect of fundamental rights obligations. For this aim, Member States facilitate cooperation among the national law enforcement authorities in order to tackle organised cross-border crime and terrorism. Therefore, it is necessary to ensure the continuous and efficient exchange of information between authorities so as not to put in jeopardy the judicial and police cooperation that has become one of the key elements of added-value arising from the Schengen area. This exchange of information has to be carried out in line with the personal data protection legislation. In addition, consistent and efficient implementation of the return *acquis* is necessary to ensure the capacity of the asylum system to provide the necessary support to persons seeking protection from persecution or serious harm and to ensure the integrity of the overall EU migration policies. Moreover, harmonised implementation of the common rules at external borders and at consulates, when processing short-stay visa applications, contribute to security to a large extent.

All policy options have a positive impact on social rights, by increasing the effective implementation of the Schengen *acquis*, although it is not possible to quantify this impact.

6.3. Impact on fundamental rights

Strengthening the respect and effective enforcement of fundamental rights is one objective of the initiative. One of the areas evaluated with this Mechanism is the respect for the fundamental right to protection of personal data. In addition, although the Mechanism was not established with the primary objective to monitor the respect of

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125 COM(2016) 120 final of 4.3.2016, p. 3.

126 See COM(2016) 120 final.

fundamental rights, it contributes to the respect for all relevant fundamental rights obligations in the implementation of the Schengen *acquis* and to the compliance with the EU Charter of Fundamental Rights. The Mechanism is used to check if there are any backward steps regarding the effective implementation of the fundamental rights protection by Member States or to identify possible violations in the areas covered by the Mechanism. By strengthening the Mechanism, the proposal would have a positive impact on continuing to guarantee the fundamental rights' protection.

All policy options have a positive impact on fundamental rights' protection, although it is not possible to quantify this impact. Horizontal measures under the four options, by increasing the effectiveness of SCH-EVAL evaluations, would also strengthen evaluation in the field of protection of personal data and the evaluation of elements already assessed in the different policy fields. In addition, one specific objective of this initiative is to integrate better the protection of fundamental rights by addressing the gap of the Mechanism in relation to the identification of specific violations occurring at the external borders. This aspect will be further assessed as part of the effectiveness of the initiative.

6.4. Administrative costs

This section describes the main impact of the four policy options on the benefits and costs of the stakeholders more immediately concerned by the initiative, namely **Member States, Commission and EU bodies and agencies.**

Arguably, in absolute terms, such benefits and costs are only secondary and relatively small compared to the overall economic impact of SCH-EVAL. The correct implementation of certain provisions may have an economic impact of many millions. It is sufficient to consider the negative impact that longer waiting times for obtaining a visa or at the external borders due to shortage of staff may have on tourism. The operational costs of SCH-EVAL amount overall to only few millions. Yet, such costs are not negligible for the actors concerned, often small administrations. Reducing the administrative burden on the actors involved is also a pre-condition for a more effective use of SCH-EVAL under the assumption that resources cannot be increased. The objective of the initiative is to do more with current resources by optimising their use. Therefore the assessment of the impact of the different options on the costs of the actors involved in running SCH-EVAL is key in the architecture of the initiative and needs to be accordingly factored in in the assessment of the efficiency of the different options.

Compared to the baseline scenario, all options would have on balance an overall positive effect both in terms of increased benefits and costs reduction. The impact on the administrative costs is summarised in the Table 10 and further explained below and in further details in Annex 4.

Table 10 – Impact on administrative costs – Comparison of policy options

Impacts assessed	*Baseline*	*Option 1*	*Option 2*	*Option 3*	*Option 4*
Administrative costs					
On national administrations	0	+	++	+++	+++
On EU institutions	0	+	++	+++	+++
On EU bodies and agencies	0	–	0	–	–

The scores are given on the expected magnitude of impact as explained below: +++ being strongly positive, ++ very positive, + moderately positive and – negative.

To estimate the current administrative costs, the Commission relied on internal data and data collected from Member State and EU agencies / bodies during the consultation. The

questionnaires addressed to Member States and EU agencies / bodies, reported in Annex 2, contained open and closed questions, to obtain both quantitative and qualitative data. Given the fragmented character of the cost sources[127], the Commission chose to focus only on the most resource intense activities. These are the preparation and implementation of evaluations and monitoring activities, and in particular **on-site visits.** It is worth to stress that this initiative does not seek to reduce the regular evaluations of all Member States. Rather, it proposes to rebalance the use of all evaluation tools so to make the Mechanism fit for purpose and able to react and adapt to different circumstances and needs.

As explained in section 5.1, between 2015 and 2019, the Regulation imposed an obligation to carry out 164 announced evaluations and in addition, it was possible to organise two thematic evaluations, eight revisits and 27 unannounced evaluations. Overall, 200 evaluations took place, which translated in 222 evaluation visits with an average of 44.4 visits per year. For the thematic evaluations, there were no on-site visits. While the 2019 thematic evaluation was carried out as desk exercise, the 2015 thematic evaluation in the field of visa was a hybrid exercise. The on-site part of the evaluation took however place in the framework of on-site visits carried out for announced evaluations. In principle, also thematic evaluations may however be carried out on-site.

Table 11 – Situation in the first five-year cycle (2015-2019)

	Announced visits	Unannounced visits	Revisits	Thematic evaluations
5-years	184	29	9	0
Yearly average	36.8	5.8	1.8	0

Source: internal Commission data

Overall, in the first five-year cycle, the **average number of experts** per team was 7.3 (announced evaluations other than revisits), 7.4 (announced revisits) and 5.3 (unannounced evaluations) [128]. As to the thematic evaluations, in 2019, a thematic evaluation covering 25 Member States – questionnaire-based – required overall 20 Member State experts while the 2015 thematic evaluation in the field of visa policy was carried out in connection with announced evaluations and did not require additional human resources.

Based on the simulations reported in Annex 3, the Commission attempted a quantification of the impact of the different options on the use of the different evaluation tools and required number of Member States experts that serves as starting point for the impact of the different options on administrative costs as well as later to assess the effectiveness. The results of these simulations are also summarised in section 7.1.

6.4.1. Member States

Benefits for Member States

Member States are directly involved in SCH-EVAL because of (a) their active participation in evaluating other Member States and addressing recommendations to remedy deficiencies and (b) their passive participation as 'evaluated' subjects that receive

[127] Different sources of costs are described in Annex 4.

[128] For unannounced evaluations, the average is based on a data sample covering 82% of the evaluations. Data for announced evaluations, including revisits, cover 100% of the evaluations.

the recommendations. In both cases, Member States benefit from the participation to SCH-EVAL but also bear certain costs.

During the stakeholders' consultation, Member States stressed their interest in the **active participation in the functioning of SCH-EVAL**. The primary **benefit** is the possibility to monitor and evaluate directly the implementation of the Schengen *acquis* on a regular basis in the whole area. This is important as the situation in other Member States may have an impact on the situation on their own territory and of their own citizens. SCH-EVAL allows both to influence the situation in other Member States when necessary and to adopt appropriate measures on the own territory. Having experts in the evaluation teams enables Member States to be informed directly about the actual situation in other Member States, instead of relying exclusively on the Commission's assessment. The general benefit from the passive participation to evaluations, i.e. the benefit for Member States from being evaluated, is arguably less appreciable and not self-evident. However, Member States may benefit from an impartial assessment of their administrations and recommendations about the areas where improvement might be necessary. This also facilitates a better use of available EU funds.

Beyond this key general benefit, there are also minor but more **concrete and immediate benefits and costs generated by the participation in the instrument**. During the stakeholders' consultation, Member States mentioned as an important benefit the **transfer of knowledge**[129]. Member State experts receive trainings by the EU agencies and the Commission, and can immediately observe best practices in other Member States. **Networking among Member State administrations** is also perceived as an additional benefit. While such general benefits cannot be quantified and may also vary, they are generally perceived as appreciable and – as it clearly emerged from the Member States' consultation – justify the costs generated by the participation of the Member States.

Costs for Member States

The main source of **costs** for the active participation in the functioning of SCH-EVAL is the contribution of experts, with an overall estimated workload of **about 24 000 working hours per year for all Member States together**[130]**.** At present, this common burden is unevenly distributed among Member States as indicated by the five-year review and also stressed by several Member States during the stakeholders' consultation. The participation of experts in the follow-up is negligible while the participation of Member State representatives in the Schengen Committee and Schengen working party requires a moderate amount of resources. **Member States do not contribute to the financial costs of the evaluations,** except for daily allowances for their experts, which may significantly vary across Member States and depending on the destination of the visit.

The level of costs that Member States incur into when they are evaluated are limited in absolute terms, but still appreciable for smaller administrations. Based on the submissions of the Member States during the consultation and on the experience of the Commission, three main sources of costs were identified: (1) the formulation of the

[129] A study carried out in Norway extensively studied the benefit resulting from the participation to SCH-EVAL in terms of increased professionality of the experts involved. See Stein/Nøkleberg/Gundhus, Schengen evaluation: An educational experience the example of Norway, 2020.

[130] Given relevant differences in wages of the experts concerned and the uneven contribution of Member States, it is not possible to provide an estimation in Euro.

replies to the standard questionnaire (on average around **800 working hours**) every five year; (2) further preparatory measures in view of the on-site visits as well as measures to support the on-site visits as such (**EUR 10 000 and 5 000 working hours or more** for the announced evaluations in the six policy fields; (3) submission of the **action plans** and **three-month progress reports on the implementation of the recommendations** (up to **250 working hours for the submission of an action plan** and up to **500 working hours yearly for the progress reports**).

While it is appropriate to make a distinction between the costs from the active participation and the passive participation of Member States, there is a certain trade-off between the two categories of costs. An administration that needs to dedicate significant resources for its own evaluation may not have sufficient resources, notably experts, to contribute at the same time to the evaluation of other Member States.

Against this background, all options would have a **positive impact on the benefits of the Member States** by increasing the number of trainings and rationalising the use of SCH-EVAL. In addition, **none of the options generates new categories of costs** for the Member States.

As regards the impact on current administrative costs, **all four policy options are expected to reduce current costs, but with remarkable differences** as it follows from (a) an analysis based on the simulations reported in Annex 3 about the impact of the different options on the use of evaluation tools and number of experts, (b) an analysis of the data provided by Member States during the stakeholders' consultation, and (c) Commission internal data.

Under **Option 1**, the main impact on the administrative costs depends on the possibility to merge the evaluation visits in different policy fields and on shortening the visits for announced evaluations. As further explained in Annexes 3 and 4, based on the position of Member States and case studies on possible synergies by merging the visits of different policy fields, it is estimated that overall it would be possible to slightly reduce the overall **number of Member States experts required per year by 3-4%**, which would translate in a proportional decrease of total working hours. The costs savings would amount to about **1 000 working hours**.

The assessment of the impact on the administrative costs for the evaluated Member States is more difficult and depends on the length and complexity of the visit and number of hosted experts. Based on a case study (see Box 13), a best estimate is that **the costs for the evaluated Member States could typically decrease by at most 15%**[131] with the measures envisaged. The number of action plans and progress reports would remain substantially unchanged.

Under **Option 2,** the measures propose to increase flexibility in the number of experts are expected to lead to further optimisation. In this case, taking into consideration the combined effect with more targeted evaluations, the need of Member States' **contribution of experts would decrease by 13%** compared to the baseline scenario(s) with proportionally some additional cost savings (about **3 000 working hours**).

A lower frequency for the **submission of the progress reports**[132] would also reduce the administrative costs. If the number of reports per year decreases from four to two, costs

[131] See Annex 4.

[132] Costs related to the implementation of the recommendations are not included, as they are not a consequence of SCH-EVAL but of the implementation of the Schengen *acquis*.

would **decrease by at least 50%**. More targeted recommendations would simplify the action plan, which should arguably lead to lower working hours. The costs savings could amount to **250 working hours** per year per Member State[133].

Under **Options 3 and 4**, the measures to facilitate experts' nomination (pool and annual call) would strengthen the possibility of meeting the target of smaller teams as these mechanisms would improve the team's composition in terms of qualifications and rotation of the designating Member State. In addition, the increase in the number of unannounced visits, revisits and verification visits (which require smaller teams) will further decrease the average number of experts needed. This, combined with smaller teams for revisit and verification visits, would mean under **Option 3, 43%-44% less Member State experts than in the baseline scenario(s) and, under Option 4, 33%-36% less experts**. Option 3 and 4 would also have a positive impact in terms of redistributing more equally the costs among Member States with adequate rotation of contribution of experts.

On the side of the evaluated Member States, combining the measures under Option 1 and 2 with the fact that evaluation teams would be smaller and that the costs of announced periodic evaluations would spread over seven years instead of five, the Commission estimated that **costs for announced evaluations would be reduced by almost 40%**[134] under **Option 4** and by up to **60%** under **Option 3** by further reducing the number of visits per evaluation.

As per Option 2, Options 3 and 4 would reduce the administrative costs **for the submission of the progress reports by at least 50%** but would also reduce by 29% the workload for the replies to the standard questionnaires that would be due every seven, instead of five, years as a consequences of the longer evaluation cycle**.**

Finally, it is reasonable to assume that the cost savings for announced evaluations could be offset largely, but not entirely, by the costs linked to a possible increased use of *ad-hoc* visits (e.g. thematic and unannounced evaluations, serious deficiencies and verification revisits). While the estimations above already reflect the fact that *ad-hoc* evaluations require fewer experts, an analysis of the costs of different past unannounced evaluations clearly suggests that *ad-hoc* evaluations are always less costly, require less preparation from the Member States and can be also designed with more flexibility so to take into consideration the costs for the Member States concerned. Any estimation is however impossible due to the non-standardised character of *ad-hoc* evaluations, but it can be concluded that, in sum, under all options there would be administrative costs reductions.

6.4.2. Commission

Benefits for the Commission

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133 Member States that do not have action plans open or have almost closed their action plans have obviously no, or negligible, costs.

134 The costs to prepare the replies to the standard questionnaire would decrease by up to 29% due to the fact that this task would be performed every seven years instead of every five years and it can be reasonably assumed that longer time between submissions does not increase the time for the preparation of the replies. For other costs, Option 3 and 4 would combine cost savings of at least 33% (Option 3) and 15% (Option 4) per announced evaluations due to the reduction of on-site visits combined with the fact that they would take place only every seven years, which might amount to cost savings of up to 58%-59% and 39% respectively.

The general benefit for the Commission from the coordination and direct active participation in the Mechanism derives principally from the complementarity of SCH-EVAL with other tools of the Commission, like infringement procedures, in its role as guardian of the Treaty. In addition, as also highlighted in the five-year review, SCH-EVAL helped policy-making. It enables the Commission to learn about emerging problems and challenges that might need to be addressed by new initiatives. In this respect, the increase use of thematic evaluations will support the Commission in drawing horizontal findings across policy fields or Member States subject to similar challenges. Beyond such general benefit linked to the added-value of SCH-EVAL in ensuring a correct implementation of the Schengen *acquis*, Commission experts acquire thanks to the evaluations additional expertise that is beneficial for their function.

Costs for the Commission

The Commission is bearing the highest share of costs for the functioning of SCH-EVAL. Pursuant to Article 13(7), **the Commission covers the most substantial part of the financial costs for the evaluation visits,** overall **per year EUR 1.2 to 2 million**. These costs are largely depending on the number of Member State experts participating to evaluations as well as length and location of the evaluations.

Other costs for the Commission are generated by the coordination of the Mechanism and the adoption of the evaluation reports as well as by the direct participation of Member State experts and Commission representatives to the evaluations. Overall, about 20 Commission officials are working full time on SCH-EVAL. The most resource intensive tasks are (1) the provision of **trainings** (overall about **720 working hours and EUR 12 000** to cover travel costs and daily allowance), (2) **organisation and preparation of the evaluations** (**1 000 working hours per year**), (3) the participation to the evaluations and adoption of the evaluation reports (**14 000 working hours per year**) as well the assessment of the action plans and adoption of related communication (**1 800 working hours per year**) and progress reports (**3 000 working hours per year**). Translations costs for the evaluation reports and the assessment of the action plans are also not negligible and included in the working hours summarised above.

All policy options have a positive impact on the general benefit of the Commission from the Mechanism, which is assumed to increase as more flexibility is given to use resources in a more targeted way and increase the number of *ad-hoc* evaluations and thematic evaluations, hence particularly under Options 3 and 4.

As regards the costs, all options allow for certain cost savings but also in this case such cost savings are different. All options would also generate additional new costs in particular in relation to the possibility to increase and improve current training. These costs cannot be exactly quantified but additional training in the field of visa or data protection would amount to more than EUR 70 000 per year.

Under Options 1 and 2, more targeted, and possibly, shorter evaluations would reduce the workload for the organisation of the evaluations in the case of announced evaluations. In particular, also for the Commission (based on internal data) it is assumed that – like for the evaluated Member States – savings would lead to a **reduction of 15%** of both financial and administrative costs for announced evaluations. This would correspond to possibly **2 400 working hours** and **EUR 200 000-300 000** yearly.

In addition, under **Option 2**, a number of simplifications would also reduce the administrative costs for the Commission in appreciable measures, even if a quantification is only partially possible. In particular, the most appreciable cost saving would result

from the informal communication of the assessment of the action plans, in particular in terms of translation costs, and the declassification of the evaluation reports (**800 working hours less**). The lower frequency of the submission of the progress reports would further reduce the workload related to this task by 50% (**1 500 working hours** less).

Under Options 3 and 4, rebalancing the use of the different tools may decrease the costs. Combining the measures under Option 1 and 2 with those under Option 3 and 4 would also lead to **reducing for the Commission the costs of announced evaluations by almost 40%** under **Option 4** and by up to **60%** under **Option 3** by further reducing the number of visits due to the combined effect of shorter visits (targeted approach), reduced number of experts (flexibility of the team sizeand smaller teams) and the lower number of announced periodic evaluations (extension of the evaluation cycle[135]) which should spread the costs of announced periodic evaluations over seven years instead of five.

Yet, similarly to the case of Member States, the cost savings for announced evaluations would be offset largely by the costs linked to a possible increased use of *ad-hoc* visits (e.g. thematic and unannounced evaluations, serious deficiencies and verification revisits).

Box 12 – Costs variation between evaluations

As an example, for the same Member State the costs (allowances not included) for the evaluation visits in different fields were:

- Common Visa Policy field: EUR 47 000;
- Other policy fields: EUR 26 000 to 31 000;
- Unannounced evaluation: EUR 17 000.

Source: internal Commission data

The Commission developed the following case-study (see Box 13) using the information from the Member State that had provided the most comprehensive dataset as well as the information from costs of the various evaluations as per the five-year cycle to assess the impacts of the options.

Box 13 – Costs of announced evaluations

Country X was evaluated in 20XX in six policy fields in line with the multiannual programme. The evaluation included eight on-site visits (overall 43 days) with the participation of 86 experts: 16 Commission representatives (eight of which leading experts), 61 Member States experts (eight of which leading experts) and nine experts from the EU bodies and agencies as observers. The financial burden on the Commission was of EUR 256 380, and for the EU bodies and agencies of about EUR 18 000. Country X indicated[136] that the preparation of the evaluation required 2 448 working hours and EUR 14 400.

As the evaluation found that country X is overall implementing correctly the Schengen *acquis*, the scope of the subsequent evaluation could be shortened (on-site visits on average of 3-4 rather than 4-6 days), a lower number of experts could be sufficient (52 instead of 61). Altogether, this would result in savings for all actors involved of 10%-15% (see Annex 4).

However, these are the maximum estimated savings. The participation of additional FRA observers, more frequent thematic evaluations and, depending on material circumstances, additional targeted unannounced visits would generate additional costs. Yet a thematic evaluation in 2019 involved overall 20 Member States experts for the evaluation of 25 Member States (on average less than one Member States experts per Member States evaluated) as well as a proportionally lower number of Commission and EU agencies' experts. Unannounced evaluations do not require the same preparation on the side of the Member State.

[135] As the extension of the cycle would allow replacing some of the evaluation visits with other types that are in general cheaper (like unannounced evaluations and revisits).

[136] Reply of a Member State to Q5 of the short questionnaire for Member States.

Financial costs for the Commission are more limited (a previous unannounced evaluation was half as expensive as the announced evaluation in the same policy field).

6.4.3. EU bodies and agencies

Benefits for EU bodies and agencies

EU bodies / agencies stressed during the consultation that the benefits from their participation in SCH-EVAL, that are very similar to those indicated by the Member States, namely transfer of knowledge and networking with colleagues from Member State administrations. In their replies to the short questionnaire, an EU agency / body includes in the main merits of SCH-EVAL "*[e]xchange with experts (our peers) from national [administrations] (exchange best practices, networking*". According to other EU bodies / agencies, *'[t] he evaluations help the Agency to be in touch with MS and the operational work*' or '[*t]he Observer has the opportunity to liaise and network with the evaluation team and feel the pulse of contemporary issues affecting also their respective countries as it relates to police cooperation and Schengen acquis*'. An EU agency also mentions that '[*t]he agency has the possibility to boost its profile with external stakeholders in the field and promote by example its services and support'*.

However, it is also stressed that *'[t]here are no **particular shortcomings** other than the **resources required to support the Commission led evaluations**'*.

Costs for EU bodies / agencies

The participation of EU bodies / agencies in SCH-EVAL generates costs in relation of three types activities: (1) submission of **risk analysis and information sharing** with the Commission (**240 to 480 working hours**) (2) **trainings for experts** (about EUR 200 000 yearly all trainings together, with an average cost of EUR 900 per expert) (3) **participation of experts as observers** (about 40 experts per year with a total workload of **at least 2 500 working hours** and financial costs of **EUR 60 000-70 000**).

An increased involvement of the EU bodies / agencies under all policy options would strengthen the existing benefits for the EU bodies/ agencies. Yet by difference to other actors, the expected cost savings are negligible, while the different options include provisions that may create new sources of costs or increased current costs.

All policy options aim at increasing and improving training, which may generate additional costs. It is not possible to estimate these costs that will depend ultimately on a case-by-case decision of the cost-benefit of additional training. Based on the available data on the costs of training, the cost increase would not be negligible.

Under **Option 1 and 2**, additional costs would also arise for the FRA from the occasional participation of their experts in the evaluations in policy fields other than return (the only policy field in which FRA experts are systematically involved) as well as in unannounced evaluations. In this case, the costs can also not be estimated but it is reasonable to assume that they would be contained, as the participation of an additional expert would amount to at least 50-70 working hours and about EUR 1 000-2 000.

Option 2 in addition may generate limited new costs from increased coordination, but such costs should be generally limited in terms of working hours and would not imply financial obligations.

Option 3 and 4 would have possibly the highest impact on costs as they widen the sharing of information, but it is to note that to a large extent this would concern the transmission of information already available to the EU bodies / agencies.

In addition, **Option 3** might require a significant increase of costs for FRA that would

probably be attending systematically evaluations dedicated to fundamental rights in addition to those in the field of return.

All in all, the initiative would on balance increase the costs for the EU bodies / agencies, but such costs are not quantifiable given the flexibility left in the implementation of such measures.

Table 12 – Summary of administrative costs (complete table in Annex 4)

	Baseline		Option 1	Option 2	Option 3	Option 4
Source of costs	*Working hours (Wh)*	*Euro*				
Active participation of Member states (for all Member States)						
Evaluation (experts)	24 000 wh	Not quantifiable in EUR	23 000 wh	21 000 wh	14 000 wh	16 000 wh
Participation in the adoption of the evaluation reports and recommendations	Not quantifiable		Unchanged	Unchanged	Decreasing	Decreasing
Passive participation of Member states (average per Member State)						
Reply to the questionnaire	800 wh	Not quantifiable in EUR	800 wh	800 wk	550 wh	550 wh
Announced Evaluation (experts)	5 000 wh	EUR 100 000-150 000	EUR 85 000 – 130 000	EUR 85 000 – 130 000	EUR 41 000 – 61 500	EUR 61 000 – 91 500
Announced Evaluation (other costs)		EUR 10 000	EUR 8 500	EUR 8 500	EUR 4 100	EUR 6 100
Ad-hoc evaluations	Not quantifiable		Increasing	Increasing	Increasing	Increasing
Submission of progress reports (working hours yearly / per Member State)	Not quantifiable - Significant		Unchanged	Decreasing by 50%	Decreasing by 50%	Decreasing by 50%
Commission						
Multiannual and Annual Programme	60 wh	Not quantifiable in EUR	Unchanged	40 wh	40 wh	40 wh
Evaluation (logistic costs)		EUR 2 000 000	Decreasing	Decreasing	Decreasing	Decreasing
Evaluation (Administrative organisation)	1 000 wh	Not quantifiable in EUR	Unchanged	Unchanged	Decreasing	Decreasing
Evaluation (visit and adoption of evaluation report)	14 000 wh	Not quantifiable in EUR	Unchanged	Unchanged	Unchanged	Unchanged
Assessment of the action plans	1 800 wh	Not quantifiable in EUR	Unchanged	1 000 wh	1 000 wh	1 000 wh
Assessment of the follow-up reports and closure of the action plan	3 000 wh	Not quantifiable in EUR	Unchanged	1 500 wh	1 500 wh	1 500 wh
EU agencies/bodies						
Trainings		EUR 200 000	Increasing	Increasing	Increasing	Increasing
Evaluations (observers)	2 500 wh	Not quantifiable in EUR	Increasing	Increasing	Increasing	Increasing
Evaluations (logistic costs)		EUR 60 000-70 000	Increasing	Increasing	Increasing	Increasing

7. HOW DO THE POLICY OPTIONS COMPARE?

Table 13 – Comparison of policy options

	Baseline	*Option 1*	*Option 2*	*Option 3*	*Option 4*
Effectiveness	0	+	++	+++	+++
Efficiency	0	+	++	+++	+++
Coherence	0	+	++	+	++
Proportionality	0	+	++	+	++
Stakeholders' support	0	+	+++	++	+++

+++ high, ++ medium, + low, 0 neutral and – negative. For proportionality and coherence, + and – means that it is positive or negative.

7.1. Effectiveness

Measures under <u>Option 1</u> are expected to have at most a low-to-moderate positive impact on the effectiveness of SCH-EVAL.

<u>Regarding the Specific Objective 1 (avoid gaps and increase strategic focus)</u>, the measures proposed to make announced evaluations more strategic and targeted could improve the focus of evaluations (through improved risk assessment) and quality of the findings. This should result in an increased focus of recommendations on each policy field's most important elements, thereby limiting their number. This would potentially facilitate a swift reaction by the Member States to address shortcomings.

However, these measures would have only a limited positive impact on the current policy fragmentation. Although there would be more opportunities to focus within each policy field on the most important issues, the policy-field specific evaluations would continue. Therefore, there would be only limited possibilities to identify horizontal findings and have an overview of a Member State's overall performance in the implementation of the Schengen *acquis*.

Shortening and combining **evaluation visits** under current conditions would at most reduce the **resources necessary for announced evaluations by 10-15%**, leaving little space to rebalance the use of different evaluation tools, if at all. If four new Member States were to be evaluated (as is expected in coming years with Romania, Bulgaria, Croatia and Cyprus), the situation would remain substantially unchanged, while – even in the scenario with 27 Member States to be evaluated – announced periodic evaluations would still require 69% of the feasible on-site visits.

Furthermore, the possibility of modifying the policy fields evaluated or covering EU agencies' activities would depend on the goodwill and cooperation of stakeholders. Operational measures would fail to include under the Mechanism elements outside the scope of the Schengen *acquis.*

Operational measures would also have a negligible potential impact on *<u>the rationalisation of processes and roles (Specific Objective 2)</u>* given the rigid constraints resulting from Articles 14 to 16 of the Regulation. Other administrative and legal provisions applying to the procedure leave limited margin for simplification (see Box 9). Derogations from standard rules (language waivers, use of the written procedure for the comitology process) may apply only in duly justified cases and would have a minor impact on the length of the process (two or three weeks at most). A more frequent organisation of the Schengen Committee would also have a marginal effect given that the Committees take place already on an almost monthly basis. Frequent meetings would

even generate an additional workload at the risk of delaying other activities without simplifying existing ones. Option 1 **would not have any relevant impact on the length of the process.**

The institutional balance would remain unchanged under Option 1. With more focused recommendations, the capacity of the Council to exert peer-to-peer pressure might improve, but the workload and variety of the issues to cover would remain the same, not giving space for close follow-up of important issues / problematic Member States or for political discussions. The adoption of the annual report by the Commission may have only a limited positive impact in increasing pressure if other conditions remain unchanged as it would remain difficult to draw horizontal findings.

As to *fundamental rights (Specific Objective 3)*, operational measures would have a positive impact to increase the prominence of certain aspects related to the role of fundamental rights in the process but without immediate legal effects. This would depend very much on the good will of the actors involved in accepting FRA's involvement or taking into account third parties' information when designing and carrying out evaluations.

The impact of operational measures on the *involvement of EU agencies (Specific Objective 4)* would be negligible. During the consultation, an EU agency explicitly noted that *'the ability of different EU agencies to support SCH-EVAL depends also on the extent to which they are able to attach the necessary priority to these activities. In this regard, it would be helpful if the role of individual agencies were more explicitly enshrined in EU law, as is already the case for a number of them'*. In relation to *Specific Objective 4 (optimise the participation of Member State experts)*, operational measures under **Option 1 would not be adequate to ensure that a sufficient number of experts with the appropriate qualification is available**. It is also to consider that the number of experts necessary is lower than under the baseline scenarios (about 3%-4% fewer experts). But in the scenario with 31 Member States to be evaluated, the proportion of announced evaluation visits remains virtually unchanged compared to today, and so the number of experts (the decrease compared to today is below 1.5%). During the consultation, the majority of the Member States and EU bodies / agencies stressed the importance of training and the need to enlarge further the scope of the training to incentivise wider expert participation in evaluations and, in particular, the need for training in the fields of visa and data protection. Yet, such measures could have realistically only a limited impact on increasing the potential offer of experts available for current policy evaluations with the highest deficit of participation. It is so also because participation in the training does not impose any obligation to participate in the evaluations. The range of non-financial incentives is similarly limited. Ultimately, the impact of operational measures in this case depends on the goodwill of the Member States and their experts.

Option 2 includes a set of measures that would have a moderate-to-high positive impact on the effectiveness of SCH-EVAL particularly to increase flexibility, simplification and protection of fundamental rights.

In particular, regarding the *scope of the evaluation and increased strategic focus (Specific Objective 1)*, Option 2 would reduce possible gaps about the inclusion of the EU agencies by providing legal clarity. It would also reinforce the strategic use of the different tools by allowing a more flexible programming; creating additional legal opportunities for merging, modifying or limiting current policy fields; and covering EU

agencies' activities. The measures to improve the coordination with agencies would also have a positive impact by further focusing the evaluations on the most crucial elements.

All these measures could result in an increased capacity to identify and correct inconsistencies across policy fields or to have an overview of the application of the Schengen *acquis* as a whole in a Member State. However, the approach would remain partially fragmented. Only in the long term (as evaluations increase their focus with each new cycle), this option might lead to at least single reports covering a given Member State's overall performance. This option would also fail to address other gaps identified in the scope of the evaluations in relation to provisions not belonging to the development of the Schengen *acquis*. Option 2 would have limited effects (same as per Option 1) in rebalancing the use of the currently available evaluation tools and, consequently, would find limitations in increasing the strategic focus of the Mechanism.

In terms of *rationalising procedures (Specific Objective 2)*, measures under Option 2 would have a moderate positive impact. Setting legal time limits for main milestones in the procedure and simplifying the follow-up process (from assessment of action plans to reporting obligations) would positively affect the structure of the process. It would help shorten the length of evaluations (from current practice of **10-12 months to 6 months**) and it is assumed that all simplification would not undermine the effectiveness of the Mechanism while reducing the workload to support the respect of the different time limits.

The main limit of this option is that the institutional balance would remain substantially unchanged. The process for the adoption of the Council's recommendations would still have a negative impact on the length of the procedure (adding at least two months to the process). As under Option 1, the workload and the variety of the issues to cover would remain largely the same, not giving space for close follow-up of important issues / problematic Member States or for political discussions. Many Member States as well as the Court of Auditors and a civil society organisation see the introduction of deadlines to fulfil the recommendations foreseen in Option 2 favourably to accelerate Member States' compliance with recommendations. However, it may not generate in itself sufficient pressure in the absence of other measures that increase the focus and involvement of the Council and the European and national Parliaments in the follow-up of the most important issues.

Finally, the limited legal measures under Option 2 to increase the prominence of certain aspects related to the role of *fundamental rights (Specific Objective 3)* would strengthen the effectiveness of possible operational measures. Compared to the current soft-law instrument, the inclusion of a reference to the use of third sources would create a commitment to use those sources in all policy fields and for planning the different evaluations. A clearer definition of FRA's role would also be helpful for the agency to attach the necessary priority to the pertinent activities as – unlike for some other EU agencies – its role in SCH-EVAL is not explicitly enshrined in EU law.

As to *increased actors' participation (Specific Objective 4)*, as noted by a Member State: '*A higher number of experts does not necessarily result in a better evaluation. While creating evaluation teams also the organisational burden for MS must be considered*'.[137] The possibility for the Commission to determine the composition and size of the team **would allow redistributing the experts more appropriately, optimising herewith the use of current resources**. In this way, it is expected that it would be possible to reduce

[137] Reply of a Member State to Q5 of the short questionnaire for Member States.

the average number of experts in the evaluation teams by 7% (5 experts instead of 5.4 for unannounced evaluations) to 12 % (6.5 instead of 7.3-7.4 for announced evaluations) and combined with the changed proportion in the use of the different tools **by 13%.** Thus, it would create more opportunities to involve the experts with the right profile in a more proportionate way, reducing competition between different evaluations, while not correcting, however, the current geographical unbalance. Measures aimed at reducing the number of policy fields (e.g. merging some policy fields) may also positively affect the demand for experts, with better mobilisation across policy fields.

In order to *optimise the synergies with other instruments (Specific Objective 4)*, the introduction of a general obligation in SCH-EVAL to coordinate with other instruments would increase synergies, which would improve the design of evaluations and thus their strategic focus.

The measures under Option 3 would overall have a high positive impact on the effectiveness of SCH-EVAL, as they would allow attaining fully three of the four specific objectives.

The measures under Option 3 would have a very high impact on increasing the instrument's *strategic focus and closing all possible gaps (Specific Objective 1)*. Comprehensive evaluations per Member State would eliminate current fragmentation allowing for a clear overview of a Member State's performance in implementing the Schengen *acquis*. It would then allow identifying the main problems in that Member State regardless of the specific Schengen-policy area. In addition, this comprehensive evaluation would include compliance with elements that go beyond the Schengen *acquis* but directly affect its functioning. Despite the all-encompassing evaluation, a certain fragmentation would remain considering that this option proposes separate evaluations for data protection and fundamental rights.

Extending the cycle to seven years would already reduce the yearly average number of announced evaluations **by 29% further to the reduced frequency** of Member State-periodic evaluations. If in addition every evaluation would encompass no more than four evaluation visits (compared to the six to eight now), the yearly number of announced evaluation visits would decrease by over 33%, and overall by 53% to 59 %, respectively with 27 and 31 Member States. Announced evaluations would require at most 34%-39% of the resources available for on-site visits. This would allow for a significant increase in the use of alternative *ad-hoc* evaluation tools and monitoring activities that would use the majority of resources available. This would consistently make up for the bigger timespan in between regular evaluations for a given Member State. Changing and clarifying the other evaluation tools' conditions would also improve their effectiveness, making them adapted to their purpose: monitoring or investigative.

Option 3 would also have a high impact on the effectiveness of SCH-EVAL in relation to *rationalisation of the distribution of tasks and responsibilities, and simplification of the process and procedures (Specific Objective 2)*. Changes made to rationalise the distribution of tasks and responsibilities in the evaluation process and follow-up would reinforce the positive effect of Option 3 on the strategic focus of evaluations. The additional measures under Option 3 **would further shorten the process** as the further step before the Council would be deleted allowing to **set a time limit of four months.**

Some Member States acknowledged that combining the adoption of the report and

recommendations would simplify and shorten the process significantly[138]. However, diverging views emerged as to the impact of changing the current inter-institutional balance. To recall, in the transition from the old to the new Mechanism, it was decided to maintain with the Council the power to adopt the recommendations '*[i]n order to strengthen mutual trust between the Member States, to ensure their better coordination at Union level and to reinforce peer pressure amongst them'*. In addition, this appeared essential '*to improve the governance of the Schengen area through political discussions at ministerial level on the correct functioning of the Schengen area, including discussions in situations where evaluation reports have shown serious shortcomings*.' [139]

Nonetheless, the five-year review indicated that the recommendations have not proved to be a sufficiently effective tool to ensure that Member States take rapid action. Discussion at Council level on the recommendations was generally very limited. Member States are already involved in the process of adopting the evaluation report through the Committee examination procedure, and most issues identified during the evaluations are of a technical rather than political character. A Member State stressed '*the need to better prioritise the issues so that the most important are submitted to the Council for political discussion*'.

The institutional set-up of Option 3 would increase SCH-EVAL's effectiveness by alleviating the Council's workload so it can strengthen its focus (and role) on decision-making and follow-up in the politically most sensitive cases, namely first-time evaluations and serious deficiencies as well as thematic evaluations. The number of evaluations falling under these special procedures would be limited and would not have any significant impact on the average length of the process. In politically important cases, where no serious deficiencies were identified, the procedure will be prolonged herewith to six months, but this is justified on balance by the absence of urgency and the need to closely involve the Council given the issues of general interest for the well-functioning of Schengen addressed by those evaluations. The fast-track procedure would introduce anyway a prioritisation of the most urgent cases that would **be dealt with in only 2.5 months**. In other cases, the Comitology examination procedure would ensure sufficient participation of the Member States in the process, including defining recommendations. Other measures (adoption of the annual report to increase political dialogue and deadlines for the adoption of the recommendations) should allow stepping up the pressure in the follow-up.

For *Specific Objective 3 (strengthen the implementation of fundamental rights safeguards under the Schengen acquis)*, Option 3 introduces a separate evaluation focusing on fundamental rights (apart from data protection evaluations). In the view of the different categories of stakeholders, the possibility of establishing **dedicated evaluations for fundamental rights** would have, overall, a negative impact on fundamental rights' protection. As indicated in the conclusion of the 2020 study of the European Parliament, '*[SCH-EVAL] is not an appropriate tool to assess and monitor compliance with fundamental rights. Additionally, turning fundamental rights into a specific evaluation area would affect their horizontality as a matter of concern to be taken into consideration across the [SCH-EVAL]'s policy fields*'.[140] Given its peer-to-peer review character, SCH-EVAL lacks the necessary elements to be a useful monitoring tool for fundamental rights and therefore dedicated evaluations may not be sufficiently effective.

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138 See Annexes 3 and 4.

139 See recital 11 of the Regulation.

140 The state of play of Schengen governance, p. 35.

It risks weakening the fundamental rights' aspects in other policy fields and hinder the progress made in the past. **It follows that Option 3 is not the most effective in relation to fundamental rights.**

Option 3 would have the highest impact on the effectiveness of SCH-EVAL in relation to the *Specific Objective 4 (optimise the participation of Member State experts and the involvement of EU bodies and agencies, and synergies with other instruments)*. The legislative changes proposed for the designation of **Member States experts** could significantly affect the evaluation team's composition by clarifying the obligation of the Member States to provide experts compared to the current legislative framework and ensuring an appropriate number of experts with the most suitable mix of profiles. This would also strengthen the effect of the introduction of additional flexibility as to the number of experts (as per Option 2). During the consultation, Member States widely agreed that an annual call for experts and the establishment of a pool might have a positive impact to enhance the availability of qualified experts. More rotation and geographical balance among Member States would be possible, as the Commission would have an overview of the needs and a list of available experts.

By widening the information that may be requested from the EU bodies and agencies, in addition to a general obligation on SCH-EVAL to coordinate with other mechanisms, Option 3 increases synergies. The Mechanism would make wider use of available information increasing the quality of the evaluation and reducing duplications as regard the information requested from Member States. This would also minimise the risk of inconsistencies between complementary instruments as all actors concerned would be able to have access to the same base of evidence reducing asymmetric information.

Option 4 largely includes all measures under Option 3, measures under Option 1 and 2 as a combined approach. It would overall have a high positive impact on the effectiveness of SCH-EVAL.

In relation to *Specific Objective 1 (avoid gaps and increase strategic focus)*, Option 4 would allow for a stronger strategic focus. It follows Option 2 in proposing to adapt the policy fields to the new realities and actors with a more flexible programming. Partial fragmentation and gaps would remain and, in principle, it would not immediately move towards comprehensive evaluations (as per Option 3).

However, in terms of possible areas of evaluation, this option does not foresee an evaluation of fundamental rights, so compared to Option 3, it foresees all Member States evaluated in five areas (while Option 3 foresees four areas). Furthermore, by removing the legal constraints that lead to individual policy-field evaluations, and creating obligations to take the results of other mechanisms into account as well as the result of previous evaluations, and provisions for more comprehensive situational awareness, Option 4 has potentially an equivalent effectiveness to Option 3. Through these measures, the Mechanism is laying down the ground for purely risk-based evaluations. It will be able to design more and more targeted evaluations, which will allow combining in one evaluation visit in a short period of time (1-2 weeks) more policy fields. For example, in the not-so distant future, one could envisage four evaluation visits, one covering integrated border management (merging external borders and return), one covering compensatory measures (merging police cooperation and SIS / new IT tools), one on visa and another on data protection. More targeted evaluations would contribute in the medium-long term to increase links among the evaluations of four policy fields and, ultimately, facilitate creating a single evaluation report assessing the overall performance of the Member State.

Furthermore, to increase strategic focus, Option 4 extends the duration of the evaluation cycle to seven years, broadens the range of tools available, and clarifies the criteria and conditions for their use (as per Option 3).

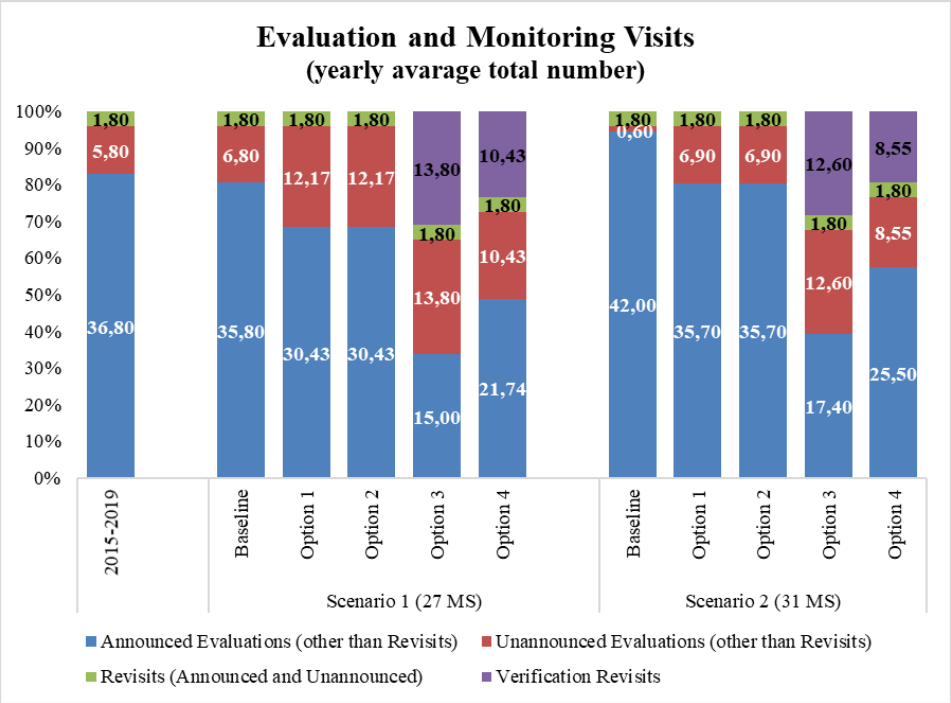
For the *Specific Objective 2 (rationalise the distribution of tasks and responsibilities, and simplify and accelerate the process and procedures)*, Option 4 proposes the measures indicated per Option 3 and it would lead to faster evaluation process, higher peer-pressure, less bureaucratic procedure and high potential for simplification.

In relation to *fundamental rights (Specific Objective 3)*, Option 4 does not include the possibility of specific evaluations (as per Option 3) considering that this is not the most effective measure. Instead, it proposes to increase legal certainty on elements relevant for fundamental rights and highlight their prominence and political importance (as per Option 2), which would have a high positive impact for achieving this objective.

As regards to *Specific Objective 4 (optimise the participation of Member State experts and the involvement of EU bodies and agencies and synergies with other instruments)*, Option 4 combines a number of measures indicated under the three options. As in the case of Option 3, it has the highest impact in relation to Specific Objective 4 to increase participation of experts and synergies with other instruments.

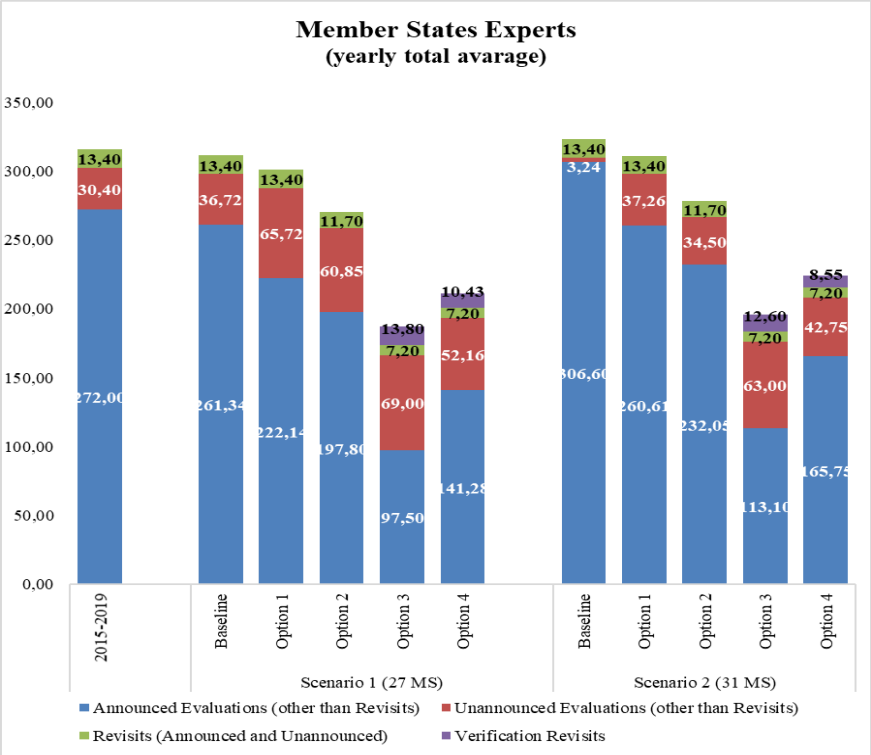
Overall, the effectiveness of Option 4 was measured in particular having in mind the fact that the Mechanism is an instrument functional to the respect of the rule of law within the framework of Schengen and in the believe that contributing to a more resilient Schengen would have in turn a positive social and economic impact, impossible to be assessed on its own merit.

Figure 12 – Evaluations – Comparison of policy options



Source: computation by the Commission based on internal data

Figure 13 – Member State experts – Comparison of policy options



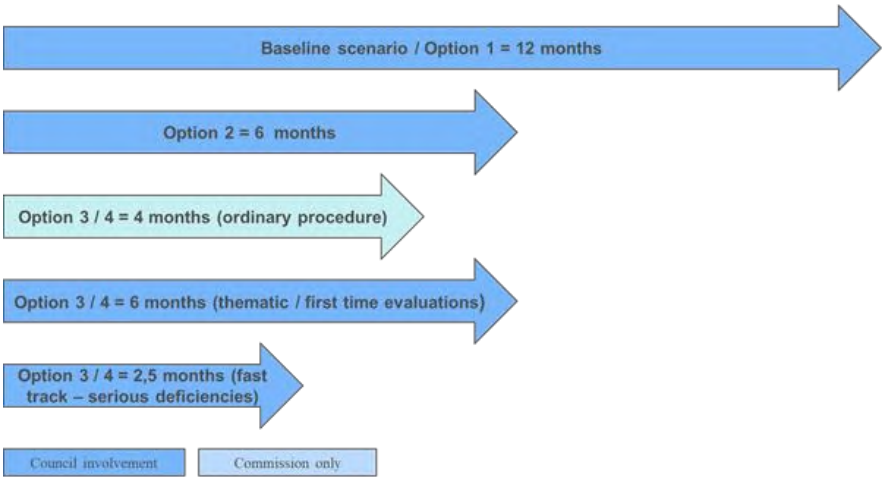
Source: computation by the Commission based on internal data

Table 14 – Evaluation team size – Comparison of the policy options

	2015-2019 & Baseline Scenario	Option 1	Option 2	Option 3 &4
Announced (other than revisit)	7.3	7.3	↓ 6.5	↓ 6.5
Unannounced (other than revisit)	5.4	5.4	↓ 5	↓ 5
Verification Revisits	N/A	N/A	N/A	1
Revisit (Announced or Unannounced)	7.4	7.4	↓ 6.5	↓ 4

Source: computation by DG Home based on internal data

Figure 14 – Length of the procedure – Comparison of policy options



7.2. Efficiency

The reform intends to make the Mechanism more efficient. As explained above, the aim is not a reduction of the total administrative and financial costs per se. But any gain in effectiveness is conditional to make better use of the available resources as existing human and budgetary resources are not expected to increase. Already now the Mechanism is not a costly instrument. In fact, it costs no more than EUR 2 million for the Commission on a yearly basis for organising evaluation and monitoring visits. It is also not costly for Member States, about EUR 100 000 -150 000[141] per Member State every five years. These amounts are negligible compared to the economic impact of the correct implementation of certain provisions of the Schengen *acquis* that can easily amount to several millions. Longer waiting times, for the issuing of visa or crossing the external borders due to insufficient staff, can, for instance, have very negative impact on the economy of border areas or on tourism.

The Commission does not expect the measures proposed under the four options to generate significant additional costs compared to the baseline scenario as regards the main changes in the organisation of evaluations (see section 6.4). Only the Commission and EU agencies would face new or additional costs under the different options (especially trainings, and for the EU agencies also wider contribution of experts and more comprehensive data sharing). This is so in particular because the Regulation would leave a sufficient margin to decide on a case-by-case basis on the proportionate implementation of the measures in question. They would also be largely offset by certain cost savings in other areas (announced evaluations) to abide with the current resources.

Option 1 has the lowest efficiency as it combines the lowest effectiveness in achieving the specific objectives with several measures that may generate additional administrative costs, notably training and wider contribution of experts by EU agencies / bodies. A one-week training in the visa field with a mock evaluation of consulates in third countries costs approximately EUR 70 000, while a mostly on-line training in the field of data protection would be a fraction of this amount. The participation of an expert by FRA would amount on average to between EUR 1 347 and EUR 2 147 in addition to between 50 working hours to at least 70 working hours. The scope of these measures should therefore be limited to balance the increase in costs with

[141] This is a rough estimation based on the data on working hours and financial costs provided by Member States.

their positive effects on a case-by-case basis. In this respect, as explained above trainings generate important benefits for the Member States but also several EU agencies stressed the benefit from the participation of their experts to SCH-EVAL ('*The evaluations help the Agency to be in touch with MS and the operational work*'). On the other side, the inclusion of new elements would not create additional costs, as those elements would be absorbed in the already existing evaluations and cost savings are expected by having more targeted and strategic evaluations.

Option 2 is more efficient than Option 1 as it includes, in addition to the measures under Option 1, a set of measures that significantly reduce the administrative burden and bring about simplification. In particular, this regards the possibility of adjusting in a more flexible way the annual programme to limit the need of amendments, declassifying the evaluation reports as a rule, reducing the frequency of follow-up reports, and introducing more flexibility in the number of experts. As explained above, it was possible to quantify the impacts of these measures only partly, but all concerned stakeholders confirmed that – compared to the size of the administration concerned – such measures would have a non-negligible impact. Option 2 is also more efficient than Option 1 in relation to the integration of fundamental rights, as it does not generate additional costs while increasing legal certainty is expected to generate benefits. **Yet, on balance, the moderate impact of Option 2 on the effectiveness of SCH-EVAL undermines the potential efficiency generated by cost savings.**

Option 3 is a highly efficient option due to its high effectiveness and possible cost reduction. Overall, the scope of the unified evaluations would be smaller than the sum of the current evaluations in six policy fields. Even a higher number of unannounced and thematic evaluations – which are normally less costly than announced periodic evaluations – would not offset the cost savings in relation to announced evaluations. The establishment of a pool of experts would facilitate the selection of experts with the most appropriate mix of profiles, which in turn would allow covering all required skills with a lower number of experts. The costs arising from the management of the pool would be at most equivalent to the burden resulting from an individual call for experts for each evaluation. Having a single evaluation report per Member State in addition to new procedures for adopting the evaluation reports and recommendations would have a significant positive impact on the effectiveness in terms of the length of the process and the administrative burden. Additional costs would result for the EU agencies from requests to provide additional risk analyses and reports. The costs would depend on the EU agency concerned. However, costs would be limited, as additional requests should concern primarily information already available to the EU agencies.

However, when it comes to fundamental rights (Specific Objective 3), the expansion of the scope by the introduction of **dedicated evaluations for fundamental rights** would imply that a relevant share of the resources for announced evaluations would be dedicated to fundamental rights. Although on balance the costs for announced evaluations would decrease, there would be a relevant shift of costs from other policy fields to fundamental rights. In proportion, as regards fundamental rights only, this measure is therefore the most costly compared to measures under Option 1 and 2, while also being the least effective. **With regard to Specific Objective 3, Option 3 is not the most efficient**.

Option 4 introduces a number of measures contributing to high efficiency and, as shown in section 6, would be largely equivalent to Option 3. In this respect, the Commission carried out a cost / benefits analysis with the data collected during the stakeholders' consultation. As in the case of Option 3, more targeted evaluation visits and

a more balanced use of evaluation tools (decreased use of announced periodic evaluations, compared to other evaluation tools) would require less financial resources from the Member States and Commission, while enhancing the strategic focus of the Mechanism.

Option 4 would simplify and accelerate the administrative procedures and reduce related working hours. Simplification would derive from a number of measures, i.e. lower frequency for Member States to reply to the standard questionnaire (for the reduced number of announced evaluations), declassification of evaluation reports, and reduction of follow-up reports by the Member States and related assessment by the Commission.

In relation to the reduced number of Member State experts (due to the flexibility in the size of the evaluation team and the proportion of the different types of evaluations), the changes would reduce the costs for Member States as regards both their active and passive participation in the Mechanism. These cost savings would not be as high as under Option 3, but still appreciable.

Regarding fundamental rights, Option 4 would aim to better integrating their protection under the Mechanism without requiring additional resources for a separate evaluation.

7.3. Proportionality

Operational measures under **Option 1** do not impose additional obligations on the actors and their practical implementation will depend on the assessment of their proportionality by the actors involved on a case-by-case basis.

The limited scope and legal effects of the measures included under Option 2 ensure their proportionality. **Option 2** is a minimalist approach that would increase legal certainty, simplify and streamline procedures. The declassification of the evaluation reports is also a proportionate measure, as it would enhance the transparency of the Mechanism (by facilitating the transmission of reports to European Parliament and national Parliaments) but it would not affect otherwise the level of confidentiality of the reports[142]. Member States would have the right, where necessary and in accordance with national law, to ask for the classification of the report as EU RESTRICTED in full or in part.

Option 3 includes ambitious legislative changes in a number of areas. As explained in the previous section, the necessity and suitability of the proposed measures are justified by their close link with the drivers of the problems identified. The proposed measures do not have generally automatic legal effects and are subject to strict conditions ensuring their proportionality[143]. Furthermore, measures on the institutional balance increase the proportionality of the involvement of the different actors by strengthening their role in the politically most important cases, while simplifying the procedure in cases having rather a technical profile. However, the measures entailing the adoption of parallel legislative acts, to expand the scope of the Mechanism or to amend the founding Regulations of the relevant EU agencies and bodies, may be considered disproportionate given the work and political risks entailed compared to the benefits, particular as an equivalent objective might be attained by other less burdensome means.

Being **Option 4** a combination of measures of the three other options, all proportionate, it goes without saying that the measures under Option 4 do not go beyond what is

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142 As regards the application of Regulation (EC) No 1049/2001; OJ L 145, 31.5.2001, p. 43.

143 In particular, it is to note that the possibility to carry out unannounced visits without previous notice would be limited to cases where this may be proportionate in the light of the position of the different stakeholders.

necessary to achieve the specific objectives of the initiative. It is also a more proportionate option than Option 3, as it does not entail the development of several parallel legal acts.

7.4. Coherence

The four options include measures that are coherent with the overall objective of strengthening the effectiveness of SCH-EVAL and herewith the proposed Schengen Strategy. The options will contribute, in different measures, to this goal by reinforcing the monitoring pillar of the Schengen Governance. Nonetheless, it should be noted that the new challenges of Schengen, such as migration and terrorism, will not be resolved directly by the revision of the Mechanism (by any of the proposed policy options) and will have to be addressed by other initiatives, amending the specific instruments that deal with these issues and that constitute the "substance" of the Schengen evaluations.

More targeted and strategic evaluations can support in particular the assessment of the necessity and proportionality of the unilateral decisions of the Member States concerning the reintroduction or prolongation of internal border checks under the Schengen Borders Code.

Further, all four options take in due account the significant changes of the legal context in which SCH-EVAL operates. Widening the scope of the evaluations to include new IT-systems related to Schengen would allow strengthening the implementation of the new regulations[144]. The proposed approach allows enough flexibility to reflect future changes that might result from measures proposed under the New Pact on Asylum and Migration and the EU Security Union Strategy, and others that might occur in years to come.

Options 2, 3 and 4 are consistent with reforms introduced by the EGBC Regulation. They include the possibility of extending the evaluations' scope to support the verification of relevant Frontex' activities in so far as they perform functions on behalf of a Member State, and put in place the basis for stronger synergies with the Vulnerability Assessment. They also improve the conditions of the involvement of other EU agencies reflecting their increased role since 2015 and proposed development of their respective mandates. However, by providing for the possibility to address recommendations immediately to the EU agencies, Option 3 may implicitly conflict with the competence of other actors to overview the EU agencies activities and decide on the most appropriate measures to address any issues emerged on occasion of the evaluations.

Regarding the measures to better integrate fundamental rights protection, the four options are coherent with the proposal for a monitoring mechanism about screening of third-country nationals at the external borders[145] and the establishment of Frontex Fundamental Rights Officer. An EU body / agency observed that there is no substantial risk of duplication, because the scope of SCH-EVAL, the proposed mechanism and

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144 Under the current This implies that as the legal basis of the SIS changes, evaluations will evaluate the implementation of the relative amendments and this would be covered by the initial decision to evaluate SIS. Yet the inclusion of new, additional provisions would not be covered by the initial decision to evaluate SIS. The same applies also when we look at other policy fields. The new IT-systems are not merely amendments of provisions already evaluated in any policy field, nor data protection nor external borders. In practical terms, agreement should be reached at the stage of adopting the multiannual or annual programme.

145 COM(2020) 612 final of 23.9.2020. See Article 7.

Fundamental Rights Officer are different. On the opposite, there would be complementarity and room for '*cross-fertilisation*'[146] among the different tools.

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.

7.5. Stakeholders' support

As indicated in section 5, the Commission proposed the measures under the four policy options by taking into account the recommendations of stakeholders.

Option 1 would introduce operational measures only. All stakeholders agreed on the changes proposed under this option. However, Option 1 would not address fully the concerns raised by some stakeholders, as it would improve the functioning of the Mechanism to a certain extent only. In this respect, the limited changes to the scope and programming (i.e. no significant increase in using evaluation tools, other than announced evaluations, and keeping the 24h notice for unannounced evaluations) were criticised in particular by the European Parliament and civil society organisations, as these changes would not allow having a comprehensive overview on the state of Schengen. This option would not solve completely the issues indicated by Member States in relation to the insufficient number of highly qualified experts and unbalanced contribution of expert by Member States or the need for the Mechanism to carry out more targeted evaluations focusing on the essential.

By reinforcing operational changes and increasing legal certainty, **Option 2** would establish measures that found broad support among all stakeholders. Despite the positive changes, i.e. declassification of evaluation reports (supported by European Parliament and NGOs), the risk of fragmentation would remain and this option would not respond adequately to stakeholders' call for having an overview of the state of Schengen's state. Option 2 would simplify the existing procedural obligations and introduce time limits as widely requested by Member States, the European Parliament and civil society organisations. Nonetheless, keeping the current institutional set-up would still affect the length of the processes, which was indicated as one of the main shortcomings by all stakeholders, especially Member States and European Parliament.

Option 3 would improve the functioning of SCH-EVAL significantly. Several stakeholders supported a number of measures proposed under this option, i.e. modifying the conditions and criteria for the use of the evaluation tools, in particular deleting the 24h notice for unannounced evaluations (European Parliament and civil society organisations), introducing a fast-track procedure (all stakeholders), creating a pool of experts (European Parliament and Member States), better reporting to the Council and European Parliament, etc. However, Member States were divided on expanding the scope of SCH-EVAL, creating all-encompassing evaluations or introducing changes to the Council's role in the evaluation process. Regarding the changes to the decision-making process, Option 3 proposes to focus the Council decision-making in the adoption of recommendations for the most politically relevant cases and to increase significantly its role in the follow up, including closure of action plans in some cases, as supported by several Member States. Stakeholders did not support the proposed creation of a specific evaluation for fundamental rights, given the peer-to-peer nature of the Mechanism and the existence of other instruments in the area.

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146 See Annex 2.

Option 4 combines the measures under the three other options that overall found broad support by all stakeholders. It adopts a more cautious approach on the introduction of all-encompassing evaluations given Member States' division on this matter. All stakeholders expressed convergence on the need for simplification of the processes and procedures. This option would achieve this goal while proposing a compromise to focus the Council's decision-making on the adoption of recommendations in the most politically relevant cases and increasing significantly its role in the follow up, including closure of action plans in some cases as supported by several Member States. Furthermore, Option 4 would increase legal certainty on elements relevant for fundamental rights without adding a separate evaluation (which did not find support during the consultation).

Table 15 – Overview – Comparison of policy options

Impacts/Options	*Option 1*	*Option 2*	*Option 3*	*Option 4*
	Operational changes	*Targeted legislative changes*	*Ambitious legislative changes*	*Combined approach*
1. Effectiveness	**Low to Moderate** – Operational measures would have only a limited impact on the effectiveness by increasing the focus of evaluations (through improved risk assessment) and quality of the findings. However, it would not allow for a proportionate use of the different instruments. The effectiveness of operational measures depends on the good will of the actors involved. With Option 1, there would be **a reduction of announced visits of about 15%** and the **number of Member State experts required would slightly decrease (by 3-4%).**	**Moderate to High** – By increasing legal certainty, Option 2 would increase effectiveness by filling possible gaps about the inclusion of the EU agencies, increasing the focus of evaluations and allowing for a more flexible programming. By simplifying, this option would increase effectiveness of the process; yet the decision-making process would remain unchanged reducing potential for greater peer pressure in relevant cases. However, **length of evaluation procedure will go from 12 to 6 months**. Flexibility in the number of experts could allow redistributing experts across evaluations but would not address the current geographical unbalance. Option 2 would see a **reduction of announced visits of about 15%** and the need of Member State experts would **decrease by 13% compared** to the baseline scenario(s). **Reporting cost reduced by 50%**	**High** – All-encompassing evaluations per Member State would eliminate fragmentation, increasing strategic focus, and extending the cycle's length would effectively rebalance the use of instruments. The changes to decision-making process would increase the Council's focus on political sensitive or important cases, increasing peer pressure, and create a more proportionate distribution of roles. In addition, **it will reduce the length of procedure from 12 to 4 months and in case of serious deficiencies, to 2.5 months**. The pool of experts and clear obligation on the Member States to contribute experts would create the conditions for balanced and adequate contributions. Better use would be made of information available. The creation of dedicated evaluation for fundamental rights could weaken their monitoring. Under Option 3, a **reduction of announced visits of about 60% would be achieved and 43%-44% less Member State experts** than in the baseline scenario(s).	High – Option 4 allows for a strong strategic focus and reduces the fragmentation to a certain extent in the short term. The extension of the cycle to seven years would contribute to a more balanced use of the evaluation tools. In the medium-long term, more targeted evaluations would make possible the combination of several policy fields. Changes to the decision-making process reduce the length of the evaluation process and administrative burden. Focusing the Council's role on politically sensitive or important cases would increase peer pressure. **it will reduce the length of procedure from 12 to 4 months and in case of serious deficiencies, to 2.5 months.** The creation of pool of experts would optimise the participation of Member States experts. Under **Option 4, a reduction of announced visits of about 40% would be possible and 33%-36% less Member State experts** than in the baseline scenario(s).
2. Efficiency	**Low** – Efficiency of operational measures is limited. Trainings in particular generate additional administrative costs while their effectiveness in promoting contribution of experts is very limited. This option does not provide for significant alleviation of administrative burdens. Option 1 would reduce costs for Member States linked to announced evaluations at most by up to 15%. A **reduction of 15% of costs** for the Commission in the organisation of the missions would be possible.	**Moderate to High** – Option 2 includes measures aiming to simplify the procedure and increase legal certainty, which would either reduce administrative costs (flexibility in the number of experts, declassification, reduced obligations in the follow-up) or increase effectiveness without generating additional costs. Option 2 would reduce costs for Member States linked to announced evaluations at most by up to 15. A reduction of 15% of costs for the Commission in the organisation of the missions would be possible. **Reporting cost reduced by 50%**	**High** – Option 3 includes measures that are not expected to generate additional costs. Additional costs for EU bodies and agencies to provide more targeted and additional information would be balanced with increased effectiveness. In relation to fundamental rights, to create dedicated evaluations generates appreciable costs without any increase in effectiveness. Under Option 3, costs for Member States related to announced evaluations would be reduced by almost 60%. A lower frequency for the presentation of the follow-up reports would reduce costs by 50%.	**High** – Option 4 introduces measures that would reduce costs (shorter evaluations visits and smaller evaluation team) and alleviate administrative burden on Member States and Commission. Under Option 4, costs for Member States related to announced evaluations would be reduced by almost 40%. A lower frequency for the presentation of the follow-up reports would reduce costs by 50%. Option 4 would reduce the costs for the Commission of the announced evaluations by possibly 40%.
3. Proportionality	This option does not generate any automatic obligation for the actors.	All measures under option 2 do not go beyond what is necessary to achieve the specific objectives.	All measures under option 3 do not go beyond what is necessary to achieve the specific objectives.	All measures under option 4 do not go beyond what is necessary to achieve the specific objectives.
4. Coherence	This option is coherent with development of the Schengen *acquis*.	This option is coherent with development of the Schengen *acquis*.	This option is coherent with development of the Schengen *acquis*.	This option is coherent with development of the Schengen *acquis*.
5. Stakeholders' support	Stakeholders supported operational measures but stressed the limited capacity of this Option in improving the functioning of the Mechanism.	All measures under Option 2 found broad support among all stakeholders.	Broad support for measures. Stakeholders divided on extension of scope beyond Schengen *acquis*, all-encompassing evaluations, Commission adopting recommendations and deleting 24h notice. They all oppose a separate fundamental rights evaluation.	This option combines a number of measures that found wide support from stakeholders under the other options but keep the Commission adopting recommendations and deleting 24h advance notice given their effectiveness.

8. PREFERRED POLICY OPTION

8.1. Choice of Preferred Policy Option

This Impact Assessment has described and analysed a number of policy options for the consideration of policy-makers. Based on the stakeholders' consultation, the **main policy choices** that policy-makers will have to consider when revising the Mechanism are changes to:

- The **institutional balance** in the decision-making process;
- The **scope of evaluations**, in particular to decide whether to continue with the evaluations per policy field or move to a fully risk-based evaluations; whether to extend SCH-EVAL to areas beyond the Schengen *acquis* and cover the activities of EU agencies;
- The **criteria and functioning of evaluation and monitoring tools**, particularly as regards the necessity of short advance notice in case of unannounced evaluations, and the duration of the evaluation cycle.

Based on the analysis of impacts, and in particular in view of the effectiveness of the Mechanism, and taking into account the positions of various stakeholders, the Commission considers **Option 4 as the preferred Option.** The other policy options are excluded as they address the problems only to a certain degree or are difficult to adopt / implement.

Option 1 would solve the identified problems only to a limited extent. This was already indicated in the five-year review and it was clearly confirmed in the analysis of impacts and even the call by the Council, the European Parliament and civil society to make legislative changes to the current Regulation.

Option 2 would improve the functioning of the Mechanism in certain areas particularly as regard simplification and streamlining. It creates a flexible framework for programming and defining priorities; simplifies or eliminates administrative burdens, and strengthens relevance and legal certainty regarding fundamental rights other than data protection. Nonetheless, it would still face some limitations, such as reduced peer pressure to accelerate the implementation of recommendations, and would have limited impact on the length of the procedure and the capacity of the Mechanism to react to new issues that may arise or to increase the monitoring of Member States.

Option 3 would be overall the most effective and efficient to achieve the objectives for certain areas of intervention. However, it presents legal obstacles for its implementation (such as the creation of parallel legal acts). It also presents operational problems for its implementation, as moving to all-encompassing evaluations might require the creation of multidisciplinary teams, which at this stage might be problematic and did not found broad support among Member States. Furthermore, it does not eliminate fragmentation, as some of the benefits of the option would be offset by the continuation of specific data protection evaluations (given their specificity) and the creation of a new specific evaluation for fundamental rights.

The factors leading to the choice of Option 4 are the following: the effectiveness and efficiency of the measures; potential for simplification and for reducing the administrative burden; and a realistic assessment of positions of different stakeholders' group, taking into account the practical / legal feasibility of proposed measures. The Preferred Option excludes from Option 3 those measures that present legal obstacles for their implementation, such as modifying the scope beyond the Schengen *acquis*, given the variable geometry of Schengen, or issuing recommendations to EU agencies and

bodies (as indicated in section 5.4). The Preferred Option also excludes issues that were very divisive among Member States, such as enlarging the scope beyond the Schengen *acquis*. It would be difficult to create a specific legal act for a very limited extension of SCH-EVAL's scope beyond the Schengen *acquis* without discussing asylum integration, which was strongly opposed by several Member States. Moving to all-encompassing evaluations would require changes in the organisation of evaluations and trainings (to have multidisciplinary teams) and only two Member States openly supported it. As a result, the Preferred Option offers an alternative that would allow more flexibility as to how to organise and design evaluations and reports but leaving more space for discussion with Member States. Option 4 is still a very ambitious option creating a modern and flexible instrument able to adapt to the dynamic nature of Schengen legal framework (high score for effectiveness and efficiency considering its potential to bring about crucial changes in the medium-long term – equivalent to Option 3); yet, it would present a more realistic and pragmatic combination of measures.

8.2. REFIT (simplification and improved efficiency)

According to the Commission's Regulatory Fitness and Performance Programme (REFIT), all initiatives planning to change existing EU legislation should aim to simplify and deliver stated policy objectives more efficiently (i.e. reducing unnecessary regulatory costs).

In its analysis on simplification, the Commission focused on the areas for highest potential for the simplification of administrative burdens, identifying areas where the biggest positive gains could be achieved by reducing administrative and bureaucratic burdens; and, on the other hand, to be able to discard policy options that would imply disproportionate newly emerging costs.

As illustrated by Table 16, the analysis of impacts suggests that the Preferred Option (Option 4) should reduce the overall burden on Member States and EU institutions. This option includes several measures that simplify the procedures in place and reduce the administrative costs to guarantee that the different actors involved may sufficiently fulfil their tasks and contribute to more efficient administrative and decision-making procedures (see Annex 4 and 5 and Table 17).

Table 16 – Impacts on simplification and administrative burden

	Baseline	*Option 1*	*Option 2*	*Option 3*	*Preferred / Option 4*
On national administrations	**0**	+	+	++	++
On EU institutions	**0**	+	++	++	++
On EU bodies and agencies	**0**	–	**0**	–	–

+++ high, ++ medium, + low, 0 neutral and – negative.

Under Option 4, there would be potential for simplification and for reducing the administrative burden (as indicated by Table 17) on the Commission, Member States and Council.

The reduction of the administrative burden would result from a combination of measures, notably: flexible legislative framework for programming; more balanced use of the evaluation tools (less announced evaluations); yearly call for experts; declassification of the evaluation reports; changes to the decision-making procedures (adoption of evaluation report and recommendations by the Commission, and Council's role focused

on most politically relevant cases); simplified procedure for the adequacy assessment of action plans (no formal Communication); reduced frequency of the reporting obligations (from three to six months).

Regarding the Commission, frequent amendments to the multiannual and annual evaluation programmes would be no longer required with the same frequency. While the management of a pool of experts may add additional workload for the Commission, this would be offset overall by the savings in terms of the individual calls for experts that would no longer be necessary. The burden generated by the need to encrypt the evaluation reports would be eliminated with the declassification of reports. For the follow-up, the Preferred Option would delete the significant administrative burden that arises from the adoption of a formal Communication and its translation.

For Member States, a reduction of the administrative burden would derive from the changes to the programming by lowering the frequency of announced evaluations and extending the evaluation cycle to seven years. Less announced evaluations would reduce Member States' replies to the standard questionnaire (which is necessary only for announced evaluations). For the preparation of the evaluations, the Preferred Option may have an appreciable impact given the wider use of evaluation tools that are less burdensome (unannounced evaluations) in combination with the reduced number of experts. The Commission expects that a lower frequency of announced evaluations (extension of the evaluation cycle) would reduce the relative burden by at least 20%. In the follow-up phase, the proposed measures would reduce by 50% the burden on Member States for the submission of the follow-up reports.

As regard the Council, the changes to the decision-making would reduce the number of cases in which the Council would adopt the recommendations, limiting the administrative burden.

Table 17 – Areas of administrative simplification potential

Areas of administrative simplification potential	*Baseline*	*Option 1*	*Option 2*	*Option 3*	*Option 4 (Preferred Option)*
Evaluation programme amendments	0.5/year (counting the average but it is about 1/year)	0	0	0	0
Calls for experts	8 calls / year	6-8 calls / year	6-8 calls / year	1 / year	1/ year
Commission proposal for recommendations	40/year	41/year	41/year	0-5 / year Only if serious deficiencies, thematic evaluations, first time evaluations	0-5 /year Only if serious deficiencies, thematic evaluations, first time evaluations
Council recommendations	40/year	41/year	41/year	0-5 / year Only if serious deficiencies, thematic evaluations, first time evaluations	0-5 /year Only if serious deficiencies, thematic evaluations, first time evaluations
Assessment action plans (Commission Communications)	20	20	0	0	0
Progress reports	4 reports/ year per action plan (24 progress	4 reports/ year per action plan (24 per MS)	2 reports/ year per action plan (12 per MS)	2 reports/ year per action plan (8 per MS)	2 reports/ year per action plan (8-12 per MS)

Areas of administrative simplification potential	*Baseline*	*Option 1*	*Option 2*	*Option 3*	*Option 4 (Preferred Option)*
	reports per MS)				

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

In line with Better Regulation rules, the evaluation of the functioning of SCH-EVAL will be based on a detailed programme for monitoring the outputs, results, impacts. Table 18 includes a non-exhaustive list of quantitative indicators proposed to monitor the achievement of policy objectives identified in this Impact Assessment. These indicators reflect and define, in practice, the success of the policy option and will be measured yearly. While certain aspects will need a qualitative analysis, certain indicators cannot include fix quantitative targets. They are contingent on external factors as they correspond to activities reactive to unpredicted risk situations. This is most notably the case for the participation of FRA observers.

The Commission will adopt a new IT tool ('KOEL'[147]) for a continuous monitoring of the fulfilment of the recommendations by the Member States, which will become operative already in 2021.

The Commission will assess the overall success only at the end of the cycle when all Member States will have undergone at least one evaluation 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 five-year cycle following the entry into force of the amendment to the Regulation. Such review shall cover all the elements of the Regulation, including the functioning of the procedures for adopting acts under the evaluation mechanism.

Table 18 – Success indicators

Specific Objectives	Operational Objective	Indicators	Target
Avoid gaps and increase the strategic focus	• Increase use of ad-hoc evaluations	• Number of unannounced and thematic evaluations (yearly average over the cycle) • Discussion at Ministerial level of findings or state of play of the recommendations	↑ increasing trend ↑ increasing trend
Rationalise the roles and distribution of responsibilities and simplify processes and procedures	• Make the evaluation process and the follow-up faster	• Average length of the evaluation process • Deficiencies identified by the Schengen evaluation mechanism pending to be remedied at the end of year	6 months ↓ decreasing trend
Optimise the participation of MS	• Ensure adequate	• Average number of experts required per evaluation visit[148]	6.5

[147] KOEL (Knowledge of European Legislation) is a web-based application within the European Commission to manage knowledge on Legislative Acts and related regulatory documents.

[148] Thematic evaluations should not be included in the computation.

Specific Objectives	Operational Objective	Indicators	Target
experts and the involvement of EU bodies and agencies	contribution of experts • Improve exchange of information	• Ratio designated/required experts • Number of risk analysis or other reports	1 ↑ increasing trend
Strengthen the implementation of fundamental rights safeguards under the Schengen acquis	• Widen the participation of FRA in the evaluations	• Number of FRA observers in Schengen Evaluations • Number of experts trained on fundamental rights	↑ increasing trend ↑ increasing trend

Annex 1: Procedural information

1. LEAD DG, DECIDE PLANNING AND CWP REFERENCES

The lead DG is the Directorate-General for Migration and Home Affairs (DG HOME). The agenda planning reference is PLAN/2020/8679.

The Commission Work Programme for 2021[149] provides, under the heading 'Promoting our European way of life' a legislative initiative to amend the Regulation establishing the Schengen Evaluation and Monitoring Mechanism.

2. ORGANISATION AND TIMING

The Secretariat-General set up the Inter-service Steering Group to assist in preparing the initiative on 10 December 2020. The following Directorates General representatives participated in the ISSG work: SJ, DG GROW, DG MOVE, DG RTD, DG HOME, DG JUST, JRC, DG SANTE and EEAS.

An Inception Impact Assessment was published on 4 January 2021 and was open to feedback from all stakeholders for a period of 4 weeks, until 1 February 2021.

Within this framework, the Impact Assessment was subsequently prepared.

3. CONSULTATION OF THE RSB

An upstream meeting with the Regulatory Scrutiny Board (RSB) was requested by the lead Directorate-General in order to receive guidance for the finalisation of the draft Impact Assessment Report on the Revision of the Schengen Evaluation and Monitoring Mechanism. The meeting took place on 26 January 2021.

On 17 February, the Directorate-General submitted the draft Impact Assessment to the Regulatory Scrutiny Board, in view of a hearing that took place on 17 March 2021. Ahead of the meeting, the Board sent out a Quality Checklist indicating an initial assessment together with a number of questions intended to guide the discussion during the meeting. On 16 March, DG HOME submitted written comments in response to the issues raised in the checklist.

On 19 March, the Board delivered its opinion on the draft Impact Assessment Report.

The lead DG finalised the Impact Assessment by addressing the comments of the Board.

4. EVIDENCE, SOURCES AND QUALITY

The starting point for this Impact Assessment report was the five-year review of the Schengen Evaluation and Monitoring Mechanism's functioning in the first Multiannual Evaluation Programme (2015-2019), adopted by the Commission on 25 November 2020[150].

Data collected in the framework of the five-year review on the implementation of the SCH-EVAL Regulation's individual provisions are the main source to define the baseline scenario and shortcomings of the current Regulation (see Annex 3). The Commission also relied on

[149] COM(2020) 690 final of 19.10.2020.
[150] COM(2020) 779 final of 25.11.2020.

three studies published on SCH-EVAL between 2017 and 2020[151] and on the previous reports by the European Parliament, the Council and the Court of Auditors. In relation to fundamental rights, main sources of information are also the papers published by NGOs and reports by the Fundamental Rights Agency (FRA).

To assess the impact of the different options, information on stakeholders' views through the stakeholder consultation activities, as per Table 19, were a main source of information.

Overall, the quality of the data on the implementation of the Regulation is very high as they cover, for almost all aspects, 100% of the procedures and rely on direct sources. Very little hard data is available however, as regards the actual administrative and financial costs of the instrument, despite the serious effort made by the Commission to collect such data, as part of the preparation of this Impact Assessment. As the data submitted by the Member States varied widely in range, the impact assessment has consolidated the replies taking into account the most converging elements also based on some case studies of procedures for which more comprehensive data were available, and the Commission's experience.

5. ANALYTICAL METHODS

The Impact Assessment relies on a combination of different analytical methods. It uses quantitative analysis of the data available to identify trends and the correlation between different factors and measure the different options' impact. In several cases, however, the size of the sub-set of data, combined with the high variation, does not allow to draw any conclusion on a mere quantitative level. It further evaluates quantitative trends based on qualitative evidence on the different procedures. As a large part of the issues at stake do not have a quantitative but rather qualitative profile, the impact assessments bases a significant part of the analysis on the views expressed by different stakeholders and case study research.

[151] The Commission conducted also two interviews with the authors of the studies to understand better their findings and recommendations.

Annex 2: Stakeholder consultation

1. CONSULTATION STRATEGY

This Annex provides a synopsis report of all stakeholders' consultation activities undertaken in the context of this Impact Assessment.

The overall aim of the consultation activities was to collect relevant input from a wide range of stakeholders at both national and EU level to enable the preparation of the initiative for the revision of the Mechanism.

The stakeholders' consultation took place between December 2020 and 1st February 2021.

The consultation encompassed, primarily, targeted stakeholders by way of thematic workshops and questionnaires. It included all categories involved in the functioning of SCH-EVAL, namely Member States and EU bodies and agencies. This format was preferred to bilateral interviews as it allows broader exchange of views among the participants. Nonetheless, the Commission articulated the workshops per stakeholder category. This approach appeared preferable given the very different interests and issues at stake for the different stakeholders.

Over the course of the consultation process, the Commission used a variety of methods and forms of consultation. These included:

- An opportunity for all interested parties to provide feedback on the Inception Impact Assessment via the Commission's 'Have your say' platform;
- Two workshops with competent Member State authorities, complemented by a targeted questionnaire and written comments following the workshops;
- A workshop with national Data Protection Authorities (DPAs) and the European Data Protection Supervisor (EDPS), complemented by a targeted questionnaire;
- A workshop with EU bodies and agencies involved in the functioning of SCH-EVAL, integrated by a targeted questionnaire;
- A workshop with representatives of the European Parliament;
- A workshop with a very restricted circle of members of the organised civil society known to have an interest in SCH-EVAL, as they had submitted position papers or otherwise approached the Commission.

The outcome of these consultation activities is summarised per stakeholders' group in section 2 of this Annex. It should be noted that the circumstances related to the Covid-19 pandemic, e.g. travel restrictions, excluded the possibility of physical meetings with the stakeholders. The consultation activities had to be carried out using alternative means, e.g. videoconference, written questionnaires and written comments following the workshops.

The feedback received through the targeted consultations was processed manually. This was feasible given the overall number of inputs received. The assessment of replies involved reading each consultation response in full and documenting viewpoints, including any issues and concerns that were raised. The feedback was then used as appropriate in conducting the Impact Assessment.

A derogation from an open public consultation on the Impact Assessment was granted on 30 July 2020. The request was made considering the technicalities and specificities of the subject and the limited number of stakeholders directly affected by the Mechanism. As the issues related to the functioning of the Mechanism are very specific and subject to strict confidentiality rules, it was considered that the general public could not be contribute to these issues through a public consultation in a productive and constructive way. In fact, evaluation reports drawn up following on-site visits are classified documents and not accessible to the public, which limits the public knowledge of the instrument.

That being said, the Commission published the Inception Impact Assessment on its website for four weeks, but only received limited feedback. The participation of the public in the consultation (only two feedbacks on the Inception Impact Assessment and limited nnumber of civil society representatives in the technical workshop) suggests a relatively limited public interest in this topic (which, again, may stem from its inherently technical nature).

Furthermore, this Impact Assessment takes into account additional resources (summarised in this Annex):

- Conclusions of the 1st Schengen Forum;
- EU institutions' reports on SCHEVAL.

Table 19 includes a synopsis of the consultation activities carried out.

Table 19 – Stakeholders' consultation

Method of consultation	*Stakeholder group*	*Consultation period*	*Objective of the consultation*
Schengen Strategy			
1st Schengen Forum	European Parliament, Member States, European Commission	30 Nov 2020	To obtain support on the Schengen Strategy main elements, including the revision of SCH-EVAL
Revision of the Schengen Evaluation and Monitoring Mechanism			
Inception Impact Assessment	Public	4 Jan – 1 Feb 2021	
Workshops at technical level	- Member States - EU bodies and agencies - Civil Society - European Parliament - Data Protection Authorities (DPAs) and European Data Protection Supervisor (EDPS)	11 and 17 Dec 2020 14 Dec 2020 8 Jan 2021 14 Jan 2021 13 Jan 2021	Collect views from different categories of stakeholders
Questionnaires	- Member States - EU bodies and agencies - DPAs	30 Nov-18 Dec 2020 11-23 Dec 2020 8-20 Jan 2021	Collect views on possible options/ information on the costs for Member States Collect data on the participation of EU bodies and agencies Collect views on possible options
Interviews	Authors of Studies on SCH-EVAL	July 2020	Technical discussion on the content of the

Method of consultation	Stakeholder group	Consultation period	Objective of the consultation
			studies

2. CONSULTATION ACTIVITIES AND RESULTS

2.1 Inception Impact Assessment

The Inception Impact Assessment was published for feedback by all interested parties on the Commission's website[152]. The consultation period was four weeks long, between 4 January and 1 February 2021. Respondents were invited to provide online comments. The Commission received two comments: one from ECRE (European Council on Refugees and Exiles) and the second from a citizen whose comment was however not immediately relevant for the reform of SCH-EVAL.

2.2 Summary of Stakeholders' position

European Parliament
The European Parliament indicated that the **scope** of SCH-EVAL should focus on the most relevant elements of the Schengen *acquis* covering new elements (i.e. new IT systems) and actors (EU agencies' implementation of the *acquis*). The Parliament advocated for including **fundamental rights'** protection horizontally in all evaluations. The Parliament proposed **extending the evaluation cycle** to seven years, increasing flexibility when using all **tools** available and to dedicate more time to horizontal findings. It suggested making a more strategic use of tools, by removing for unannounced visits the 24h notice to the evaluated Member State. The Parliament was in favour of introducing **time limits** for the adoption of the evaluation reports and recommendations, and indicated the need to speed up implementation of recommendations. The Parliament suggested defining **'serioius deficiencies'** and setting up a fast-track procedure for them. The Parliament suggested increasing the involvement of FRA experts and other actors, and **widening the scope of evidence** in order to include the information provided by civil society's organisations and other reputable sources (e.g. national / international monitoring bodies). The European Parliament recommended increasing **synergies with other EU mechanisms**, particularly vulnerability assessment, and reinforcing the links between SCH-EVAL and infringement procedure.

Member States
Member States recommended that the **scope** of SCH-EVAL should reflect the development of the Schengen *acquis*, notably to include the new IT systems and EU agencies' activities, and considered the possibility of hybrid evaluations (on-site / remote). Some Member States proposed to extend the **length of the evaluation cycle**. For Member States, evaluations need to be more strategic and targeted, and they recommended a wider use of thematic evaluations while keeping the notice for the unannounced visits. Member States agreed on introducing legal **time limits** for the evaluation process (including **fast-track** procedure for serious deficiencies) and implementation of recommendations. A number of Member States expressed support for the **combined adoption of the evaluation report and recommendations** by the Commission (under comitology examination procedure) to allow the Council to focus on the most politically relevant cases. Others saw the added-value of having findings and recommendations in a single document. Few Member States suggested to have a single report per Member State. Most Member States agreed on the **declassification** of the evaluation reports with the possibility for Member States to indicate information that is to be treated as classified. Member States generally agreed to lower the frequency of **follow-up** reports. Member States proposed an improved **training** system and incentives. Member States generally agreed that the Commission could decide on the optimal number of national experts and on the creation of a **pool of national experts**. A number of Member States proposed to strengthen the links between Frontex Vulnerability Assessment and SCH-EVAL, promote a wider **involvement of EU agencies**, and improve the risk analysis and information provided by the EU agencies.

DPAs / EDPS

[152] The Inception Impact Assessment and the received feedback is available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12825-Schengen-evaluation-and-monitoring-mechanism-

DPAs / EDPS recommended that evaluations should be dedicated exclusively to data protection and carried out by data protection experts. The **scope** should be adjusted to evaluate the new IT-systems and stressed that the evaluation programme should focus on the most important aspects. DPAs / EDPS suggested **training** for data protection experts and possible hybrid evaluations (on-site / remote).

EU bodies / agencies
EU bodies / agencies recommended clarifying the **conditions for the use of the evaluation tools** and asked for a clear definition of '**serious deficiencies'** and a 'grading system' for recommendations that would correspond to the severity of the deficiencies identified. EU bodies / agencies indicated the opportunity to **accelerate procedures and processes**. EU bodies / agencies supported the idea of a **pool of Member States experts** and proposed that the trained experts should participate in SCH-EVAL as evaluators. EU bodies / agencies suggested including other actors that might be able to provide **information and evidence** (e.g. human rights monitoring bodies) and recommended to clarify the elements of complementarity between SCH-EVAL and Vulnerability Assessment.

Civil Society Organisations
Civil Society Organisations proposed a general evaluation per Member State and stressed the need to better incorporate **fundamental rights'** compliance in the evaluations. NGOs advised to increase the use of **unannounced evaluations** without the 24-hour notice to the evaluated Member State and asked for a clearer definition of **serious deficiencies** and a prioritised procedure for these cases. NGOs supported the introduction of **deadlines** for the Commission-led phase of the Mechanism and follow-up, and proposed the adoption of the recommendations by the Commission. NGOs indicated that the Commission should determine the composition of the evaluation teams and proposed to include EU experts from relevant bodies and agencies and the European Parliament. NGOs invited the Commission to use more actively enforcement powers. NGOs recommended to **widen the scope of evidence** to include sources from third parties and suggested considering their input during the preparation of evaluations and follow-up

2.3 Consultation of European Parliament

The Commission organised a workshop on 14 January 2021, at a technical level, with the European Parliament. Representatives of various Parliamentary groups from the LIBE Committee[153] attended the meeting.

The stakeholders participating in the meeting stressed the convergence between the Commission's five-year review and the study carried out on behalf of the European Parliament.

Key messages by the European Parliament

- The current **scope** of SCH-EVAL should be adjusted, particularly to include new IT-systems, certain instruments in the field of police cooperation, and some EU agencies' activities. It is also key to differentiate between the most relevant elements of the Schengen *acquis* that need to be assessed and the other components that might be excluded or evaluated less regularly;
- A **seven-year cycle** could be considered so to ensure a better connection to the Multiannual Financial Framework and more flexibility to use all the tools currently available and dedicate more time to drawing horizontal findings;
- To improve the functioning of the mechanism, it would be necessary to make **more strategic use of unannounced evaluations, removing the 24h notice to the evaluated Member State** or, **at least, removing it for specific cases**; define the conditions for **thematic evaluations** and provide a clearer definition of **'serious deficiencies'** and a **faster procedure** for them. More rapid procedures for the

[153] Committee on Civil Liberties, Justice and Home Affairs.

adoption of the evaluation reports and recommendations and their follow up would be also essential.

- There is a need that SCH-EVAL investigates alleged violations of **fundamental rights** at the external border. Fundamental rights protection should be included horizontally in all evaluations, with experts in fundamental rights in the evaluation teams and relying on third sources (monitoring systems and complaints collected by monitoring bodies and NGOs (which could trigger a visit).
- To increase the **transparency** of SCH-EVAL, it is essential to **involve relevant stakeholders,** taking into account external sources of information, i.e. information from NGOs or national / international monitoring bodies, and **better reporting to and sharing information with the European Parliament**.
- To avoid overlaps with other instruments, it would be crucial to strengthen SCH-EVAL links with the **Frontex Vulnerability Assessment**. The Commission should also reinforce the link between SCH-EVAL and the **infringement** procedure, by clearly defining when the Commission would take legal action against a Member State that fails to implement the Schengen rules.

Recommendations by the European Parliament for the reform of SCH-EVAL

Scope and evaluation tools

- Include the assessment of new information systems and their interoperability, extending SCH-EVAL to Eurodac given its role in border security;
- Reconsider the scope of the police cooperation evaluation as now it is too scattered and does not cover all relevant aspects;
- Verify the implementation of the Schengen *acquis* by EU agencies, in particular monitoring the activities of eu-LISA, Europol and Frontex, given their enhanced responsibilities;
- Assess more regularly the absence of internal border controls, considering the unilateral actions by Member States following the 2015 migration crisis and the outbreak of COVID-19 pandemic;
- Differentiate between the most relevant elements of the Schengen *acquis* that need to be assessed and the other components that might be excluded or evaluated less regularly;
- Ensure more flexibility when using all the tools currently available;
- Modify the duration of the evaluation cycle so to dedicate more time to horizontal findings and to have a better overview of the Schengen area as a whole and ensure a better connection to the Multiannual Financial Framework;
- Make more strategic use of unannounced evaluations removing the 24h notice to the evaluated Member State or at least removing it for specific cases;
- Better define the conditions for thematic evaluations;
- Provide a clearer definition of 'serious deficiencies' and a faster procedure for them;

Evaluation process and follow-up

- Shorten the length of the overall evaluation process;
- Introduce time-limits for the adoption of the evaluation reports and recommendations;
- Faster implementation of recommendations;

Involvement of other actors and transparency

- Enhance the involvement of other actors and widen the scope of evidence in order to include the information provided by civil society's organisations and other reputable sources (e.g. national / international monitoring bodies);
- Integrate fundamental rights experts in the evaluation team;
- Increase the role of Fundamental Rights Agency, indicating the possibility for its experts to participate in the evaluations as full members and not as observers;

Coordination and synergies between SCH-EVAL and other mechanisms

- Increase synergies and avoid duplications with other EU mechanisms, notably the Frontex Vulnerability Assessment;
- Reinforce the links between SCH-EVAL and infringement procedure.

2.4 Consultation of competent Member States authorities

The Commission organised two workshops with Member States at a technical level (see, in addition, section 1 of this Annex.). As a follow-up, all Member States provided additional written submissions by replying to the questionnaire or by submitting other comments in writing. The Commission articulated the consultation around four main topics (scope, process, follow-up, experts).

Key messages by Member States on the scope of the evaluations and use of the evaluation tools

The Commission invited the Member States to take a position in particular on the following points:

- How could evaluations become more strategic in order to address comprehensively all those aspects that put the well-functioning of the Schengen area at risk?
- How could be ensured that all regions are adequately evaluated given the limited available resources while respecting the principle that the entire Schengen area should be regularly evaluated?
- Is the current repartition per policy field still adequate? Do recent legislative and regulatory reforms require to adapt the scope of the policy fields or even completely reconsider policy-specific evaluations?
- Could thematic evaluations allow a more effective comparison of the implementation of different elements of the Schengen *acquis* across the area while unannounced or revisits could address specific challenges?
- How could issues related to fundamental rights be better integrated in the evaluation process?

Regarding the scope, Member States expressed different views in particular on the possibility of widening the scope of the mechanism to better integrate the evaluation of the implementation of provisions targeting secondary movements. Others supported an increased role of SCH-EVAL in evaluating the absence of internal border controls. Some Member States raised the need to ensure SCH-EVAL is equipped to evaluate Frontex standing corps' activities.

As to the **scope of the SCH-EVAL evaluations,** Member States generally stress that

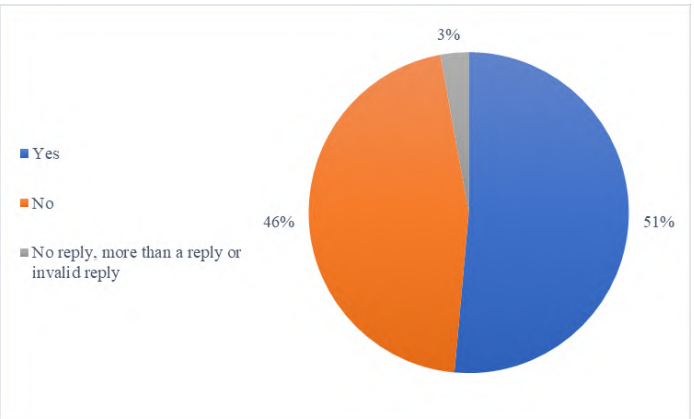
- **evaluations need to be more strategic and targeted** and focus on the elements that could have an impact on the well-functioning of the Schengen area;
- the scope of the evaluation mechanism should be adjusted to reflect the development of the Schengen *acquis*, notably to include the **new IT systems other than the Schengen Information System** such as Entry-Exit system and ETIAS (several Member States also called for a thematic evaluation of the IT systems);
- the evaluation cycle has to be maintained (to ensure that **all Member States are evaluated regularly) with more flexibility in articulating the announced evaluations**. Some Member States consider that evaluations need to consider the particular challenges faced by certain Member States in certain policy fields. Hybrid evaluations combining different policy areas (for instance, in the fields of SIS and Police Cooperation) or covering a geographic area including more than one Member State at the same time could be carried out, if appropriate. Some Member States also suggested integrating data protection in other policy fields. Besides, some Member States proposed to extend the length of the cycle to alleviate pressure on resources for making use of other evaluation tools;
- the Commission should make wider use of **thematic evaluations**;
- **unannounced evaluations should not occur without any previous notice,** as this would be detrimental to the evaluations' organisation. However, one Member State

considered that if a Member States has reported all actions as completed, there should not be any problem to carry out a verification visit without advance notice; and

- in addition, some Member States also raised the need to **prevent incoherence among policy fields** and the various reports should avoid in the future formulating the same or similar recommendations. Some Member States indicated that ideally, **a single report could include all policy fields**.

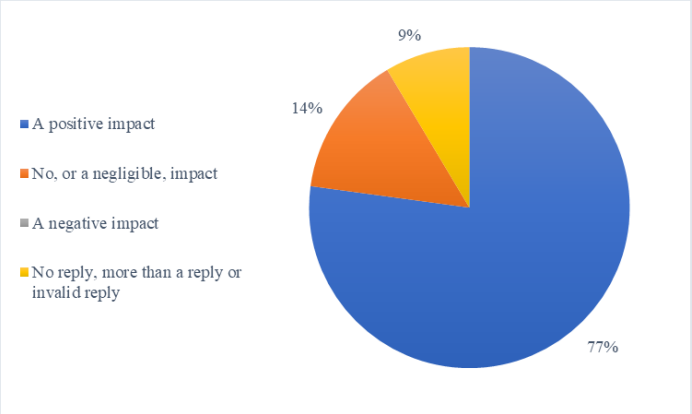
Results of replies to the questionnaire[154]

Scope of the evaluations
Should the articulation of evaluations according to the policy areas mentioned under Article 4 of the SCH-EVAL Regulation be strictly followed also in the future?



Member States' most recurrent comment is the necessity to integrate new IT system in the evaluations and to have more strategic and targeted evaluations. Several Member States consider the possibility of merging different policy fields, but in general, for Member States the repartition per policy fields is appropriate. An extension beyond the Schengen *acquis* is also clearly rejected by a number of Member State. One Member State asks for stronger integration of fundamental rights.

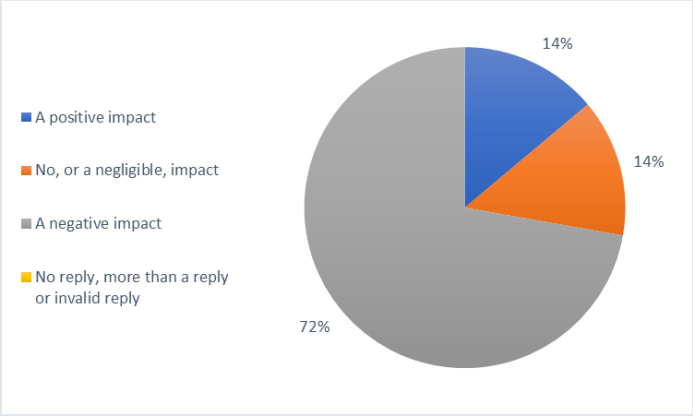
Planning of the evaluations
A more flexible approach in the adjustment of the planning of evaluations in order to be able to react to evolving circumstances would have:



In their comments, several Member States consider flexibility important notably for unannounced evaluations. Several Member States also refer to the Covid-19 situation to substantiate a need to introduce more flexibility also for announced evaluations in case of force *majeur*. Only 1 Member State considers that the procedure in place provides already flexibility. A Member State recalls that '*conducting an evaluation requires a planning of several months, on which the state to be evaluated must be able to rely. In this respect, a balanced approach must be found but in total we appreciate more flexibility, shorten the questionnaires, more video conferences and shorter evaluations could be adequate instruments*'.

154 The graphs in Annex 2 reflect Member States' replies to the questionnaire submitted during the consultation.

<u>Unannounced evaluations</u>
The possibility to conduct unannounced on-site visits without previous notifications would have:



A wide number of Member States mention that the previous notice would be necessary for logistic reasons in their comments. The most common reason advanced by Member States in favour of not giving previous notice is that the Member State evaluated would not have any possibility to take any influence on the evaluation results.

Key messages by Member States on the <u>evaluation process</u>

The Commission invited the Member States to take position on the following points:

- What would be an appropriate target for the length of the evaluation process taking into account the resources available and the need to ensure adequate evaluations' standards?
- Which procedural steps could be in particular shortened without affecting the quality of the exercise nor the participation of all directly or indirectly affected parties?
- What procedural requirements could be softened without any appreciable impact on the quality of the evaluations and involvement of all relevant actors to make the process more cost-efficient?

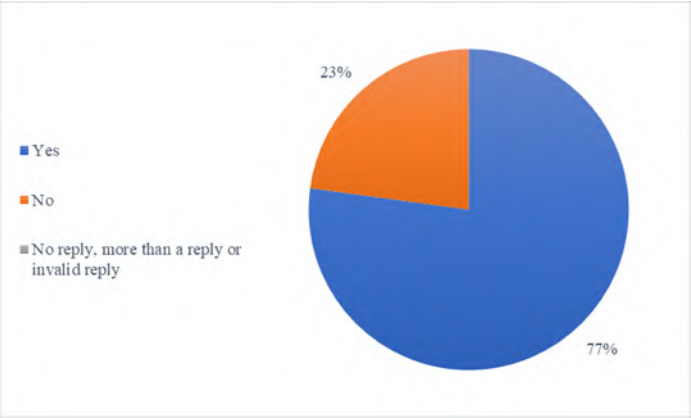
- Overall, MS experts agree, in line with the 1st Schengen forum's conclusions at political level, that the **process needs to be shortened**. A majority of Member States consider that an ideal length for the adoption of the evaluation report would be up to **4-6 months** from the evaluation report with the possibility of a **fast-track procedure in case of serious deficiencies**. The introduction of a legal time-limit for the adoption of the evaluation report by the Commission (and in general for all steps of the procedure) found also wide support, while some Member States also support the possibility to set a deadline for the recommendations.
- In the view of one Member State, it is important that the Schengen Committee and the Schengen Working Party meet on a frequent and regular basis.
- Most Member States also agree that **declassification of the evaluation reports** would facilitate their handling from a technical point, but Member States should maintain the possibility to indicate information that is to be treated as classified. Only a Member State asked that at least the draft evaluation report is classified par default.
- As to the **decision-making process**, a number of Member States consider that the current two-step adoption process, i.e. adoption of the evaluation report by the Commission and adoption of the recommendations by the Council is appropriate. Others see possible advantages in the combined adoption of the evaluation report and recommendations by the Commission (under comitology examination procedure) to shorten the process and allow the Council to focus on the most politically relevant cases. Some Member States also asked for a more balanced

distribution of responsibilities and increased synergies between the Council and the Commission.

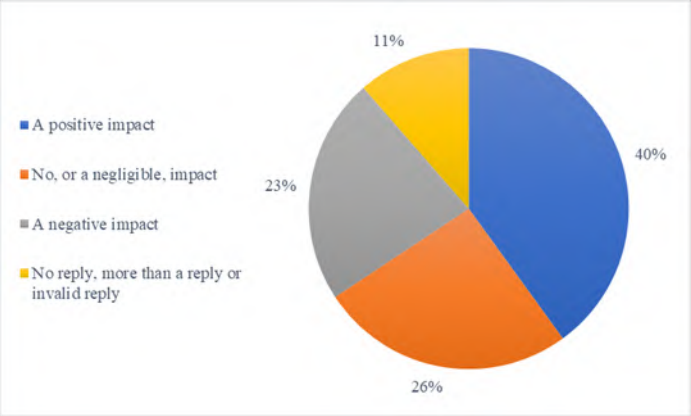
Results of replies to questionnaires

Pursuant to Article 14(2) of the SCH-EVAL Regulation, the Commission shall communicate the draft evaluation report to the evaluated Member State within six weeks of the on-site visit and the evaluated Member State shall provide its comments on the draft evaluation report within two weeks of its receipt.

Had these time limits an appreciable impact on the effectiveness?

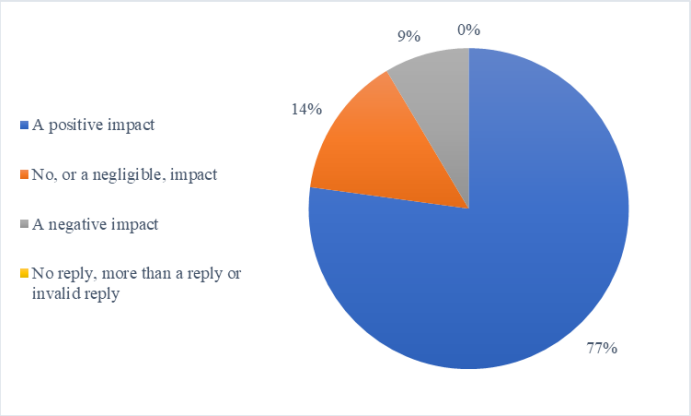


Shorter time limits for sending the draft report to the evaluate Member States and submission of comments on the draft report by the evaluated Member State would have overall:



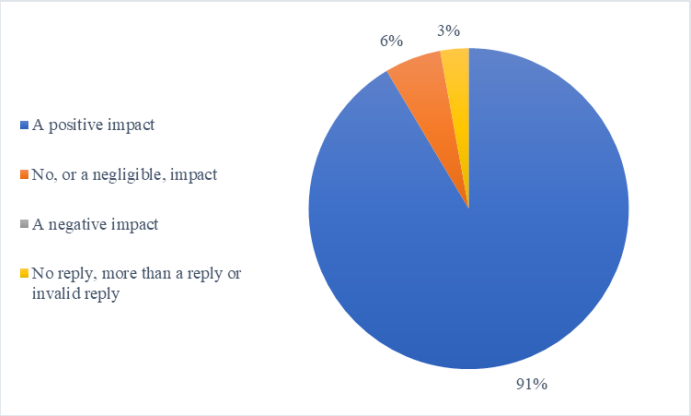
In their comment, a number of Member States consider that the six-week time limit could be shortened, even to two weeks. The two-week time limit for the evaluated Member State comments is considered by some Member States even now too short, and it could negatively affect the quality of the report to shorten it.

A time limit for the evaluation report drafting meeting, if it takes place, would have:

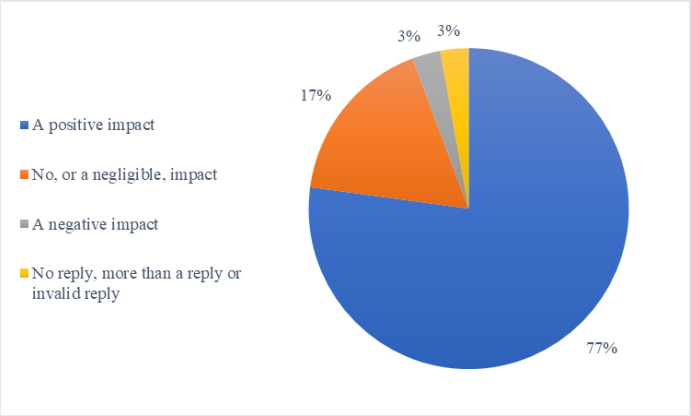


Member States' comments stress the importance that the drafting meeting should take place shortly after the evaluation visit to be effective. Some Member States consider that the meeting could take place per videoconference. A Member State mentioned that the classified nature of the information should be taken into consideration with respect of the possibility to hold the meetings online.

A time limit for the adoption of the evaluation report by the Commission would have:



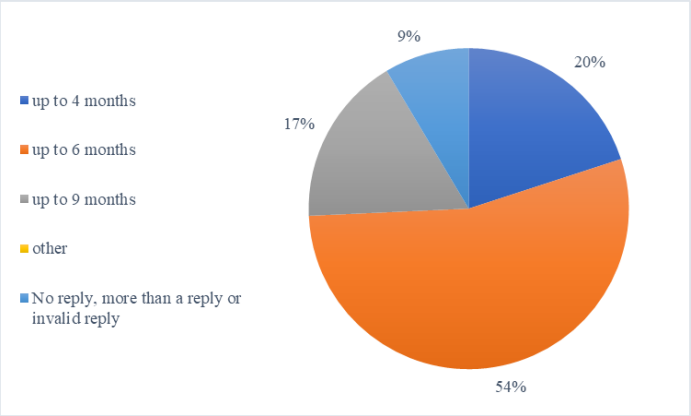
A time limit for the adoption of the recommendations by the Council would have overall:



Member States consider notably that time limits for the adoption of the evaluation report and the recommendations would have a positive impact on the length of the process and accelerate the follow-up. One Member State considers that this would not be the case because '*to start implementing recommendations that are deemed necessary by the Member State itself it is not necessary to await the adoption of the evaluation report by the Commission*'.

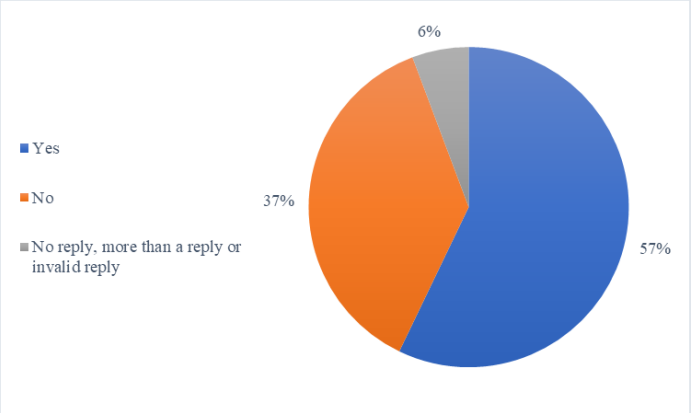
<u>Overall length</u>

What should be the overall length of the procedure from end of the on-site visit until adoption of the recommendations:



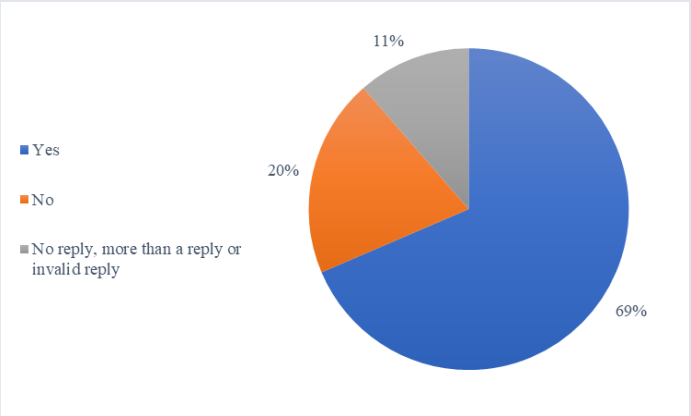
<u>Handling of sensitive information</u>

Do the measures in place generate additional costs to comply with the relevant technical requirements or delay the handling of the documents concerned?



The most common view is that the system generate additional costs in terms of administrative burden and delays in the handling of the documents while the relevant technology is already in place although not directly available to all persons concerned. These costs are not quantifiable.

Do you consider that the technological security system in place to protect the information exchanged is necessary?



The most common comment is that classification would be necessary, but only for duly justified cases and the possibility for Member States should therefore remain to require the classification of the report, if it contains sensitive information.

Key messages by Member States on the follow-up

The Commission invited the Member States to take position on the following points:

- In light of the issues described above, what measures could be proposed to ensure a swift follow-up on the recommendations by Member States?
- What support or incentives could be offered by the Commission to Member States to facilitate implementation of the recommendations?
- Would it be beneficial to involve more closely the Council in the follow-up process? If so, what would be the most appropriate measures?
- What would be the most cost-efficient system to ensure that the Commission receives timely and accurate information on the progress made by Member States?
- Would it be appropriate to increase the level of transparency on the implementation of the recommendations by Member States? What would be the most appropriate way to disseminate information about the state of implementation in a certain Member State?
- What information should be shared with the European Parliament?
- What are otherwise the main factors that in the past weakened the actual impact of SCH-EVAL on the well-functioning of the Schengen area? What measures are needed to strengthen the follow-up in the future?

- Member States generally agree that the follow-up process should be revised, as it is **ineffective** while generating an **excessive administrative burden**. In particular, follow-up reports should **not be required more often than every six**

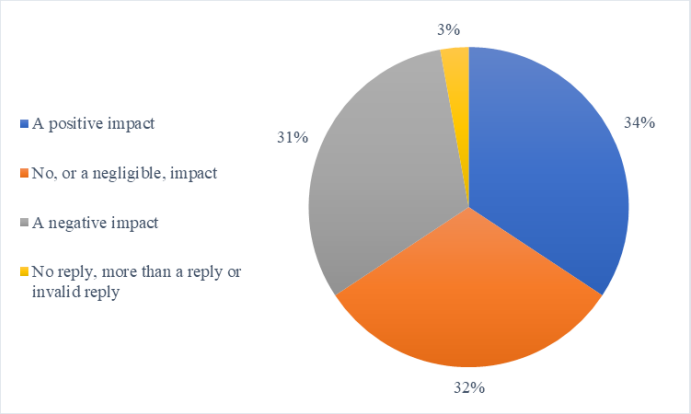
months, but at least once per year. They also see with favour the use of a new IT tool (KOEL) for the reporting (as announced by the Commission). Monitoring should also focus on the most important findings and the Commission should provide more timely feedback on the action plans.

- Several member States see with favour a **wider involvement of the Council in the follow-up process** and stress the need to **foster political discussion** on recurrent deficiencies. One Member State indicated that the respective roles of the Schengen Committee and Schengen Working Party should be clarified.
- For some member States, a **deadline for the fulfilment of the recommendations** is needed and non-compliant findings should be addressed within two years at the latest, while others suggested more flexibility in the use of funds to support the fulfilment of the recommendations.

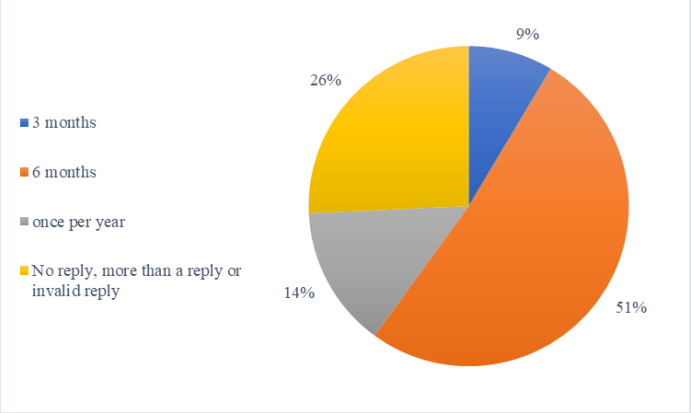
Results of replies to the questionnaire

Follow-up

The current time limits under Article 16 of the SCH-EVAL Regulation for the follow-up had:

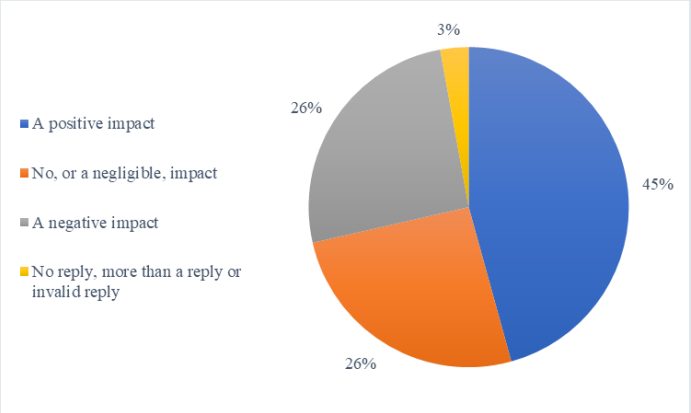


With which frequency should Member States report to the Commission to ensure an effective and cost-efficient monitoring:



In their comments, some Member States note that the time limits for the action plan are appropriate while several Member States consider that the three-month time limit for the follow-up reports generate excessive administrative burden and is often disproportionately short. One Member State also notice that the Commission is rarely respect the time limit for the assessment of the action plan. Another member State also stresses that timely feedback on the follow-up reports in between reporting from the Commission is essential to be able to determine if the actions taken are sufficient and / or if additional information is required by the Commission. Alignment with the Vulnerability Assessment is also proposed by a Member State.

A time limit for the implementation of the recommendation by the evaluated Member States with regard to the length of the implementation of the recommendations would have:



In their comments, Member States predominantly submit that deadlines should be introduced in particular in the case of serious deficiencies. Deadlines should in general take into account the different nature of the recommendations, but some Member States warn that only the Member State concerned might be able to judge the appropriate framework. A public authority considers that it should be sufficient to implement the recommendations by the subsequent evaluation, i.e. within five years.

Key messages by Member States on the participation of 'Member States' Experts'

- What are the merits of the participation of the national experts in the evaluations and what are the main issues that emerged in the past? What measures are needed to strengthen the contribution of national experts to SCH-EVAL in the future? Provide concrete information on specific policy areas.
- In the light of the issues described above, what measures could be taken to increase the number of national experts available with appropriate skills and qualifications also at short notice?
- In case of the creation of a pool of experts, which rules and principles may be most opportune to ensure a swift mobilisation and availability of the experts in case of need?
- Would it be appropriate to incentivise a stronger rotation of experts and wider participation of all countries? What would be the most appropriate arrangement to achieve this?
- Do you consider that the Regulation should be reviewed to strengthen the participation of national experts? What legislative measures could be envisaged?

What are the most urgent training needs to meet present and future challenges?

Member States overall strongly endorse and value the participation of their national experts in the evaluations as a **cornerstone of the peer review principle** and to guarantee the **quality of the evaluations**. National experts also gain from the experience as well as the importance of creating networking among experts. Yet, Member States acknowledge that **current contributions are inadequate**.

On trainings:

- **The training provided by the EU agencies is of utmost importance and the need to be further enlarged as to their scope and modalities (including e.g. refreshing training, multidisciplinary training, e-learnings tools, participation as observers to real evaluations**). An alignment of the methodology in the different policy fields is needed, to increase consistency and quality of reports.
- **Additional training** would be needed in particular on the single point of contacts (SPOC) in police cooperation, the Schengen Information System (SIS), Data Protection, Visa new development of the Schengen *acquis*, Return. Training in fundamental rights should be integrated in the modules of the different policy fields.
- There should also be an obligation for experts trained to operate as evaluators afterwards.

On incentives:

- The workload for experts as evaluators is very heavy, and it adds to their regular tasks. Incentives provided at present are not sufficient, and national administrations have limited possibilities. The Commission could provide additional **incentives**, including diplomas, more recognition but also incentives of financial nature.
- Several Member States invited the Commission to organise **lighter programmes** for future evaluations and make on-site visits more efficient.

On the designation and nomination process

- **Long-term planning** may facilitate the organisation at national level.
- Member States acknowledge a need to increase the number of experts, and several Member States favour a stronger rotation of experts to guarantee more geographical balance and stress that this is a shared responsibility, as it is becoming very burdensome for some Member States. A certain proportionality with the size of the Member States should be however maintained.
- The **Commission could decide on the optimal number of national experts** required for evaluations on a case-by-case basis, taking into consideration the specificities of the evaluations and between a legal minimum and maximum.
- The idea to create a list of national **experts pools is supported by most Member States**, while few Member States considers that the ideas should be further explored, but they see advantages as much as risks to be carefully weighted. Some Member States also proposed that pools are instead created at a national level with guidance by the Commission; to create a database with all experts and their level of qualification to help nominations by creating a reserve list; to map experts at a national level to assess the current capacity to provide good quality expert.

On the role of EU agencies

A number of Member States see a need to

- strengthen the **link between Frontex Vulnerability Assessment and SCH-EVAL**;
- promote a **wider involvement of eu-LISA and of the Fundamental Rights Agency (FRA)**;
- **avoid duplications** between the activity of EU bodies and agencies;
- **improve and widen the scope of the risk analysis and information** provided by the EU agencies.

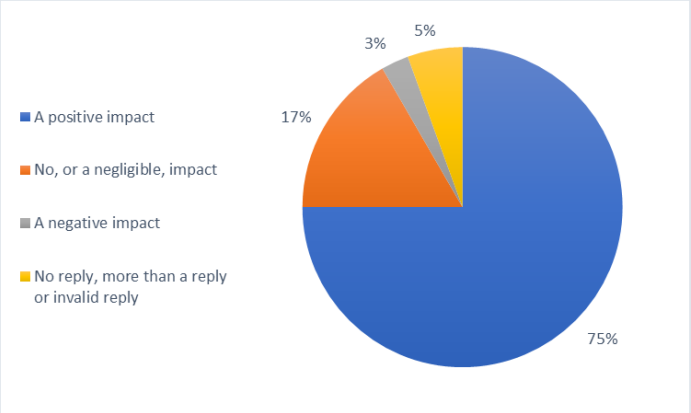
One Member State however considers that a wider involvement of the EU agencies might rather delay the process.

Results of replies to questionnaire

<u>Pool of experts</u>

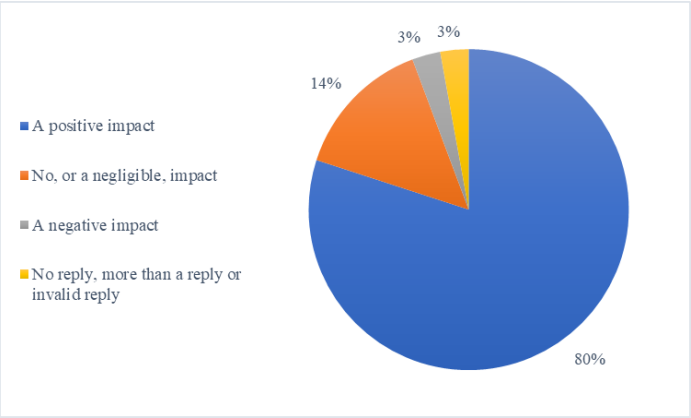
The creation of a reserve list ('pool') of experts available to be nominated if the number of designations by the Member States for a given evaluation is considered inadequate or the profile of the experts designated do not match the need, or otherwise in

the case of unannounced on-site visits, would have:



A number of Member States stress that it is necessary to ensure that the pool does not generate excessive administrative burden on the Commission and Member States.

<u>Number of experts</u>
More flexibility on the number of experts participating in the evaluations so to take into account the material circumstances and characteristics of the evaluation concerned would have:



The most frequent comment provided is that the size of the team should be adapted in particular to the size of the country and the policy field. Some Member States mention that this measure could have a positive impact on costs and on the quality of the evaluations. For a Member State, a correct proportion between Commission and Member States experts should be ensured nonetheless.

2.5 National Data Protection Authorities (DPAs) and European Data Protection Supervisor (EDPS)

An additional workshop was organised with a specific focus on data protection, including the National Data Protection Authorities (DPAs) and the European Data Protection Supervisor (EDPS). These stakeholders were also invited to reply to a short questionnaire (see below). Overall 23 DPAs attended the meeting and 13 DPAs provided additional information in writing in reply to the questionnaire.

<u>Key messages by the Data Protection Authorities (DPAs) and the European Data Protection Supervisor (EDPS)</u>

- **DPAs and EDPS see clear merits in the current Mechanism and dedicated evaluations for data protection**. The evaluation of the data protection requirements should not be fully integrated into the other evaluated areas. The information and experience acquired by the national experts is of high added value for the supervisory work of the DPAs. It is important to keep the peer review carried out by data protection experts; otherwise this could lead to a decrease of the importance of data protection aspects. Furthermore, the other areas would be overloaded by adding the data protection aspects. It would also cause even more work for the DPAs than currently and there is a risk that not sufficient data protection experts would be available for the evaluation of the other areas.

- DPAs expressed different views on extending the scope to the new IT-systems (EES, ETIAS). **The system should be made flexible enough that the data protection requirements of the new IT-systems could also be evaluated**.
- **The evaluation programme should focus on most important aspects.** This is in particular important if also EES and ETIAS will be evaluated. **Methodology of evaluations should be revised to lower the workload** e.g. preparation of the experts via team meetings before the on-site visit and finalising the report after the on-site visit. The Commission should provide additional supportive documents to the team members (e.g. checklists; list of recommendations of previous SCH-EVALs).
- Most DPAs consider that the **enhanced supervision powers of DPAs should not have an effect on the scope of the data protection evaluations**. However, a few of those DPAs expressed that some adjustments might be necessary.
- It is **important to keep parts of the evaluations as on-site visits** (verification of practical implementation of the data protection requirements); however, some parts could also be done remotely. Most DPAs are against only questionnaire-based evaluations.
- **Difficulties of DPAs to send sufficient experts** has been aggravated by pandemic, but is mainly due to the fact that the new EU data protection *acquis*[155] has caused a lot of additional work for the DPAs. Therefore, there are not sufficient experts available for evaluations. Further reasons for lack of nominations are high workload for the Member States experts, in particular during the on-site visit, lack of financial incentive and high turnover of DPA staff.
- There is a **need for more official endorsement of the importance of SCHEVAL**.
- DPAs are committed to improve their participation. There is support for the idea of creating a pool of experts to which all DPAs have to contribute according to their size and possibilities. For data protection, the pool should include lawyers and IT-experts, but also other profiles e.g. auditors. The teams should consist of experienced experts and newcomers to SCHEVAL.
- **Organisation of training for the Member States experts is important**. It could help in particular to introduce new colleagues into the topic, but all DPA staff would need training on the new *acquis* e.g. new SIS *acquis*. Theoretical and practical parts of training measures are seen as important.
- **Many DPAs are in favour of enhancing the cooperation of DPAs** (in the Supervision Coordination Groups) with the Commission and the SCHEVAL teams, **but not** necessarily via a more formalised cooperation e.g. **a cooperation obligation laid down in the SCHEVAL Mechanism**.

Recommendations by DPAs and EDPS for the reform of SCH-EVAL

Scope and evaluation tools

- Maintain evaluations dedicated exclusively to data protection and carried out in the format of peer review by data protection experts;
- The SCHEVAL system should provide for the possibility to evaluate the new IT-systems like EES and ETIAS including in relation to their data protection requirements;
- The SCHEVAL system should maintain on-site visits while providing the possibility to cover some aspects of the evaluation remotely;

Experts

- A pool of experts should be created to which all Member States would have to contribute according to their

[155] Regulation (EU) 2016/679, OJ L 119, 4.5.2016, p. 1 ('General Data Protection Regulation') and the Directive (EU) 2016/680, OJ L 119, 4.5.2016, p. 89 ('Law Enforcement Data Protection Directive').

size and possibilities; it should consist of lawyers and IT-experts, but also other profiles e.g. auditors;
- There is a need for more official endorsement of the importance of SCHEVALs;
- Create financial and other incentives for experts;

Training
- Training for data protection experts should be organised. It should cover theoretical and practical aspects of the evaluations.

QUESTIONNAIRE TO THE DPAs AND EDPS

Scope

1. Do you consider that the scope of the DP SCHEVALs (covering currently the DPAs and their supervisory role, the Schengen Information System – SIS - and the Visa Information System – VIS) should be extended to the new IT systems such as Entry-Exit system (EES) and ETIAS? Please elaborate why.
2. Do you consider (as suggested by some Member States in the meeting of 11 December 2020) that the evaluation of data protection requirements of the Schengen system should be integrated in the other evaluated areas (currently in particular SIS, Visa policy and in future possibly EES, ETIAS)? As a consequence, the DP SCHEVALs would be limited to the evaluation of the DPAs and their supervisory role. Please elaborate why.
3. Do you consider that the reinforced powers of the DPAs in supervisory activities should lead to a change of the scope of the DP SCHEVALs? Please elaborate why.
4. Which aspects should in any case be evaluated in DP SCHEVALs?
5. Do you consider DP SCHEVALs could be carried out mainly as questionnaire-based evaluations?
6. What other changes to the scope and/or format of the DP SCHEVALs would you suggest?

Experts

7. What are the reasons that DPAs have difficulties to nominate sufficient national experts? What are the reasons why some DPAs have never or rarely nominated national experts?
8. In addition to the creation of a pool of experts, what other measures and incentives would you suggest to guarantee the nomination of sufficient national experts (lawyers and IT-experts) for every DP SCHEVAL?
9. In case the data protection requirements would be evaluated within the SCHEVAL of the specific area (e.g. Visa Policy, SIS) or during a thematic evaluation, would you be able to nominate sufficient national experts and observers for those SCHEVALs?

Training

11. On what DP SCHEVAL aspects your national experts and observers would require training?
12. Do you consider that on-line training would be sufficient or should also on-site training be organised?
13. Would you ask all your national experts and observers to participate in DP SCHEVAL training? Do you think the possibility of this training would increase the number of national experts nominated for DP SCHEVALs?
14. Would your national experts and observers also be willing to contribute to the training e.g. by presentations (in the training for some of the other evaluated areas Member States' experts and observers are also providing parts of the training)?

Other issues

15. Do you consider that there should be a more formalised cooperation/exchange between the DP SCHEVALs teams and the SCGs (SIS and VIS) as well as in the future with the 'Coordinated Supervision Committee' (once it has taken over from the SIS SCG, possibly from the VIS SCG and if the scope of the DP SCHEVALs is extended to EES and ETIAS) ?
16. Do you have any other suggestions to improve the DP SCHEVALs.

2.6 Consultation of relevant EU bodies and agencies

As part of the consultation, the Commission organised a workshop with the participation of EU bodies and agencies currently involved in SCH-EVAL and invited to reply to a short questionnaire (see below). All concerned stakeholders - **Frontex, FRA, CEPOL, Europol, eu-LISA** and **EDPS** - attended the workshop and provided additional

information in reply to a short questionnaire. Overall a strong convergence of views emerged among the participants during the workshop.

Key messages by the EU bodies / agencies

- **EU bodies/agencies' contribution has been essential for the functioning of SCH-EVAL** and their experts, while being on paper merely observers, played a key role in the evaluation teams.
- **EU bodies / agencies benefit from their participation in SCH-EVAL.** It provides an additional opportunity to gain valuable insight into the evaluated Member States' status, to connect with Member States experts and exchange best practices.
- Certain EU bodies / agencies would be available, and wish, to **participate also in further policy fields** than they do now.
- **Earlier call for experts** would facilitate the organisation, noting that the short calls of the last months (due to COVID-19 restrictions) represented a major challenge;
- Several developments are ongoing and EU bodies / agencies see a need to improve further and adjust **training**. However, given the relevant training costs, it is important to ensure that participants to the training also serve afterwards as evaluators.
- **Risk of duplications** between SCH-EVAL and other tools in their respective policy fields is **limited**, while there is actual and **potential complementarity**[156].
- The time gap between **risk analyses** and evaluation visits is significant, so that the information may be often outdated. Some EU bodies / agencies would dispose of additional information that may be provided, but this would imply additional costs in certain cases and require a clarification of the legal framework.
- **Participation to SCH-EVAL is very demanding for EU bodies / agencies**. Any further involvement is subject to two main constraints: **available human and financial resources** and a **clear legal basis** about the obligations of the EU bodies / agencies, which would also facilitate the exchange of information and prioritisation of SCH-EVAL-related tasks.

Recommendations by EU bodies / agencies for the reform of SCH-EVAL

Scope and evaluation tools

- Clarify the scope, aim and main differences between thematic evaluations, announced and unannounced visits;
- Increase the number of unannounced visits vis-a-vis the number of announced visits;
- Increase the insufficient number of evaluations on internal borders (thus helping to bring Schengen 'back to normal', ending the regime of exceptional, prolonged reintroduction of controls at internal borders);
- Ensure an overarching, comprehensive and improved evaluation of fundamental rights' aspects across the board of Schengen policy fields;
- Provide clear definitions of 'serious deficiencies' and introduce a 'grading system' for recommendations that would correspond to the severity of the deficiencies identified;
- Draw upon other actors that might be able to provide information and evidence that is relevant to the application of Schengen acquis (e.g. human rights monitoring bodies, ombudspersons, national human rights institutions or civil society organisations active in fields such as border monitoring, provision of legal assistance, monitoring of places of deprivation of liberty);

Evaluation process

- Improve the timeliness of SCH-EVAL issuing processes, in particular for what concerns the adoption

[156] Reference was made in particular to complementarity with Frontex Vulnerability Assessment, Frontex Fundamental Rights Officer and the proposed monitoring mechanism, EMPACT and EDPS audit work on Central Units at eu-LISA.

of reports and of recommendations;

- Keep the conduct of Schengen evaluations and the establishment of recommendations at technical level;
- Design processes to ensure that the findings from SCH-EVAL will contribute to an enhanced situational awareness and improved planning for stakeholders in the European Border and Coast Guard Community;

Follow-up

- Put in place an effective tool to ensure implementation of recommendations;
- Ensure a closer follow-up and monitoring of the reporting by Member States on the implementation of the SCH-EVAL recommendations, also by introducing time limits for the implementation of the recommendations and procedural steps when time limits are not met;
- Indicate how technical support would be offered to Member States for the fulfilment of the recommendations by the Commission or by EU bodies / agencies;

Experts and trainings

- Establish processes for managing the pool of Member States experts, to ensure continuity of expertise and also cost-efficiency for related training activities provided by the Agencies;
- Ensure that experts participating to the training;
- Make experts of the EU bodies and agencies full member of the evaluation team;

Coordination and synergies between SCH-EVAL and EU bodies and agencies

- Clarify in the Regulation the main differences and elements of complementarity between SCH-EVAL and Vulnerability Assessment and ensure that Vulnerability findings effectively contribute to SCH-EVAL;
- Clarify how data and finding generated by SCH-EVAL activities across all policy fields are shared with the EU bodies / agencies.

QUESTIONNAIRE TO THE EU BODIES AND AGENCIES

1. TRAININGS

Under Article 12 of the SCH-EVAL Regulation, the Member States and the Commission, in cooperation with relevant EU bodies, offices or agencies, shall ensure that experts receive appropriate training, including on respect for fundamental rights. EU agencies and bodies played a key role in the first multiannual evaluation programme.

1.a. Please indicate the number of trainings organised between 2015 and 2019 and the number of experts trained and their country of origin.

1.b. Please indicate the average yearly costs in the reference period for the organisation of trainings for SCH-EVAL.

1.c. If possible, please explain the main different components of these costs, differentiating in particular between fix and marginal costs; what is the maximum number of experts that can be trained in a single training section and what is the fix cost of an additional training section?

1.d. What are the strengths and the gaps of the current training system in your field of expertise? What improvements would be possible in your view in the short time and what would be the estimated costs?

2. RISK ANALYSIS

Under Article 7(1) and 7(2) of the SCH-EVAL Regulation, Frontex shall submit risk analysis to the Commission and to the Member States and recommend priorities for evaluations in the following year and a risk analysis to the Commission which shall include the recommendations on the priorities for evaluations to be implemented in the form of unannounced on-site visits in the following year.

In addition, under Article 8 of the SCH-EVAL Regulation, the Commission shall, where appropriate, request EU bodies, offices and agencies, other than Frontex, which are involved in the implementation of the Schengen acquis to carry out risk analyses, including on corruption and organised crime, in so far as these may undermine the application of the Schengen acquis by the Member States. Such analyses could be used for preparing the annual evaluation programmes.

2.a. Please indicate the number of risk analysis provided between 2015 and 2019 in view of SCH-EVAL and briefly explain the type of information provided.

2.b. Please indicate the yearly cost (in working hours) for establishing the risk analysis.

2.c. Do you dispose of other information that in your view could be exchanged/shared in the future to improve the effectiveness of SCH-EVAL, in particular to improve the preparation and identification of sites to be visited?

2.d. What information could be further included in the risk analysis to strengthen the functioning of SCH-EVAL evaluations? What would be an estimated cost (in working hours or equivalent in EUR) to improve or extend risk analysis accordingly?

3. DIRECT PARTICIPATION OF OBSERVERS IN EVALUATIONS

Under Article 10(5) of the SCH-EVAL Regulation, The Commission may invite Frontex, Europol, or other EU bodies, offices or agencies involved in the implementation of the Schengen acquis to designate a representative to take part as an observer in an on-site visit concerning an area covered by their mandate. Regular use has been made of this possibility by the Commission in the first multiannual programme.

3.a. Please indicate the number of times the experts from your agency participated in evaluations (on-site visits) and the pertinent policy fields.

3.b. Please indicate the average yearly costs in the reference period of the participation of your expert. Please indicate the different components of costs and the average number of working hours per evaluation and per expert.

3.c. What has been the main merits and shortcomings of the participation of your experts in SCH-EVAL?

3.d. Do you consider that, taking into account the expertise of observers from your agency or body, their participation should be considered also in further policy fields in addition to those where they participate today?

4. SYNERGIES

4.a. Please indicate the tools, in particular evaluation mechanisms or alike, of your agency or body having the same or a complementary scope to SCH-EVAL. Also explain whether in your view there are currently appreciable duplications or gaps between SCH-EVAL and pertinent tools of your agency or body.

4.b. How do you consider that synergies should and could be improved?

4.c. Do you consider that there are further tools (in addition to trainings, sharing of risk analysis and participation in evaluations) by which your agency or body could contribute to the strengthening of the mechanism?

5. OTHERS

What are in your view the main issues and merits of SCH-EVAL today? What legislative and operational measures would be needed for the mechanism to reach its full potential

2.7 Consultation of representatives of the Civil Society

As part of the consultation, a workshop was organised to give the civil society representatives the opportunity to express their views on the upcoming reform. Three NGOs attended the meeting.

Key messages by representatives of the civil society:

- Fundamental rights should not be separated by creating - in addition to evaluations for data protection – further evaluations dedicated to fundament rights only, but **better integrated in the existing evaluations in the various policy fields**.
- There is a need for **increased transparency** and to make **wider use of evidence beyond the information provided by the evaluated Member State** and collected during the on-site visits. Relevant NGOs and International Organisations should be involved in both the preparation of the visits and in the evaluation itself. The Commission should also develop benchmarks of compliance and inform NGOs about them to allow the assessment and reporting of the relevant information. Access of Members of the European Parliament and civil society organisations to the evaluation reports should be facilitated, with due respect for sensitive information.
- **A stronger involvement of the European Parliament would be beneficial**. The scrutiny by the national parliaments and European Parliament on Member States' actions to remedy deficiencies could guarantee proper political discussion on the state of Schengen and put pressure on Member States to better comply with the recommendations, especially in relation to fundamental rights' violations at the borders.
- A better link should be established between Schengen evaluations and **availability of funds for the Member States**, especially when fundamental rights' violations were found during the evaluation.

A stakeholder also indicated the need for a **more independent mechanism to monitor better the respect for fundamental rights at the external border**. To do so, unannounced evaluations should be carried out at the border, but better organised and more effective so to spot the practice of push-backs taking place at the external borders (covering both sides of the border). This mechanism should also include the possibility to file a complaint and report fundamental rights violations It would be important to define to what extent evidence of fundamental rights' violations would trigger a truly unannounced visit.

Recommendations by NGOs for the reform of SCH-EVAL

Meijers Committee

Scope and evaluation tools

- Include a general evaluation per Member State assessing the compliance with the Schengen *acquis* rather than on selected topics only;
- Allow evaluation teams to be allowed to pay unannounced visits to Member States, instead of having to give a 24-hour notice as is currently required;

Process and follow-up

- Empower the Commission rather than the Council to adopt recommendations on the basis of evaluations
- Use more actively enforcement powers under Article 258 TFEU, in particular in case of a pattern of non-compliance with the Schengen *acquis* and the respect for fundamental rights;
- Ensure that the Commission informs both the Council and the European Parliament of the findings of the evaluation teams, as well the recommendations based thereon;
- Guarantee a better involvement of the European Parliament and national Parliaments so to mobilise the necessary attention and debate at political level;
- Facilitate access of individual Members of the European Parliament to the evaluation reports;
- Ensure that the Commission makes the findings of the evaluation teams, as well as the recommendations

based thereon, publicly available, with due respect for sensitive information;

- Improve the follow-up to the findings by providing for shorter and clearer deadlines on the evaluators and the Member States being evaluated;

Experts

- Enable the Commission to determine the composition of the evaluation teams;
- Include EU experts from relevant bodies and agencies in evaluation teams, in addition to Commission and Member State experts, such as Frontex, as well as an independent expert appointed by the European Parliament;

Fundamental rights

- Improve the overall transparency of the SCH-EVAL, with due respect for sensitive information;
- Incorporate fundamental rights compliance and involve the Fundamental Rights Agency;
- Ask the Fundamental Rights Agency, the European Ombudsman, EASO and UNHCR to indicate concrete issues that should be included in the evaluation and grant the possibility to national ombudsmen, official human rights bodies and NGOs of reputed experience to provide similar information in advance.

ECRE

Scope and evaluation tools

- Propose a definition of serious deficiencies and a prioritised procedure for these cases;
- Build more flexibility into the annual programme and increase the number of unannounced visits;

Process and Follow-up

- Introduce additional deadlines for the Commission-led phase of the Mechanism;
- Invite independent organisations and relevant national authorities to report on the implementation of action plans and consider their input in assessing progress;
- Provide the European Parliament with an oversight role in the follow-up and monitoring phase;
- The European Parliament should hold to account the European Commission and Member States for addressing the shortcomings of the Schengen Evaluation and Monitoring Mechanism in next year's review;
- Invite independent organisations and relevant national authorities to report on the implementation of action plans and consider their input in assessing progress;

Fundamental rights

- Develop objective and strict benchmarks against which the evaluation teams assess the fundamental rights compliance;
- Consult the Fundamental Rights Agency, independent civil society organisations, international organisations (UN institutions and bodies), state bodies, Ombudspersons and National Preventive Mechanisms and include in the evaluations the evidence provided;
- Introduce additional deadlines for the Commission-led phase of the mechanism;
- Include experts from Fundamental Rights Agency in the evaluation teams when fundamental rights concerns have become apparent ahead of the evaluation, including thorough documentation by external sources;
- Revise the Schengen questionnaire to ensure that future evaluations consistently assess compliance with obligations on access to asylum and *non-refoulement;*
- Make sure that the responses by Member States to questions related to fundamental rights in questionnaires are verified by independent civil society, national authorities with a relevant mandate or international organisations invited to respond to the same questions;
- Make public the progress made by the Member States on the recommendations about fundamental rights compliance;
- Schedule a thematic evaluation of fundamental rights compliance under the next Schengen multi-annual evaluation programme (2020-2024) and make the findings publicly available;
- Expand the scope of the monitoring to apply to all alleged fundamental rights violations by national border management authorities or during border control activities.

3. ADDITIONAL RESOURCES

3.1 1st Schengen Forum

Under the New Pact on Migration and Asylum, the Commission announced the establishment of a dedicated Schengen Forum, involving the relevant national authorities such as Ministries of Interior and (border) police at national and regional level, in order to stimulate more concrete cooperation and more trust among Member States to support the well-functioning of Schengen.

The 1st Schengen Forum took place on 30 November 2020. At the Forum, EU institutions and Member States provided political guidance on the future reform of SCH-EVAL, concluding in particular that there is a need to **increase the speed and the efficiency** of SCH-EVAL so that it can reach its full potential, to **improve its use,** but also to reflect on **how fundamental rights are respected at the external borders**.

3.2 EU Institutions' reports on SCH-EVAL

In **2017**, the **European Parliament** adopted a Report in which – while stressing to '*[see] great value in the renewed Schengen evaluation mechanism as it promotes transparency, mutual trust and accountability between the Member States by scrutinising the way they implement the different fields of the Schengen acquis*' – it also indicated that any revision of SCH-EVAL should address the major delays from the on-site visit to the implementing decisions and action plans and should facilitate swift remedial action on the part of the Member States. The European Parliament also submitted that the value of unannounced visits in the context of the Schengen Evaluation Mechanism could be enhanced were such visits to be really unannounced (without 24-hours' notice).

In **2019**, the **Court of Auditors** issued a Special Report on '*EU information systems supporting border control*' covering SCH-EVAL in connection with external borders and IT-systems. The main remarks of the Court of Auditors in the report are: (a) the cost of Schengen evaluations is relatively low compared to the expenditure on the information systems; (b) reports are thorough and methodical, and address key aspects of the systems and provide a detailed set of operational recommendations and specific recommendations on improving the information systems; (c) however, it can take several years to address identified weaknesses. This is due to a lack of deadlines for adopting evaluation reports and the implementation of corrective action plans.

Recommendations by the Court of Auditors

- to include in its five-year report information on the delays encountered by the evaluated Member States' implementation of their action plans to address the Council recommendations;
- to propose appropriate legislative and procedural measures in order to shorten the timeframe of the Schengen evaluation cycle

Finally, in **2019**, under the **Finnish Presidency**, the **Council** launched a consultation of the Member States on the functioning of SCH-EVAL and ways forward. In its report on the consultation, the Council noted how '[*w]hile fulfilling its core role of monitoring the proper application of the Schengen acquis, the evaluation process has brought further benefits in most Member States, including by strengthening national coordination, increasing expertise and exchanges via the experts participating in the evaluations, and feeding recommendations into national plans and strategies*'. However, from the Member States' consultation emerged a need for improvement, in particular: (a) the overall functioning of the Schengen system, and

especially identified deficiencies, is not sufficiently communicated at a political level and the results of the valuable work of the on-site teams have not been discussed at the political level; (b) the experts participating in evaluations should receive appropriate training; (c) unannounced visits should be used more promptly and flexibly when deemed necessary and include observers (Frontex); (d) the risk analyses prepared by Frontex according to Article 7 of the Regulation, including recommendations for announced and unannounced visits, would be more useful if they included the main results of the Vulnerability Assessment.

Annex 3: Implementation of the SCH-EVAL Regulation

1. INTRODUCTION

At the end of 2020, the Commission published its five-year report on the functioning of SCH-EVAL according to Article 22 of the Regulation. The five-year review of the evaluations carried out in the first five-year cycle allowed taking stock of the implementation of the provisions of the Regulation. It led to the conclusion that insufficient use has been made of certain evaluation tools (notably thematic evaluations), the Member States' contribution of experts has not always matched the needs in term of evaluation team's size and qualification, and the evaluation process (from the evaluation visit until adoption of the recommendations by the Council) was excessively long. This Annex presents statistics on these three aspects in order to outline the baseline scenario and the expected effects of the policy options assessed in this Impact Assessment.

2. NUMBER OF EVALUATIONS

2.1 Current scenario (2015-2019)

Under the Regulation (Article 1), evaluations are carried out to verify

- **(Article 1(a))** the application of the Schengen *acquis* in the Member States to which it applies in full (26 Member States of the Schengen area) or in part (Ireland);
- **(Article 1(b))** 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 has not been taken yet to lift internal border controls. This provision does not apply to Bulgaria and Romania that are not evaluated as their evaluation was completed before the entry into force of the Regulation.

Evaluations of these Member States take place as

- **Announced ('periodic') evaluations**;
- **unannounced** evaluations;
- **revisits** (announced or unannounced); and
- **thematic evaluations** on the application of specific parts of the Schengen *acquis* across several Member States.

The Regulation leaves wide discretion about the organisation of *ad-hoc* unannounced evaluations, revisits and thematic evaluations. As for the announced ('periodic') evaluations, there is an obligation to evaluate *at least* once every five years Member States that apply in full or in part the Schengen *acquis* in the relevant policy fields. Member States falling under Article 1(b) are evaluated *only* once before the Council takes its decision.

Between 2015 and 2019, these provisions imposed an obligation to carry out **164 announced evaluations**. Under the first five-year cycle, the 26 Member States applying in full the Schengen *acquis* were evaluated in the six policy fields (154 evaluations),[157] one Member State – Ireland – applying *in part* the Schengen *acquis* was evaluated in one policy field only

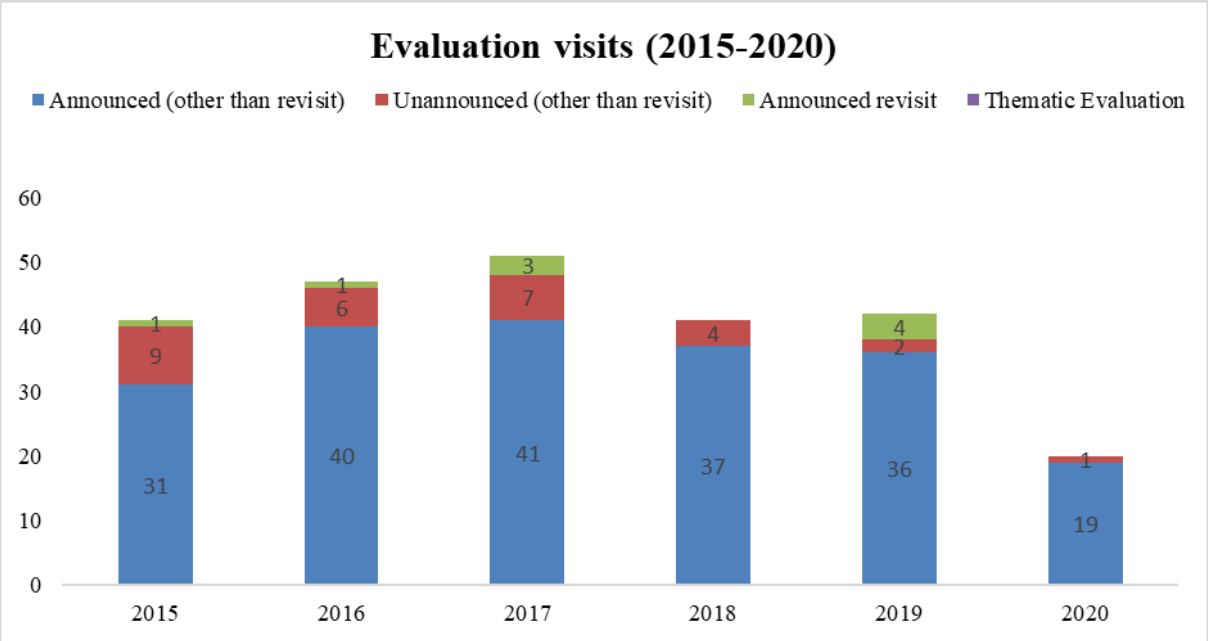
[157] The six policy fields are external border management, common visa policy, return, police cooperation, the Schengen Information System and data protection. Liechtenstein undergoes however evaluations only in four policy fields. Due to the absence of external borders, it is not evaluated in external border management and common visa policy.

(data protection). In addition, Croatia was evaluated in eight policy fields[158] and Cyprus in one policy field (data protection) under Article 1(b) (nine evaluations). This exercise required overall **184 evaluation visits**. While four evaluations were questionnaire-based only, evaluations in the field of external borders required as a rule more than one evaluation visit.

Resources available allowed in addition for **27 unannounced evaluations** (with 29 evaluation visits), **8 announced revisits** (with 9 evaluation visits) and **2 thematic evaluations**[159]. The two thematic evaluations did not require any separate evaluation visits. In one case, the thematic evaluation was combined with announced evaluations and in the second case, the thematic evaluation was a desk-reviewed exercise.

All in all, 201 evaluations took place, including 222 evaluation visits.

Figure 15 – Evaluation visits (2015-2020)



Source: internal Commission data

2.2 Baseline scenario

Based on internal Commission data and data collected from Member States, the Commission tried to develop a model to simulate the baseline scenario as well as possible effects of the different policy options on the future use of the different evaluation tools.

The model is based on the following underlying assumptions:

- The **number of evaluation on-site visits** carried out in the future **would be equal to the number of evaluation on-site visits carried out between 2015-2019**. It is to note that, under the constraint of constant resources at national and EU level, the number of evaluations could be easily altered by relying more widely on questionnaire-based

158 In addition to the six policy fields, Croatia was evaluated also in the field of judicial cooperation in criminal matters and firearms.

159 For a complete list of the evaluation in the first five-year cycle, see SWD(2020) 327 final of 25.11.2020, p. 29.

evaluations but it is not an aim of the current initiative to switch to a desk exercise which is not assumed to be generally as effective. On-site visits instead cannot be increased given fix costs that are independent from the characteristics of the on-site visitss.

- The **number of evaluated Member States** may vary **between 27 and 31**, whereby **26 Member States would be evaluated in all policy fields** and **one Member State, Ireland, only in three policy fields, namely data protection, Schengen Information System and police cooperation**. While the number of evaluated Member States is not to expected to remain constant, it appears reasonable to consider two alternative extreme scenarios where in which the Council, respectively, would take or would not take the decision that the provisions of the Schengen *acquis* apply in full or in part in respect to Romania, Bulgaria, Croatia and Cyprus. There are no reasons to assume at present that Ireland would be evaluated in additional policy fields, and the inclusion of further third countries appears rather remote.
- The **number of *ad-hoc* evaluation on-site visits (unannounced evaluations and verification visits and revisits** would correspond to the difference between the total number of possible evaluation on-site visits and the number of mandatory evaluation on-site visits, i.e. announced evaluations. As to the repartition of resources between these ad-hoc evaluation tools (1) **the number of revisits** would remain unchanged, hence **nine**, (2) **additional resources** would be **equally divided between unannounced evaluation and verification visits**, where verification visits would be envisaged; otherwise would be used entirely for unannounced evaluations. The number of revisits already corresponds essentially to the number of serious deficiencies and a change in the proportion of announced and unannounced evaluation does not affect the number of cases in which serious deficiencies can be detected as serious deficiencies can emerge in both cases.
- **Thematic evaluations are not integrated in the model**. This is due to the fact that given the limited experience with thematic evaluations so far, there are insufficient elements to estimate the average costs of thematic evaluations. From a practical point of view, by including thematic evaluations, the number of other *ad-hoc* evaluations (unannounced evaluations, announced and unannounced revisits and verification visits) would decrease. While it is envisaged to make more systematic use of thematic evaluations in the future, their number should remain however relatively small compared to other types of *ad-hoc* evaluations.

Based on this assumption, in terms of **different evaluation tools' use, the baseline scenario would diverge from the current situation as the number of Member States to be evaluated is higher than under the first evaluation cycle**. Ireland would be evaluated, at least, in three policy fields (data protection, police cooperation and SIS)[160]. Once Cyprus will have completed its evaluation that started in 2019, different scenarios are possible. If the Council does not decide to lift internal border controls for any of the four Member States, in principle the number of mandatory evaluations will decrease from 164 to 156, corresponding to 178 evaluation visits[161]. If the Council does lift internal border controls for all four Member States concerned, the number of mandatory evaluations would increase to 188, including 209 evaluation visits, and leaving virtually no space for ad-hoc evaluations. Under

[160] Council Implementing Decision (EU) 2020/1745, OJ L 393, 23.11.2020, p. 3.

[161] This corresponds to the 154 evaluations of the 26 Member States and 3 evaluations for Ireland, while assuming that the number of policy fields would remain unchanged.

the two extreme scenarios (it is obviously possible that the Council adopts a decision only for some Member States concerned) **announced evaluations would account for 81% to 95% of the on-site visits** (against 83% in the first five-year cycle) and essentially **no unannounced evaluations would be possible**.

Verification revisits are not foreseen under the current Regulation.

Table 20 – First five-year cycle – evaluation and monitoring activities

Scenario 1 (27 Member States and Ireland)	Announced visits	Unannounced visits	Revisits	Thematic evaluations
5-years	179	34	9 (assumed constant)	0
Yearly average	35.8	6.8	1.8	0
Scenario 2 (31 Member States and Ireland)	**Announced visits**	**Unannounced visits**	**Revisits**	**Thematic evaluations**
5-years	210	3	9	0
Yearly average	42	0.6	1.8	0

2.3 Policy Options

Figure 16 shows the impact of the different policy options considered in this Impact Assessment against the described baseline scenario.

- Under **Option 1 and Option 2**, the scope of the **obligation to carry out announced evaluations remains unchanged and no verification revisits would take place**. Nevertheless, as part of the strategic approach stakeholders suggested the possibility to combine evaluation visits that today are carried out separately (for instance, combining elements of different policy fields in the same evaluation visit or covering more than one Member State at once). **The Commission estimated that this more targeted approach could reduce the number of announced evaluations at most by up to 15%**. Preliminarily, it is to note, that the possibility to change the design of evaluation visits depends on the agreement of the Member States. **First**, based on the Member States' consultation, it would be possible realistically, that a number of Member States could agree to combined evaluations in the visa field (evaluating two Member States on the same location at the same time, for example in the visa field,) or merging police cooperation and SIS. External border management evaluations are very comprehensive and would be difficult to merge with other policy fields, while strong opposition emerged about the opportunity to merge data protection with other policy fields. In a scenario where there are no separated evaluations in police cooperation and half of the evaluations in visa policy, there would be a reduction of about 20% visits but effectively a bit less as not all Member States would probably agree. **Second**, based on some case studies and analysis of possible synergies, the Commission came to the conclusion that combined evaluation visits would be more complex and would probably require proportionally more resources. A conservative estimation taking into consideration all these constraints is that the reduction would be of no more than 10%. In addition, a 5% reduction is estimated as result of the shortening of the evaluations visits across all policy fields.

In a scenario with 27 Member States falling under the multiannual evaluation programme, the number of announced evaluations would decrease to about 69%, while the situation would remain virtually unchanged if four new Member States would be added (announced evaluations would require 80% of the possible on-site visits). As the number of revisits is not assumed to change, this would leave the possibility to carry out 61 or 35, instead of 28, evaluation visits for unannounced evaluations or thematic evaluations. **Under Option 1 and 2, there are no verification visits**.

Table 21 – Options 1 and 2 evaluation and monitoring activities

Scenario 1 (26 Member States and Ireland)	Announced visits	Unannounced visits	Revisits (Announced or Unannounced)	Verification Revisits
5-years	152	61	9	N/A
Yearly average	30.4	12.2	1.8	N/A
Scenario 2 (30 Member States and Ireland)	**Announced visits**	**Unannounced visits**	**Revisits (Announced or Unannounced)**	**Verification Revisits**
5-years	179	34	9	N/A
Yearly average	35.7	6.9	1.8	N/A

- An estimation of the impact of **Option 3** is more difficult as the possibility to carry out a single all-comprehensive evaluation implies an unknown number of evaluation visits depending on several variables (such as the size of the Member State, risk situation, past evaluations, etc.). It was decided to consider an hypothetical scenario in which four evaluation visits would be organised for each Member State. The extension of the evaluation cycle to seven years in addition would reduce by 29% the number of Member States to be evaluated each year. The combined effect of the two measures (a single evaluation and extension of the cycle) would lead to a situation in which only 34% - 39% of the evaluation visits per year would be announced. **Option 3 includes also verification visits**.

Table 22 – Option 3 evaluation and monitoring activities

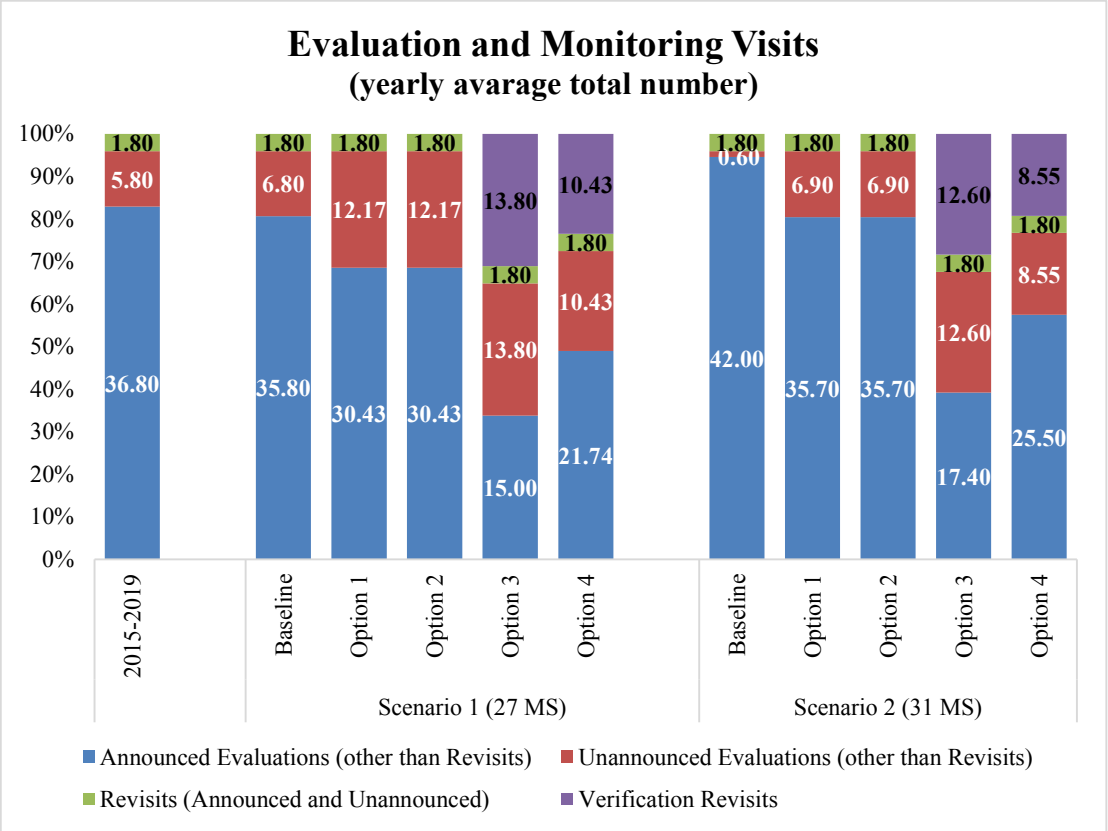
Scenario 1 (27 Member States and Ireland)	Announced visits	Unannounced visits	Revisits (Announced or Unannounced)	Verification visits)
7-years	104	97	13	97
Yearly average	14.8	13.8	1.8	13.8
Scenario 2 (31 Member States and Ireland)	**Announced visits**	**Unannounced visits**	**Revisits (Announced or Unannounced)**	**Verification visits)**
7-years	120	89	13	89
Yearly average	17.4	12.6	1.8	12.6

- **Option 4** would combine the effect of Option 1 and Option 2 with an extension of the cycle from five to seven years. Under Option 4, a reduction of announced visits of about 40%, while assuming that, with current Commission resources, the number of visits would remain constant (around 45 visits a year).

Table 23 – Option 4 evaluation and monitoring activities

Scenario 1 (27 Member States and Ireland)	Announced visits	Unannounced visits	Revisits (Announced or Unannounced)	Verification visits)
7-years	152	73	13	73
Yearly average	21.7	10.4	1.8	10.4
Scenario 2 (31 Member States and Ireland)	**Announced visits**	**Unannounced visits**	**Revisits (Announced or Unannounced)**	**Verification visits)**
7-years	178	60	13	60
Yearly average	25.5.	8.6	1.8	8.6

Figure 16 – Evaluation visits – Comparison of policy options



3. Number of Member States Experts

3.1 Current scenario (2015-2019)

Under Article 10 and 11 of the Regulation, the team responsible for the evaluation consists of **experts designated by Member States** and **Commission representatives**. For **evaluation visits**, the maximum number of Member State experts participating in an **announced visit is eight** and, for an **unannounced visit, is six**. In the case of questionnaire-based evaluations,

there is no maximum number of experts. Suppose experts designated by Member States exceed the relevant maximum number set out in the Regulation; in that case, after consulting the Member States concerned, the Commission shall appoint the team members based on a geographical balance and the experts' competences.

The selection procedure under Article 10 foresees that the Commission shall invite Member States to designate experts who are available for participation in the respective evaluation visits, indicating their area of expertise. In case of announced visits, the Commission sends the invitation at least three months before the visits, and the Member States shall designate experts within two weeks. In the case of unannounced visits, the timeframes are two weeks and 72 hours respectively.

Under the first five-year cycle, **all 32 Member States contributed experts to the Schengen evaluations** in very different proportions. **One-third of the over 1 500 nominations comprised experts from five Member States**, namely Romania (7.7%), Poland (7.2%), Germany (6.9%), the Netherlands (6.5%) and Switzerland (4.9%).

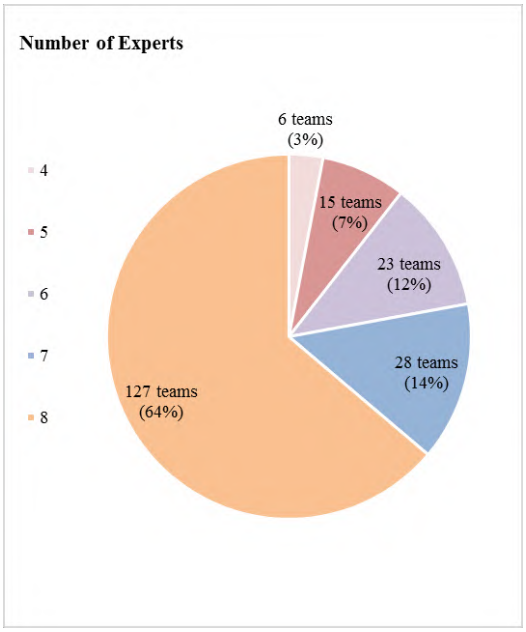
For announced evaluations, the teams generally (64% of the cases) consisted of the maximum number of eight experts and the number of designations was often higher than eight, so that not all proposed experts could be retained. Yet, on several occasions the Commission had to extend the time limit for the designation of experts (occasionally even several times) due to a limited number of designations received and for 21 (10%) evaluations the number of experts was eventually below six, hence critically low. Scarce availability of experts applied, in particular, evaluations in the data protection field where 12 (out of 29) evaluation teams had fewer than 6 experts and only four teams included eight experts. Occasionally, a lack of experts also affected evaluations in the fields of common visa policy and police cooperation[162].

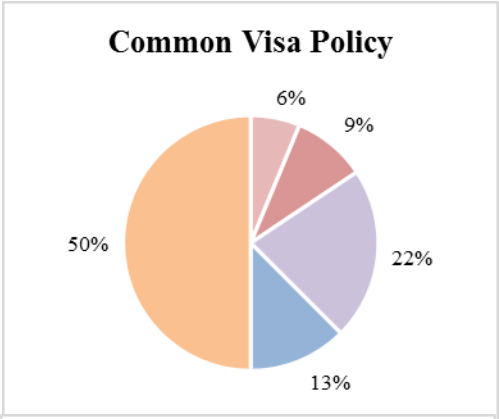
Overall, in the first five-year cycle, the **average number of experts per team was 7.3 (announced evaluations other than revisits), 7.4 (announced revisits) and 5.3[163] (unannounced evaluations)**. As to the thematic evaluations, in 2019, a thematic evaluation covering 25 Member States – questionnaire-based – required overall 20 Member State experts.

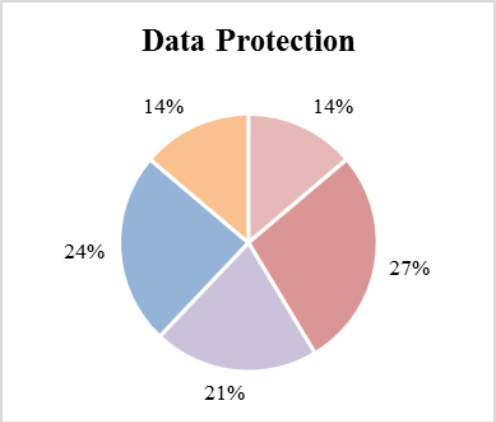
[162] See for more details SWD(2020) 327 final of 25.11.2020, pp. 30-32.

[163] For unannounced evaluations, the average is based on 82% of the evaluations. Data for announced evaluations, including revisits, cover 100% of the evaluations.

Figure 17 – Number of Member States Experts per evaluation







Source: five-year review

3.2 Baseline Scenario and policy options

While the total number of evaluation visits is assumed to remain unchanged, the different proportion of the use of the various evaluation tools would change. This would affect the number of Member States experts already because at present the evaluation and monitoring team size varies depending on the type of evaluations. Some options would in addition affect the team size per evaluations type.

Table 24 – Evaluation team size – Comparison of the policy options

	2015-2019 & Baseline Scenario	Option 1	Option 2	Option 3 &4
Announced (other than revisit)	7.3	7.3	↓ 6.5	↓ 6.5
Unannounced (other than revisit)	5.4	5.4	↓ 5	↓ 5
Verification Revisits	N/A	N/A	N/A	1
Revisit (Announced or Unannounced)	7.4	7.4	↓ 6.5	↓ 4

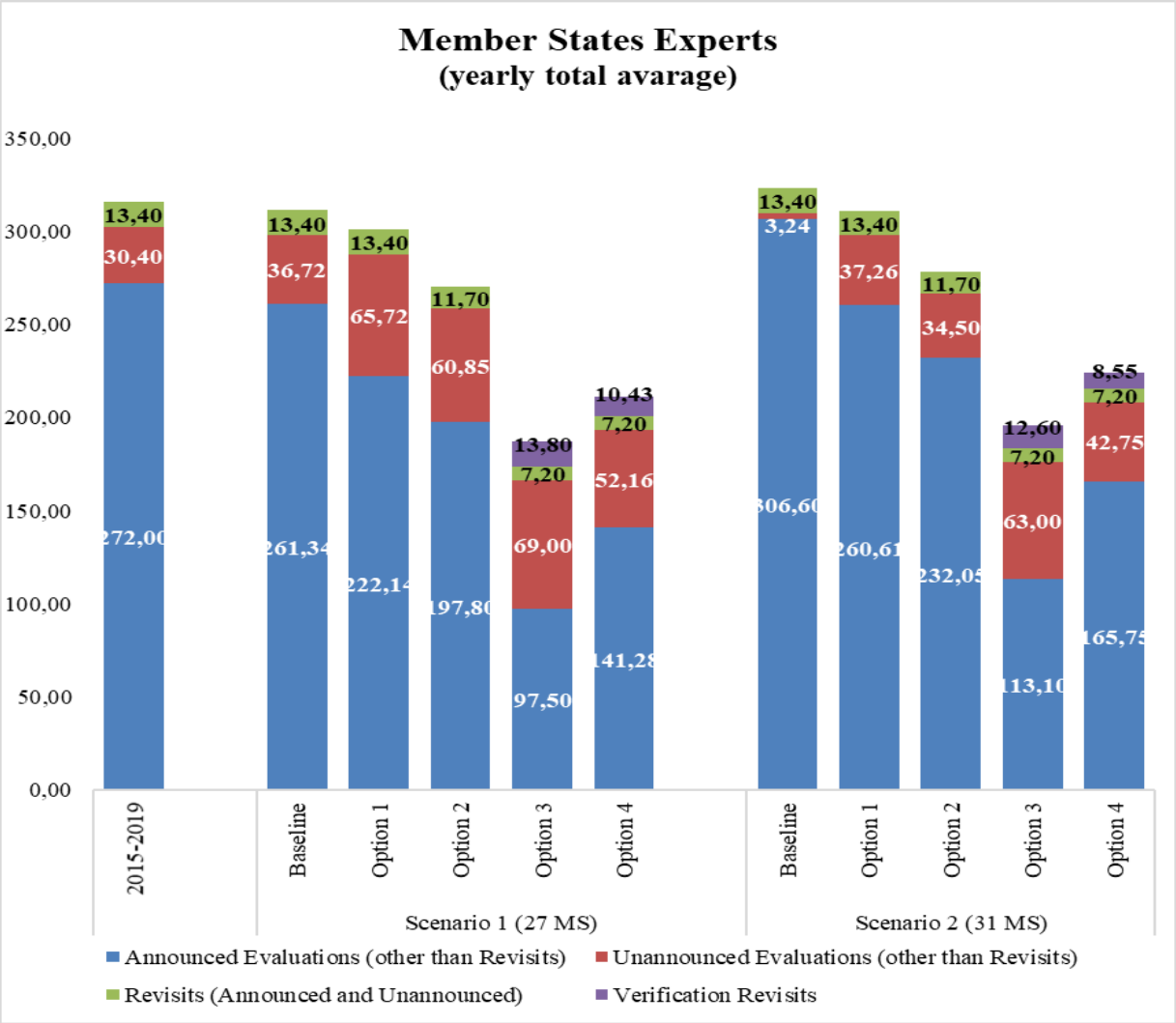
Source: computation by DG Home based on internal data

- Under the baseline scenario and **<u>Option 1</u>, the evaluation team's size and composition is not expected to change, as mere operational measures would not have any appreciable impact on experts' designation.** However, as the evaluation

visits' scope would change, the overall number of experts required would slightly decrease under Option 1 (by 3-4%) as a consequence of the adjusted proportion of announced and unannounced visits and because the latter require on average fewer experts.

- **Under <u>Option 2</u>, the flexibility introduced with the possibility for the Commission to indicate the team's optimal composition is expected to bring about a redistribution of the experts in the first place**. According to the views of several Member States during the stakeholders' consultation, in general it should be possible to create smaller teams. The Commission estimated that the **average number of experts per announced evaluation visits – both regular and revisits – could arguably not exceed 6.5 (compared to 7.4 under the baseline scenario) and for unannounced evaluation 5 (compared to 5.4 under the baseline scenario)**. In this case, the need of Member State experts would **decrease by 13%** compared to the baseline scenario.
- Under **<u>Option 3</u>,** the measures to facilitate experts' nomination (pool and annual call) would strengthen the possibility of meeting the target of smaller teams as these mechanisms would improve the team's composition in terms of qualifications and rotation of the designating Member State. The average number of experts per revisit and verification visits would furthermore decrease from 7.4 to 4 and 1, respectively. In light of the estimated changes in the number of visits, overall it is estimated that Option 3 would require **43%-44%** less Member State experts than the baseline scenario(s).
- Under **<u>Option 4</u>,** the average size of the evaluation team would the same as per Option 3. Considering the estimated changes in the number of visits, overall it is estimated that Option 4 would require **33%-36%** less Member State experts than the baseline scenario(s).

Figure 18 – Member States Experts – Comparison of policy options



Source: computation by DG Home based on internal data

The simulation above simply combines the expected number of on-site evaluation visits, Figure 16, with the average team size, Table 24.

4. LENGTH OF THE PROCEDURE

4.1 Current scenario (2015-2019)

The procedure under SCH-EVAL is articulated into two main phases:

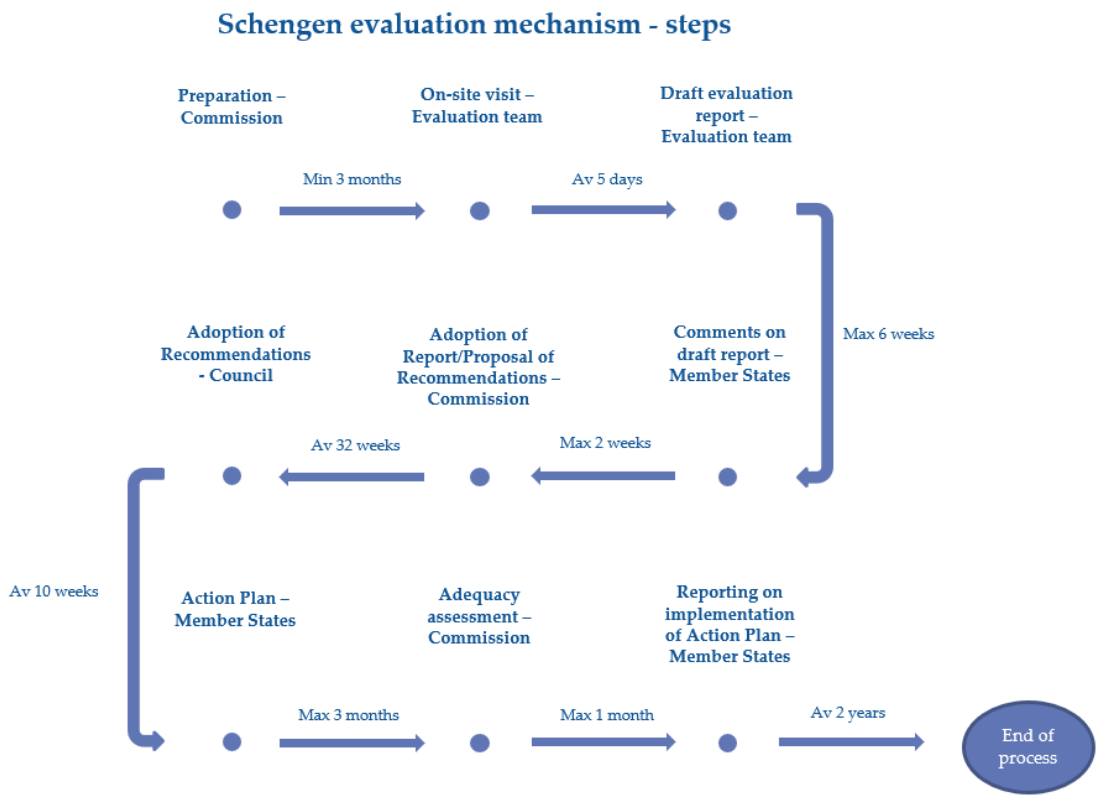
(1) the **evaluation process** to assess the implementation of the Schengen *acquis*, which ends with the adoption of recommendations by the Council for the necessary action to remedy any deficiencies identified in the evaluation report adopted by the Commission; and

(2) the **follow-up process** aiming at the fulfilment of the recommendations to improve the implementation of the Schengen *acquis*.

Each phase includes a series of administrative measures and actions as well as implementing decisions. The Regulation shapes and regulates the administrative procedure's key structure by defining the rights and responsibilities of all actors involved. Time limits are set only for

certain intermediary steps, while a wide discretion is left to the actors involved in prioritising their tasks. Figure 19 shows the main steps of the procedure.

Figure 19 – Main steps of the evaluation process



In the first five-year cycle, the **average length of the evaluation process was one year** (357 days). **The yearly average length of the evaluation process** was, however, **very stable,** although **the length of the individual procedures was very variable,** ranging from 3.5 months to over two years. The longest step is the adoption of the evaluation report (on average 9.5 months), while the adoption of the recommendations takes on average 2.5 months.

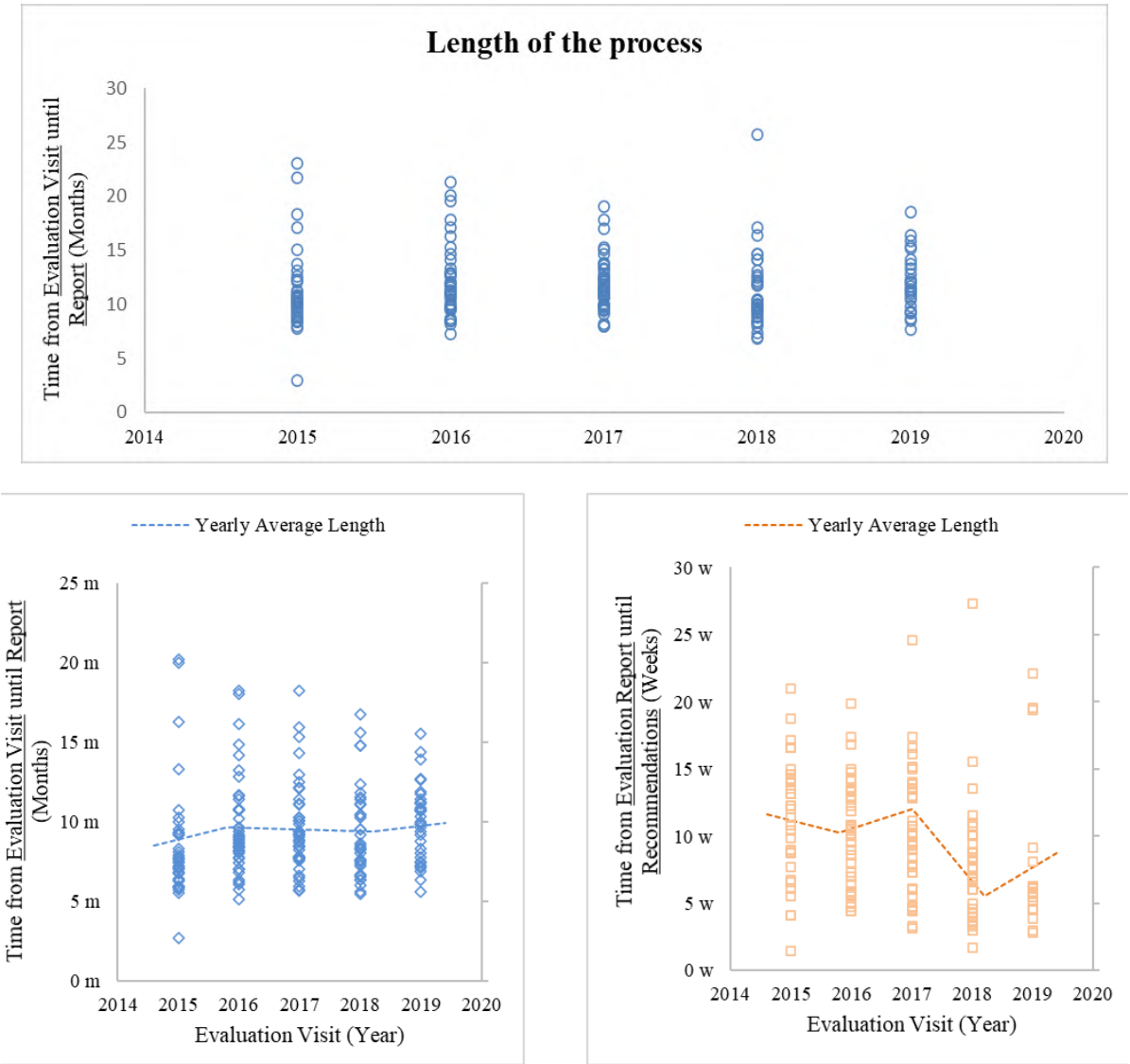
In the preparation of this Impact Assessment, the Commission carried out an analysis to understand the **main factors that may have influenced the length of the process**. In particular, it analysed, on a quantitative level, any possible correlation between the length of the process and (a) the number of experts, (b) the length of the evaluation visit, (c) the workload resulting from several evaluations in parallel[164], (d) the policy field, (e) the number of recommendations, priority recommendations and serious deficiencies. While the data available did not allow reaching firm conclusions[165], none of these factors appeared to have any dominant effect. The strongest variation depends on the policy field. The average length

164 In this case, the Commission used the number of open procedures as a proxy for the workload in a certain point of time. Correlation was tested both with the number of open procedures at the time of the adoption of the evaluation report and the number of open procedures 1, 2 and 3 months before. The analysis regarded however, only the evaluation phase before the Commission.

165 Due to possible multi-collinearity, in several cases it is also difficult to discriminate among the different effects. An example is the correlation between policy field and number of recommendations.

for the adoption of evaluation reports may vary from one policy field to the other, from 322 days to 459 days.

Figure 20 – Length of the evaluation process (2015-2019)



Source: five-year review

In 2020, the picture changed suddenly. Due to the restrictive measures in place to limit the spread of the Covid-19 pandemic, it was technically[166] not possible to adopt evaluation reports from March until the beginning of June. This delayed the adoption of reports related to evaluations carried out in 2019. The average adoption time for 2019 evaluation reports was 336 days, while on the other hand the reports for the evaluation carried out at the beginning of 2020 was faster than the average (198 days), which confirms the conclusion that the length of the process is due to a large extent to the administrative burden.

166 Security measures for EU RESTRICTED documents require the presence in the Commission premises which was not possible during the first lock-down.

Overall, the analysis of the different procedures led to the conclusions that two factors delay in particular the process: the **lack of a clear timeline** and the **administrative burden** due to the articulation and complexity of the process.

As regard the **length of the follow-up**, in the first five-year cycle, only a limited number of procedures could be closed as of today. An analysis of the data both from a qualitative and quantitative point of view has limitations given the limited size of the sample. Only about 25% of the action plans were closed at the end of 2020.

4.2 Baseline scenario

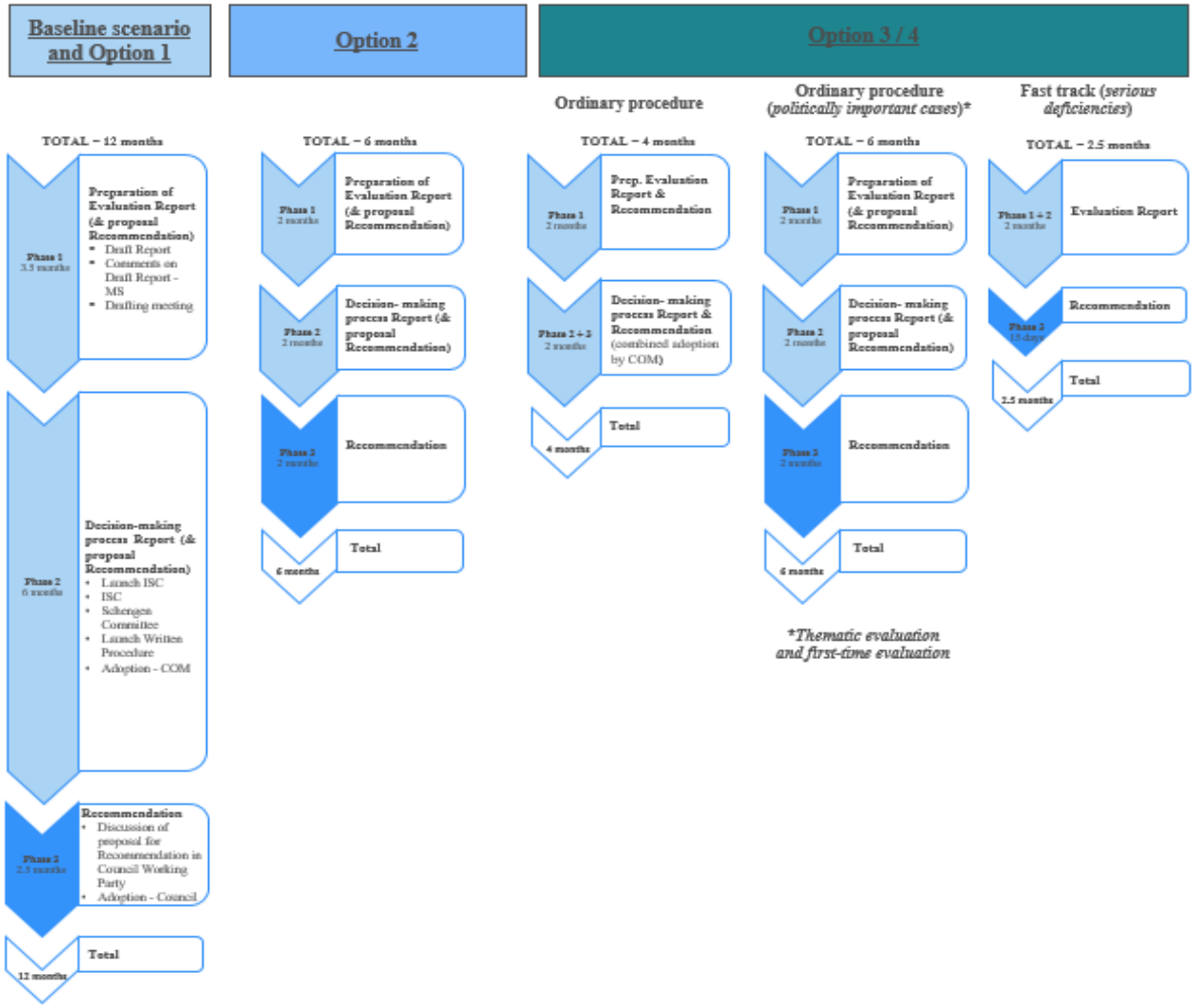
As regards the length of the evaluation process, the baseline scenario corresponds to the **current scenario**. However, as the number of evaluation visits would increase, generating additional workload, it is also reasonable to expect that **the length could further increase**. As there is no clear correlation between the number of procedures and the process length, an estimation is not possible though.

4.3 Policy options

Figure 21 shows the impact of the different policy options considered in this Impact Assessment against the described baseline scenario:

- **Option 1 would not have any relevant impact on the length of the process.** Changing the number of experts and the length of the procedure would not per se be sufficient to have any impact. Simplification of the process is limited due to the rigidity of the legislative and administrative provisions regulating the procedure, while a more frequent organisation of the Schengen Committee would also have a marginal effect given that the Committees take place already on an almost monthly basis. Frequent meetings would even generate an additional workload at the risk of delaying other activities without simplifying existing ones.
- **Option 2** is expected to have a positive impact on the length of the procedure thanks to a number of simplifications introduced that would, for instance, facilitate the handling and translation of documents and reduce the overall workload, while time limits would improve the structure of the process and create clear benchmarks. However, even if the Commission considers possible to reduce the length for the adoption of the evaluation reports, at least two additional months should be added for the adoption of the recommendations, coming to a maximum length of six months.
- The additional measures under **Option 3** and **Option 4** would further shorten the process as the further step before the Council would be eliminated allowing to set a time limit of **four months**. Under these options, specific procedures would be in place for politically important or sensitive cases and for urgent cases with the involvement of the Council. The number of evaluations falling under these special procedures would be very limited and would not have any significant impact on the average length of the process. In politically important cases, where no serious deficiencies were identified, the procedure will be prolonged herewith to **six months**, but this is justified on balance by the absence of urgency and the need to closely involve the Council. The fast-track procedure would introduce anyway a prioritisation of the most urgent cases that would be dealt with in only **2.5 months**.

Figure 21 – Length of the evaluation process – Comparison of policy options



Annex 4: Who is affected and how?

1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

The initiative would affect immediately the following stakeholders that participate actively or passively in the evaluations, namely:

– Member States (Public Authorities);
– EU institutions (European Parliament, Council and Commission);
– EU bodies and agencies involved in the implementation of the Schengen *acquis,* currently in particular Frontex, the Fundamental Rights Agency (FRA), Europol, eu-LISA and the European Data Protection Supervisor (EDPS).

While ultimately citizens and undertakings will benefit from better implementation of the Schengen *acquis* and are the main beneficiaries of this initiative, the Regulation has no immediate or practical effects for them. SCH-EVAL as such is not an instrument that addresses individual situations and individuals are not involved in any form in the process.

2. SUMMARY OF COSTS AND BENEFITS

During the consultation, the stakeholders concerned highlighted the benefits of their participation to the evaluations but stressed that evaluations became today a resource-intensive activity.

Table 25 and Table 26 provide a short summary of the main benefits and costs expected from Option 4. For most elements, it is not possible to quantify the effects due to the lack of sufficient data or because the effect of the implementation of new measures will depend both on the actors involved and on external factors.

2.1 Overview of Benefits

Table 25 – Overview of benefits

Overview of Benefits (total for all provisions) – Option 4			
Description	***Member States***	***Commission***	***EU bodies / agencies***
Legal provisions and operational measures on the scope of the mechanism, on the scope of the evaluations and on their programming	Costs saving for announced evaluations by 40%. Not expected to be entirely offset by increased of ad-hoc evaluations – *Non quantifiable*	Cost savings for the Commission in particular as regard evaluations financial costs and reduced administrative burden for the participation to the evaluations	Cost savings thanks to shorter and more targeted announced evaluations – *Non quantifiable, and not expected to be significant*

Overview of Benefits (total for all provisions) – Option 4			
Description	***Member States***	***Commission***	***EU bodies / agencies***
Legal provisions aiming at the simplification of the procedure	Cost savings by 50% for the submission of the progress reports – *Non quantifiable, but highly significant (per Member State up to 240 working hours yearly)* Costs saving for announced evaluations by 40%. Not expected to be entirely offset by increased of ad-hoc evaluations – *Non quantifiable*	Cost savings due to the declassification of the reports, informal communication of the assessment of the action plan and reduced frequency of the assessment of the actions plans – *Non quantifiable, but highliy significant and above 2 400 working hours* Facilitation in the programmation of the evaluations – *Non quantifiable, but highliy significant*	No direct benefits
Legal provisions changing the institutional balance	Cost savings and further benefits from a faster adoption process and reduce burden on the Council – *Non quantifiable, but significant*	Cost savings and further benefits from a faster adoption process and reduce burden on the Council – *Non quantifiable, but significant*	No direct benefits
Legal provisions and operational measures on the designation of experts, training and incentives of non-financial nature	Reduced administrative burden due to the elimination of repeated calls for experts and facilitation in the composition of the teams and facilitation in programming - *Non quantifiable, but significant to allow to all Member State to participate* Increase in the professionality of Member State experts from trainings - *Non quantifiable, but potentially highly significant*	Reduced administrative burden due to the elimination of repeated call for experts and facilitation in the composition of the teams thanks to the pool - *Non quantifiable, but expected to be non-negligible* A lower number of experts would imply cost savings as regards notably the financial costs of the evaluations - *Non quantifiable, but expected to be highly significant (>25%)*	No direct benefits
Legal provisions and operational measures aiming at reinforcing the implementation of fundamental rights' safeguards	No direct benefits	No direct benefits	Benefits for the Fundamental Right Agency (FRA) from a wider participation in the Mechanism – *Non quantifiable, but significant compared to corresponding costs (see below)*

Overview of Benefits (total for all provisions) – Option 4			
Description	***Member States***	***Commission***	***EU bodies / agencies***
Legal provisions and operational measures aiming at maximising the input and coordination with EU agencies/bodies	No direct benefits	Increased availability of timely information facilitating the programming of the evaluations and of the on-site visits – *Non quantifiable, but highly significant*	Increased availability of information from SCH-EVAL evaluations with significant synergies – *Non quantifiable, but highly significant*

2.2 Overview of Costs

Table 26 – Overview of costs

Overview of Costs (total for all provisions) – Option 4			
Description	***Member States***	***Commission***	***EU bodies/ agencies***
Legal provisions and operational measures on the scope of the mechanism, on the scope of the evaluations and on their programming	No additional costs expected on balance (see above)	Increased administrative costs for the preparation of more strategic evaluations – *Non quantifiable but negligible compared to corresponding cost savings (see above)*	No additional costs expected
Legal provisions aiming at the simplification of the procedure	No additional costs expected Declassification of evaluation reports would not generate any inconvenient as Member States would maintain the possibility to request the classification		
Legal provisions and operational measures on the designation of experts, training and incentives of non-financial nature	No additional costs expected	New costs for the organisation and administration of the pool of experts – *Non quantifiable but comparable to corresponding cost savings due to the simplified designation procedure* Additional costs for the organisation of trainings – *Non quantifiable*	Additional costs for the organisation of trainings – *Non quantifiable*

Overview of Costs (total for all provisions) – Option 4			
Description	*Member States*	*Commission*	*EU bodies/ agencies*
Legal provisions and operational measures aiming at reinforcing the implementation of fundamental rights' safeguards	Possible minor inconvenient due to the elimination of the 24h notice in advance in case of investigative unannounced evaluations	No additional costs expected	Additional costs for the Fundamental Rights Agency (FRA) – *Non quantifiable, but expected to be marginal*
Legal provisions and operational measures aiming at maximising the input and coordination with EU agencies/bodies	No additional costs expected	Additional costs for the exchange of information and coordination – *Non quantifiable, but expected to be negligible*	Additional costs for the more frequent and wider submission of information – *Non quantifiable, but expected to be reasonably limited as most information is already available to the EU bodies/agencies*

3. COSTS FOR MEMBER STATES

Member States are directly involved in SCH-EVAL in two ways because of (a) their active participation in evaluating other Member States and addressing recommendations to remedy deficiencies and (b) their passive participation as 'evaluated' subjects that receive the recommendations. In both cases, Member States benefit from the participation to SCH-EVAL but also bear certain costs.

During the stakeholders' consultation, Member States stressed their interest in the **active participation in the functioning of SCH-EVAL**. The primary **benefit** is the possibility to monitor and evaluate directly the implementation of the Schengen *acquis* on a regular basis in the whole area. This is important as the situation in other Member States may have an impact on the situation on their own territory and citizens. SCH-EVAL allows both to influence the situation in other Member States when necessary and to adopt appropriate measures on their own territory. Having experts in the evaluation teams enables Member States to be informed directly about the actual situation in other Member States, instead of relying exclusively on the Commission's assessment. The general benefit from the passive participation to evaluations, i.e. the benefit for Member States from being evaluated, is arguably less appreciable and not self-evident. However, Member States may benefit from an impartial assessment of their administrations and recommendations about the areas where improvement might be necessary. This also facilitates a better use of available EU funds.

Beyond this key general benefit, there are also minor but more **concrete and immediate benefits and costs generated by the participation in the instrument**.

During the stakeholders' consultation, Member States mentioned as an important benefit the **transfer of knowledge**. Member States' experts receive trainings by the EU agencies and the Commission, and can immediately observe best practices in other Member States. **Networking among Member States' administrations** is also perceived as an additional benefit. While such general benefits cannot be quantified and may also vary, they are

generally perceived as appreciable and – as it clearly emerged from the Member States' consultation – justify the costs generated by the participation of the Member States.

Yet, Member States also raised the increasing administrative burden arising from the evaluations.

Box 14 – Questions on costs to Member States

Please indicate below your Member States estimation of the administrative costs generated in 2019[167] in terms of working hours as appropriate in order to comply with the provisions of the SCH-EVAL Regulation and operational measures in place. Please use ranges where the provision of a value would not be possible or appropriate. Also indicate the main components of cost and whether there were differences across different policy fields.
Please also indicate whether the costs were significantly different in the preceding years.
Member States evaluated in 2020 or to be evaluated in 2021 should provide an estimation of the expected administrative costs.

10.a. Designation and participation of the experts in the evaluations of other Member States under Article 10 of the SCH-EVAL Regulation
10.b. Submission of the action plan under Article 16 of the SCH-EVAL Regulation
10.c. Submission of the follow-up reports under Article 16 of the SCH-EVAL Regulation
10.d. Please indicate other significant costs generated by the provisions of the SCH-EVAL Regulation or operational measures in place, in particular those related to the evaluation of your country
- Working hours for the preparation of the evaluation including the preparation of the reply to the standard questionnaire:
- Working hours for carrying out the evaluation on-site visit:
- Transportation, meals, other material costs:

Other

3.1 Costs linked to the 'functioning of SCH-EVAL'

The first category of costs includes a wide number of tasks, by which Member States contribute to the evaluations but also to the decision-making process within the Council. These include notably:

a. Participation of experts in evaluations (Articles 10, 11, 14): all Member States must contribute experts who participate in the evaluation and draft the evaluation report. Based on the data collected and Commission's experience, preparation of and participation in the evaluation visits, as well as the finalisation of the draft evaluation report may vary depending on the characteristics of the evaluation and composition of the team, but require in a standard case about 88 working hours for a leading expert and 72 working hours for other experts. On average, Member States contributed per year **about 315 experts, with an overall estimated workload of about 24 000 working hours**[168]. In addition, Member States do not contribute to the financial costs, except for daily allowances for their experts, which may significantly vary across Member States and depending on the destination. Data are insufficient to provide an estimation of such costs. With the proposed flexibility, it is estimated that Option 4 would require **33%-36% experts less** than the baseline scenario(s), which would imply savings of 8 000 working hours. The Commission cannot quantify further reductions due to shorter evaluation visits, as this most likely would be offset by more preparation.

[167] Please mention the expected costs or the costs in a different year if due to any circumstances, e.g. state of the evaluation or implementation of recommendations 2019 would not be indicative.
[168] Given the difference in wages across Member States, working hours appears more indicative.

b. Participation of experts to the follow-up (Article 16(2)): Member States experts may be consulted as appropriate for the assessment of the action plan, but this task was not considered by any Member State as particularly time consuming.

c. Adoption of the evaluation report and recommendations (Articles 14 and 15): A Member State stressed in its reply that coordination work and participation to the SCH-EVAL-related meetings would require yearly **at least 500 working hours**. While estimation of the related costs is not possible, the proposed decision-making process may reduce this administrative burden by combining several tasks at the level of the adoption. Costs linked to the adoption of the recommendations by the Council would generally disappear because the number of cases with serious deficiencies is normally very limited.

Table 27 – Costs for Member States

Task	*Estimated costs (working hours)*	*Option 4*
Evaluation visit (preparation, participation and drafting of the report)	24 000 working hours	16 000 working hours
Assessment of the Action Plan	Negligible	Unchanged - negligible
Participation in the adoption of the evaluation reports and recommendations	Non-quantifiable	Significantly decreasing – non-quantifiable
Sum of quantifiable savings for all Member State		**8 000 working hours**

Source: Member States' replies to questionnaire

3.2 Member States' evaluation costs

The costs for the Member States undergoing the evaluation include different aspects of the preparation of the evaluation and the follow-up after the evaluation is concluded.

a. Reply to the standard questionnaire (Article 9(1)): before any announced evaluation, Member States must submit their replies to a standard questionnaire covering all policy fields and including overall 384 questions. Based on the replies received, preparing the replies would generally require 400-500 working hours, but up to 1 000 working hours or more for certain Member States; thus, on average around **800 working hours**. By lowering the frequency of announced evaluations, the extension of the cycle to seven years would decrease proportionately the relative burden. A similar questionnaire does not precede unannounced evaluations.

b. Preparation and logistic support of the evaluations (Article 13) imply significant costs for the Member States evaluated. From the replies provided by Member States, the most significant component of these costs is human resources that can amount to **5 000 working hours** or more for the evaluations in the six policy fields. Member States also bear certain financial costs for the evaluations (translation, catering, transports within the evaluated Member State, and financial costs related to the participation of their own experts to support the evaluation), which may significantly vary depending on the price level the country. A cautious estimation suggests that announced evaluations may require **EUR 10 000** per Member State evaluated based on the data received. Member States also indicate that a large share of these costs depends on the length of the visits, the number of locations visited, and experts' number. These costs do not apply in principle to unannounced evaluations, requiring more limited logistic support. Option 4 may have an appreciable impact given the wider use of evaluation tools that are less burdensome (unannounced evaluations, revisits, verification visits) in combination with the reduced number of experts. The Commission expects that a

lower frequency of announced evaluations (extension of the evaluation cycle) will **reduce** the **relative burden by at least 40%.**

c. In the follow-up phase (Article 16)[169], Member States have to present an action plan and need to report on its implementation progress by submitting follow-up reports every three months. In this case, the workload can be extremely different, mainly depending on the number of recommendations and the procedure's state. Based on the Member States' data, for each evaluation, a Member State dedicates **up to 250 working hours** for the presentation of the action plan and **up to 500 working hours** yearly for the follow-up reports. Member States that do not have action plans open or have almost closed their action plans have obviously no, or negligible, costs. While the available data do not support any estimation of the average related workload per year, the measures under the Option 4 would reduce the relative burden. A lower frequency for the presentation of the follow-up reports **would reduce costs by 50%** as the number of reports per year will go from four to two. More targeted recommendations would simplify the action plan, which should arguably lead to lower working hours.

Table 28 – Costs for the Member States evaluated

Task	*Estimated costs (hours)*	*Option 4*
Reply to the questionnaire (working hours per Member State)	800 working hours	570 working hours
Evaluation visit, including preparation (working hours per Member State, six policy fields)	5 000 working hours	4 000 working hours
Action Plan (working hours yearly per Member State)[170]	Non-quantifiable (Up to 250 working hours)	Decreasing, non-quantifiable
Follow-up reports (working hours yearly per Member State)	Non-quantifiable (Up to 500 working hours)	Decreasing by 50%
Other costs (EUR)	EUR 10 000	EUR 8 000
Sum of quantifiable savings per Member State		**1 230 working hours / EUR 2 000**

Source: Member States' replies to questionnaire

4. Benefits and Costs for the Commission

The Commission plays different roles in the Mechanism. First, it coordinates the evaluations and organises the evaluations activities together with the Member State under evaluation. Commission representatives take actively part in the evaluations. The Commission adopts the report and has to carry out the follow-up.

The general benefit for the Commission from the coordination and direct active participation in the mechanism derives principally from the complementarity of SCH-EVAL with other tools of the Commission, like infringement procedures, in its role as guardian of the Treaty. In addition, as also highlighted in the five-year review, SCH-EVAL helped policy making. Beyond such general benefit linked to the added-value of SCH-EVAL in ensuring a correct implementation of the Schengen *acquis*, Commission experts acquire thanks to the evaluations additional expertise that is beneficial for their function.

[169] Costs related to the implementation of the recommendations are not included, as they are not a consequence of the Mechanism but of the implementation of the Schengen *acquis*.

[170] The number of action plans depends on the number of evaluations.

However, the Commission is also bearing the highest share of costs for the functioning of SCH-EVAl. The main tasks of the Commission and the relative costs are outlined below.

a. The **adoption of the multiannual and annual programme** (Article 5 and 6) generates only minor administrative costs. While the overall preparation may require few days, the relative implementing decision's preparation and adoption add at least three working days (24 working hours)[171]. Frequent amendments added at least two working days, which would be no longer required with the same frequency by introducing increased flexibility as per Option 4.

b. The Commission does not organise at present any **training (Article 12)** on its own but contributes yearly six trainers to support the training activities organised by the EU bodies and agencies (**overall about 720 working hours and EUR 12 000** to cover travel costs and day allowance), while participation of Commission experts in the training requires only negligible resources. Improving the current training system implies additional costs for the Commission, which cannot be quantified, as the scope of the training would still need to be identified. The Commission expects that an additional training for visa will require EUR 70 000 while training in data protection may only imply a small fraction of this amount.

c. Organisation and preparation of the evaluations (Article 13) include a wide range of administrative tasks for the Commission. On average, each visit's organisation may require at least 24 working hours (~1 000 working hours per year). Shorter evaluations reduce the administrative burden for the organisation. While the management of a pool of experts, as stressed by several stakeholders, may add additional workload, this would be offset overall by the savings in terms of the individual call for experts that would no longer be necessary under Option 4.

d. Participation to the evaluation visit and finalisation of the draft report (Articles 12 and 14) by the two Commission representatives generally require at least one week to prepare the evaluations, including coordination meetings and study of the file. This preparation even in a simple case entails about **80 working hours**. At the same time, the evaluation visit normally lasts one additional week, the finalisation of the draft report, including also the consultation of the Member State evaluated and other Member States at least two additional working weeks. While a more targeted approach would probably increase the work for the preparation of the evaluations, this should be offset by the savings from a shorter evaluation visit and a shorter evaluation report. An additional burden is generated by the need to **encrypt the evaluation reports** (Article 17), requiring at the very least two working hours per each evaluation report, 80 working hours yearly. The proposed reform of Article 17 would cancel this cost.

e. Adopting the report and the proposal for the recommendations (Article 14 and 15), under the current two-step system, the Commission already adopts the evaluation report and the proposal for the recommendations. The procedure for the adoption of the recommendations by the Council does not generate significant additional costs for the Commission. The measures proposed under Option 4 to rationalise the decision-making process and combine the two steps would not have as such a major impact, but rather transfer certain limited administrative costs (translation) from the Council to the Commission.

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[171] This includes for the discussion in the Schengen Committee, translation and further work by different Commission services.

f. In the **follow-up (Article 16)**, the Commission is required to present its assessment of each action plan to the Council. The assessment may take at least three days (**960 working hours** in a year for 40 action plans). A significant additional administrative burden arises from the procedure for the adoption of a formal Communication and its translation. The Commission estimated that, even combining the assessment of different action plans, the procedure required yearly about **800 working hours.** The proposed modification under Option 4 would have a significant positive impact by eliminating these costs.

Table 29 – Yearly administrative costs for the Commission

Task	*Estimated costs*	*Option 4*
Multiannual and Annual Programme (working hours per year)	60 working hours	40 working hours
Trainings (working hours per year)	720 working hours	Increasing, non-quantifiable
Administrative organisation of the evaluations (working hours per year)	1 000 working hours	Decreasing
Evaluation visit and finalisation of the draft report (working hours per year)	14 000 working hours	Unchanged
Encryption of evaluation reports (working hours per year)	At least 80 working hours	0
Adoption of the evaluation report and recommendation proposal (working hours per year)	200 working hours	Unchanged
Assessment of the action plans (working hours per year)	1 800 working hours	1 000 working hours
Assessment of the follow-up reports and closure of the action plan (working hours per year)	3 000 working hours	1 500 working hours
Sum of the quantifiable savings (working hours)		**2 400 working hours**

Source: internal Commission data

g. Pursuant to Article 13(7), the Commission covers the most substantial part of the financial **costs for the evaluation visits**, i.e. the travel, accommodation and meals for the evaluation team members. In addition, it covers the financial expenses for the participation of its own experts and, partially, for the observers of the EU bodies and agencies. The overall cost of the evaluations per year amounted to **EUR 1.2 to 2 million**. In combination with the duration of the evaluation visit and team size, travel destination may significantly influence total evaluation costs. Missions for the field of common visa policy tend to be more costly because they are carried out at Member States' consulates in visa-required third countries. Unannounced evaluation visits are cheaper, because a smaller team usually carries them out. They tend to have a shorter duration (two to four days instead of up to six days).

Rebalancing the use of the different tools may decrease the costs. **The Commission estimated that the measures under Option 4 would reduce the costs of the announced evaluations by possibly 40%**[172] due to the combined effect of shorter visits (targeted approach), reduced number of experts (flexibility of the team size) and the lower number of announced evaluations (extension of the evaluation cycle[173]). Yet, there are no sufficient

[172] Compared to the Member States, Commission costs are largely proportional to the length of the visit and the number of experts.

[173] As the extension of the cycle would allow replacing some of the evaluation visits with other types that are in general cheaper (like unannounced evaluations and revisits).

elements to estimate the costs arising at the same time from increased use of alternative evaluation tools and measures, such as training.

5. BENEFITS AND COSTS FOR THE EU BODIES AND AGENCIES

Also EU bodies / agencies stressed during the consultation the benefits from their participation in SCH-EVAL. These benefits are very similar to those indicated by the Member States, namely transfer of knowledge and networking with colleagues from Member States' administrations. In their replies to the short questionnaire, EU bodies / agencies include in the main merits of SCH-EVAL "*[e]xchange with experts (our peers) from national [administrations] (exchange best practices, networking*". According to other EU bodies / agencies, "[t] he evaluations help the Agency to be in touch with MS and the operational work" or "[t]he Observer has the opportunity to liaise and network with the evaluation team and feel the pulse of contemporary issues affecting also their respective countries as it relates to police cooperation and Schengen acquis". An EU agency also mentions that "The agency has the possibility to boost its profile with external stakeholders in the field and promote by example its services and support".

However, it is also stressed that "[t]here are no **particular shortcomings** other than the **resources required to support the Commission led evaluations**".

The participation of EU bodies and agencies in SCH-EVAL generate costs in relation of three activities.

a. Risk analysis and sharing of information (Article 7 and 8): Under the current Regulation, Frontex has a legal obligation to submit a risk analysis to the Commission and to the Member States by 31 August each year, with recommendations on the priorities for announced evaluations in the following year, and on possible unannounced on-site visits in the following year. Frontex submits this latter analysis only to the Commission). In addition, the Commission shall, where appropriate, request EU bodies and agencies, other than Frontex, which are involved in the implementation of the Schengen *acquis* to carry out risk analyses. At present, three agencies provide yearly risk analysis (Frontex, FRA and Europol) with estimated costs **between 240-480 working hours**. The EU agencies' submissions show that the costs are much lower when information is already available to the agencies. Quantifying the costs arising from the new obligations under Option 4 to widen the scope of the EU agencies' information is impossible. Still, as most information would be already available to the EU agencies, such costs are not expected to be very significant.

Option 4 would have an impact on costs as it aims at widening the sharing of information, but it is to note that to a large extent this would concern the transmission of information already available to the EU bodies / agencies. The change is not quantifiable.

Table 30 – Yearly costs for EU bodies / agencies risk analyses

	Body / Agency A	Body / Agency B	Body / Agency C
Type of contribution	Risk analysis / statistical report	Risk analysis / statistical report	Risk analysis / statistical report
Preparation of risk analysis or report (average working hours per year)	320 working hours	480 working hours	240 working hours

Source: EU bodies / agencies' replies to the questionnaire

b. Participation of experts as observers (Article 10(5)): Pursuant to Article 10(5), the Commission may invite Frontex, Europol, or other Union bodies, offices or agencies

involved in the implementation of the Schengen *acquis* to designate a representative to take part as an observer in an evaluation visit concerning an area covered by their mandate. Currently five EU bodies and agencies provide experts on a regular basis, namely Frontex, FRA, Europol, eu-LISA and EDPS. By difference to Member States experts, the Commission covers only partially[174] the financial costs for the participation of EU bodies / agencies' experts in the evaluations. The costs were on average **EUR 60 000 to 70 000 per year** for all experts in all missions in the first five-year cycle. EU bodies and agencies also indicated that their observers' working time would be largely in line with the evaluation team's members, **50-70 working hours per evaluation**, even though their tasks under the SCH-EVAL Regulation are in theory more limited. Shortening the evaluation visits, as per Option 4, may generate costs savings for the EU bodies and agencies that could partly offset the increased costs from wider participation.

Option 4 leads to **additional costs for the Fundamental Rights Agency (FRA) from the occasional participation of their experts in the evaluations in policy fields other than return** (the only policy field in which FRA experts are systematically involved) as well as in unannounced evaluations. The increase is not quantifiable as it is unknown how many additional FRA observers would be need and it is reasonable to assume that it would be negligible.

Table 31 – Yearly costs for EU bodies / agencies observers

	Body / Agency A	Body / Agency B	Body / Agency C	Body / Agency D	Body / Agency E
Number of observers	~80	23	~27	39	19
Estimated working time (working hours)	No data available	>1 610 working hours	1 350 working hours	No data available	No data available
Financial costs (EUR)	EUR ~140 000	EUR 31 000	EUR 37 800	EUR 83 765	EUR 4 200

Source: EU bodies / agencies' replies to questionnaire

c. Information provided during the consultation indicates that the cost of **training (Article 12)** provided by the EU agencies depends on the form of the training. To provide an additional module to existing training or webinars[175] may cost about EUR 2 000 – 4 000, while the organisation of an in-person training is generally more expensive with very variable costs, ranging from EUR 5 000 to EUR 70 000, depending on the number of participants and affiliation (i.e. fully covered or self-payers). In the first five-year cycle, the training costs were yearly, for all EU agencies together, about EUR 200 000 for four one-week training sessions, with an average cost of EUR 900 per expert. Improved training, as per Option 4, including increasing their number, would imply additional costs and create new EU agencies' workload. While it is not possible to estimate as the costs will depend ultimately on a case-by-case decision of the cost-benefit of additional training, this is where the Commission expects a higher cost increase. However, it could be considered to build on the training already in place to offset costs, especially regarding additional modules in fundamental

[174] The Commission cover the meals only for EU bodies' and agencies' observers.

[175] At present webinars are offered to the evaluation team ahead of the evaluation and are rather targeted.

rights, as suggested by Member States. E-learning tools should also be used for the organisation of refreshers as far as possible.

Option 4 would generate **additional costs as it aims at increasing and improving trainings**. It is not possible to estimate the amount of the additional because this will depend ultimately on a case-by-case decision of the cost-benefit of additional training. Based on the available data on the costs of training, the cost increase would be not negligible.

Table 32 – EU bodies' and agencies' trainings

	Body / Agency A	*Body / Agency B*	*Body / Agency C*	*Body / Agency D*	*Body / Agency E*
Type of training	In-person training	Modules integrated in other training, (Standalone) in-person training	In-person training	Support to other EU agency	Webinars
Training (sessions)	11	12 + 2	9	5	31
Number of experts trained	826	No data available	213	N/A	No data available
Cost per session (EUR)	EUR 60 000 – 80 000	EUR 2 000 – 5 000	EUR 4 200	EUR 24 000 – 29 000	No data available
Overall Costs (EUR)	EUR 660 000 - 880 000	EUR 30 000	EUR 135 300	EUR 7 000	No data available

Source: EU bodies / agencies' replies to questionnaire

Table 33 – Summary of administrative costs

	Baseline		Option 1	Option 2	Option 3	Option 4
Source of costs	*Working hours (Wh)*	*Euro*				
Active participation of Member states (for all Member States)						
Evaluation (experts)	24 000 wh	Not quantifiable in EUR	23 000 wh	21 000 wh	14 000 wk	16 000 wh
Assessment of the Action Plan	Non-quantifiable – Negligible		Unchanged	Unchanged	Unchanged	Unchanged
Participation in the adoption of the evaluation reports and recommendations	Not quantifiable		Unchanged	Unchanged	Decreasing	Decreasing
Passive participation of Member states (average per Member State)						
Reply to the questionnaire	800	Not quantifiable in EUR	800 wh	800 wh	550 wh	550 wh
Announced Evaluation (experts)	5 000	EUR 100 000-150 000	EUR 85 000 – 130 000	EUR 85 000 – 130 000	EUR 41 000 – 61 500	EUR 61 000 – 91 500
Announced Evaluation (other costs)		EUR 10 000	EUR 8 500	EUR 8 500	EUR 4 100	EUR 6 100
Ad-hoc evaluations	Not quantifiable		Increasing	Increasing	Increasing	Increasing
Submission of the Action Plan	Not quantifiable - Significant		Unchanged	Unchanged	Unchanged	Unchanged
Submission of progress reports (working hours yearly / per Member State)	Not quantifiable - Significant		Unchanged	Decreasing by 50%	Decreasing by 50%	Decreasing by 50%
Commission						
Multiannual and Annual Programme	60 wh	Not quantifiable in EUR	Unchanged	40 wh	40 wh	40 wh
Trainings	720 wh	Not quantifiable in EUR	Increasing	Increasing	Increasing	Increasing
Evaluation (logistic costs)		2 000 000 €	Decreasing	Decreasing	Decreasing	Decreasing
Evaluation (Administrative organisation)	1 000 wh	Not quantifiable in EUR	Unchanged	Unchanged	Decreasing	Decreasing
Evaluation (visit and adoption of evaluation report)	14 000 wh	Not quantifiable in EUR	Unchanged	Unchanged	Unchanged	Unchanged

	Baseline		Option 1	Option 2	Option 3	Option 4
Encryption of evaluation reports	80 wh	Not quantifiable in EUR	Unchanged	0	0	0
Adoption of the evaluation report and recommendation proposal	200 wh	Not quantifiable in EUR	Unchanged	Unchanged	Unchanged	Unchanged
Assessment of the action plans	1 800 wh	Not quantifiable in EUR	Unchanged	1 000 wh	1 000 wh	1 000 wh
Assessment of the follow-up reports and closure of the action plan	3 000 wh	Not quantifiable in EUR	Unchanged	1 500 wh	1 500 wh	1 500 wh
EU agencies/bodies						
Trainings		200 000 €	Increasing	Increasing	Increasing	Increasing
Risk Analysis and information sharing	240-480 wh	Not quantifiable in EUR	Unchanged	Increasing	Increasing	Increasing
Evaluations (observers)	2 500 wh	Not quantifiable in EUR	Increasing	Increasing	Increasing	Increasing
Evaluations (logistic costs)		EUR 60 000-70 000	Increasing	Increasing	Increasing	Increasing