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#### COVER NOTE

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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

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Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL "A strategy towards a fully functioning and resilient Schengen area"

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Delegations will find attached document COM(2021) 277 final.

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Brussels, 2.6.2021  
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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND THE COUNCIL**

**"A strategy towards a fully functioning and resilient Schengen area"**

*'We must restore the four freedoms – in full and as fast as possible. The linchpin of this is a fully functioning Schengen area of free movement. We will work with Parliament and Member States to bring this high up our political agenda and we will propose a new strategy for the future of Schengen.'*  
President von der Leyen, State of the Union Address 2020

## **1. INTRODUCTION: SCHENGEN - AN INDISPENSABLE ACHIEVEMENT OF THE EU**

The area without controls at internal borders ('the Schengen area') is the largest free travel area in the world. It allows more than 420 million people to move freely, and goods and services to flow unhindered. By removing border controls between Member States, the Schengen area has become part of our European way of life. It is a symbol of Europe's interconnectedness and of the ties between the peoples of Europe<sup>1</sup>. The Schengen area also contributes to the efficient functioning of the Single Market, and thus to the growth of the Union's economy.

The Schengen area is one of the biggest achievements of European integration and its fundamental role in the European Union's construction is undisputed<sup>2</sup>. However, in recent years, it has been repeatedly put to the test by a series of crises and challenges. The unprecedented 2015 refugee crisis exposed shortcomings in the Union's management of the external borders and migration, leading to internal border controls being reintroduced in a number of Member States. Internal border controls were also reintroduced in response to the persistent terrorist threat following a spate of attacks on European soil. All this has undermined the climate of trust needed to sustain an area free from internal border controls.

The past year has put in stark relief the fact that, while it is undeniable that the Schengen foundations are part of Europe's DNA, Schengen cannot be taken for granted. The COVID-19 pandemic presents an unprecedented challenge and has placed a major strain on the Schengen area, leading many more Member States to reintroduce internal border controls, at times jeopardising the proper functioning of the Single Market. The impact of these controls has been particularly felt by the lack of coordination, especially in cross-border areas. As internal border controls were re-established, trucks faced long hours waiting in queues to cross from one Member State to another, seriously disrupting supply chains within the EU. As such, the COVID-19 pandemic brought to the forefront the economic implications of Schengen and its intrinsic relationship with the Single Market. More than this, border closures represent a real concern for citizens especially in border regions, having had a real impact on their daily lives.

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<sup>1</sup> Special Eurobarometer 474: The Schengen Area, available at [https://data.europa.eu/euodp/nl/data/dataset/S2218\\_89\\_3\\_474\\_ENG](https://data.europa.eu/euodp/nl/data/dataset/S2218_89_3_474_ENG).

<sup>2</sup> The need for the Union to offer its citizens an area of freedom, security and justice without internal borders is enshrined in the Treaties - Articles 3 of the Treaty on European Union and Article 67 of the Treaty on the Functioning of the European Union.

***Essential facts relevant to the Schengen area:***

- The Schengen area includes 26 European countries<sup>3</sup>, with a population of around 420 million people<sup>4</sup>.
- The Schengen area is encircled by 42,673 km of sea borders and 7,721 km of land borders<sup>5</sup>.
- There are almost 1.7 million people who reside in one Schengen country while working in another, and every day some 3.5 million people cross internal Schengen-area borders<sup>6</sup>.
- There are some 24 million business trips within the Schengen area each year<sup>7</sup>.
- People residing in the Schengen area make over 1.25 billion journeys within the Schengen area every year<sup>8</sup>.
- Around 150 million residents of the Schengen area live in border regions, amounting to 30% of the EU population<sup>9</sup>.
- Border regions cover 40% of the EU territory<sup>10</sup>.

Over time, strong efforts have been made to mitigate the impact of internal border controls, with the Commission issuing two recommendations<sup>11</sup>, notably encouraging the use of increased police checks in border regions as an alternative to controls related to migration and security. A further series of guidelines and recommendations were developed more recently in relation to the COVID-19 pandemic<sup>12</sup>, including the creation of a ‘Green Lanes’ system to ensure border crossings remained open to all freight vehicles, thereby keeping people and businesses supplied with goods and services. The Commission recommended a system of coordination at Union level, and measures to be proportionate in order to avoid fragmentation in approaches to travel within the Union and from outside.

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<sup>3</sup> Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland. Bulgaria, Croatia, Cyprus, and Romania are legally obliged to join the area in the future; Ireland maintains an opt-out, but participates in the parts of the Schengen acquis related to Schengen Information System, police and judicial cooperation.

<sup>4</sup> The Schengen area, <https://op.europa.eu/en/publication-detail/-/publication/8b556648-c5fe-427a-b9fb-8e7de617e125/language-en>.

<sup>5</sup> Ibidem.

<sup>6</sup> [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621815/EPRS\\_BRI\(2018\)621815\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621815/EPRS_BRI(2018)621815_EN.pdf)

<sup>7</sup> Ibidem.

<sup>8</sup> The Schengen area, <https://op.europa.eu/en/publication-detail/-/publication/8b556648-c5fe-427a-b9fb-8e7de617e125/language-en>.

<sup>9</sup> Commission Communication to the Council and the European Parliament, Boosting growth and cohesion in EU border regions, 20 September 2017, COM(2017) 534 final.

<sup>10</sup> Ibidem.

<sup>11</sup> Commission Recommendation (EU) 2017/820 of 12 May 2017 on proportionate use of police checks and police cooperation in the Schengen area, (OJ L 122, 13.5.2017, p. 79), and Commission Recommendation (EU) 2017/1804 of 3 October 2017 on the implementation of the provisions of the Schengen Borders Code on a temporary reintroduction of border control at internal borders in the Schengen area, (OJ L 259, 7.10.2017, p. 25).

<sup>12</sup> E.g. Guidelines for border management measures to protect health and ensure availability of goods and essential services, COM(2020)1753, Guidelines on the free movement of workers, C(2020)2051, and on emergency assistance in cross-border healthcare, C(2020)2153, Council Recommendation (EU) 2020/1475, and its amendment (EU) 2021/119, for a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic.

Unilateral and uncoordinated measures risk depriving citizens of their rights, and risk holding back Europe's recovery. According to a Commission analysis of the direct economic cost of non-Schengen<sup>13</sup>, delays at the borders would have a substantial impact on cross-border service provision, transport, tourism, public administrations and cross-border workers and travellers. For those categories, the direct costs are estimated to range between EUR 5 and 18 billion per year. The medium-term indirect costs of non-Schengen could be considerably higher than those direct estimates, as the impacts on intra-EU trade, investment and mobility would be unprecedented.

Restoring the Schengen area without controls at internal borders is of paramount importance for the European Union as a whole. This was recognised by the European Parliament<sup>14</sup> and by the European Council<sup>15</sup> calling for the restoration of the normal functioning of the Schengen area.

The Strategy reflects the intense consultations the Commission carried out with the European Parliament, the Member States and other key stakeholders over the last year and draws on the conclusions of the two Schengen Forums held in November 2020 and May 2021. Its successful implementation will rely on increased political commitment and dialogue to forge an ever closer cooperation.

#### *The need for a comprehensive strategy sustaining the area of freedom, security and justice*

The Schengen area is one of the clearest manifestations of the ever closer Union among Member States and citizens. It began as an intergovernmental project among just five Member States back in 1985. Despite challenges, it has continued growing and deepening, expanding to 26 countries. It constitutes an integral part of the EU's legal framework with which all new Members must align themselves. Schengen's future must be marked by a continued commitment to preserve and fortify this essential freedom and driver of economic growth. That immediate future must also be marked by a continued expansion to those EU Member States that are not yet part of the area without controls at internal borders.

Maintaining the benefits of Schengen requires common action at Union level, and constant efforts from all Member States. Above all, it requires commitment and mutual trust. Over the

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<sup>13</sup> I.e. the situation where the border controls have been reintroduced for a longer period of time. Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen - A Roadmap, 4 March 2016, COM(2016)120.

<sup>14</sup> See e.g. European Parliament Resolution of 19 January 2021 on the Situation in the Schengen area following the Covid-19 outbreak, [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0175\\_EN.html#def\\_1\\_1](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0175_EN.html#def_1_1); European Parliament resolution of 20 January 2021 on monitoring the application of Union law 2017, 2018 and 2019, [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0011\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0011_EN.html), and Report on monitoring the application of Union law 2017, 2018 and 2019, 17 December 2020, (2019/2132(INI)), [https://www.europarl.europa.eu/doceo/document/A-9-2020-0270\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2020-0270_EN.html).

<sup>15</sup> <https://www.consilium.europa.eu/media/21787/0216-euco-conclusions.pdf>, <https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/>, <https://www.consilium.europa.eu/media/39922/20-21-euco-final-conclusions-en.pdf>.

last 36 years, a comprehensive Schengen legal framework and common operational tools have been gradually developed to better protect the area without controls at internal borders. Overall, the foundations of Schengen are solid and Member States by and large comply with the essential provisions that underpin the good functioning of Schengen from the effective management of external borders, the common visa and return policies, to police cooperation and the Schengen Information System, as well as data protection requirements<sup>16</sup>. Europe is one of the most travelled to regions in the world, issuing over 17 million Schengen visas in 2019 alone. The fact that these systems can quietly cope with this shows just what a well-oiled machine the Union is operating.

But no system can bear the test of time without renewal. There is a need to constantly shore up and strengthen the Schengen legal framework in order to cope with the realities and challenges of today and tomorrow. The Schengen area is underpinned by three key pillars: (1) an **effective external border management**, (2) **measures compensating for the absence of controls at internal borders** (common visa policy, return policy, relevant police cooperation instruments and various IT systems, and the related data protection requirements), and (3) a **robust governance**, including an efficient evaluation and monitoring mechanism, and increased preparedness. **Actions are needed in all three areas to protect the integrity of the Schengen area and further improve its functioning.** In addition, sustaining the area of freedom, security and justice requires effective measures in the field of security, police and judicial cooperation as well as in the area of migration. Without being formally part of the Schengen *acquis*, they too are fundamental for promoting mutual trust and safeguarding the effective exercise of fundamental freedoms within the Union.

This Strategy takes stock of the progress made on these fundamental pillars and other key measures sustaining the area of freedom, security and justice, and proposes further actions to make the area without internal border controls fully functioning and more resilient.

## **2. A MODERN AND EFFECTIVE MANAGEMENT OF THE UNION'S EXTERNAL BORDERS**

At its heart, Schengen is the absence of internal border controls. But since anyone crossing the external borders – by air, land or sea – can travel freely to and within the other Member States, Schengen's existence presupposes a high degree of trust in a robust management of the external borders. The setting up of the Schengen area therefore required the development of a comprehensive set of Union rules that ensure a common and highly efficient management of our common external borders as a shared responsibility of all Member States and Schengen Associated Countries, and of the EU, to compensate for the elimination of controls at the internal borders.

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<sup>16</sup> 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), COM(2020) 779 final.

This went hand in hand with close cooperation with our partner countries in the Western Balkans and the Union's wider neighbourhood, thus improving the level of information sharing and police and judicial cooperation with Member States as well as the Justice and Home Affairs agencies. Going forward, we need to continue strengthening trust in the robustness of the Union's external border management.

This requires, an integrated and strategic approach to external border management, systematic border surveillance, modern and interconnected IT systems, increasingly digitalised procedures and continued cooperation with third countries.

#### *An integrated approach to external border management*

Efficient and coordinated external border management is key to ensuring trust between Member States in order to reach the objective of open, but well controlled and secure borders. New common capabilities, IT systems and modern technologies can only deploy their full effect if the overall approach to external border management is strategic and if all aspects of border management, security and migration are fully integrated and implemented. The Union and the Member States need to jointly work towards achieving a fully effective European integrated border management in practice, bringing together all relevant actors at both European and national levels. The aim is to provide both the strategic framework and the operational components needed to better connect our policies and therefore eliminate loopholes between border protection, security, return, migration, while always ensuring the protection of fundamental rights<sup>17</sup>.

For that purpose, the Commission will shortly launch discussions with the European Parliament and the Council on the **Multiannual Strategic Policy for European integrated border management**<sup>18</sup>. This process will be further implemented through the technical and operational strategy adopted by the Frontex Management Board and the national strategies of the Member States.

#### *Systematic surveillance of the external borders*

To fully attain the imperatives of Schengen, and against the background of recent challenges and the possibilities brought about by new technological developments, in recent years the European Union has taken landmark decisions to reinforce the external borders with the objective of turning the Union's external border management into one of the most performant systems in the world. The reinforced mandate of Frontex in 2019 and the establishment of the **European Border and Coast Guard standing corps** are a true example of European

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<sup>17</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, p.1) (the "European Border and Coast Guard Regulation").

<sup>18</sup> Regulation (EU) 2019/1896, Article 8. The effective implementation of European integrated border management by the European Border and Coast Guard should be ensured by means of a multiannual strategic policy cycle.



integration in the area of external border management. For the first time ever, the Union has its own uniformed service to support the European management of common external borders and an effective EU return policy. This new standing corps, to be composed of 10 000 Frontex and national officers, will be able, at any time, to support Member States facing challenges at the common external borders and to make returns more effective.

The Commission is committed to ensuring the full and timely implementation of the new mandate of Frontex and welcomes the fact that the first teams of the standing corps are ready for deployment, with the full corps expected to be completed by the end of 2027. The Commission will work with Frontex to continue monitoring and together with Member States, ensure the implementation of the internally agreed roadmap for implementing the 2019 European Border and Coast Guard Regulation .

Since 2017<sup>19</sup>, the Schengen Borders Code requires all persons, regardless of their nationality, to undergo **systematic checks against relevant databases at entry and exit of the Schengen area** in order to verify that those persons do not represent a threat to public order and internal security. However, several challenges have been identified in the implementation of these new rules that need to be addressed. Whilst the new rules provide for derogations to systematic checks under certain conditions, an inconsistent implementation of these exceptions can undermine the effectiveness of the instrument. To meet the highest security standards, it is crucial that Member States systematically check all travellers against relevant databases at the external borders and apply any derogations in a uniform way. In addition, the consultation of Interpol notices and diffusions relevant for the fight against terrorism and serious crimes at the first line border checks must be improved. To support these twin objectives, by the end of 2021 the Commission, in collaboration with Member States, will prepare guidance to ensure that the rules are applied in a uniform manner and that any derogations are used in a limited manner.

The Commission has, furthermore, put on the table additional measures to reinforce external border management, notably by presenting, in September 2020, a proposal for a **pre-screening** of third-country nationals entering irregularly at the external border<sup>20</sup>. Once adopted, the rules will be applicable to all third-country nationals who cross the external border without authorisation. It will act as a first step in the overall asylum and return systems, and will accelerate the process of determining the status of a person and the type of procedure that should apply to their circumstances. The pre-entry screening will further strengthen the management of the Union's external borders in full respect of all fundamental rights obligations. The Commission therefore calls upon the European Parliament and Council to advance with the negotiations to swiftly adopt the Regulation.

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<sup>19</sup> Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 (the Schengen Border Code) as regards the reinforcement of checks against relevant databases at external borders (OJ L 74, 18.3.2017, p. 1).

<sup>20</sup> Proposal for a Regulation introducing a screening of third country nationals at the external borders, 23 September 2020, COM(2020) 612.



Part and parcel of state-of-the-art border management is the **full respect of fundamental rights**, including the rights of the child, by all actors involved and at all borders. Given the enhanced role of Frontex, the new Regulation also significantly reinforces the Agency's fundamental rights framework. A new **Frontex Fundamental Rights Officer** has been recently appointed and his work will be supported by 40 fundamental rights monitors on the ground, in full independence. Fundamental rights will also form a key component of the Multiannual Strategic Policy Cycle for the European integrated border management. In addition, Frontex, in cooperation with and building upon the work of the Fundamental Rights Agency, is expected to provide **further guidance on the conduct of border checks and border surveillance**, especially at sea.

Based on the Commission's proposal for a pre-screening of third-country nationals entering irregularly at the external border, all Member States will be expected to establish a national monitoring mechanism to strengthen the protection of fundamental rights and to ensure effective investigations of any violations. The Fundamental Rights Agency will prepare **guidelines for this monitoring mechanism** and will support Member States upon their request in the development of their national monitoring mechanisms.

*Implementing one of the world's most technologically advanced border management system*

Tremendous progress has been made in terms of the Union's information systems, needed for internal security, migration and health purposes both at the external borders and within the Schengen area. From what initially was only one information system – the Schengen Information System – the Union has created a common European IT architecture with new interconnected systems for border management, migration and law enforcement purposes. 2021 is a crucial year for the development of these new information systems and the overall IT architecture.

Testing of the Entry / Exit System (EES)<sup>21</sup> began in March this year and will continue until the end of 2021, with a view to making the Entry / Exit System fully operational as of the second quarter of 2022. The European Travel Information and Authorisation System (ETIAS)<sup>22</sup> will become operational at the end of 2022. In addition, the implementation of the revised Schengen Information System (SIS)<sup>23</sup> and the revised Visa Information System should be completed by the end of 2021 and the end of 2023, respectively. Full interoperability of the

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<sup>21</sup> The Entry/Exit System (EES) will be an automated IT system for registering travellers from third-countries, both short-stay visa holders and visa exempt travellers, each time they cross an EU external border. See [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/ees\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/ees_en).

<sup>22</sup> ETIAS will be a largely automated IT system created to identify security, irregular migration or high epidemic risks posed by visa-exempt visitors travelling to the Schengen States, whilst at the same time facilitate crossing borders for the vast majority of travellers who do not pose such risks. See [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/etias\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders/etias_en).

<sup>23</sup> The Schengen Information System (SIS) is the most widely used and largest information sharing system for security and border management in Europe. See [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system_en).

new IT architecture should be put in place by the end of 2023. Interoperability will connect all European systems for borders, migration, security and justice, and will ensure that all these systems ‘talk’ to each other, that no check gets missed because of disconnected information, and that national authorities have the complete, reliable and accurate information needed, in full respect of data protection requirements. It will also be an essential enabler to *bona fide* travel.

Full implementation of all the new and updated IT systems as well as their interoperability within the foreseen timeframes is far from being an easy task. Member States and the Commission and eu-Lisa have shown full commitment to achieving this objective. Moreover, the Commission, together with eu-LISA, have provided – and will continue to provide – operational support to Member States. Progress is being closely monitored with a scoreboard tracking system and tools are in place to ensure a quick reaction to any possible emerging challenges. The IT systems can only enter into operation if all Member States and Schengen Associated Countries are ready at the same time. Any delay in only one country would prevent the systems from being launched anywhere in the Schengen area. Furthermore, given the dependencies between the systems, a delay in implementing one system could push the overall timeline for the whole IT-system architecture off track. We have a common responsibility to deliver on this ambitious project on time in order to have fully functioning tools ready to reply to any sudden and constantly evolving challenges.

The IT architecture also needs to be completed as soon as possible, in particular by adding the revised Eurodac system. As part of the New Pact on Migration and Asylum, the Commission proposed in September 2020 an upgraded **Eurodac**<sup>24</sup>, which will, amongst others, help track unauthorised movements, tackle irregular migration and improve return. The Commission calls upon the European Parliament and Council to advance with the negotiations to adopt this proposal as soon as possible.

#### *Towards a digitalisation of procedures at the external border*

Once global travel recovers from the COVID-19 pandemic, strong increases in passenger flows can be expected. This will give a new impetus to the digitalisation process that already started before the pandemic, and will require innovative ways to facilitate and accelerate border controls at international ports of entry. Digital documentation is both more efficient and secure. By the end of 2021, the Commission will **propose a Regulation on the digitalisation of the visa procedure**, with a view to making the Schengen visa procedure fully digitalised. As a next step, in 2023, following an in-depth assessment and the necessary consultations, the Commission intends to present a **proposal for a Regulation on digitalisation of travel documents and facilitation of travel**.

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<sup>24</sup> Amended proposal for a Regulation of the European Parliament of the European Parliament and of the Council on the establishment of ‘Eurodac’ for the comparison of biometric data, COM(2020)614 final.

## *Cooperation with third countries*

Protecting the Union's external border also requires close cooperation and partnership with neighbouring and partner countries. Such cooperation is an inherent part of EU Integrated Border Management. Strong, comprehensive, mutually beneficial and tailor-made partnerships in line with the New Pact on Migration and Asylum contribute to better managed migration and strengthened border management cooperation. As underlined also in the Joint Communication on a Renewed partnership with the Southern Neighbourhood<sup>25</sup>, strong mutual commitment to, in particular, **strengthen third countries' border management capacity and step up efforts against the criminal networks behind migrant smuggling and trafficking in human beings** is key. This priority will be further reinforced by the upcoming EU Action Plan against migrant smuggling (2021-2025).

The New Pact stipulates that the EU should use all the tools at its disposal to bring operational support to the new partnerships, including through a much deeper involvement of EU agencies. The European Union also has a responsibility to support and promote its high standards of border protection, including on fundamental rights, to third countries. EU agencies should also work more intensively with partner countries. The reinforced mandate of Frontex allows for specific operational and technical support and cooperation with third countries. Cooperation with the Western Balkans, including through EU status agreements with Western Balkan partners<sup>26</sup>, will enable Frontex border guards to work together with national border guards on the territory of a partner country. Frontex can also now provide practical support to develop partners' border management capacity and to cooperate with partners to optimise voluntary return. Furthermore, the Commission will support the exchange of information between Member States and neighbouring partner countries by presenting a **recommendation to Member States for the model provisions on the exchange of information** on situational awareness to be used in bilateral and multilateral agreements with third countries. It will also draw up a new **model status agreement** to provide a basis for Frontex to carry out joint operations in third countries, **and a model working arrangement** to harmonise the framework for the practical cooperation with these countries. This will help ensuring a unified way of cooperating with the EU's external partners.

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<sup>25</sup> Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Renewed partnership with the Southern Neighbourhood: A new Agenda for the Mediterranean", 9 February 2021, JOIN(2021) 2 final.

<sup>26</sup> The status agreement with Albania entered into force on 1 May 2019 and as of 22 May 2019, Frontex teams have been deployed. The agreement with Montenegro, which was signed in October 2019, entered into force on 1 July 2020. A Joint Operation started on 15 July 2020. The agreement with Serbia was signed in November 2019 and ratified in an extraordinary session of the Parliament on 25 February 2021. The European Parliament and the Council both approved the agreement on 11 and 25 May 2020, respectively. Operations are expected to start on 16 June 2021. A Status Agreement which would allow for the deployment of European border guard teams at the Croatia-Bosnia Herzegovina border was initialled two years ago, in January 2019, and is pending signature by Bosnia and Herzegovina. The agreement with North Macedonia is also pending signature.

### **Key actions to improve external border management**

*The Commission will present:*

- a Policy Document (Q4 2021) followed by a Communication establishing the Multiannual Strategic Policy for European integrated border management (2022);
- a proposal for a Regulation on the digitalisation of the visa procedure (Q4 2021);
- a proposal for a Regulation on digitalisation of travel documents and facilitation of travel (2023);
- a report on the implementation of the systematic checks against databases (Q4 2021);
- guidance on the systematic checks against relevant databases at entry and exit of the Schengen area (Q4 2021);
- an EU Action Plan against migrant smuggling (2021-2025) (Q3 2021);
- a recommendation to Member States for the model provisions on the exchange of information on situational awareness to be used in bilateral and multilateral agreements with third countries (Q3 2021);
- a model status agreement and model working arrangements with third countries (Q3 2021).

*The European Border and Coast Guard Agency should:*

- adopt the technical and operational strategy for integrated border management;
- continue to take all necessary steps to establish the European Border and Coast Guard standing corps by 2027;
- develop further guidance on the conduct of border checks and border surveillance.

*Member States should:*

- continue to take all necessary steps to meet the legal deadlines for the implementation of the new IT architecture, in close cooperation with the Commission and eu-LISA.

*The European Parliament and Council are called upon to advance with the negotiations to swiftly adopt:*

- the proposal for a Regulation on pre-entry screening;
- the proposal for a Eurodac Regulation.

### **3. MEASURES FOR REINFORCING SCHENGEN INTERNALLY AND COMPLEMENTARY MEASURES FOR AN AREA OF FREEDOM, SECURITY AND JUSTICE**

The Schengen area is underpinned by a robust legal framework of measures supporting operational cooperation and information exchange between police and judicial authorities in criminal matters as well as measures in the fields of visa and return policy which have been developed to compensate for the absence of controls at internal borders. These are collectively known as the Schengen *acquis* which together serve to sustain the area of freedom, security and justice<sup>27</sup> by promoting mutual trust between Member States and by safeguarding the effective exercise of the fundamental freedoms within the European Union.

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<sup>27</sup> Article 67 of the Treaty on the Functioning of the European Union.

In addition, in an area without internal border controls, Member States must cooperate very closely not only on Schengen-related measures, but also on other, complementary measures in the fields of security, police and judicial cooperation as well as migration and asylum. Furthermore, the Union Customs Code contributes to security in the Schengen area by its security risk assessment and control regime at the external border underpinning the free movement of goods.

*Preventing and fighting security threats, including serious and organised crime and terrorism*

In recent years, many concrete measures have been put in place at Union level to continue combatting serious and organised crime and terrorism effectively, reinforcing security within the Schengen area while ensuring and preserving the possibility to move freely without being subjected to border checks. The Commission works with the European Parliament, the Council, Member States as well as other stakeholders to fully implement the actions provided for in the main strategic security initiatives presented in July 2020, as part of the **EU Security Union Strategy (2020-2025)**<sup>28</sup>. That Strategy focuses on priority areas to further foster security for all those living in Europe, in particular by protecting Europeans from terrorism and organised crime. These include:

- the **Counter Terrorism Agenda for the EU**<sup>29</sup> which points at different risks for our internal security, and proposes actions to remedy them, in particular, in view of the threat posed by returning Foreign Terrorist Fighters;
- the **EU Strategy to tackle organised crime**<sup>30</sup> which sets out a number of measures to boost law enforcement and judicial cooperation, and to tackle organised crime structures, and high priority crimes or rising crimes including smuggling of drugs, firearms or environmental crime or counterfeiting, and
- the **EU Strategy on Combating Trafficking in Human Beings**<sup>31</sup> which focuses on preventing such a crime, bringing traffickers to justice and protecting and empowering victims.

All measures contained in these strategies form an important building block towards an area of freedom, security and justice. They are key to improving security within the Schengen area. An effective implementation is crucial to prevent and fight security threats and consequently strengthen the trust between Member States. Also, when implementing and applying those measures it is crucial that Member States fully respect fundamental rights, including the rights of the child and the relevant data protection requirements.

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<sup>28</sup> Communication from the Commission on the EU Security Union Strategy, COM(2020) 605 final, 24 July 2020, [https://ec.europa.eu/home-affairs/what-we-do/policies/internal-security\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/internal-security_en).

<sup>29</sup> COM(2020) 795 final.

<sup>30</sup> COM (2021) 170 final.

<sup>31</sup> COM (2021) 171 final.

An effective implementation of the key priorities of the EU Security Union Strategy also relies on continued close cooperation with the Western Balkans and the Union's wider neighbourhood.

### *Stepping up police and judicial cooperation*

In an area without internal border controls, police officers in one Member State should have access to the same information available to their colleagues in another Member State. They should cooperate effectively and by default across Europe. Therefore, an important component of the measures that underpin security in an interdependent area without internal border controls is **police cooperation** which, still varies greatly among the Member States as well as an international level. As a result, criminals and groups of criminals continue to operate across Member States unabated, taking advantage of the different national jurisdictions<sup>32</sup>.

To be effective in fighting serious and organised crime as a Union, we need to move away from law enforcement cooperation based largely on soft-law instruments towards binding systematic partnerships. Improved police cooperation can also expand the set of alternatives to internal border controls available to Member States. To this end, towards the end of this year, the Commission will present a legislative proposal for an **EU Police Cooperation Code**. The forthcoming Code will provide a coherent EU legal framework to ensure that law enforcement authorities have equivalent access to information held by other Member States when they need it to fight crime and terrorism.

To enhance **information exchange**, the EU Police Cooperation Code will formalise and clarify the procedures for information-sharing among Member States, in particular for investigation purposes, including the role of the 'Single Point of Contact' for such exchanges, and making full use of Europol's information exchange channel<sup>33</sup>. The Code will be complemented by a proposal to reinforce the automated exchange of important data categories under the **Prüm** Council Decisions<sup>34</sup>. The new legal framework will make exchanges of DNA and fingerprints data as well as vehicle registration among Member States more efficient and faster, allowing national authorities to find out if data is available in other Member States, and get swift access to it. The Commission is also assessing the need to add new data categories to this exchange, such as photos, driving licences, police records and ballistics.

When it comes to **operational cooperation across the EU**, the EU Police Cooperation Code will address the need for common standards to allow police officers to cooperate effectively

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<sup>32</sup> See Europol's EU Serious and Organised Crime Threat Assessment (12 April 2021): "*Criminal activities in border regions take advantage of the natural delineations of individual law enforcement jurisdictions which create options to evade law enforcement and provide proximity to multiple markets.*" According to Europol, more than 70% of organised crime groups are present in more than three Member States.

<sup>33</sup> Europol's "Secure Information Exchange Network Application".

<sup>34</sup> Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA.



with their colleagues in neighbouring countries. Building on good practices in bilateral or multilateral cooperation among Member States, police officers should be able to carry out joint operations and joint patrols in border areas. As criminals and terrorists operate across Member States, police authorities should be able to monitor and arrest them in hot pursuits across national territories as necessary. Respecting the role of Member States in the field of internal security and the necessary flexibility to cooperate regionally, the EU Police Cooperation Code will aim to clarify and align the rules of engagement in cross-border law enforcement operations. Stepping up operational police cooperation in the Union will require strong political engagement by all relevant actors.

In December 2020, the Commission also presented a proposal to **strengthen the mandate of Europol**<sup>35</sup>, for example by enabling the agency to support national investigations with the analysis of big data. The Commission urges the European Parliament and the Council to advance with negotiations to swiftly adopt the new Regulation.

It is also essential to continue developing recently adopted tools in the hands of law enforcement authorities. An increased use of Advance Passenger Information (API) in combination with Passenger Name Records (PNR) has the potential to significantly enhance security at a relatively small expense and without interfering with travel flows. Under the PNR Regulation, Member States are collecting passenger names for all flights, including intra-EU flights. By contrast, under the API Directive<sup>36</sup>, API data is only collected systematically for flights entering the Union from third countries. The Commission therefore is preparing a legislative proposal to expand the use of **advance passenger information (API) to cover also intra-Schengen flights**. This change would extend the toolbox of compensatory measures available to the Member States allowing law enforcement authorities to enable a risk-based data-driven approach within the Schengen area.

In addition to reinforced police cooperation, the trust between Member States relies also on close judicial cooperation. An important tool to increase the speed and ease of surrender within the EU is the European Arrest Warrant (EAW), a key instrument of judicial cooperation in criminal matters. The full implementation of the key actions outlined in the Council Conclusions on the EAW of December 2020<sup>37</sup> as well as the European Parliament's report on the EAW of January 2021<sup>38</sup> is essential for enhancing the operation of the EAW. The Commission will **update the EAW Handbook** and will provide guidance to practitioners on how to deal with potentially abusive search and extradition requests from third countries. It is working with legal practitioners through a newly constituted coordination group to improve the speed in the information exchange on the EAW. Finally, the Commission is closely monitoring the correct implementation of the Framework Decision on EAW, using infringement procedures as appropriate.

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<sup>35</sup> COM(2019) 796 final of 9.12.2020.

<sup>36</sup> Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24).

<sup>37</sup> <https://data.consilium.europa.eu/doc/document/ST-13214-2020-INIT/en/pdf>

<sup>38</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0006\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0006_EN.html)



In addition, areas of judicial cooperation focusing on the coordination of cross-border prosecutions, where the Union has now developed a series of legislative tools, such as the European Investigation Order, and set up a Union agency to facilitate such coordination, namely Eurojust, are also relevant. It is essential that Eurojust develops further its capacity to assist national authorities in cross-border investigations and prosecutions by using modern IT technology and secure communications, including via E-Codex and establishing hit/no-hit connections with other JHA agencies. Similarly, Joint Investigation Teams (JITs) should also benefit from digital tools by processing information via a secure IT collaboration platform. The Commission is working towards ensuring a more general digitalisation of judicial cooperation instruments to further facilitate this evolution<sup>39</sup>.

*Need for future-proof systems: making the best use of existing and future technologies*

**The use of technology in support of cross-border police cooperation** and law enforcement has been evolving fast in the last years, offering new possibilities to prevent, detect and fight cross-border and potential threats across the countries. Furthermore, modern technologies are in particular less costly and could prove effective in achieving similar objectives to the temporary physical border checks. In addition to police checks that Member States may carry out in the border areas (in the absence of internal border controls), they can also deploy such technologies for instance at airports or train stations as areas of increased risk.

Moreover, a further development, deployment and use of artificial intelligence is essential for law enforcement to keep up with the amount and complexity of data in today's investigations and the use of modern technologies by criminals. One of the objectives of the Commission's proposal for a Regulation on Artificial Intelligence<sup>40</sup> is to foster the development of safe and lawful Artificial Intelligence that respects fundamental rights. Artificial Intelligence requires access to high quality datasets. The timely creation of European data spaces, will help design, train and evaluate Artificial Intelligence tools for law enforcement purposes.

In recent years, there has been significant investment in research and innovation for security and travel facilitation at EU and Member States levels<sup>41</sup> and a number of Member States are

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<sup>39</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Digitalisation of justice in the European Union: A toolbox of opportunities, COM(2020)710 final, 2 December 2020.

<sup>40</sup> Commission Proposal of 21 April 2021 for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts, COM(2021)206 final. This proposal classifies a number of uses of Artificial Intelligence for migration and law enforcement as high risk.

<sup>41</sup> The Commission supports this research work through the Work Programme of Horizon Europe in the area civil security for society: From 2007 to 2020, the EU invested nearly EUR 3 billion in security research, with around 700 projects launched during that time period, covering a wide range of security topics, including border management and travel facilitation.

implementing successful systems in that respect<sup>42</sup>. The Commission will continue supporting Member States in the take up and use of new technologies. At the same time, it is key to continue investing in research for opportunities that may be offered by new upcoming technologies. The Commission will promote both technical and political discussions on these matters to explore the full potential of modern technologies while guaranteeing the full respect of fundamental rights and to ensure the exchange of best practices and knowledge among Member States exchange.

### *A common migration and asylum policy*

The very exceptional circumstances of the 2015 refugee crisis put the area without internal border controls under strain, unveiling important shortcomings in the Union's migration management system, in particular with respect to solidarity and responsibility. All the solutions proposed in the **New Pact on Migration and Asylum** will contribute to effective migration management, closer cooperation and responsibility-sharing among Member States, thereby reinforcing the Schengen area. The New Pact aims at closing the gaps between external border controls, asylum and return procedures in the Member States by setting out a **seamless process at the border, applicable to all third-country nationals crossing borders without authorisation**. In combination with the pre-entry screening proposal, the Pact increases the links between the asylum and return procedures at the external borders. The new border procedures as well as other measures included in the Pact should contribute to strengthening the management of the external border and help prevent and reduce absconding and unauthorised movements within the Schengen area.

At the same time, the Pact proposes a **permanent solidarity mechanism** to support the Member States that are confronted with the biggest challenges in terms of irregular arrivals at the external borders. Solidarity would be mandatory and tailor-made to what is needed on the ground. Possibilities for solidarity would cover relocation, complemented by 'return sponsorship' schemes, under which a Member State commits to support returns; moreover, under specific circumstances, solidarity can include other contributions, such as contributions to capacity building for asylum, reception capacity, operational support or engagement with relevant non-EU countries of origin or transit. A common migration and asylum system as a whole and the assurance that there is a strong system in place to deal with irregular arrivals will reinforce mutual trust and as a result support the Schengen area.

#### **Key actions to reinforce the Schengen area internally**

*The Commission will:*

- present a legislative proposal for an EU Police Cooperation Code (Q4 2021);
- present a proposal for a Regulation on the obligation to communicate advance passenger data (API) (2022);

<sup>42</sup> One such system is for instance the Dutch flagship measure, the @MIGO-BORAS system. This system allows for electronic license plate recognition, verification of relevant databases and dispatching patrols of the Royal Marechaussee to carry out spot checks.

- initiate specific consultations to explore the use of technologies as alternative to border controls (Q3 2021);
- update the Handbook on the European Arrest Warrant (Q4 2021).

*Member States should:*

- fully implement the existing security initiatives, making full use of the already available law enforcement tools.

*The European Parliament and Council are called upon to advance with the negotiations to swiftly adopt:*

- the proposal to strengthen the mandate of Europol;
- the proposals covered by the New Pact on Migration and Asylum.

#### **4. INCREASED PREPAREDNESS AND ENHANCED GOVERNANCE TO FOSTER TRUST**

The Schengen area is supported by a significant body of measures that compensate for the absence of controls at internal borders but these measures are only as good as their implementation. For this, we need a strong governance system equipped to deal with future Schengen-wide challenges, as well as increased political dialogue, monitoring and enforcement.

*Political dialogue for consensus and cooperation*

The Commission established the Schengen Forum to promote a regular and structured political dialogue among the actors involved in ensuring the proper functioning of the Schengen area. Two such events have already taken place on 30 November 2020 and 17 May 2021, with the participation of Members of the European Parliament and Ministers for Home Affairs. The Forum has proven to be a useful platform to provide political steer to the main elements included in this Strategy, and for building trust.

Based on this experience, the **Commission will continue to organise regular Schengen Forums** to discuss the state of Schengen at political level and foster continued reflection and cooperation on the responses needed to the current and future challenges. The next Forum is scheduled to take place before the end of 2021.

It is important that political discussion comprehensively covers all elements of the complex architecture supporting the proper functioning of Schengen. To this end, the Commission will relaunch the adoption of the ‘**State of Schengen Report**’ to serve as a basis for discussions at the annual Forum. The report will summarise the situation as regards the absence of internal border controls, the results of Schengen evaluations, and the state of implementation of recommendations. The Commission will integrate into these reports a ‘State of Schengen Scoreboard’ to assess in an interconnected manner the implementation of the Schengen *acquis* in the different policy fields and better support Member States in addressing any challenges.

## *Preparedness: modernising and adapting our systems*

Reintroduced internal border controls have been an issue for several years, well before the start of the COVID-19 pandemic. Several Member States have had continuous internal border controls in place since 2015. This has highlighted the need to have more coordination at European level with regard to these internal border controls, in order to ensure their proportionality. In response, the Commission presented an amendment to the Schengen Borders Code in 2017<sup>43</sup>, which, despite agreement by stakeholders on the need to address the issue, did not receive sufficient support for negotiations to be successfully pursued by the co-legislators.

The experience of the COVID-19 pandemic further exposed the need for a stable framework for coordination and decision-making at the external borders and within the Schengen area in crisis situations. The capacity to address any future pandemic or similar threats affecting several or all Member States at the same time in a fully coordinated manner will be a mark of Schengen's resilience. Indeed, the action of one Member State at the common external border of the Union or inside the Schengen area impacts all others.

The European Commission reacted swiftly within the limits of its powers, by rapidly opening up 'green corridors' for the transit of essential goods and adopting two sets of guidelines on the free movement of workers<sup>44</sup> and emergency assistance in cross-border healthcare<sup>45</sup>, as well as a number of other guidelines and recommendations relating to the management of the external and internal borders as the crisis unfolded<sup>46</sup>. In addition, based on a Commission proposal, Council Recommendation (EU) 2020/1475<sup>47</sup>, and its amendment (EU) 2021/119<sup>48</sup>, took a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, while Council Recommendation (EU) 2020/912 addressed restrictions of non-essential travel to the European Union<sup>49</sup>.

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<sup>43</sup> COM(2017)571 final.

<sup>44</sup> Communication from the Commission Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak, C(2020)2051.

<sup>45</sup> Communication from the Commission Guidelines on EU Emergency Assistance on Cross-Border Cooperation in Healthcare related to the COVID-19 crisis, C(2020)2153.

<sup>46</sup> E.g. Guidelines for border management measures to protect health and ensure availability of goods and essential services (COM(2020)1753 final), Guidance on health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships (C(2020)3100 final), and Communication: COVID-19: Temporary restriction on non-essential travel to the EU, COM(2020)115.

<sup>47</sup> Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (OJ L 337, 14.10.2020, p. 3). On 1 February 2021, the Council adopted, upon proposal from the Commission, amendments to Recommendation (EU) 2020/1475 in view of a very high level of community transmission across the EU, possibly linked to the increased transmissibility of new SARS-CoV-2 variants of concern. On 31 May 2021, the Commission made a proposal amending this Recommendation, in view of the improving epidemiological situation, as well as the upcoming rollout of the EU Digital COVID Certificate.

<sup>48</sup> Council Recommendation (EU) 2021/119 of 1 February 2021 amending Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (OJ L 36I, 2.2.2021, p. 1).

<sup>49</sup> Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ L 208, 1.7.2020, p. 1).

Building on the lessons learnt from these experiences, the Commission intends to put forward **a new proposal for an amendment of the Schengen Borders Code** by the end of this year. The new proposal will need to address the lessons learned from the COVID-19 crisis and build on discussions related to the 2017 proposal, in particular as regards the preservation of Member States' possibility to reintroduce internal border controls while reasserting the principle that this should only be as a measure of last resort, to be used in case of threats.

To deal with any future Schengen-wide challenges, a revised Schengen Borders Code would address situations where a serious threat, including a threat to public health, such as that created by the COVID-19 pandemic, would arise. In such instances, it is important to ensure coordination and close cooperation at Union level with the necessary safeguards so that reintroducing border checks at internal borders remains a measure of last resort. In this way, the Commission and the Member States would be able to have an overview of the circumstances giving rise to the need for reintroduced border controls. The revised Code would also address the need for coordination of measures restricting travel into the EU, drawing notably from the experiences in response to the serious threat to public health posed by the pandemic where there have been divergences in the implementation of Council Recommendation (EU) 2020/912 by Member States, and allowing for a flexible framework to respond to crises.

The COVID-19 crisis has underlined how fragile the full functioning of the Single Market can be. The Commission will in June present a Communication on lessons learned from the COVID-19 crisis to reflect on how to be better prepared, more resilient and better able to respond to public health crises in the future. The current legal framework for the Single Market is insufficiently adapted to crisis situations. In the Communication on Updating the 2020 New Industrial Strategy<sup>50</sup>, the Commission announced a proposal for a Single Market Emergency Instrument. It will provide a structural solution to ensure the free movement of persons, goods and services in case of future crises. The instrument should guarantee more information sharing, coordination and solidarity when Member States adopt crisis-related measures.

Amongst the wide range of guidelines and recommendations adopted for the COVID-19 pandemic, the Commission adopted in particular the **'Green Lanes' system**, in response to the freight traffic halted at internal borders in March 2020<sup>51</sup> and upgraded based on the

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<sup>50</sup> Communication from the Commission on Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery, COM(2021)350 final, [https://ec.europa.eu/info/sites/default/files/communication-industrial-strategy-update-2020\\_en.pdf](https://ec.europa.eu/info/sites/default/files/communication-industrial-strategy-update-2020_en.pdf).

<sup>51</sup> Communication from the Commission on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services 2020/C 96 I/01, C(2020)1897 (OJ C 96I , 24.3.2020, p. 1).

experienced gained over time in October 2020<sup>52</sup>. The aim was to ensure that EU-wide supply chains continued to operate in all circumstances. In line with the Green Lanes principles, Member States were requested to designate all the relevant internal border-crossing points on the trans-European transport network (TEN-T) as ‘green lane’ border crossings, open to all freight vehicles irrespective of the goods they carry. Crossing the border, including any checks and health screening, should not take more than 15 minutes and restrictions such as mandatory quarantine or testing of transport workers should be waived, without prejudice to the need for national authorities to take proportionate and specifically adapted measures to minimise the risk of contagion. To be better prepared for future crises and for the case that border control at internal borders should again become unavoidable, despite the measures being put in place, the Commission will codify the pertinent **mitigating measures** from the guidelines and recommendations developed in relation to COVID-19 **in the Practical Handbook for Border Guards**, which should become a first point of reference for border guards in a crisis situation. It would also ensure the free movement of professionals and provide safeguards for cross-border posting of workers at the time of crisis (including transport and health workers).

In addition, the **Green Lanes system should now be consolidated** in a framework which can be activated in response to any new crisis. The Commission intends to put forward a Contingency plan to this effect by the end of 2021, in alignment with the broader initiative on a Single Market Emergency Instrument. As regards the transport and mobility aspects, this initiative will draw lessons from the current pandemic and address the needs of the European freight and passenger transport in the event of a pandemic. It will focus on ensuring free movement of transport workers and freight transport and providing clarity to the passenger transport. It will aim at better preparing the EU transport system for pandemic-like events and preserving the integrity of the Single Market.

The Commission Recommendation on an **EU Migration Preparedness and Crisis Blueprint**<sup>53</sup> adopted as part of the New Pact of Migration and Asylum will also help ensure preparedness for and response to difficult migratory situations that could affect the Union. The Blueprint ensures a constant monitoring of the migratory situation at the EU external borders and in relevant third countries as well as timely information sharing among all the relevant actors. The work of the Blueprint Network now requires full implementation with the active participation of all actors, and in particular Member States and relevant agencies.

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<sup>52</sup> Communication from the Commission to the European Parliament, the European Council and the Council upgrading the transport Green Lanes to keep the economy going during the COVID-19 pandemic resurgence, COM(2020)685 final.

<sup>53</sup> Commission Recommendation on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint), 23 September 2020, C(2020)6469 final.



### *Strengthened monitoring and enforcement*

A well-functioning Schengen area depends on mutual trust among Member States and ultimately on a correct and efficient implementation of the Schengen legal framework. This is key as deficiencies and lack of implementation in one Member State can affect all Member States and subsequently put the Schengen area at risk.

The Schengen Evaluation and Monitoring Mechanism ('Mechanism'), as a peer-to-peer instrument, supports the building of mutual trust among Member States. It is also essential for the effective functioning of Schengen by identifying and remedying problems and improving Member State implementation of the legal framework.

A stronger and resilient Schengen needs a Mechanism fully fit for purpose. The Mechanism's 5-year review has revealed shortcomings that prevent it from working as effectively as it should. Based on extensive consultations with all relevant stakeholders, which led to a broad common understanding, the Commission is putting forward a **proposal to revise the Schengen Evaluation and Monitoring Mechanism**. The aim of the proposal is to make the Mechanism more efficient, strategic and better equipped to tackle new realities and challenges. It should also increase the Mechanism's capacity to facilitate political dialogue on the state of Schengen, focusing on those areas that have the potential to jeopardise the functioning of the Schengen area as a whole.

The proposal significantly accelerates the evaluation process to identify and address shortcomings in time. It establishes an expedited procedure when evaluations detect deficiencies that could put the functioning of the Schengen area at risk. Under this new procedure, the evaluated Member State will have to immediately start implementing actions to remedy deficiencies even before the evaluation report is adopted, informing the Commission and Member States without delay of the measures taken. It also focuses the decision-making power of the Council on the most politically relevant cases and increases the European Parliament's and the Council's scrutiny role in the process.

The proposal creates a flexible framework to fully integrate in the evaluations recent legislative developments, such as the new IT architecture and the Entry-Exit System, as well as the enhanced role of relevant EU agencies. It also reinforces risk-based evaluations, allowing for a better overview of Member State performance and of the functioning of the Schengen area as a whole. It brings much needed flexibility to react when new challenges arise, while simplifying existing procedural obligations and eliminating red tape. It clarifies existing tools, creates new ones, and expands the evaluation cycle from five to seven years, all to ensure a more closely, tailored and strategic monitoring of Member States.

The current mechanism will continue evaluating how Member States are implementing and applying data protection requirements. In addition, in order to address concerns on the limited capacity of the current Mechanism to detect specific types of fundamental rights violations, the proposal increases the role of the Fundamental Rights Agency and its systematic



involvement in evaluations as well as the role of third parties including ombudspersons, and authorities monitoring the respect of fundamental rights. To render unannounced visits more effective, the proposal provides for the removal of the systematic 24-hour notice for such visits.

In recent years, other quality control and monitoring mechanisms have been established at EU and national levels that can complement the Schengen Evaluation and Monitoring Mechanism. The proposal provides for **increased synergies with those instruments, in particular the vulnerability assessment process carried out by Frontex**. The aim is to maximise the use of information gathered through the vulnerability assessment and avoid, to the extent possible, duplication of efforts and conflicting recommendations. Relevant examples, in other policy fields where increased synergies will be possible are the European Multidisciplinary Platform Against Criminal Threats ('EMPACT') or the oversight conducted by the Commission, with the support of eu-LISA, as regards the implementation of relevant IT systems. Results of national quality control mechanisms (encouraged under the European Border and Coast Guard Regulation) and of the independent monitoring mechanism developed under the proposal introducing a pre-screening of third-country nationals at the external borders, would also be taken into account in evaluations.

The Mechanism relies on Member State readiness to implement recommendations. However, if one Member State fails to implement the relevant legislation correctly and is not following up on recommendations made, this has an effect on the entire Schengen area. The Commission will, where necessary and appropriate, make **a more systematic use of the synergies between the Schengen Evaluation and Monitoring Mechanism and infringement procedures**. To this end, it will follow a structured approach, applying more flexible and transparent criteria to decide on the circumstances that may trigger an infringement procedure in line with the Commission's overall policy on the enforcement and implementation of EU law<sup>54</sup>. Situations in which infringements could be pursued include important 'non-compliant' findings that could have a substantial and immediate impact on the proper functioning of Schengen, when a Member State does not systematically follow recommendations to remedy 'non-compliant' deficiencies, or when there are 'persistent deficiencies' because the Mechanism has not succeeded in ensuring Member State compliance by the end of the cycle.

In addition, the Commission will launch a close political and technical dialogue with Member States having long-lasting controls at internal borders, with a view to understanding the situation, and explore with those Member States options for specific cooperation measures between neighbouring Member States or reinforced cross-border police cooperation. Where these consultations confirm that Member States disproportionately prolong controls at internal borders, without any intention to change course of action, the Commission is prepared to make use of the legal means at its disposal. Finally, the Commission will continue to assess

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<sup>54</sup> Communication from the Commission - EU law: Better results through better application, C(2016)8600 (OJ C 18, 19.1.2017, p. 10).

the COVID-related introduction of internal border controls with a view to ensuring that they are lifted as soon as the epidemiological situation permits.

### *Completing the Schengen area*

The Commission considers that completing Schengen requires taking the necessary steps to follow up on the legitimate expectation and the legal obligation of those EU Member States that are not yet fully part of the area without controls at internal borders to join. Bulgaria and Romania have been positively evaluated within the framework of the Schengen evaluation process already in 2010/2011. Concerning Croatia, on 22 October 2019 the Commission adopted a Communication<sup>55</sup> which stated that Croatia had taken the measures needed to ensure that the necessary conditions for the application of the Schengen *acquis* are met which was reconfirmed following a targeted revisit to Croatia's external borders.

The Commission considers that it is now high time to follow up on these positive evaluations and therefore calls upon the Council to take the necessary steps for **Bulgaria, Romania and Croatia to become part of the area without controls at the internal borders of Member States**. These Member States are effectively implementing most of the Schengen *acquis*, but without the full benefits that comes with being part of the Schengen area, and this needs to be rectified.

Not only is their accession to the Schengen area a lawful expectation and legal obligation of these countries, the Commission is also convinced that all three countries joining Schengen in full will increase security in the EU as a whole, as these countries will then be able to fully exploit the tools available, such as those linked to the Visa Information System and to interoperability. Their accession is finally crucial for a reinforced mutual trust in the Schengen area.

The same will apply for **Cyprus** once it has successfully completed the currently ongoing Schengen evaluation process. From a technical point of view, the national system of Cyprus is ready to integrate into the Schengen Information System, therefore the Council could take a decision soon to grant Cyprus partial access to the Schengen Information System, as an important first step.

**Ireland**, while not part of the Schengen area, as a result of its opt-in on the part of the Schengen *acquis* related to the Schengen Information System, has had access to the system since March 2021. This is a further building block for an increased security all throughout the EU.

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<sup>55</sup> Communication from the Commission to the European Parliament and the Council on the verification of the full application of the Schengen *acquis* by Croatia, 22 October 2019, COM(2019)497 final.

## **Key actions to reinforce the preparedness and governance of Schengen**

*The Commission is:*

- presenting a proposal for a Regulation to revise the Schengen Evaluation and Monitoring Mechanism.

*The Commission will:*

- organise regular Schengen Forums and present annual ‘State of Schengen Reports’;
- present a Communication on lessons learned from the COVID-19 crisis (Q2 2021);
- launch political and technical dialogues with Member States having long-lasting controls at internal borders (Q3 2021);
- present a proposal for a Regulation amending the Schengen Borders Code (Q4 2021);
- codify the guidelines and recommendations developed in relation to COVID-19 in the Practical Handbook for Border Guards (Q4 2021);
- present a Contingency plan that includes the reactivation of the Green Lanes system in response to any new crisis in case the proper functioning of the free movement of goods in the Single Market is threatened (Q4 2021);
- propose the Single Market Emergency Instrument (2022).

*The Commission, Member States and Agencies should:*

- constantly monitor the migratory situation at the EU external borders and in relevant third countries with the Migration Crisis Blueprint framework.

*The Council is called upon to:*

- take the necessary steps for Bulgaria, Romania and Croatia (as well as Cyprus once it has successfully completed the currently ongoing Schengen evaluation process) to become part of the area without internal border controls.

## **5. CONCLUSION**

36 years ago, five Member States agreed to abolish border controls between them. With the end to internal border controls began a shared responsibility for European internal security, at a time when none of the systems we count on today existed. What did exist was trust and commitment to build an area of freedom, security and justice without internal borders. Trust and commitment are absolutely essential for the area of freedom, security and justice to work. Trust in each Member State to implement the rules to keep the Union a safe place of free movement without border control and commitment from all stakeholders involved to preserve and reinforce the architecture underpinning the Schengen area.

With the measures proposed in this Strategy, the Commission aims to complete the range of tools necessary to ensure the proper functioning of the Schengen area, as an area of freedom, security and justice. This should once again put the ecosystem of rules back into balance and reinforce the mutual trust between Member States so that all its residents, and our economy, can again fully benefit from a Schengen area without internal border controls.

It is also essential to continue working together to find solutions to immediate crisis like the COVID-19 pandemic by implementing the agreed recommendations on travel to the EU as well as the EU Digital COVID certificate without delay and in harmonised manner. It is equally crucial to continue working with our partners in third countries to address the pressure at our external borders and ensure international cooperation, including with the relevant international organisations, in particular WHO and ICAO, to combat the COVID-19 pandemic so that we can go back to normal.

The Commission will bring forward the proposals and initiatives included in this Strategy, and as appropriate, will support Member States financially and operationally to ensure that legislation is properly implemented. At the same time, it calls upon the European Parliament and Council to adopt the proposals still under discussion, such as those submitted under the New Pact on Migration and Asylum, as well as the proposal for a reform of the Schengen Evaluation Mechanism, presented together with this Strategy.

Finally, the Commission calls upon the Member States to swiftly implement all the initiatives that have already been adopted, in particular the new IT architecture and the European Border and Coast Guard Regulation. This should complete the work done in the areas of the external borders and internal security, where all the measures and initiatives already agreed now need to be properly implemented. With the upcoming proposal on the revision of the Schengen Borders Code, the Commission will also address the need for coordination in case of the emergence of threats with a Schengen-wide dimension. A Contingency plan that includes the reactivation of the Green Lanes system in response to any possible new crisis - in case the proper functioning of the free movement of goods in the Single Market is threatened - will equally be proposed. All this should lead to securing trust in a European wide area of freedom, security and justice where our citizens can move freely and safely, and where the recourse to internal border controls will remain truly a measure of last resort.