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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN  
PARLIAMENT**

**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)**

{SWD(2020) 327 final}

## 1. INTRODUCTION

On 14 June 1985, France, Germany and the three Benelux States signed the Schengen Agreement that removed internal border controls between those Member States. Today, 35 years later, the Schengen area is one of the most significant achievements of the European Union. It has enhanced the freedom of movement by enabling 400 million EU citizens and non-EU citizens legally present on the territory, as well as goods and services, to move<sup>1</sup> without being subject to internal border control, bringing significant social and economic benefits<sup>2</sup> to our societies.

A well-functioning Schengen area depends on the correct and efficient implementation of the Schengen *acquis* and on mutual trust among Member States. It requires modern, uniform and highly efficient external border management and a number of compensatory measures (such as efficient cooperation of law enforcement authorities, effective visa and return policies and a comprehensive Schengen Information System) to safeguard citizens' security, reduce the risk of unauthorised movements between Member States and improve synergies between national authorities.

A robust monitoring system to verify how countries implement the Schengen *acquis* and to recommend improvements in its implementation is crucial. For this reason, in 1998, as part of the Schengen Convention, the contracting parties set up a Standing Committee with the mandate to identify shortcomings in the implementation of Schengen and propose solutions<sup>3</sup>. Following the integration of the Schengen Convention into the EU legal framework, 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<sup>4</sup>.

In 2015, under the new 'Schengen Evaluation and Monitoring Mechanism'<sup>5</sup> the responsibility for the coordination and overall organisation of the exercise was transferred to the Commission. However, the mechanism remains a shared responsibility with the Commission carrying out evaluations jointly with experts from the Member States. This peer-review element is core to Schengen evaluations because it reinforces accountability, ownership of results and trust. The Council is responsible for issuing recommendations to the evaluated States, based on a Commission proposal, on how to remedy any deficiencies identified during the evaluations.

The mechanism remains as relevant as ever. Since 2015, the Schengen area has been under constant pressure, and today we are confronted with a different reality than at the time of the

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<sup>1</sup> Beyond Member States, the Schengen area covers also Iceland, Norway, Switzerland and Liechtenstein (so-called 'Schengen Associated Countries'). Ireland is not part of the Schengen area but it will apply the Schengen *acquis* in part as of 1 January 2021. The United Kingdom was also not part of the Schengen area but applying in part the Schengen *acquis*. 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. The report refers to all these countries as Member States.

<sup>2</sup> In 2016 it has been 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.

<sup>3</sup> 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.

<sup>4</sup> See Council conclusions of 5 December 2014 on the legacy of Schengen evaluation within the Council and its future role and responsibilities under the new mechanism.

<sup>5</sup> Council Regulation (EU) No 1053/2013, OJ L 295, 6.11.2013, p. 27 (SCH-EVAL Regulation), which became operational in 2015.

creation of Schengen. Instability in Europe's neighbourhood and beyond, the consequences of the very exceptional circumstances of the 2015 refugee crisis, the COVID-19 crisis and the terrorist threat require reflection and follow-up.

Part of a well-functioning Schengen area is the need for having in place a fully effective tool for evaluating its functioning and for ensuring that improvements are effectively implemented. All pertinent Member States have now been evaluated under the new mechanism in line with the first Multiannual Evaluation Programme. In accordance with the reporting obligations under the SCH-EVAL Regulation<sup>6</sup>, this report provides a state of play of the implementation of the Schengen *acquis*, based on the findings of the evaluations and implemented recommendations. The report also serves as basis for the reflections needed in relation to the review of the mechanism to ensure that it can achieve its full potential as a tool to evaluate the functioning of Schengen and for ensuring that improvements are effectively implemented.

One of the lessons learnt in the past is that setting up and maintaining the Schengen area requires daily combined efforts on the part of Member States and EU institutions to allow all EU citizens to take full advantage of the area of freedom, security and justice without internal frontiers. It is precisely with a view to stimulating concrete cooperation on issues related to Schengen among all actors involved and rebuilding trust that the Commission has established the Schengen Forum. By providing a state of play on the implementation of the Schengen *acquis* and the functioning of the Schengen Evaluation and Monitoring Mechanism, this report aims to offer the necessary foundation for discussions in the First Schengen Forum on 30 November.

## 2. THE SCHENGEN EVALUATION PROCESS

### 2.1. *The Schengen Evaluation Process*

The Schengen *acquis* includes a wide-ranging and fast-developing set of rules as well as compensatory measures to counterbalance the absence of internal border controls. The Schengen Evaluation and Monitoring Mechanism monitors the implementation of the Schengen *acquis* by the countries that apply the Schengen *acquis* in part or in full<sup>7</sup>. It also assesses the capacity of those countries where internal border controls have not yet been lifted to implement the Schengen *acquis* in full<sup>8</sup>. The Schengen Evaluation and Monitoring Mechanism assesses in particular, the implementation of measures in the areas of external borders, return, visa policy, police cooperation, the Schengen Information System (SIS), data protection, and the absence of border control at internal borders.

The Commission carries out evaluations over a five-year cycle following multiannual and annual programmes, together with experts from **Member States as well as EU agencies** that participate as observers. Each country is evaluated at least once every five years. Additional *ad-hoc* evaluations in the form of *unannounced* evaluations or *revisits* can be organised, as required. *Thematic evaluations* are an additional tool for assessing the implementation of

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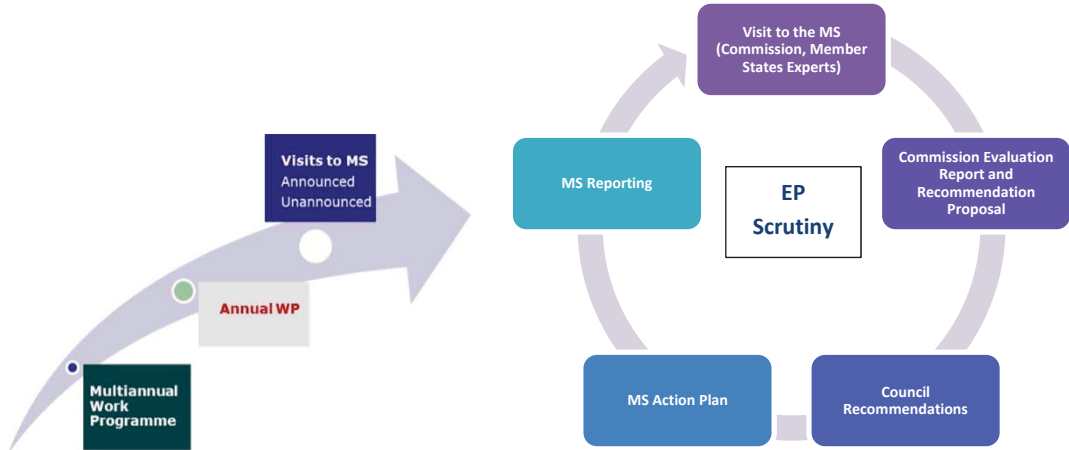
<sup>6</sup> Articles 20 and 22 of the SCH-EVAL Regulation.

<sup>7</sup> Article 1 SCH-EVAL Regulation.

<sup>8</sup> This applies to Cyprus and Croatia. As specified in recital 28 of the SCH-EVAL Regulation, the evaluation of Bulgaria and Romania has already been completed pursuant to Article 4(2) of the 2005 Act of Accession and no evaluation would be carried out under Article 1(b) of the SCH-EVAL Regulation.

specific parts of the Schengen *acquis* across several countries at the same time. The figure below illustrates the five-year evaluations process.

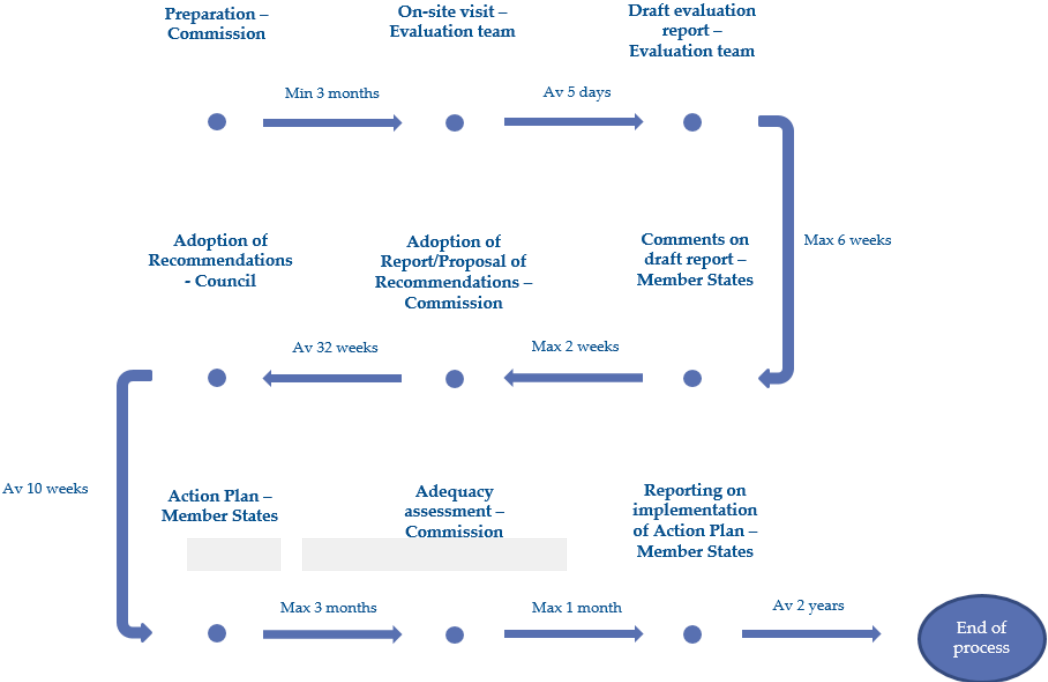
### SCH-EVAL Cycle (5-year)



Evaluation reports are presented to the Schengen Committee (in which all Member States are represented) and, subject to its positive opinion, adopted by the Commission<sup>9</sup>. Upon a Commission proposal, the Council adopts the recommendations to address any deficiencies identified in the evaluation reports, concluding the **first phase** of the evaluation. As a follow-up, the country concerned must submit an action plan listing the remedial actions to implement the Council recommendations. The Commission assesses the action plans in cooperation with the relevant evaluation experts. The evaluated country has an obligation to report on the progress made every three months. When all remedial actions have been taken, the Commission closes the evaluation concluding the **second phase**.

### Schengen evaluation mechanism - steps

When the evaluation report concludes there are *serious deficiencies*



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s, the Commission has to inform the Council without delay and shorter time limits apply to the follow up. The evaluated countries are required to submit the action plan within one month from the Council's recommendation. The Commission can consider a *revisit* to verify the implementation of the measures taken to address the deficiencies identified. Furthermore, where an evaluation report concludes that the evaluated country is seriously neglecting its obligations and the Commission during its monitoring finds that the situation persists, the Commission may trigger the application of the procedure provided for in Article 29 of the Schengen Borders Code which could ultimately lead to recommending to reintroduce controls at internal borders, provided all the conditions for doing so are fulfilled.

## 2.2. *The First Multiannual Evaluation Programme*

Between 2015 and 2019, **over 200 evaluation visits**<sup>10</sup> took place both within the Schengen area<sup>11</sup> and in 27 third countries<sup>12</sup>, the latter to check the implementation of the visa policy. 29 *unannounced visits* and 8 *revisits* were carried out for 15 countries in all main policy fields with the exception of data protection and police cooperation. Two *thematic evaluations* were carried out, in 2015 and 2019/2020, respectively on local Schengen cooperation in the area of visa policy and on the national strategies for integrated border management.

Based on these evaluation visits, the Commission has adopted **198 evaluation reports** and the Council addressed more than **4 500 recommendations** to Member States. However, only 45 evaluations have been closed while a number of evaluation reports and recommendations for the evaluations carried out in 2019 are still to be adopted.

In these first five years, a strong emphasis has been put on developing working methods that improve the quality, effectiveness and coherence of the evaluations. Given the central role of the national experts, the main focus was to further develop the **tailored training** already in place since the previous evaluation system. At present, trainings for experts in view of their participation in evaluation teams are offered by the European Border and Coast Guard Agency (Frontex) and the European Union Agency for Law Enforcement Training (CEPOL) with the support of trainers from the Commission and the Fundamental Rights Agency (FRA). They include specific modules for external borders, return, police cooperation and Schengen Information System. Standardised **checklists** have also been prepared to ensure a coherent assessment.

**EU agencies**<sup>13</sup> made a significant contribution to the process through the organisation of trainings, the provision of risk analyses that informed the preparation of the annual programmes for the Schengen evaluations, and by participating in the evaluations as observers. In the field of external border management, an additional quality control tool was

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<sup>10</sup> On four occasions, evaluations were based on stand-alone questionnaires and not on questionnaires and on-site visits, namely for the evaluation of Liechtenstein in the field of return (2015), Malta for SIS (2016), Croatia in relation to compliance with firearms legislation (2016) and Judicial cooperation in criminal matters (2017). In the field of external borders evaluations required in most cases more than one on-site visit.

<sup>11</sup> In addition to the 26 States of the Schengen area, the mechanism also assessed the preparedness of Croatia to fully apply the Schengen *acquis*. The evaluation of Cyprus started in 2019 and is ongoing. Ireland and the UK were assessed respectively in the fields of data protection and SIS.

<sup>12</sup> Evaluations in the field of the common visa policy take typically place in third countries due to the fact that Schengen visa applications are, as a rule, processed by Member States' consulates abroad.

<sup>13</sup> The agencies involved at present are Frontex (external border management, visa and return), Europol and CEPOL (police cooperation, SIS), eu-LISA (SIS), and Fundamental Right Agency (FRA) (return). The European Data Protection Supervisor (EDPS) while not an agency also participates as observer.

adopted in 2016 with the implementation of vulnerability assessments set out under the European Border and Coast Guard (Frontex) Regulation<sup>14</sup>. These annual vulnerability assessments carried out by Frontex complement the Schengen Evaluation and Monitoring Mechanism by offering a snapshot of the countries' operational capacity for managing the external borders. They are taken into account when evaluating a particular country.

**Financial support** under the Internal Security Funds and the Asylum, Migration and Integration Fund facilitated the implementation of the recommendations. Member States were encouraged to (re)allocate resources under their national programmes to give priority to actions remedying deficiencies identified in evaluation reports<sup>15</sup>.

### 3. STATE OF PLAY ON THE IMPLEMENTATION OF THE SCHENGEN ACQUIS

#### 3.1. *Main findings and progress made during the First Multiannual Evaluation Programme*

Based on the findings of the evaluations carried out over the last five years, it can be concluded that **overall, Member States comply with the essential provisions of the Schengen *acquis*** in all policy fields evaluated. **However, evaluations showed that there are some recurrent deficiencies in Member States and equally divergent practices** among Member States due to an incoherent implementation of the Schengen *acquis*. These divergences undermine the level of harmonisation and coherence, and ultimately **could have an impact on the well-functioning of the Schengen area**.

**Evaluations allowed identifying and addressing numerous recurring deficiencies.** Several Member States have taken a positive and pro-active attitude towards remedying the shortcomings identified during the evaluations. In some cases, Member States started working on remedial actions even before the Council adopted its recommendations. Furthermore, when the report concluded the existence of 'serious deficiencies', the *revisits* showed that Member States have taken swift action to address the most serious shortcomings. This confirms that the close monitoring of Member States' obligations and responsibilities and rapid Member State action is fundamental for a correct and effective implementation of the Schengen *acquis*.

#### **Recurrent Deficiencies and Areas of improvements**

- Incomplete or non-conform transposition, implementation and application of pertinent Schengen *acquis*;
- Insufficient number of staff and inadequate qualification and/or training;
- Diverging and inconsistent national practices due to incoherent implementation of the Schengen *acquis*;
- Fragmented administrative structures with insufficient coordination and integration of the different authorities; and
- Practical, technological and regulatory barriers to cooperation within the Schengen area.

The findings that result from evaluations have served as a **basis for reinforcing EU policy** in recent years, making an **essential contribution to the further development of the Schengen *acquis*** and to ensuring its correct and more harmonised implementation. The findings have

<sup>14</sup> OJ L 251, 16.09.2016, p. 1.

<sup>15</sup> See Article 12 of Regulation (EU) No 515/2014, OJ L 150, 20.5.2014, p. 143.

contributed to the formulation of the Commission Recommendation of 7 March 2017 on making returns more effective<sup>16</sup> and informed the recast Return Directive and the revision of the Return Handbook<sup>17</sup>. They were extensively used for legislative proposals in the field of visa policy and to improve the Visa Code Handbook. They were essential for the improvement of the Schengen Information System legal framework and to modify the Schengen Borders Code introducing the obligation of systematic checks. Furthermore, the outcome of the thematic evaluation of Member States' national strategies for integrated border management will support setting up the multi-annual European Integrated Border Management Cycle to consolidate the strategic approach to border management at the national and EU levels.

### **3.2. Specific findings per policy field**

#### **3.2.1. External border management**

A well-functioning area without internal border controls requires common, uniform and highly efficient external border management. Deficiencies in the external border management of one country can affect all Member States and subsequently put the functioning of the Schengen area at risk. External border management evaluations are thus a key element of the Schengen Evaluation and Monitoring Mechanism.

The **main legislative act** governing this area is the Schengen Borders Code<sup>18</sup>. In the last five years, as a result of the new challenges faced by the EU, additional initiatives were introduced to reinforce this legislative framework, including systematic checks of EU citizens against relevant databases at external borders<sup>19</sup>, the adoption of a new Frontex Regulation in 2016<sup>20</sup> and its subsequent review in 2019 with the inclusion of the EUROSUR Regulation<sup>21</sup>, as well as the gradual development of an integrated system for managing the EU's external borders (the European integrated border management).

External border management evaluations cover the following main elements: external border checks at sea and airports and land border crossing points, external border surveillance, national strategies and concepts for European integrated border management, risk analysis, inter-agency and international cooperation, national quality control mechanism, external border management capacities (personnel and equipment) and infrastructure.

Under Articles 21 and 29 of the Schengen Borders Code, the existence of persistent serious deficiencies in external border controls identified in a Schengen evaluation report may lead to the reintroduction of internal border controls. The provisions have been applied once during this first Multiannual Evaluation Programme. During the unannounced visit to one Member State<sup>22</sup> in autumn 2015, serious deficiencies were identified in the external border

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<sup>16</sup> Commission Recommendation (EU) 2017/432, OJ L 66, 11.3.2017, p. 15.

<sup>17</sup> C(2017) 6505.

<sup>18</sup> Regulation (EU) 2016/399, OJ L 77, 23.3.2016, p. 1, as amended.

<sup>19</sup> 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. The systematic checks of the travel documents of persons enjoying the right of free movement under EU law against relevant data bases was introduced.

<sup>20</sup> Regulation (EU) 2016/1624, OJ L 251, 16.9.2016, p. 1. Repealed in 2019 by Regulation (EU) 2019/1896, OJ L 295, 14.11.2019, p. 1.

<sup>21</sup> Regulation (EU) 1052/2013, OJ L 295, 6.11.2013, p. 11.

<sup>22</sup> Greece.

management, which were considered to put the overall functioning of the area without internal border control at risk<sup>23</sup>. As a result, five Member States jointly reintroduced internal border controls<sup>24</sup>. The Council adopted recommendations on the necessary measures to be taken by the Member State concerned, which submitted an action plan and progress reports as required by the SCH-EVAL Regulation<sup>25</sup>. The evaluation carried out in 2016 already indicated that the serious deficiencies had been addressed.

Based on the 42 evaluations carried out in relation to external border management, it can be concluded that **Member States are to a large extent adequately implementing the Schengen Borders Code and managing external borders in line with the *acquis***. Decisive progress has also been made to harmonise Member States' strategic approaches towards external border management by the gradual implementation of an integrated border management system. While serious deficiencies were identified in four Member States<sup>26</sup>, those countries swiftly took the necessary measures to address the most important deficiencies. Today, no Member State has serious deficiencies in this area, but specific challenges remain in a few countries that still need to be promptly addressed. Despite these positive elements, Member States' external border management does not yet guarantee a uniform level of control at the EU's external borders, given the diverging practices and approaches to external border management on a number of issues.

In this respect, some **recurring deficiencies** have been identified. In various Member States, the *strategic planning* for integrated border management is not adequate which results in reduced inter-institutional cooperation, overlapping of competences between different external border authorities and scattered resource allocation. These deficiencies could decrease operational efficiency in external border management and response capacity. Member States' conduct of *risk analyses*, one of the main managerial tools for external border management, still diverges. Not all Member States carry out a comprehensive risk analysis based on the existing harmonised Common Integrated Risk Analysis Model (CIRAM). This model ensures all Member States produce unified high-standard risk analysis products for external border management and return purposes.

Though the overall quality of controls at the external borders is good, it still varies in and among Member States. Most countries face challenges related to resources, training and operational planning to ensure uniform and systematic checks at all external border crossing points, and efficient external border surveillance. However, notwithstanding such challenges, most Member States have managed to maintain the overall quality of external border control. Pre-arrival information generated by the implementation of several information systems, and risk analysis results are not efficiently integrated in external border control procedures. The evaluations have also revealed recurrent shortcomings in *external border surveillance and situational awareness*. In a number of Member States, surveillance systems do not cover their entire external border, and there are limited exchanges of information between concerned external border authorities and limited implementation of the EUROSUR Regulation<sup>27</sup>.

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<sup>23</sup> COM(2016) 120.

<sup>24</sup> Council Implementing Decision (EU) 2016/1989, OJ L 306, 15.11.2016, p. 13.

<sup>25</sup> COM(2017) 570.

<sup>26</sup> In addition to Greece, serious deficiencies in external border management were identified also by the evaluations of Spain, Sweden and Iceland in 2017. Re-visits were carried out in Sweden and in Iceland in 2019.

<sup>27</sup> Regulation (EU) No 1052/2013, OJ L 295, 6.11.2013, p.11.



Allegations of *fundamental rights violations* in some countries are a cause for concern and require close monitoring.

**A substantial number of the deficiencies identified have been successfully addressed in these past five years** and the Commission encouraged the use of police checks or law enforcement authorities' cooperation within the Schengen area, as an effective alternative to internal border controls<sup>28</sup>. Nevertheless and despite this progress, internal border controls have been reintroduced repeatedly by Member States using Articles 25 and 28 of the Schengen Borders Code, which allow immediately restoring internal border controls on the grounds of a serious threat to public policy or internal security. More recently, the Schengen area was put again to the test because of the outbreak of the COVID-19 pandemic. Against this backdrop, the Commission intervened to provide together with Member States a coordinated response to the crisis by, among others, organising videoconferences with Ministers of the Interior, the meetings of the COVID-19 Information Group on Home Affairs as well as publishing guidelines<sup>29</sup> on border management measures, green lanes, facilitation of frontier workers and by putting forward a proposal for a Council recommendation on a temporary restriction on non-essential travel to the EU from third countries<sup>30</sup>. These recent events have re-confirmed the importance of a more resilient and efficient Schengen, which should also include a more effective governance.

### **3.2.2. Common visa policy**

Inherently associated with external border management, the common visa policy has two main objectives. First, it enables Member States to conduct a thorough migratory and security assessment of third-country nationals who require a visa to travel to the Schengen area for short stays (up to 90 days in any 180-day period). Second, it also provides legal guarantees for applicants to ensure an efficient and fair visa procedure, with the aim of facilitating legitimate travel and people-to-people contact.

**The main legislative acts** governing this policy field are the Visa Code<sup>31</sup>, providing common and harmonised rules for visa processing, the Visa Information System (VIS) Regulation<sup>32</sup> and the Visa Regulation (EU) 2018/1806<sup>33</sup>.

Based on the 29 evaluations carried out in relation to common visa policy, it can be concluded that **Member States to a large extent adequately implement the common visa policy with decisions that, overall, are well justified on whether visas should be issued or refused.**

However, serious deficiencies were identified recently in two Member States<sup>34</sup>. Moreover despite a common regulatory framework, Member States' visa-issuing practices still diverge in several aspects. Consular staff sometimes still view Schengen visas as 'national' visas. Competition between States in 'attractive markets' as well as 'visa-shopping' weakens the perception of Schengen as a common travel area.

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<sup>28</sup> C(2017) 3349.

<sup>29</sup> C(2020) 1753.

<sup>30</sup> COM(2020) 115.

<sup>31</sup> Regulation (EC) No 810/2009, OJ L 243, 15.9.2009, p. 1.

<sup>32</sup> Regulation (EC) No 767/2008, OJ L 218, 13.8.2008, p. 60.

<sup>33</sup> OJ L 303, 28.11.2018, p. 39

<sup>34</sup> Serious deficiencies emerged during the 2018 evaluation of Finland and the 2019 unannounced evaluation of the Netherlands.

In this sense, **recurring deficiencies** have been identified. Member States practices still diverge when determining the *validity of visas* or the *supporting documents* to be requested, despite legally binding harmonised lists adopted by the Commission. The *examination of applications* has not been found to be sufficiently thorough in all instances, particularly in case of centralised decision-making. Insufficient *staff training and staff shortages* have been observed in many consulates and this has led that in some locations, consulates are not able to meet the deadlines set out in the Visa Code. The use of *external service providers (ESP)* is widespread, but the monitoring of their activities was not always adequate and contracts and practices did not always comply with legal requirements. Another recurrent shortcoming was the systematic collection of *fingerprints* even if applicants have given fingerprints in the previous five years. *Information made available* to the public on conditions and procedures has also been found to be incomplete or outdated in certain cases.

The introduction of the *Visa Information System (VIS)* – a database supporting the exchange of data related to visa applications - constitutes considerable progress for the visa procedure. The full potential of the system is undermined, however, by the sometimes inadequate quality of the data entered into the Visa Information System, 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 of the system.

**A substantial number of the deficiencies identified have been successfully addressed in these past five years. In addition, the amendments to the Visa Code that became applicable in 2020<sup>35</sup> seek to address several of these issues and to strengthen the harmonised implementation of the common visa policy by providing faster and clearer procedures for legitimate travellers<sup>36</sup>.**

### 3.2.3. Return

A fair and efficient system to return illegally staying third-country nationals is an essential component of a well-functioning European asylum and migration management system.

The Return Directive<sup>37</sup> is the **main legislative act** governing return, which sets the common standards and procedures for an effective and fair return of illegally staying third-country nationals. The Directive leaves significant flexibility to the Member States as to the concrete measures to be taken at national level to implement it, resulting in different systems and approaches being taken by Member States.

The Return Directive is a ‘hybrid instrument’, as it applies both to cases of presence on the territory of a Member State of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in the Schengen Borders Code, and to cases in which other conditions for entry, stay or residence in that Member State are not complied with. To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code, the Return Directive constitutes a development of the provisions of the Schengen *acquis*<sup>38</sup>.

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<sup>35</sup> Regulation (EU) 2019/1155, OJ L 188, 12.7.2019, p. 25.

<sup>36</sup> In particular by allowing for applications to be lodged up to 6 months, and no later than 15 days, before the trip; providing for the possibility of the application form to be filled in and signed electronically; introducing a harmonised approach to the issuing of multiple entry visas to regular travellers with a positive visa history for a period which increases gradually from 1 to 5 years.

<sup>37</sup> Directive 2008/115/EC, OJ L 348, 24.12.2008, p. 98.

<sup>38</sup> See recitals 25-30.

This is why the new Schengen Evaluation and Monitoring Mechanism introduced evaluations also in the field of return to ensure that the rules of the Return Directive are correctly implemented by the Member States<sup>39</sup>.

Based on the 31 evaluations carried out in relation to return, it can be concluded that the **return systems of the Member States are in general compliant with the Return Directive**. No serious deficiencies have been identified. However, in some countries practical and normative obstacles exist which negatively affect the enforcement of returns. Moreover, the evaluations have brought to light specific shortcomings and structural weaknesses in the return systems of the evaluated Member States that have been faced with important challenges due to the large numbers of third-country nationals entering and staying illegally.

A number of **recurrent deficiencies** have been identified. A major problem is the *general lack of reliable statistical information on return-related activities*, which makes assessing the effectiveness of national return systems more difficult. However, the amendment to the Migration Statistics Regulation<sup>40</sup> and the entry into operation of the Schengen Information System for return<sup>41</sup> will contribute to addressing this issue.

There are also divergent approaches when it comes to issuing *return decisions*. Not all Member States systematically issue return decisions to illegally staying third-country nationals, following a negative decision on asylum applications. In addition, certain return decisions do not specify clearly that the third-country national should not only leave the Member State in question, but the EU and the Schengen area. This ambiguity leads to possible unauthorised movements from one Member State to another. Similar divergent practices exist regarding *entry bans* which are not systematically issued when third-country nationals do not comply with the obligation to return within the period for voluntary departure as required by the Return Directive.

On *voluntary return assistance*, evaluations showed that there is scope for improving the support provided to irregular migrants willing to depart voluntarily, notably by ensuring that the assisted voluntary return and reintegration programmes have a wider scope (e.g. not limited only to rejected asylum seekers or third-country nationals who lost a right to stay in the EU).

Several Member States do not take sufficient measures to ensure the *enforcement of return decisions*. In some countries, there is no mechanism in place to ensure the systematic follow-up of return operations or the mechanism is not fit for purpose. Measures to locate returnees systematically in order to prevent absconding and to ensure that decisions are complied with, are often lacking. Effective forced-return monitoring systems have not been established in all Member States.

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<sup>39</sup> All Member States are bound by the Return Directive, with the exception of Ireland by virtue of Protocol 19 on the Schengen *acquis* integrated in the framework of the European Union and Protocol 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaties. To the extent that the Directive applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code, Denmark takes part to it by virtue of Article 4 of Protocol 22 annexed to the Treaties and Iceland, Norway, Switzerland and Liechtenstein are bound by it based on the respective agreements associating them with the implementation, application and development of the Schengen *acquis*.

<sup>40</sup> Regulation (EU) 2020/851, OJ L 198, 22.6.2020, p. 1, amending Regulation (EC) 862/2007, OJ L 199, 31.7.2007, p. 23.

<sup>41</sup> Regulation (EU) 2018/1860, OJ L 312, 7.12.2018, p. 1.

The approach towards *unaccompanied minors* is different among Member States. The identification of durable solutions, looking at all available options, including return to the country of origin and reunification with family members in a third country, is an essential component of the best interests of the child determination, which however is not carried out by all Member States. This results in ‘return’ not being assessed as a possibility when conducting the individual assessment of the best interests of the child.

In relation to *detention*, several issues have been identified. The availability and use of effective alternatives to detention is uneven across Member States. Insufficient detention capacity and the fact that some Member States do not use all the possibilities in the Directive regarding the length of detention contribute to an increase in the risk of absconding, affecting the effectiveness of the return system. Issues with ensuring adequate material conditions in detention centres are recurrent and include *inter alia* a lack of adequate privacy for detainees and a prison environment of detention centres which does not fully reflect the administrative nature of the deprivation of liberty.

**Implementation of recommendations has been slow.** In 2018, the Commission tabled a proposal for a recast Return Directive<sup>42</sup>, which consists of **targeted amendments aimed at maximising the effectiveness of the EU return policy** while safeguarding the fundamental rights of irregular migrants and ensuring the respect of the principle of *non-refoulement*. The proposed recast relies on the information collected during the evaluations and addresses several of the aforementioned shortcomings, such as setting an obligation for Member States to establish assisted voluntary return programmes and introducing a common list of objective criteria to determine the existence of a risk of absconding. Furthermore, the amended proposal for a Regulation establishing a common procedure for international protection<sup>43</sup> requires that a return decision is immediately issued to an asylum seeker whose application is rejected<sup>44</sup>.

#### 3.2.4. Police Cooperation

The 1990 Schengen Convention introduced provisions to increase cooperation and information exchange between the police forces of Member States as a compensatory measure to the abolition of internal border controls. Those provisions cover cooperation to prevent and detect crime; operational cooperation, e.g. the possibility to extend surveillance or continuing the pursuit of criminals across internal borders (so-called ‘hot pursuit’), and the sharing of information for the prevention and repression of crime or threats to public order and safety.

However, the **legislative framework** for Schengen police cooperation remains more fragmented than other components of the Schengen *acquis* and leaves great flexibility to the parties in the way they choose to implement it. A significant part of the cooperation framework is based upon Council non-binding documents such as good practices (‘Schengen Catalogue’) and guidelines. Furthermore, the core provisions of the Schengen Convention are mainly implemented through bilateral or multilateral agreements concluded by the Member States. Since 1990, the EU framework on information exchange and data access for law enforcement purposes has continuously developed. While a part of it does not formally belong to the Schengen *acquis*, it is closely related to it. For this reason, the implementation of the Prüm Decisions, the Europol Regulation and other non-Schengen legal instruments is also considered during the evaluations. This contributes to assessing how Member States cope with general information exchange requirements provided by the Schengen Convention.

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<sup>42</sup> COM(2018) 634.

<sup>43</sup> COM(2020) 611.

<sup>44</sup> See recital (31a) and Article 35a.

Based on the 27 evaluations carried out in relation to police cooperation, it can be concluded that **Member States are generally compliant with the Schengen *acquis* in the field of police cooperation.** No serious deficiencies were identified and only a few non-compliant findings were made, mainly in the area of information exchange and especially access to the Visa Information System for law enforcement purposes.

However, a number of **recurrent deficiencies** prevent reaching the full potential of some of the existing police cooperation and information exchange tools. The most necessary improvements identified concerned *strengthening law enforcement information exchange* in particular with regard to the functioning of the Single Points of Contact (SPOC)<sup>45</sup> of Member States and the mobile access to police databases of street-level police officers. Other important areas for improvement concerned the development and sharing of *strategic crime threat assessments and risk analyses* to allow a better joint response to cross-border crime and revising the *bilateral or multilateral agreements* concluded by the Member States to extend and facilitate the possibilities for operational cross-border cooperation (in particular cross-border surveillance and ‘hot pursuits’).

### 3.2.5. Schengen Information System (SIS)

The Schengen Information System is a key compensatory measure for the abolition of internal border controls as it offers essential support to security policy across the Schengen area. SIS is a large-scale IT system that provides alerts on persons or objects of interest for security reasons. It also supports checks at the external borders, and law enforcement and judicial cooperation across Europe.

Its scope is defined in three **legal instruments** concerning border control cooperation, law enforcement cooperation and cooperation on vehicles registration<sup>46</sup>. The second generation of SIS became operational on 9 April 2013 in 28 Member States and at present 30 Member States are connected to it<sup>47</sup>. On 28 November 2018, the European Parliament and the Council adopted three new Regulations that will further widen the scope and functionalities of SIS to be implemented in three phases by 2021. Each Member State using SIS is responsible for setting up, operating and maintaining its national system and designating a national SIRENE<sup>48</sup> Bureau, which ensures the exchange of all supplementary information related to SIS alerts. The EU-Agency for large-scale IT systems (eu-LISA) is responsible for the operational management of the central system and the communication infrastructure.

Based on the 32 evaluations carried out in relation the Schengen Information System, it can be concluded that **Member States have generally implemented and used SIS effectively and in a uniform manner.** Although serious deficiencies in the implementation of SIS were

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<sup>45</sup> The SPOC is the national ‘one stop shop’ for international law enforcement cooperation: It has one phone number and one e-mail address for all international law enforcement cooperation requests dealt with at national level. It gathers under the same management structure the different national offices or contact points for the different cooperation channels with representatives from all law enforcement agencies of the country. Ref. Single Points of Contact (SPOC) Guidelines (Council Doc. 10492/14, 13 June 2014)

<sup>46</sup> Regulation (EC) No 1987/2006, OJ L 381, 28.12.2006, p. 4; Council Decision 2007/533/JHA, OJ L 205, 7.8.2007, p. 63, and Regulation (EC) No 1986/2006, OJ L 381, 28.12.2006, p. 1.

<sup>47</sup> In addition to the 26 countries of the Schengen area, Bulgaria, Romania, the UK and Croatia are connected to SIS though the two latter still subject to certain restrictions regarding its use of Schengen-wide SIS alerts for the purposes of refusing entry into or stay in the Schengen area.

<sup>48</sup> SIRENE stands for Supplementary Information Request at the National Entries.

identified in four Member States<sup>49</sup>, these countries have been actively working on remedying the deficiencies. However, in one of the cases the situation has not improved.

Certain **recurrent deficiencies** emerged during evaluations, such as the lack of *technical tools or mandatory procedures* at the country level to upload fingerprints and photographs to SIS alerts even when they have them available. Another recurrent finding relates to some of the functionalities introduced in 2013 by the second generation of SIS, in particular, that not all information included in SIS alerts is *displayed to the end-users*. It was also found that the increased exchange of the supplementary information due to the extensive use of the system often brings the *SIRENE Bureaux* to the limits of their capacity. The *SIRENE Bureaux* do not always have sufficient personnel and technical resources, including automated and integrated workflow tools, to enable them to exchange this information effectively. **A substantial number of the deficiencies identified have been successfully addressed in these past five years.**

### 3.2.6. Data Protection

A further important part of the Schengen *acquis* are the rules on the protection of personal data. A significant reform of the EU data protection legal framework took place in 2016 to strengthen the rights of citizens in the digital era. The General Data Protection Regulation (GDPR)<sup>50</sup> and the Data Protection Law Enforcement Directive<sup>51</sup> are the **main legislative acts** applicable in this area in combination with the specific data protection provisions in the Schengen Information System (SIS) and Visa Information System (VIS) *acquis*.

These evaluations assess how the Member States implement and apply the Schengen *acquis*, in particular in relation to the SIS and VIS against the background of data protection requirements. They also include the role of the Data Protection Authorities (DPAs) as regards the supervision of the authorities managing and using the SIS and the VIS.

Based on the 29 evaluations carried out in relation to data protection, it can be concluded that **Member States generally implement and apply the relevant provisions on the SIS and the VIS in compliance with data protection requirements.** Although no serious deficiencies were identified, there are still a number of recurrent issues that need to be addressed/are being addressed.

Evaluations carried out after May 2018 (date of entry into application of the new data protection framework) indicated in some countries delays in implementing the GDPR and/or transposing the Data Protection Law Enforcement Directive into national law as well as adapting the national SIS and VIS related legislation accordingly.

In some Member States, there are shortcomings concerning the complete *independence* of the DPAs which lead to direct or indirect influence by the Government on the work of the DPA. Some of those issues have been solved in the follow-up to the Schengen evaluations and during the reform of the national data protection legislation to implement the GDPR and transpose the Data Protection Law Enforcement Directive. Some DPAs also lack sufficient human and financial *resources* to carry out all their SIS and VIS related tasks.

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<sup>49</sup> Serious deficiencies emerged in the evaluations of Belgium in 2015, of France and Spain in 2016 as well as in the UK in 2017. Re-visits were carried out in Belgium in 2016 and in France in 2019. It is considered that Belgium, France and Spain have addressed all serious deficiencies.

<sup>50</sup> Regulation (EU) 2016/679, OJ L 119, 4.5.2016, p. 1.

<sup>51</sup> Directive (EU) 2016/680, OJ L 119, 4.5.2016, p. 89.

In a number of Member States more frequent and comprehensive *inspections* by the DPAs were deemed necessary in order for them to fulfil their task of monitoring the lawfulness of the processing of SIS II and VIS data. In some cases, the deadlines for carrying out the first audit of the data processing operations in the SIS and VIS system have not been met.

In the field of *data subject rights* in relation to SIS and VIS, a lack of proper information was found to constitute a constraint for the effective exercise of those rights.

The period of keeping of *logs for SIS and VIS* queries was, in some cases, not in line with the Schengen *acquis*. Frequently there was no pro-active self-auditing on data protection compliance by data controllers, including no regular review of logs. Furthermore, there is often a lack of clarity on the tasks and allocation of responsibilities for the processing of personal data amongst different authorities involved in the visa issuing procedure and processing of related data. Some improvements are still necessary in relation to physical, organisational and IT security measures in respect of VIS data. The Data Protection Officers should in some cases be more involved in overseeing the processing of personal data in the Schengen specific context. There was often no regular and continuous training on data protection and data security for all operational staff having access to SIS II.

**Member States are in general taking the necessary steps in order to follow-up on the findings and recommendations. While overall some progress has been made to address the deficiencies, implementing the recommendations has been slow.**

#### **4. THE FUNCTIONING OF THE SCHENGEN EVALUATION AND MONITORING MECHANISM IN THE FIRST MULTIANNUAL PROGRAMME**

##### **4.1. Shortcomings identified**

In the last five years, the Schengen Evaluation and Monitoring Mechanism has led to substantial improvements in implementing the Schengen *acquis* in the EU and has already proven its added value in ensuring the efficient functioning of the Schengen area. Nevertheless, the experience gained during the first Multiannual Evaluation Programme (2015-2019) showed a series of shortcomings that have weakened the full potential of the mechanism. Both the European Parliament in its Report from 2017<sup>52</sup> and the Member States, through the consultation launched by the Finnish Presidency of the Council in 2019<sup>53</sup>, have noted the need to reconsider certain aspects of the mechanism. It is important therefore to use the experience gathered during the first Multiannual Evaluation Programme to evaluate how the Schengen Evaluation and Monitoring Mechanism could be conducted in a more efficient way, including from a resource point of view.

One of the main shortcomings is **the excessive length of the first phase of the evaluation process (adoption of report and recommendations)** which had a significant impact in addressing deficiencies swiftly and effectively. In 25% of cases, this phase took over a year, and in twelve cases, more than 18 months, taking particularly long when the evaluation team identified ‘serious deficiencies’ (a finding that, in principle, should lead to a faster follow-up). On average, the Commission needed around 10 months to adopt an evaluation report and the

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<sup>52</sup> Report on the annual report on the functioning of the Schengen area (2017/2256(INI)).

<sup>53</sup> Council doc. 13244/2019.

Council needed an additional two months and a half to adopt recommendations, which determine the starting date for countries to present an action plan to remedy the deficiencies.

**Member States' contributions of experts have not always matched the needs.** The number of available experts was occasionally insufficient to meet the needs of ongoing evaluations. In evaluations concerning data protection and visa policy, teams were sometimes made up of only 4 or 5 experts (the optimal number is 8) because of a lack of nominations by countries. Furthermore, experts did not always have the required profile or sufficient experience in the relevant policy fields. There was also a notable geographical imbalance. Over the five years, a third of the experts were designated by only five countries.

**Unannounced visits did not prove as effective as originally conceived.** At present, the annual evaluation programme for unannounced visits is set the year before visits are carried out, based on a risk analysis concluded one year before the visit takes place. This set-up did not allow for adapting quickly to new challenges. Furthermore, the call for designating experts two weeks prior to the visit and the obligation to give 24 hour advance notice to the Member State in question, while facilitating a smooth organisation of the evaluation, weakened the purpose as such of the unannounced visits.

**The follow-up and implementation of the action plans was generally slow and the monitoring has not generally been comprehensive and consistent.** Since 2015, about 201 evaluations have been carried out and, despite significant progress, about 25% of the action plans have been closed on average after 2.25 years. Generally, evaluations did not focus on the effective and consistent implementation of the key elements in each specific policy field of the Schengen *acquis* across Member States that are crucial for ensuring a well-functioning Schengen area. Therefore, recommendations focused too much on very specific and numerous details rather than the core elements of the Schengen *acquis* and with no clear timeline indicated for their implementation. Furthermore, **insufficient use has been made of thematic evaluations** that would allow evaluating several or all Member States at once in a particular Schengen-relevant aspect and identifying trends and common shortcomings as well as best practices. In addition, current SCH-EVAL **reporting obligations generate a significant administrative burden** both on the Commission and on the Member States. The combination of all these elements did not allow comprehensive and consistent monitoring of the implementation of the action plans.

**The recommendations have not proved to be a sufficiently effective tool to ensure that Member States take rapid action.** Generally, there has been little discussion in the Schengen Committee on the evaluation findings and the related recommendations proposed by the Commission, partly due to the too detailed and specific nature of the evaluations. Ultimately, the fact that the recommendations are adopted by the Council did not generate the expected peer-to-peer pressure to ensure a high standard in implementing the Schengen *acquis*. **The system did not ensure otherwise proper political discussions on the state of Schengen** in other relevant fora, and the involvement of the European Parliament was also not very regular.

The assessment of the respect for **fundamental rights** in the implementation of the Schengen *acquis* was not sufficiently integrated in the evaluation mechanism.

## **4.2. *Potential operational measures for improving the functioning of the Schengen Evaluation and Monitoring Mechanism***

### **4.2.1. *Making evaluations faster, more targeted and strategic***



All actors must devote sufficient financial and human resources and adopt the appropriate measures to swiftly accomplish their respective tasks during the evaluation process. Simplification of internal **workflows** combined with **benchmarks** should help reduce the time it takes to carry out evaluations.

The completion of the first Multiannual Evaluation Programme has given the Commission and the Council a good overview of the situation in all Member States. Without compromising the quality of the current procedure, evaluations could be made more relevant to needs based on the outcome of previous evaluations. As stressed by Member States, room for improvement remains regarding the **quality of reports and recommendations** as well as regarding increased coherence of evaluations across different policy fields. Deficiencies exist both across countries and within policy fields. The **check-lists** currently used to carry out evaluations could be revised to focus on the main elements that may affect the Schengen area as a whole.

**More strategic and rational use of available analytical tools is necessary.** Thematic evaluations could be used in a systematic way to assess the implementation of major legislative changes as they enter into force. It is also essential to allow the swift organisation of unannounced visits when required. **Improving synergies and cooperation** with other actors and evaluation mechanisms is crucial. In particular, the role played by EU agencies (Frontex, eu-LISA, FRA, Europol), the European Data Protection Supervisor and national quality control mechanisms should be reinforced. This could be achieved with wider participation of agencies in the evaluations and by establishing a more regular and systematic exchange of information between them and the Commission. It is particularly important to increase synergies with Frontex vulnerability assessments and for the FRA and Europol to develop more targeted risk analyses that would help designing better evaluations.

It is also important to ensure Member States **designate a sufficient number of qualified experts covering all policy fields**. Consideration should be given to setting up a mechanism to better coordinate the nomination of experts for all Schengen evaluations. The Commission will update the existing training curricula and provide for trainings on visa policy. Regular refresher training could also be made available.

Finally, during the evaluation and follow-up, the respect for **fundamental rights** in the implementation of the Schengen *acquis* needs particular attention. It is important to reflect on how to better integrate fundamental rights in the assessment. Update of current check-lists to better incorporate fundamental rights issues, wider participation of the Fundamental Rights Agency in the evaluations and broader use of its guidelines could be beneficial in this regard.

#### ***4.2.2. Making implementation of recommendations faster and more efficient***

Streamlining the recommendations would facilitate the development of effective action plans and their swift implementation. **Schengen catalogues and handbooks** in the relevant policy fields represent an important tool Member States should take into account when implementing the specific SCH-EVAL recommendations. They will need to be regularly updated and further improved. **Best practices** referred to in the evaluation reports should be shared among Member States and used in the implementation of the recommendations. Following the Court of Auditor recommendations<sup>54</sup>, the possibility to set **time-limits for the implementation of the recommendations** could be considered.

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<sup>54</sup> 'EU information systems supporting border control - a strong tool, but more focus needed on timely and complete data', Special Report No 20/2019.

Another important way to facilitate swift implementation of recommendations is the provision of the **necessary financial support**. Under the proposed Multiannual Financial Framework<sup>55</sup> and Border Management and Visa Instrument<sup>56</sup>, the link between the evaluation mechanism and defining national priorities has been maintained. The reinforced *thematic component* proposed opens more flexibility in responding to deficiencies that need to be urgently addressed, in particular priority actions for immediate implementation. To further ease re-programming and scoping of possible additional funding needs, countries could systematically detail in the action plans their assessment of the financial impact of the remedial measures.

Increasing peer-to-peer pressure also requires that the identified deficiencies be sufficiently communicated at the political level. The current Regulation provides for **yearly reports** by the Commission, which offer an opportunity to present the state of the Schengen area, disseminate best practices and increase political awareness by allowing discussion on common challenges at the political level.

Effective and timely follow-up to remedy the deficiencies identified by the mechanism is key to the credibility of the whole evaluation and monitoring process and for it to reach its full potential. This is crucial, in the end, to ensure the well-functioning of the Schengen area. Practice has demonstrated that in some cases some Member States have persistently failed to implement the Council recommendations and address the deficiencies identified. In such cases, more systematic Commission monitoring, including through **infringement procedures**, will be considered.

**Potential operational measures to improve the Schengen Evaluation and Monitoring Mechanism:**

- Simplify internal workflows and set benchmarks to reduce the length;
- Develop new trainings in the area of visa policy and reinforce the existing ones to promote and enhance participation;
- Update checklists to focus on the main elements that may affect the Schengen area as a whole;
- Make more strategic use of unannounced evaluations and thematic evaluations;
- Improve synergies and cooperation with EU agencies and national quality control mechanisms;
- Further simplify reports and refocus recommendations;
- Elaborate and up-date catalogues with best practices; and
- Adopt the annual report to facilitate political discussion.

Finally, it has also become apparent that for the mechanism to work fully effectively in the future it is essential to complement the operational improvements with legislative changes needed to bring clarity and reinforce existing rules and procedures. These elements will be part of the reflection process that will start with the first Schengen Forum on 30 November and result in the proposal for the revision of the mechanism that the Commission intends to present next year.

## 5. CONCLUSION

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<sup>55</sup> COM(2018) 472.

<sup>56</sup> COM(2018) 473.

The development of the Schengen area is one of the key means that has enhanced citizens' freedoms and through which the internal market prospers and develops. Since 2015, the Schengen area has been under pressure. Several terrorist attacks, the arrival of elevated numbers of irregular migrants at the EU's external borders as a consequence of the 2015 refugee crisis and more recently the outbreak of the COVID-19 pandemic have led to the reintroduction of internal border controls some of which are still in place today. Since 2016, the Commission has consistently maintained that internal border controls would not solve present challenges, while entailing important economic, political and social costs for the EU and the individual Member States.

The Schengen *acquis* includes a significant body of measures that compensate for the absence of internal border controls and effectively ensure a high degree of security. External border management, compensatory measures (such as efficient cooperation of law enforcement authorities, effective visa and return policies and a comprehensive Schengen Information System), as well as a robust monitoring mechanism are the three essential pillars of Schengen. The stability of this complex architecture depends on the strength of each individual pillar and on their coherence and cohesion.

The challenges faced since 2015 have put the spotlight on Member States' fragile trust in the Schengen system and confirmed the importance of strong coordination within the Schengen area and the need for strengthening its governance to address these challenges effectively.

An efficient Schengen Evaluation and Monitoring Mechanism is instrumental to regaining trust and to guaranteeing a better and coherent implementation of the Schengen *acquis* and consequently a well-functioning Schengen area. 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.'*<sup>57</sup> The European Parliament also 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'*.<sup>58</sup>

The mechanism has already brought about tangible improvements. Based on the findings of the evaluations carried out in practice over the last five years by Commission and Member States' experts, it can be concluded that serious deficiencies have been promptly addressed. Member States are, overall, implementing the Schengen *acquis* adequately. However, there are still shortcomings in Member States and many divergent practices which ultimately could have an impact on the integrity and functioning of the Schengen area. Ensuring a higher level of harmonisation in the coming years will be key for the Schengen area to function properly.

The Schengen Evaluation and Monitoring Mechanism will continue to have an important role in that regard. Nevertheless, the experience gathered in the first Multiannual Evaluation Programme has revealed a number of shortcomings that prevent the mechanism from working as effectively as it could and should. In light of the importance of the Schengen Evaluation and Monitoring Mechanism in the architecture of Schengen governance, it is essential to take action to address the shortcomings identified above and enhance the effectiveness of the

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<sup>57</sup> Council doc. 13244/2019, paragraph 1.7.

<sup>58</sup> Report on the annual report on the functioning of the Schengen area (2017/2256(INI)), paragraph 7.

mechanism. Some shortcomings could be already addressed at operational level, some others will require also legislative changes.

A more regular and structured political dialogue among the actors involved in the functioning of the Schengen area is also essential. The Commission has established the Schengen Forum to stimulate more concrete cooperation on the ways to make a stronger and more resilient Schengen area through increased political dialogue on the responses needed to current challenges. Increasing the dissemination of information on evaluation results and the implementation of recommendations would facilitate this political discussion.

As stressed in the Joint Statement by the EU Home Affairs Ministers of 13 November 2020, a well-functioning Schengen area requires a modern and efficient management of its external borders as well as solid compensatory measures to ensure a high level of security. It is therefore crucial that political discussion covers comprehensively all elements of the complex architecture supporting the proper functioning of the Schengen area. Deficiencies should not be looked at in isolation, but in their interplay with other areas covered by the Schengen Evaluation and Monitoring Mechanism and their potential to damage the Schengen area as a whole.

This report presents possible operational measures for addressing the shortcomings identified and underlines the need for equally assessing the legislative changes that are needed to make the evaluation mechanism fully fit for purpose. The discussions in the Schengen Forum on 30 November 2020 should feed into a Schengen Strategy that the Commission intends to adopt in 2021. The Strategy will also revisit the Schengen Evaluation Mechanism to ensure that it can achieve its full potential as a tool to evaluate the functioning of Schengen and to ensure that improvements are effectively implemented.