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**CORRIGENDUM**

This document corrects COM(2022)301 of 24.5.2022.

Concerns only the English language version.

Withdrawal of the marking.

The text shall read as follows:

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN  
ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE  
REGIONS**

**State of Schengen Report 2022**

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT,  
THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND  
SOCIAL COMMITTEE, AND THE COMMITTEE OF THE REGIONS**

**State of Schengen Report 2022**

*The Schengen area without controls at internal borders ('the Schengen area') is a historic achievement of European integration. Since its foundations were laid in 1985, it has changed the daily reality of millions of people. The Schengen project has torn down barriers, brought people closer together and strengthened European economies. The speed with which people, goods and services circulate within the EU helps drive European competitiveness and generate jobs and growth.*

*The creation of the Schengen area has also unified the continent by establishing an area without frontiers, emblematic for all Europeans. It enjoys overwhelming support<sup>1</sup>. For a whole generation of Europeans, the idea of being subject to border checks at internal borders of the EU is scarcely imaginable. Thanks to Schengen, citizens can travel seamlessly between Member States to explore, to study or to work. In addition, the cost of not having Schengen would be extremely high<sup>2</sup>, as the COVID-19 pandemic most recently drastically demonstrated.*

*Indeed, several crises in recent years have demonstrated that this achievement cannot be taken for granted. The Schengen area faced a first major test in 2015 with the migration crisis, and a number of serious threats to security. More recently, new challenges emerged with the pandemic as well as the large number of arrivals of people due to the war in Ukraine.*

*Thanks to the resolve of the EU and Member States and the progress achieved in the past years, Schengen has proven its resilience and emerged from these challenges stronger. Whilst challenges continue to exist, Schengen is overall functioning well. This is confirmed by the results of the regular Schengen evaluations, which show only few instances of systemic deficiencies as well as by other tools we have in place to assess the functioning of the Schengen area and the national capabilities for border control in the Member States.*

*In the last years, the Schengen system has been put to the test by various crises, which have led to ad hoc political discussions around Schengen. It has become evident more than ever that the achievements of Schengen should not be taken for granted. All recent challenges have placed the spotlight on the need to take decisive steps to improve the governance structure of the Schengen area so as to safeguard its well-functioning. The Commission established in November 2020 the annual Schengen Forum as the first step towards fostering an inclusive political debate dedicated to building a stronger Schengen area based on mutual trust. High-level political exchanges confirmed the need for a stronger governance for Schengen that was reiterated at the second Schengen Forum of May 2021.*

*In this context, the Commission has developed a new governance model for the Schengen area in the form of a 'Schengen cycle' ensuring a regular 'health-check' on the state of Schengen. Following discussions at the JHA Council in Lille, these ideas have started to materialise with the first Schengen Council taking place on 3 March 2022. Schengen, a shared project, needs a common response to current and future challenges and the commitment of Member States, EU institutions and relevant agencies. The new regulation reforming the Schengen evaluation and monitoring mechanism is intended to further contribute to this objective by ensuring prompt identification of shortcomings and efficient follow-up procedures.*

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<sup>1</sup> Winter 2021/2022 Eurobarometer.

<sup>2</sup> [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/581383/EPRS\\_STU%282016%29581383\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/581383/EPRS_STU%282016%29581383_EN.pdf)

*This reinforced governance is crucial to follow-up on the ambitious agenda set for Schengen in the **Schengen Strategy presented by the Commission in June 2021**. Urgent adoption of the reinforced legislative framework and implementation is necessary to make the Schengen area stronger and more resilient.*

*This **State of Schengen report** identifies the key elements of the new governance model for the Schengen area, takes stock of the implementation of the Schengen Strategy overall as well as its individual components and sets out the priorities for the Schengen area in 2022/2023. It also addresses the Commission's legal obligations<sup>3</sup> to report on the situation as regards the absence of internal border controls, the results of Schengen evaluations, and the state of implementation of recommendations. This report serves as a model for the future: as the first step of the annual Schengen cycle, each future State of Schengen Report should launch a yearly reporting exercise on presenting the state of Schengen, identifying priorities for the year ahead and aiming to ensure discussions on progress made at the end of a given year. The State of Schengen report should be the basis for increased political dialogue, monitoring, and enforcement of the Schengen acquis.*

## **1. Reinforcing the governance of the Schengen area**

An area that depends on mutual trust among Member States and ultimately on a correct and efficient implementation of the Schengen legal framework, requires a strong and structured governance. Following discussions at the first<sup>4</sup> and second<sup>5</sup> Schengen Forum<sup>6</sup> and to truly reinforce Schengen for the long-term, a new model of Schengen governance has been set up. During the first Schengen Council of March 2022, Member States reconfirmed this need and endorsed the **Schengen cycle** presented by the Commission. This cycle provides for a regular 'health-check' on the state of Schengen, allowing to identify problems early on to ensure common responsibility and to promote the uptake of appropriate measures.

**The starting point of the annual Schengen cycle is the annual State of Schengen report**, through which the Commission initiates the governance process by identifying the main challenges for the Schengen area and priority actions that are to be addressed at both national and European level. As part of the Schengen cycle, to provide a situational update on the state of Schengen, the Commission will regularly present a Schengen barometer<sup>7</sup>.

Interinstitutional discussions at the **Schengen Forum** and political deliberations in the June **Schengen Council**<sup>8</sup> will provide the needed political impetus on the key strategic issues. Implementation of the priority actions will require the engagement of all. The Schengen governance model provides a framework to ensure a proper follow-up, with regular exchanges on

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<sup>3</sup> This report addresses Commission's legal obligation to provide reporting pursuant to Article 20 of Council Regulation 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and to Article 33 of the Schengen Borders Code (Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders). It also aims to provide for the link with other similar reporting, which have so far delivered on various elements related to the state of Schengen, the Communication Back to Schengen, the regular reports on the implementation of the European Agenda on Migration, the reports on Migration and Asylum, the Systematic checks report, Interoperability report(s), the Security Union progress report.

<sup>4</sup> 30 November 2020.

<sup>5</sup> 17 May 2021.

<sup>6</sup> The Commission established the Schengen Forum to stimulate more concrete cooperation and mutual trust aiming to bring political momentum by taking stock of the achievements accomplished and the obstacles experienced and setting out the way forward for Schengen.

<sup>7</sup> The Commission presented a Schengen Barometer at the first Schengen Council in March 2022.

<sup>8</sup> The Schengen Council is an initiative of the French Presidency of the Council of the EU established in the framework of the Justice and Home Affairs Council in Mixed Committee Format (i.e. involving also the Schengen Associated Countries Iceland, Norway, Switzerland and Liechtenstein) and dedicated to discuss at high political level issue related to Schengen, bring all relevant actors to the discussion, in particular the Agencies.

common challenges, coordinated solutions and sharing of good practices so as to pave the way for effective and timely implementation of the required actions. During the last phases at the end of the year, discussions will focus on monitoring how the main challenges for Schengen have been addressed, including guidance for operations carried out by the European Border and Coast Guard Agency ('Frontex'). This will help ensure a stronger political commitment to the common European governance of the Schengen area and set out the necessary steps for the following annual cycle.

The new **Schengen Evaluation and Monitoring Mechanism**, which the Commission proposed in June 2021 and which has been recently adopted by the Council, will play a crucial role in this new Schengen governance model. It will be the key mechanism to identify the challenges that Member States are facing and to ensure swift remedial actions. This will help avoid that any implementation issues, in particular cases of serious deficiencies, produce spill-over effects across the entire Schengen area. The prompt implementation of this reform will guarantee that the Schengen area is equipped with a more efficient, strategic and flexible instrument to tackle new challenges, react to changed realities, and adapt to new circumstances. The Commission is already taking the necessary steps to ensure its timely and effective application.

The Commission's **Schengen coordinator** will steer and coordinate the Schengen cycle, in coordination with the Member States.



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<sup>9</sup> As of 2023, the Schengen Cycle will be launched in February with the adoption of the State of Schengen Report.

### **Box 1. First Schengen Cycle - Priorities for 2022/2023**

The main priority actions for the Schengen area are:

1. Strengthened management of the **external borders**.
2. Ensure **internal border controls** are measures of **last resort** maintained for a limited period and accompanied by mitigating measures, where necessary.
3. Strengthened internal **security** through reinforced police cooperation within the EU.

To achieve these objectives, swift implementation on the following priority actions is indispensable:

- Adopting and implementing the multiannual strategic policy for **European Integrated Border Management**;
- Ensuring systematic checks at the external borders of all travellers;
- Implementing the **new IT architecture and interoperability for border management** on time by 2023;
- Application of the new **Schengen Evaluation and Monitoring Mechanism**;
- Ensuring full implementation of the **Frontex** and **Europol** mandates;
- Enhancing the national return systems;
- Full use of the available **cross-border police cooperation** tools;
- Lifting all long-lasting **internal border controls**.

Another key priority for improving the legislative framework is to quickly adopt the proposals put forward by the Commission, including:

- Amendment to the **Schengen Borders Code**.
- **Police Cooperation** proposals.
- The **screening** proposal.

## **2. Progress under the Schengen Strategy**

With the Schengen Strategy, the Commission set out the measures for the well-functioning of the Schengen area. Since its adoption in June 2021, the Commission has lived up to its pledge and has ensured that the tools to underpin the Schengen area are rapidly brought forward. The three pillars on which the Schengen area is built upon: an **effective external border management, measures compensating for the absence of controls at internal borders** and a **robust governance**, have all been strengthened and equipped with updated tools to make them apt to deal effectively with new circumstances. It is now time to deliver on the outstanding proposals and commitments, with the engagement of Member States and other stakeholders indispensable to ensure common responsibility.

Implementing one of the world's most technologically advanced border management systems remains a key priority. During the last year, Member States, eu-LISA<sup>10</sup> and the Commission have further stepped-up efforts to implement the **new IT architecture and interoperability** in line with the agreed timelines. Now it is of utmost importance to ensure that all stakeholders take the necessary steps within the scope of their responsibilities to avoid new delays which would put at risk the overall timeline<sup>11</sup> to have the full new architecture and interoperability in place by the end

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<sup>10</sup>Eu-LISA is the European Union Agency managing the operations of large-scale information systems, administering to matters regarding freedom, justice, and security.

<sup>11</sup> The entry into operation of the renewed Schengen Information System (SIS) is planned for September 2022 and the Commission will adopt a decision to set the exact date for the full application of the new Regulations, once the requirements are met (Article 66 of Regulation (EU) 2018/1861 and Article 79 of Regulation (EU) 2018/1862); The Entry/Exit System (EES) entry into operation was postponed to November 2022. The European Travel Information and Authorisation System (ETIAS) entry into operation is scheduled for May 2023.

of 2023. Delays in deliveries, ill-equipped border crossing points and quality issues might cause a domino effect on other systems and functionalities.

Important steps have been taken to modernise and make the lodging and processing of visa applications more efficient while reinforcing the security of the Schengen area. Digital documentation is both more efficient and secure. On 27 April 2022, the Commission presented a Proposal on the **digitalisation of visa procedures**.

In December 2021, the Commission adopted a set of proposals on Schengen and Police Cooperation. The proposal for a revision of the **Schengen Borders Code**<sup>12</sup> is intended to bring more clarity as regards the rules concerning the reintroduction of internal border controls and the use of alternative measures. It also proposes to establish common tools to manage external borders more efficiently in crisis situations, such as in the face of a public health crisis or in a situation where migrants are instrumentalised for political purposes.

These measures are complemented by legislative proposals to bolster the internal security of the European Union in line with the Security Union Strategy. The **police cooperation proposals**<sup>13</sup> provide for a coherent EU legal framework to ensure that law enforcement authorities have adequate access to information held by other Member States to fight crime and terrorism. Efficient and smooth police cooperation will help boost the prevention, detection and investigation of criminal offences in the EU, fostering security for everyone living and moving in the Schengen area. The common standards for joint patrols will facilitate the work between police officers participating and acting in the territory of other EU countries, also promoting a common EU culture of policing. Quick progress on their agreement will contribute to ensuring the well-functioning of the Schengen area. It is expected that the negotiation process is finalised in 2023.

Enhancing security in an area without internal border controls requires secure external borders. Since 2017, the Member States and Schengen Associated Countries have been required to carry out **systematic checks against relevant databases on all persons crossing the EU's external borders**<sup>14</sup>, including persons enjoying the right to free movement. This measure was intended to strengthen the EU's internal security following findings that EU citizens were among foreign terrorists fighters returning to the EU. The report to the European Parliament and the Council analyses the implementation and impact of these systematic checks. It finds that the application of systematic checks against relevant databases on persons enjoying the right of free movement under EU law filled an important regulatory gap, despite challenges faced by Member States in the implementation of these rules. The Commission intends to address those challenges and support Member States using 'soft law', in particular the upcoming review of the Practical Handbook for Border Guards<sup>15</sup>, which is used by Member State competent authorities when carrying out border checks on persons.

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<sup>12</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, COM(2021) 891, 14.12.2021.

<sup>13</sup> They cover a Proposal for a Council Recommendation on operational police cooperation (COM/2021/780 final), Proposal for a Directive of the European Parliament and of the Council on information exchange between law enforcement authorities of Member States (COM/2021/782 final), and the Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation (COM/2021/784 final).

<sup>14</sup> Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders, OJ L 74, 18.3.2017, p. 1–7.

<sup>15</sup> C(2019) 7131 final, 8.10.2019.

## **Box 2. European Border and Coast Guard – Main developments**

- Important progress has been made to operationalise the 2019 European Border and Coast Guard Regulation<sup>16</sup>.
- As of 1 January 2021, Frontex supports the Member States in the protection of the external borders and in returns through the European Border and Coast Guard standing corps. The standing corps is now composed of more than 6000 officers, and it will reach its full capacity of 10,000 officers by 2027. Currently, Frontex deploys each day, on average, 2000 officers at the land, sea and air external borders and in support of returns.
- A new strategic policy cycle will aim to guarantee an effective and coherent use of the European Border and Coast Guard, bringing together more than 120,000 border and coast guards and return experts of the Member States and Frontex. This framework will better connect various policies and tools and aim to close loopholes between border protection, security, return and migration, while ensuring the protection of fundamental rights.
- Following the consultation of the European Parliament and of the Council that is launched today, the Commission plans to adopt by the end of 2022 the first multiannual strategic policy for European Integrated Border Management, to be implemented and complemented by the strategies to be adopted by Frontex and national authorities.
- Additional strategic steering will be provided at a high-level meeting of the Management Board of the Agency. The meetings of the Schengen Council also provide for the opportunity to discuss once a year at political level matters related to the implementation of European Integrated Border Management by the European Border and Coast Guard, including Frontex.
- On 21 December 2021, the Commission also adopted a model for working arrangements to be used by Frontex when cooperating with third countries and a model status agreement to regulate the deployment of teams of the European Border and Coast Guard standing corps in third countries.
- In the area of return, Frontex has also made important progress in developing its capacities to support Member States on return and reintegration. In particular, a Deputy Director-General for Returns and Operations took office in February 2022 and oversees a new Return Division.
- Enhanced support is provided to Member States in the area of voluntary return and Frontex Joint Reintegration Services was rolled-out to provide reintegration support to Member States from April 2022.
- Frontex is advancing on establishing its capacities to organise return operations at the Agency's own initiative with a first successful flight organised to Albania in January 2022.
- The Agency has undergone important structural changes with three Deputy Executive Directors taking office respectively in November 2021, January 2022 and February 2022.
- All the main building blocks of a fully functioning monitoring system were put in place to ensure the compliance of the Frontex activities with fundamental rights. In particular, a new Fundamental Rights Officer and a Deputy Fundamental Rights Officer took up duties respectively in June 2021 and March 2022. Their work is supported by 20 Fundamental Rights Monitors and their number will increase to 46 Monitors by the end of the summer.
- Frontex fulfils a critically important task to support Member States in managing common European Union external borders. To ensure full continuity of the Agency, the Commission will proceed quickly with the recruitment process leading to the appointment of a new Executive Director.
- The Frontex Management Board will continue to further strengthen the oversight of the Agency's internal management and its activities. At the same time, given the enhanced mandate and significantly reinforced resources, the Agency should ensure its full accountability towards the EU institutions. In the lead up to the upcoming evaluation of the functioning of the Agency, the Commission will launch a dialogue with the European Parliament and the Council in relation to the governance of the Agency.

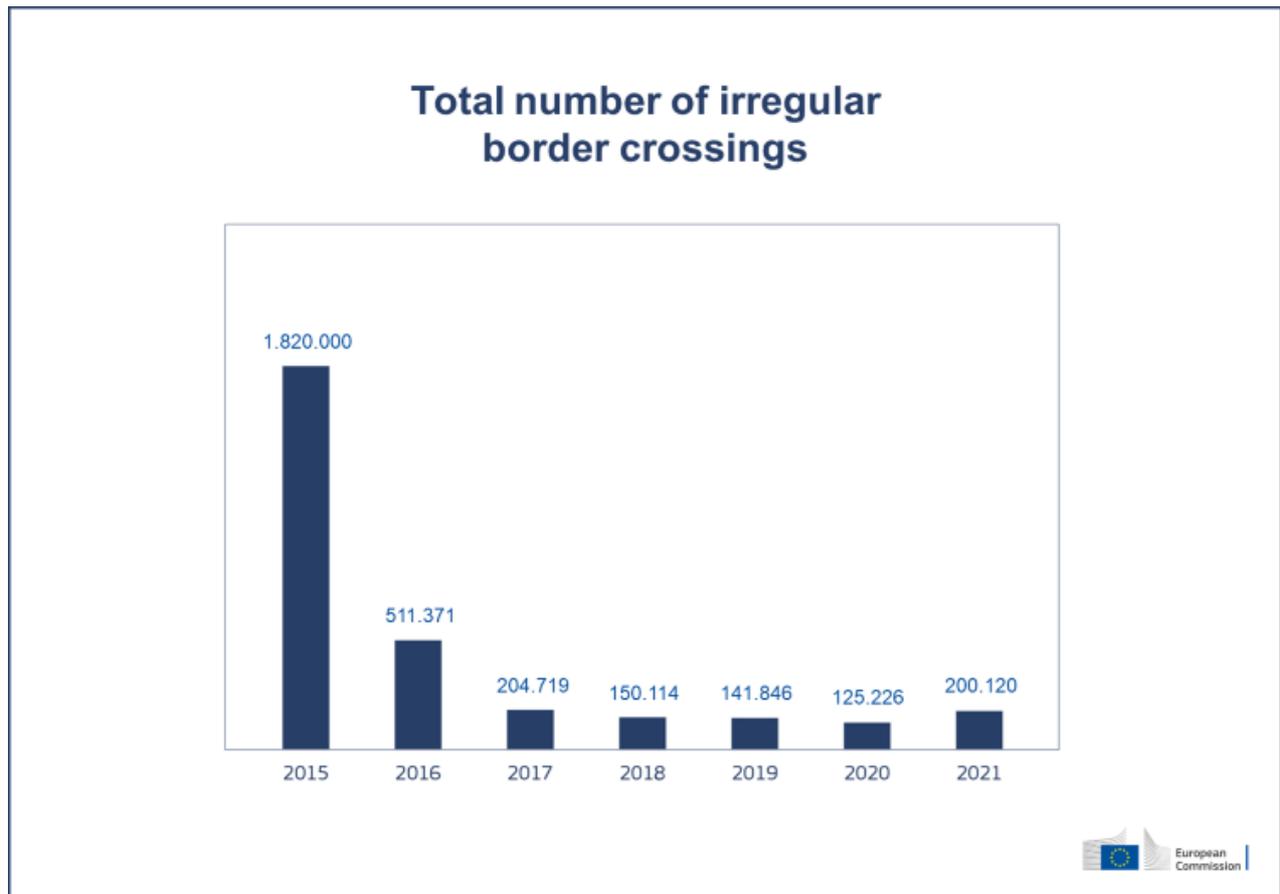
<sup>16</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019.

### 3. State of the Schengen area

#### 3.1. Situation at the external borders

Hundreds of millions of people cross EU's external borders every year making the EU the most welcoming destination in the world. Today, around 1.3 billion people from around 60 countries worldwide can benefit from visa-free travel to the European Union.

Although the vast majority of third-country nationals arrive to the EU in an authorised manner, irregular migration continues to be a challenge. In 2021, Frontex reported 200 000 irregular border crossings. During that year, irregular arrivals in Lithuania, Poland and Latvia were more than ten times higher than those in 2020 due to the **instrumentalisation** of migrants for political ends organised by the Belarusian regime. However, because of the determined and decisive EU action the situation has now stabilised and the number of arrivals from Belarus has dropped significantly.



In terms of trends, the **Central Mediterranean route, with Italy as the main destination country**, was again the most-used migratory path for irregular migration to the EU in 2021 (34% of the reported irregular border-crossings). This trend continued in 2022: as of 8 May 2022, almost 11 800 arrivals were reported on this route, a 7.6% decrease compared to the same period last year. The total number of irregular border crossings in 2022, as of 8 May, is 11 797 to Italy and only 1 to Malta. Arrivals to Spain via the **Western Mediterranean** and **Western African** routes also continued to be high: as of 8 May 2022, 10 475 irregular border crossings were recorded, 32% more than in the same period of 2021. While arrivals to mainland Spain decreased in 2022 as compared to the same period of 2021, there has been a significant increase (53%) in arrivals to the Canary Islands.

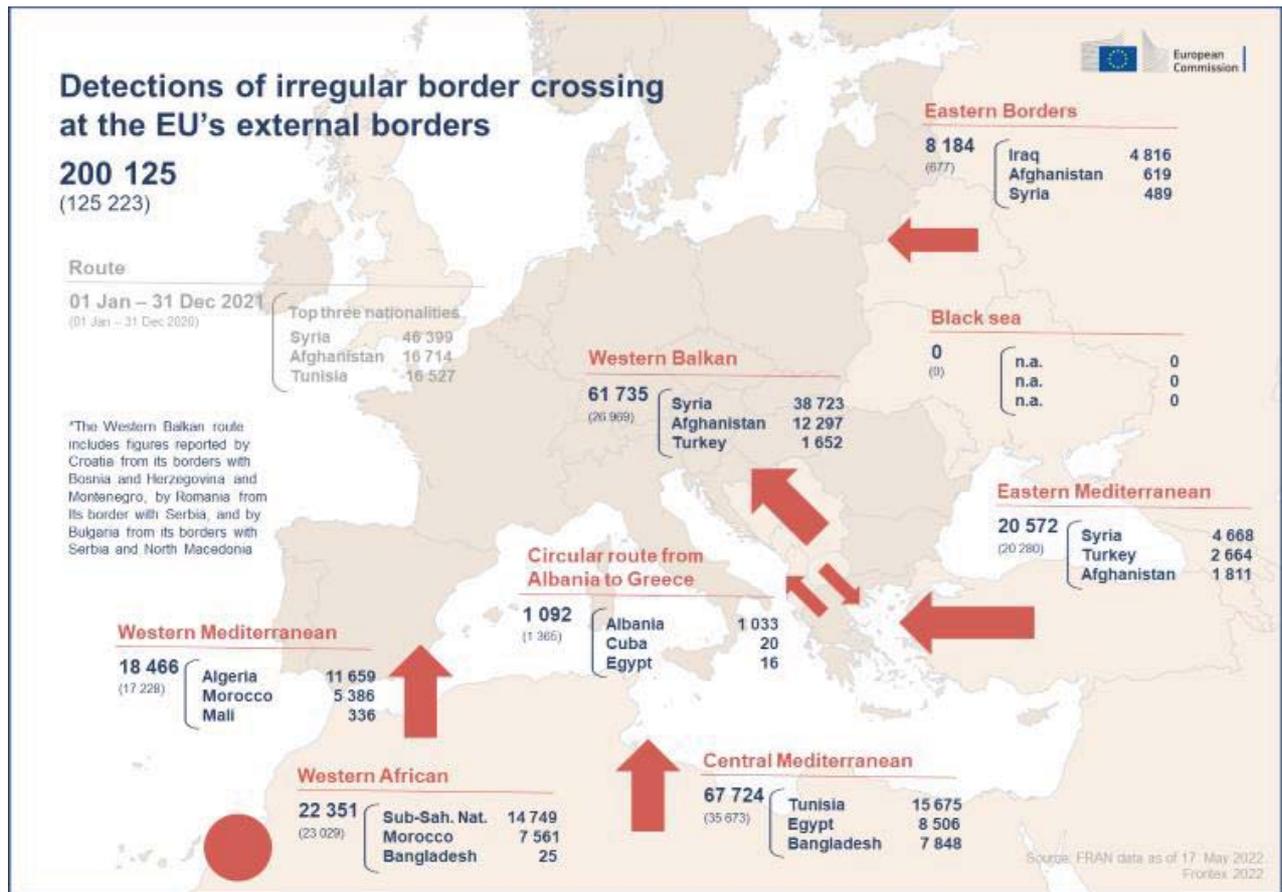
While migratory pressure continued to decrease in **Greece**, arrivals to **Cyprus** markedly increased (by 123%) in 2021, compared to 2020. In 2022, as of 8 May, 3 031 arrivals to Greece (an increase

of 24% compared to the same period of 2021) and 6 755 to Cyprus (an increase of 142%) were reported.

The pressure also increased on the **Western Balkan route** where 19 029 irregular border crossings were reported in the first three months of 2022, an increase of 125% compared to the same period of the previous year.

Irregular arrivals from **Afghanistan** to the EU have increased since the Taliban takeover in August 2021 but remained at moderate levels.

According to Europol<sup>17</sup>, more than 90% of the irregular migrants that reach the EU make use of smugglers, either during parts or all of their journey. Two thirds of them do not meet the criteria for being granted international protection at first instance and will eventually need to be returned.



<sup>17</sup> [Facilitation of Illegal Immigration | Europol \(europa.eu\)](https://www.europol.europa.eu/facilitation-of-illegal-immigration)

### **Box 3. Russian aggression of Ukraine – the biggest European displacement of people since World War II and the EU’s immediate response**

Since the beginning of Russia’s military invasion of Ukraine, around 6 million people have entered the European Union from Ukraine and Moldova, out of whom 200 000 are non-Ukrainian third-country nationals. Ukrainians holding a biometric passport arrive as visa-free travellers and often join their families and friends in different Member States.

The EU has managed the massive consequences effectively by relying on measures both within and beyond the Schengen *acquis*:

- Given the exceptional situation at the borders of the Union with Ukraine, the Commission put forward operational guidelines<sup>18</sup> intended to help Member States’ border guards to manage arrivals at the **borders efficiently**, while maintaining a high level of security.
- On 4 March 2022, the Council, on a proposal by the Commission, unanimously adopted for the first time the implementing decision<sup>19</sup> introducing temporary protection<sup>20</sup> due to a mass influx of persons fleeing Ukraine as a consequence of the war.
- The activity of the EU Migration Preparedness and Crisis Management Mechanism Network (the ‘Blueprint Network’)<sup>21</sup> has been intensified to ensure constant exchange of information and a coordinated response to the challenges triggered by such events.
- The Commission also set up the **Solidarity Platform**, bringing together Member States and Schengen Associated Countries, EU Agencies, international organisations, with the participation of Ukraine and Moldova, to coordinate support to people fleeing the war in Ukraine and to the countries receiving them.
- At the Extraordinary Justice and Home Affairs Council of 28 March, the Commission presented a 10-point action plan<sup>22</sup>, agreed in advance with the French Presidency of the Council of the EU, to facilitate stronger European coordination on welcoming people fleeing the war against Ukraine.
- **EU agencies** swiftly provided concrete support:
  - **Frontex** immediately deployed additional staff to the EU-Ukraine borders in the framework of the already existing Joint Operation Terra<sup>23</sup> and also following requests from Member States. As of 27 April 2022, 297 European Border and Coast Guard Standing Corps are deployed at the eastern EU external borders (including Ukraine, Moldova, Russia and Belarus). Frontex also helped 718 third-country nationals fleeing war to return safely to their countries of origin.
  - Frontex is actively supporting on the ground the efforts of the Moldovan authorities on the ground to address the twin challenges of regulating the influx and subsequent outflow of hundreds of thousands of refugees fleeing from the war in Ukraine. Following the conclusion in record time of a Status Agreement with Moldova, as of 27 April, 70 European Border and Coast Guard Standing Corps officers are deployed in Moldova.
  - **Europol’s** experts and guest officers deployed at the EU external borders are supporting Member States, reinforcing secondary security checks as well as analysing criminal information to be able to support investigations and to produce a full criminal intelligence

<sup>18</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0304\(10\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0304(10)&from=EN)

<sup>19</sup> Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

<sup>20</sup> Temporary protection provides people fleeing from the war with a right to a residence permit, access to suitable accommodation, to labour market, medical care, social welfare, education and opportunities for families to reunite in certain circumstances, without prejudice to the right to access the asylum procedure.

<sup>21</sup> Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration.

<sup>22</sup> [https://ec.europa.eu/home-affairs/10-point-plan-stronger-european-coordination-welcoming-people-fleeing-war-ukraine\\_en](https://ec.europa.eu/home-affairs/10-point-plan-stronger-european-coordination-welcoming-people-fleeing-war-ukraine_en)

<sup>23</sup> Joint operation Terra 2022 organised by Frontex takes place across 12 EU Member States and covers 62 border crossing points. In total, more than 450 standing corps officers from 28 EU and Schengen countries support national authorities with border management. The aim of the operation is to strengthen border control at the EU’s land borders, assist countries in fighting cross-border crime and strengthen the EU’s internal security.

picture and consolidated data analysis.

- The **Fundamental Rights Agency** visited all Member States bordering Ukraine and Moldova, observing and analysing the fundamental rights situation at border crossing points and registration/reception centres.
- Following the Commission's proposal, the Council adopted a **partial suspension of the EU-Russia visa facilitation** from 25 February 2022.

Overall, the very existence of a border-free Schengen area has provided a unique opportunity for Europe to respond cohesively to the challenges, offering both an opportunity to those fleeing to enjoy protection in the country most suitable to them and facilitating solidarity offers and transfers from the frontline Member States to others.

### 3.2. Situation at the internal borders

Since September 2015, border checks at the internal borders have been reintroduced more than 280 times. There are three main justifications for which Member States notified the Commission of the temporary reintroduction of border controls in the Schengen area: 1. those reintroduced in conjunction with the 2015 refugee crisis on grounds of secondary movements, 2. those reintroduced to counter terrorism, and 3. those introduced to limit the spread of COVID-19.

Over the years, the Commission has maintained a close political and technical dialogue with those Member States having long-lasting controls at internal borders, with a view to understanding the situation, and exploring options for specific alternative measures. In 2017, the Commission proposed to modify the applicable rules, building on the Recommendations of the Commission<sup>24</sup> adopted in the same year with a view to paving the way to lifting the long-lasting internal border controls. However, that proposal did not receive sufficient support in the Council. Reflecting on those discussions and based on consultations with Member States and stakeholders<sup>25</sup>, in December 2021 the Commission presented new amendments to the Schengen Borders Code, replacing its previous proposal. The proposed targeted amendments draw on lessons learnt as well as on the experiences gathered during the COVID-19 pandemic, addressing concerns raised by the Member States while preserving the Schengen area where any internal border controls should remain a measure of last resort.

In the recent ruling in Joined Cases C-368/20 and C-369/20<sup>26</sup> the Court of Justice stressed that as an exceptional measure, the possibility of reintroducing internal border control must be interpreted strictly<sup>27</sup>. The Commission and the Council have launched discussions with the Member States on the implications of the judgment. The Commission is in the meantime reassessing the most recent notifications of internal border controls in the light of the judgment.

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<sup>24</sup> Commission Recommendation (EU) 2017/820 of 12 May 2017 on proportionate police checks and police cooperation in the Schengen area, C(2017) 3349, OJ L 122, 13.5.2017, p. 79–83, and Commission Recommendation (EU) 2017/1804 of 3 October 2017 on the implementation of the provisions of the Schengen Borders Code on temporary reintroduction of border control at internal borders in the Schengen area, C(2017) 6560, OJ L 259, 7.10.2017, p. 25–27.

<sup>25</sup> As outlined in Annex 2 to the Impact Assessment accompanying the proposal COM(2021) 891, a stakeholders' consultation took place between November 2020 and February 2021 and encompassed, primarily, targeted stakeholders by way of the Schengen Forum and thematic workshops divided according to the topic and stakeholders involved. It included Member States, European Parliament, carriers and NGOs.

<sup>26</sup> The judgment concerns the legality of prolongations of internal border controls beyond the time-limits set out in the Schengen Borders Code and brings important clarifications in this regard.

<sup>27</sup> See point 69 of the judgment C-368/20.

#### **Box 4. Impact of COVID-19**

The COVID-19 pandemic has exposed the need for a stable framework for coordination and decision-making at the external borders and within the Schengen area in crisis situations. At the start of the pandemic, the majority of Member States reintroduced internal border controls, with common coordination amongst themselves only following later, at times jeopardising the proper functioning of the Single Market. In response, the Commission called on the Council for a coordinated decision<sup>28</sup> as regards travel restrictions on non-essential travel from third countries into the Schengen area. This call was followed by all EU Member States (with the exception of Ireland) and all Schengen Associated Countries and was later included in a Council Recommendation.<sup>29</sup> However, Member States have applied this Recommendation in very different ways, thus putting at risk the overall functioning of the Schengen area. The *ad hoc* coordination measures put in place by the Commission over the last two years helped to manage the crisis in a more orderly manner. The Commission has also worked together with Member States to identify their needs to effectively address the pandemic, in particular within the context of the Council's Integrated Political Crisis Response (IPCR). However, the crisis also revealed the need for a specific legal framework for such actions at the external borders in case of any future similar situations and this forms part of the Commission's proposal for an amendment of the Schengen Borders Code, adopted in December 2021. The pandemic circumstances have also affected the planning and implementation of the Schengen evaluation and monitoring process, in particular in the field of the common visa policy.

### **3.3. Completion of the Schengen area**

Since 2011, the Commission has been actively advocating for the completion of Schengen, urging Member States to rapidly take the necessary steps to allow those EU Member States that are not yet fully part of the area without controls at internal borders to join. This will increase security in the EU as a whole.

During the last months, important political steps have been taken. In December 2021, the Council recognised<sup>30</sup> that Croatia had fulfilled the necessary conditions for the application of all parts of the Schengen *acquis*. It is now up to the Council to table a draft Decision<sup>31</sup> on the lifting of the controls at the internal borders and to consult the European Parliament.

Furthermore, Romania and Bulgaria are also awaiting the Decision of the Council, whilst they continue to actively apply the Schengen *acquis*, in particular in relation to the management of the external borders with Ukraine. The Commission has since 2011 confirmed that Bulgaria and Romania fulfil the necessary conditions to join Schengen. Both Member States, in the context of the reformed Schengen Evaluation and Monitoring Mechanism, made a joint declaration<sup>32</sup> to the Council stressing their commitment to correctly apply the Schengen *acquis* and to contribute to the proper functioning of the area without internal border controls. To substantiate this pledge and to strengthen mutual trust, they invited on a voluntary basis a team under the coordination of the Commission, to assess the application of the latest developments of the Schengen *acquis* since the evaluations of 2011, focusing on external border management and police cooperation. The Commission stands ready to coordinate and implement these voluntary assessments. The Commission once again calls upon the Council to take the necessary steps to consolidate the

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<sup>28</sup> COM(2020) 115 final.

<sup>29</sup> Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction, 30.06.2020.

<sup>30</sup> Council conclusions on the fulfilment of the necessary conditions for the full application of the Schengen *acquis* in Croatia.

<sup>31</sup> This Decision has to be adopted by unanimity of its members representing the Member States who already apply the relevant provisions as well as of the acceding Member State.

<sup>32</sup> SUMMARY RECORD PERMANENT REPRESENTATIVES COMMITTEE 28 February, 2 and 4 March 2022 <https://data.consilium.europa.eu/doc/document/ST-7304-2022-INIT/en/pdf> under point 26.

Schengen area by adopting the decision for enabling Bulgaria, Croatia, and Romania to become formally part of it<sup>33</sup>.

The Schengen evaluation process to assess the readiness to join the Schengen area is ongoing for Cyprus as well. On 3 May 2022, the European Parliament adopted, based on the Commission's proposal, the report on the application of the provisions of the Schengen *acquis* in the area of the Schengen Information System in Cyprus by a large majority. As a next step, the Council is expected in the second half of 2022 to adopt a Decision on the application of the provisions of the Schengen *acquis* in the area of the Schengen Information System in Cyprus, to be followed by an evaluation of the operation of the system.

#### **4. Priorities resulting from the Schengen evaluations**

Along with a robust governance, a well-functioning Schengen area relies on the correct and timely implementation of the Schengen *acquis*. These rules ensure that all Member States apply uniform criteria on controls on entry and exit at the common external border, develop cooperation between border guards, national police, and judicial authorities, use adequate information exchange systems and implement a common return policy. They ensure harmonised entry conditions, and a common visa policy to maintain a high level of internal security and the possibility to travel without being subject to internal border controls. Given the large amount of personal data that is processed, the respect of the data protection requirements plays a key role. The correct implementation of all these rules not only safeguards citizens' security in an area without internal borders but it also creates synergies between national authorities.

Financial support under EU funding (Internal Security Fund, Border Management and Visa Instrument, and Asylum, Migration and Integration Fund) also facilitates the correct implementation of the Schengen *acquis*. The Commission seeks to ensure that Member States have sufficient resources to implement those recommendations with financial implications stemming from the Schengen evaluations. Taking into account the evaluations' timeline, Member States are therefore encouraged to set aside necessary resources under their national programmes so that deficiencies identified in the evaluation reports are prioritised, especially in case serious deficiencies have been identified.

While Schengen evaluations during the last years have demonstrated that in general terms Member States implement adequately the Schengen *acquis*, there are still certain key shortcomings and actions that need to be addressed as priorities. Deficiencies should not be looked at in isolation but in their interplay with various areas covered by the Schengen Evaluation and Monitoring Mechanism and their potential to undermine the Schengen area. Some of these deficiencies are of a horizontal nature across different policy areas and, due to their manifold implications, may have a higher impact on the well-functioning of the Schengen area.

During the first evaluation cycle of Schengen Evaluations (2015-2019), serious deficiencies were identified in ten evaluations in three fields<sup>34</sup> and for the period 2020-2021 – another case in a fourth policy area<sup>35</sup>. These serious deficiencies relate in some cases to deficiencies putting at risk

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<sup>33</sup> As required by the respective Acts of Accession, the Council acting with unanimity shall take its decision, after consulting the European Parliament.

<sup>34</sup> Report on the Functioning of the Schengen Evaluation and Monitoring Mechanism pursuant to Article 22 of Council Regulation (EU) No 1053/2013 First Multiannual Evaluation Programme (2015-2019) (COM(2020) 779 final) and the impact assessment carried out in the preparation of the Proposal reforming the Schengen evaluation and monitoring mechanism (SWD/2021/119 final).

<sup>35</sup> In the first evaluation cycle, 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). For the period 2020-2021, it identified serious deficiencies in the field of return for Greece.

the overall functioning of the Schengen area or in other cases represent a serious risk to fundamental rights. When serious deficiencies have been identified, Member States are closely monitored to ensure swift implementation of remedial actions, including by conducting revisits. The reformed Schengen Evaluation and Monitoring mechanism will bring about an even more robust monitoring system speeding up the entire process especially when serious deficiencies are identified, for which a specific fast-track procedure is provided for.

#### 4.1. External border management

External borders must be protected and managed efficiently, ensuring that the rights of people seeking protection are fully respected. Smooth crossings of the borders have to go hand in hand with ensuring a high level of security. Efficient and security oriented border check procedures based on comprehensive pre-arrival information and queries of relevant databases to ensure systematic checks of all persons crossing the external borders are the rule. Member States are also obliged to ensure a comprehensive mechanism for monitoring the external borders and effective border surveillance to ensure complete situational awareness and to provide for an adequate response, including saving lives at sea.

A particular challenge is the instrumentalisation of migrants for political ends, for which the Commission has put forward dedicated proposals in December 2021, in response to the call from the **European Council**: the amendment of the Schengen Borders Code providing for a definition of instrumentalisation of migration<sup>36</sup> and a new instrument addressing situations of instrumentalisation in the field of migration and asylum<sup>37</sup>. The adoption of these proposals is expected to provide solid framework for cases of instrumentalisation in the future and render unnecessary the need to resort to ad hoc measures under Article 78(3) TFEU<sup>38</sup>.

**European Integrated Border Management** is a shared responsibility of all Member States and Schengen Associated Countries, of Union institutions and agencies. In this context, the European Border and Coast Guard plays a key role, bringing together relevant national authorities and Frontex. Deficiencies in the external border of one country can affect all Member States and subsequently put the functioning of the Schengen area at risk. Therefore, Member States' border management needs to be integrated with one another to establish effective, efficient and coordinated border management at the EU external borders.

**Schengen evaluations have revealed** that over the past years Member States invested significantly to better protect the external borders, resulting in improvements shown during the second evaluation cycle (starting as of 2020) and in an adequate level of external border management in general. The evaluations identified, however, certain shortcomings, one of which is that there is generally **no adequate strategic governance and planning of national capabilities** for integrated border management. This results in reduced inter-institutional cooperation, overlapping of competences between different external border authorities and scattered resource allocation. This relates in particular to the long term planning of **human resources and training**, as well as the systematic use of information systems for border control, including **low level of connectivity** in some of the locations to ensure systematic checks in the relevant databases. Diverging execution and quality of risk analyses and vulnerability assessments in the Member States are a concern.

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<sup>36</sup> COM(2021) 891.

<sup>37</sup> COM(2021) 890.

<sup>38</sup> On 1 December 2021, the Commission adopted a proposal for a Council Decision based on Article 78(3) of the Treaty on the Functioning of the European Union (TFEU) aimed at supporting Latvia, Lithuania and Poland by providing for the measures and operational support needed to manage in an orderly and dignified manner the arrival of persons being instrumentalised by Belarus, in full respect of fundamental rights.

**Regarding border control (border checks and border surveillance),** the Schengen evaluations revealed that, in general, the application of the Schengen *acquis* by the Member States is adequate. The Schengen evaluation also pointed out good practices and innovative activities implemented by the Member States to implement the Schengen criteria efficiently. Despite the overall good progress, there are recurrent shortcomings in external border surveillance and deficient border check procedures at some border crossing points. Border control is carried out in accordance with comprehensive risk analysis in most Member States; however, there are still deficiencies detected in the way some Member States implement the European model of risk analysis for border control<sup>39</sup> resulting in insufficient situational awareness, scattered planning of resources and inadequate operational actions.

At some border crossing points, border checks are not carried out systematically and not up to standard. This is mainly related to insufficient human resources, lack of properly trained border guards as well as poor connectivity to databases, which prevents that checks against relevant databases, including the Schengen Information System and Interpol Stolen and Lost Travel Documents (SLTD) database, are uniformly and systematically carried out, leading to important security gaps. This could represent a threat to public policy, internal security, public health or international relations of any of the Member States and of the EU as a whole.

This is further aggravated by the insufficient implementation and application of the Carrier's Liability<sup>40</sup> and the **Advance Passenger Information directives**<sup>41</sup> in some Member States. In order to combat irregular immigration and ensure effective border controls, air carriers need to transmit at the request of the authorities responsible for carrying out checks on persons at external borders, by the end of check-in, information concerning the passengers they will carry to an authorised border crossing point through which these persons will enter the territory of a Member State. When this is not carried out, border guards do not have all the necessary information at their disposal to perform adequate border controls. A revision of the Advance Passenger Information Directive is envisaged by end of 2022<sup>42</sup> to close gaps that became apparent also from the 2020 evaluation and ensure the conditions for adequate implementation.

Several Member States have a **fragmented national situational picture**, reduced detection capabilities and limited response capacities especially at sea and land borders, due to the lack of integrated border surveillance systems, insufficient coordination and cooperation between their national border control authorities, as well as scattered **implementation of the European Border Surveillance system (EUROSUR)**<sup>43</sup> affecting the quality of border control. These deficiencies could decrease operational efficiency in external border management and response capacity therefore putting the Schengen area at risk. This is especially valid at sea and land borders, due to limited capabilities and integrated border surveillance systems, affecting the quality of border control. These deficiencies could decrease operational efficiency in external border management and response capacity therefore putting the Schengen area at risk.

The respect of fundamental rights and in particular the principle of *non-refoulement* is a key principle in the management of EU external borders. In 2020, observers from the European Union Agency for Fundamental Rights started to participate in the Schengen evaluations in the field of

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<sup>39</sup> The Common Integrated Risk Analysis Model <https://frontex.europa.eu/we-know/situational-awareness-and-monitoring/ciram/>

<sup>40</sup> Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

<sup>41</sup> Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data.

<sup>42</sup> See Annex I to Commission Work Programme 2022, COM(2021) 645 of 19.10.2021.

<sup>43</sup> The European Border Surveillance system (EUROSUR) is a framework for information exchange and cooperation between Member States and Frontex to improve situational awareness and increase reaction capability at the external borders.

external borders. They have contributed to identifying deficiencies and recommendations for improvement. Allegations of fundamental rights violations at external borders are always a cause for concern. Effective assessments of all alleged violations and swift and independent investigations where relevant is essential to ensure that fundamental rights are protected at the external borders. Independent fundamental rights monitoring mechanisms are a good practice in this respect, which the Commission will continue to support and finance. The respect of fundamental rights is an aspect that is covered by the new Schengen Evaluation and Monitoring Mechanism, which will ensure that measures are taken to prevent and address any shortcomings.

#### **Box 5. Priorities for European external border management**

- Efficient implementation of the European Integrated Border Management;
- Increase the use of risk analysis in border control and the full integration of vulnerability assessment results into the planning and operations of the European Border and Coast Guard;
- Improve the quality of border checks by applying information led procedures and step up the use of pre-arrival information by implementing information systems for border control, including the adoption by the Commission of a proposal for a revision of the Advance Passenger Information Directive;
- Strengthen national integrated border surveillance systems and inter-agency cooperation;
- Implementation of sound national training systems for border control<sup>44</sup>;
- Implement national monitoring mechanisms for fundamental rights.

## **4.2. Visa policy**

The Schengen area cannot function efficiently without a common visa policy. It is a tool to facilitate the entry of legal visitors, such as tourists and persons travelling on business, while preventing security risks and the risk of irregular migration to the EU. The Visa Code<sup>45</sup> establishes harmonised procedures and conditions for the processing of visa applications and issuing of visas, while the Visa Information System<sup>46</sup> ensures that consulates, border guards, law enforcement, immigration and other relevant authorities have access to data of visa applicants.

The travel restrictions related to the COVID-19 pandemic resulted in a massive drop of Schengen visa applications. While before the pandemic consulates of States participating in the Schengen area received 16 million visa applications in 2018 and 17 million in 2019, the number of applications dropped to 3 million in 2020 and 2.5 million in 2021.

The pandemic also placed constraints on carrying out Schengen evaluations in this policy area given that the evaluations are taking place at Member States' consulates in visa-required third countries. Only two evaluations could be carried out in 2020 and 2021. However, many Member States progressed well with the implementation of their action plans related to previous evaluations. The closure of 12 action plans in the past two years means that a substantial number of the deficiencies identified have been successfully rectified.

Member States adequately implement, to a large extent, the common visa policy with decisions that, overall, are well justified on whether visas should be issued or refused. Some of the main issues of concern relate to:

- Member States' practices still diverge when determining the validity of visas or the supporting documents requested, despite the rules on visa validity enshrined in the Visa

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<sup>44</sup> The Common Core Curriculum for Border and Coast Guard Basic Training in the EU is the only curriculum establishing the core learning standards on the operational level of border guarding in the European Union Member States. The Commission and Frontex have continuously encouraged Member States to make use of it.

<sup>45</sup> Regulation (EC) No 810/2009 (OJ L 243, 15.9.2009, p. 1).

<sup>46</sup> Regulation (EC) No 767/2008 (OJ L 218, 13.8.2008, p. 60).

Code and the legally binding harmonised lists of supporting documents adopted by the Commission.

- Insufficient training and staff shortages leading to procedural errors.
- The use of external service providers is widespread, but the monitoring of their activities is insufficient.
- The use of the Visa Information System is suboptimal due to the sometimes inadequate quality of the data entered therein, the fact that the national case handling systems are not always adapted to the Visa Code and Visa Information System workflow, the lack of adequate IT training and the limited awareness of certain functionalities and benefits of the system.

As part of the monitoring process of previous evaluations, the Commission has been repeatedly calling on Member States to address these issues and adequate financial support has been made available under the Integrated Border Management Fund Border Management and Visa Instrument (2021-27) to support relevant actions.

On 27 April 2022, the Commission presented a Proposal on the **digitalisation of visa procedures** to modernise and make the lodging and processing of visa applications more efficient while reinforcing the security of the Schengen area. On the same day, the Commission proposed to abolish the visa requirement for nationals of Kuwait and Qatar. In the months to come, it will carry out an evaluation of the revised Visa Code that entered into force in February 2020. It will continue to monitor closely third countries that have been granted visa free access to the EU, in particular through the visa suspension mechanism report<sup>47</sup> and it will also continue working in close cooperation with the Member States concerned and the United States to achieve full visa waiver reciprocity for the remaining Member States, namely, Bulgaria, Cyprus and Romania. Furthermore, the Commission, in coordination with Member States, is closely following citizenship for investment programmes run by visa-free third countries as beneficiaries of these schemes can get free access to the Schengen area. Recently, upon proposal of the Commission, the Council decided to suspend temporarily the visa exemption requirements for holders of Vanuatu passports issued after 2015 due to risks linked to its Citizenship for Investment programme<sup>48</sup>. Member States will have to continue working in close cooperation with eu-LISA and the Commission to upgrade their visa processing IT systems to comply with the upgrade of the Visa Information System. Schengen evaluations in this policy field will be resumed in June 2022 taking into due account the evolving epidemiological situation.

#### **Box 6. Priorities for visa policy**

- Swift progress on the negotiations of the proposal regarding the digitalisation of visa procedures
- Swift progress on the negotiations on the proposal for Visa exemption for Kuwait and Qatar.
- Preparation of the implementation of the revised Visa Information System
- Stepping up the monitoring of third countries having obtained visa free access to the EU
- Stepping up the monitoring of investors citizenship and residence schemes run by third countries in line with recommendation C/2022/2028<sup>49</sup>.
- Resuming Schengen evaluations from June 2022.

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<sup>47</sup> The Commission must report annually to the European Parliament and to the Council on the continuous fulfilment of the visa exemption requirements by the countries, whose nationals obtained visa-free access less than seven years ago, following the successful completion of a visa liberalisation dialogue (Republic of Albania, Bosnia and Herzegovina, Montenegro, Republic of North Macedonia, Republic of Serbia, Georgia, Republic of Moldova, Ukraine). The fourth Visa Suspension mechanism report was adopted on four August 2021 (COM(2021) 602).

<sup>48</sup> EU 2022/366.

<sup>49</sup> C(2022) 724 final.

### 4.3. Return of people with no legal right to stay

Stepping up efforts to reduce irregular migration to the EU and better protect the external borders should go hand in hand with taking measures to effectively **return** third country nationals illegally staying on the territory of Member States. Every year around 400 000 third country nationals are ordered to leave, but only 140 000 (less in 2020 also due to the restrictive measures to contain the pandemic) of the persons concerned effectively return to a third country, out of which approximately 45% are voluntary returns. Improving the effectiveness of Member States' return systems is also an important aspect of the work on establishing a common EU system for return as set out in the Pact on Migration and Asylum combining stronger structures inside the EU, notably a reinforced legal framework with the recast Return Directive, with more effective cooperation with third countries. Furthermore, in line with the EU Strategy on voluntary return and reintegration adopted in April 2021, a more uniform and coordinated approach among Member States to unlock the full potential of voluntary return and reintegration is being developed with the aim of boosting the effectiveness and sustainability of the common EU system for returns for the mutual benefit of the returnees, the EU and the third countries.

Schengen evaluations have demonstrated improvements in this field and Member States' national legislation and practices are now better aligned to the requirements of the Return Directive. However, there are still improvements to be made to ensure full respect of fundamental rights. Serious deficiencies have been identified in one Member State due to inadequate detention conditions and insufficient procedural safeguards.

Furthermore, as regards the effectiveness of the return systems, not all Member States systematically issue return decisions to third-country nationals with no legal right to stay. Divergent practices exist regarding entry bans which are not systematically issued when third-country nationals do not comply with the obligation to return, limiting their deterrent effect.

The **effective enforcement of return decisions remains a challenge**, which is also influenced by the limited cooperation on readmission of third countries. Despite these external challenges, there are obstacles within the national systems, revealed by Schengen evaluations, which hamper the effectiveness of the Member States' return systems. Furthermore, data collection in the field of return needs to be improved to allow for better policy-making, implementation and evaluation. The main issues identified in a number of Member States relate to:

- Limited/insufficient resources dedicated to return, in terms of personnel and infrastructure.
- Lack of or ineffective monitoring of the implementation of return decisions, including through IT return case management systems.
- Limited availability and use of the voluntary return and reintegration programmes (including in relation to return counselling).
- Limited use of alternatives to detention to prevent absconding and lack of sufficient specialised detention capacity.

The Commission is working closely with Member States to ensure the full implementation of return rules and following up as appropriate, including through infringement procedures. Special focus is being put on the implementation of the return procedures, such as the issuance of return decisions and their effective enforcement, as well as when it comes to the respect of the rights of migrants – children and vulnerable people in particular – during all steps of the return process.

On 2 March 2022 the Commission appointed the first EU Return Coordinator. The Return Coordinator will bring together the strands of EU return policy, building on positive experiences of Member States in managing returns and facilitating a seamless and interlinked implementation of the return process. The Commission is in the process of setting up the High-Level Network for Return which will support the Return Coordinator to facilitate practical cooperation between

Member States, the Commission and Frontex and serve as a trusted space for constructive exchange and dialogue on return matters at high level.

**Box 7. Priorities for return policy.**

- Swift adoption of the renewed return legal framework based on the recast Return Directive.
- Promotion of voluntary return and reintegration as an integral part of a common EU system for return, in line with the EU strategy on voluntary return and reintegration.
- Make full use of the operational and practical support Frontex can provide in this area.

#### **4.4. Police cooperation<sup>50</sup>**

In an area without controls at the internal borders, solid **police cooperation** among Member States is indispensable to ensure security and trust within the Schengen area, and border regions in particular. According to the 2021 ‘EU Serious and Organised Crime Threat Assessment’ (EU SOCTA) published by Europol, almost 70% of organised criminal networks are active in more than three Member States. Police officers need to be able to cooperate effectively, quickly, and systematically across the EU to fight transnational crime.

The Schengen evaluations conducted so far in the field of police cooperation have highlighted that, even though Member States are generally legally compliant with the Schengen *acquis*, **a number of obstacles hamper the practical use of some of the cross-border police cooperation tools** available to Member States.

Cross-border police cooperation, as set out in the Proposal for a Council Recommendation on operational police cooperation, is made more complicated by the coexistence in many Member States of different police bodies, e.g. military-status police, civil-status police, national, regional or local police. It is essential that each Member State organises its internal coordination in such a manner that all relevant services can participate in cross-border and international police cooperation. To that end, almost all Member States have designated one service as a **Single Point of Contact**<sup>51</sup> that is competent for all cross-border and international law enforcement operational cooperation and information exchange. Single Points of Contact, which are corner stones of cross-border law enforcement cooperation and operational information exchange, suffer from a lack of integration and of tailored training for the staff, thus limiting the benefit of the sharp increase in information exchange over the past years.

Efficient cross-border cooperation requires interoperable communication means and mobile access to relevant databases in compliance with the necessary safeguards. Technical systems used nationally should be available for secure cross-border information exchange, including secure e-mail as well as radio communication systems, most notably in case of hot pursuits. As a result of the lack of adequate technical tools, in the majority of the Member States police officers resort to non-secure radio communication tools or mobile phones in order to contact their respective dispatch for background checks. This carries a risk of communication failure (frequent in mountainous areas) and misunderstandings (e.g. in the case of transliteration issues). The same risks are encountered in case of absence of adequate mobile access to databases for police officers in the field. When police officers check a person during a joint patrol or during targeted joint

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<sup>50</sup> ‘Police cooperation’ involves all the Member States’ competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences (Article 87 TFUE).

<sup>51</sup> The Single Point of Contact (SPOC) means the national central body responsible for international police cooperation referred to in Article 39(3) of the Convention Implementing the Schengen Agreement.

actions in the border areas, they need to have immediate and adequate access to their national and international databases to which they have access under national law. If the available information or actions to be taken are not correctly displayed, wanted criminals for instance could pass undetected through several countries. In addition to police officers in the field, investigators also need more direct access to relevant international databases. With the majority of criminals working across borders, an early detection of international links is crucial for a successful criminal investigation.

Finally, the extent to which **cross-border operational police activities** (such as hot pursuits or cross-border surveillance) are facilitated varies significantly throughout the EU. Whilst some countries vastly allow for mutual access to each other's law enforcement (including Customs and Border Guards) databases, others impose too narrow geographic or time limitations to hot pursuits or do not allow foreign police officers to apprehend suspects on their territory during a hot pursuit.

The Convention Implementing the Schengen Agreement (CISA)<sup>52</sup> setting out basic principles for police cooperation, and the Swedish Framework Decision 2006/960/JHA simplifying the exchange of information between law enforcement authorities both form part of the Schengen *acquis*. The Convention's provisions give considerable flexibility to state parties in the way they choose to implement it. In practice, bilateral or multilateral agreements are used systematically to further develop this common baseline<sup>53</sup>. There are currently around 60 such agreements between EU Member States.

A major challenge in the field of police cooperation is that the legislative framework is fragmented and leaves wide flexibility to the Member States in the way they choose to implement it. The police cooperation proposals<sup>54</sup> aim to address this and strengthen police cooperation by providing clear channels and timeframes for exchanging information and giving Europol a stronger role. The Commission welcomes the progress made by the Council, which aims to adopt its general approach on the Directive and the Regulation in June 2022 as well as to endorse the Recommendation on operational police cooperation. Trilogues for these proposals could therefore still start this year with the ensuing adoptions expected before the end of 2023.

It is essential to continue developing the tools in the hands of police authorities. The use and exchange of Advance Passenger Information in combination with Passenger Name Records already delivered tangible results in the fight against terrorism and serious crime. A new legislative initiative is under preparation to improve the use of Advanced Passenger Information also for law enforcement purposes by enhancing legal certainty and closing gaps that became apparent from the 2020 evaluation of the Advance Passenger Information Directive<sup>55</sup>, whilst providing for the necessary safeguards. It is scheduled to be presented by the end of 2022.

**Box 8. Priorities for police cooperation.**

- Swift adoption of the Police Cooperation proposals, and implementation of the Recommendation on operational police cooperation expected to be adopted by the Council in June.
- Adoption by the end of 2022 by the Commission of a proposal for a new legislative measure on Advance Passenger Information strengthening its use for law enforcement purposes.

<sup>52</sup> Articles 39 to 47 of the Convention Implementing the Schengen Agreement.

<sup>53</sup> Article 39(5) of the Convention Implementing the Schengen Agreement.

<sup>54</sup> They cover a Proposal for a Council Recommendation on operational police cooperation (COM/2021/780 final), Proposal for a Directive of the European Parliament and of the Council on information exchange between law enforcement authorities of Member States (COM/2021/782 final), and the Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation (COM/2021/784 final).

<sup>55</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0082&from=EN>

- Further integration of international cooperation channels, improvement of case management systems and automation of processes in the Single Points of Contact (SPOC).
- Efficient and direct online access to national, EU and international law enforcement databases for the staff of the Single Points of Contact, investigators and police officers in the field in as far as this is necessary for their tasks.
- Efficient mobile access to (inter)national databases for police officers in the field, specifically in border regions.
- Interoperability of radio communication tools.

#### 4.5. Schengen Information System

The Schengen Information System (SIS) is the main compensatory measure for the abolition of internal border controls as it offers essential support to migration and security policy across the Schengen area and at its external borders.

The importance of the SIS for the security and border management in Europe keeps growing. Although the use of the system was affected by the COVID-19 crisis due to the related reduction in travel and the reduction in the number of border checks performed during the time, the use of SIS in Europe is now steadily growing, reaching at the end of 2021 a peak of almost 90 million alerts<sup>56</sup> introduced by the Member States in the Schengen Information System database<sup>57</sup>. By December 2019, just before the pandemic started, the number of searches in the Schengen Information System reached a record of 6.6 billion, and a record level of 283 713 hits<sup>58</sup> was achieved (it more than doubled from 128 598 hits in 2014). In 2021, more than 7 billion searches were performed in SIS,<sup>59</sup> and 222 967 hits achieved, contributing to solving this number of cases in European countries that use the system.

Based on the Schengen evaluations carried out, it can be concluded that **Member States have generally implemented and used the Schengen Information System effectively and in a uniform manner**. Although serious deficiencies in the implementation of the Schengen Information System were identified in some Member States, these countries have been urgently and actively working on remedying the shortcomings.

Certain **recurrent deficiencies** emerged during evaluations:

- Member States do not insert all relevant information in the Schengen Information System. For instance, fingerprints and photographs are not always attached, even if these data are available at country level. In some cases this is due to a lack of technical tools or mandatory procedures at the country level requiring authorities issuing the alert to add these data when available.
- Not all information available in the Schengen Information System alert (for example available photograph of a person) is displayed to the end-users, i.e. police officers, borders guards and other users when they consult the system. This makes it difficult to correctly identify the person subject of an alert and take the appropriate action.
- In some Member States there is a lack of progress in the use of new tools, such as the fingerprint search functionality of SIS. This has important consequences, leading to security gaps.

<sup>56</sup> 'Alert' means a set of data entered into the Schengen Information System allowing the competent authorities to identify a person or an object with a view to taking specific action.

<sup>57</sup> This is an increase of almost 20 million additional alerts compared to data from four years ago (71 million by December 2016).

<sup>58</sup> A 'hit' means any match which fulfils the following criteria: (a) it has been confirmed by: (i) the end-user; or (ii) the competent authority in accordance with national procedures, where the match concerned was based on the comparison of biometric data; and (b) further actions are requested.

<sup>59</sup> There were 6.6 billion searches performed in SIS in 2019 and 7.0 billion searches in 2021.

- The ‘SIRENE Bureaux’, the administrative structures dealing with the exchange of information supplementary to the Schengen Information System alerts, are at the very heart of Schengen Information System operation but do not always have sufficient personnel and technical resources, including automated and integrated workflow tools, to enable them to exchange this information effectively.
- Limited reinforcement of human and technical resources in the SIRENE Bureaux often brings these structures to the limits of their capacity. The quality and speed of the information exchange and the operational cooperation between offices is crucial in the follow-up to hits to ensure, for example, the protection of missing and vulnerable persons.
- Some Member States did not connect their Automatic Number Plate Recognition systems to the Schengen Information System limiting the overall security within Schengen and at the external borders.

**Box 9. Priorities for the Schengen Information System.**

- Swift implementation of the renewed Schengen Information System as soon as possible, which will include new alert categories and bring about new functionalities that will further enhance the effectiveness of the Schengen Information System.
- Proper staffing and resources to be enhanced in the SIRENE Bureaux of the Member States with the automation of the workflow in order to process the high number of incoming hits and ensure the quality and speed of the information exchange and cooperation.
- Full use of the fingerprint search functionality of the Schengen Information System.

#### 4.6. Data protection

A further important part of the Schengen *acquis* are the rules on the protection of personal data. The specific personal data protection provisions in the Schengen Information System and Visa Information System *acquis* and, in the future, of the new information systems (Entry-Exit System, ETIAS, interoperability), the provisions in the General Data Protection Regulation (GDPR)<sup>60</sup> to which those systems’ *acquis* makes cross-references and the Data Protection Law Enforcement Directive (LED<sup>61</sup>) are the main legislative requirements applicable in this area.

Assessing how Member States implement and apply the Schengen *acquis*, in particular in relation to the SIS and VIS, against the background of data protection requirements is an essential safeguard.

Although no serious deficiencies were identified during the Schengen evaluation and compliance with the applicable acts of EU law in individual instances needs to be assessed on a case-by-case basis, there are still several **recurrent issues** that need to be addressed:

- Some national data protection authorities (DPAs) lack sufficient human and financial resources, which hampers their possibilities to carry out all their Schengen Information System and Visa Information System related tasks.
- Some of the data protection authorities risk being subject to external influence on their work which could affect their independence.
- Not all data protection authorities have been given effective corrective powers towards law enforcement authorities.
- In some Member States, more frequent and comprehensive inspections by the data protection authorities were deemed necessary for them to fulfil their task of monitoring the

<sup>60</sup> Regulation (EU) 2016/679, OJ L 119, 4.5.2016, p. 1.

<sup>61</sup> Directive (EU) 2016/680, OJ L 119, 4.5.2016, p. 89.

lawfulness of the processing of Schengen Information System and Visa Information System data.

- Often the requirement to carry out audits of the data processing operations in the Schengen Information System and Visa Information Systems at least every four years has not been met by the data protection authorities.
- Improvement is also often required as regards information on data subject rights in relation to the Schengen Information System and the Visa Information System and the procedure to use those rights.
- The period of keeping logs from the queries in the information systems remains, in some cases, still not in line with the Schengen *acquis*.
- Frequently, there is no pro-active self-auditing on data protection compliance by data controllers, including no regular review of logs.
- Finally, regular, and continuous training on data protection and data security for all operational staff having access to the information systems is not always provided.

**Box 10. Priorities for data protection.**

- Member States should provide sufficient resources to the data protection authorities in order for them to carry out all their Schengen Information System and Visa Information System related tasks.
- Data protection authorities should ensure that the audits of the data processing operations in the Schengen Information System and Visa Information System will be carried out at least every four years.
- Schengen Information System and Visa Information System competent authorities should follow-up on the recommendations in particular in relation to self-auditing and training.
- During the implementation of the new information systems for border control (Entry-Exit System, ETIAS, interoperability), the privacy-by-design approach shall be fully embraced by all responsible entities. It should be ensured that data protection requirements are fully integrated and will be respected from the beginning of the use of those systems.

## 5. Next steps

While today we are better equipped to respond to the current and future challenges, any legislation or framework is only as good as its effective and timely implementation.

Schengen evaluations conducted during the last years confirmed that Member States are adequately implementing the Schengen *acquis* in the different policy fields and that the Mechanism has achieved its desired and intended effect. However, shortcomings and deficiencies have been identified and progress in some areas is still needed. This report identifies the key priority areas requiring urgent improvements and highlights that swift and adequate implementation of all available tools is necessary.

With the Schengen Cycle, the Schengen area now has a **reinforced and robust governance**, that ensures political steer for legislation to be adequately implemented and regularly monitored. Following the first steps in implementing the cycle, it is necessary to continue guaranteeing joint efforts and common ownership by Member States, EU institutions and agencies of the process on the way towards the next annual cycle of 2023.

It is essential to continue working towards a fully **effective European integrated border management**, bringing together all relevant actors at both European and national levels. In an area without controls at the internal borders, solid **police cooperation** between Member States together with effective implementation of the large-scale information systems, notably the **Schengen Information System**, as well as effective **return** and **common visa policies**, are indispensable.

Moreover, it is crucial not to lose focus on the full implementation of the new IT architecture by the end of 2023. The EU has designed one of the world's most **technologically advanced** border management systems and we need to deliver on this ambitious project on time.

**Providing sufficient resources and training** to those implementing and enforcing the Schengen *acquis* is vital to ensure that our legal commitments are effectively implemented in practice. In this context, EU agencies play a key role and it is important to ensure that their mandates are fully used.

Finally, swift and effective implementation of the **recommendations** identified in the Schengen evaluations is key.

**Increased political ownership based on dialogue and regular monitoring will ensure implementation of the priorities for the Schengen area. Therefore, the Commission calls on Member States and EU agencies to take the necessary steps to deliver on these priorities and take the necessary follow-up actions.**

**In this respect, the Commission invites the Schengen Council in June to endorse the key elements of the new Schengen governance model and the priorities for 2022-2023 as set out in this report. The Commission will closely accompany this process both at the political and technical levels, and it will report on progress achieved and follow-up actions at the end of the annual cycle.**