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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 26 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of Sweden on the application of the Schengen <i>acquis</i> in the field of police cooperation

Delegations will find attached document COM(2023) 26 final.

Encl.: COM(2023) 26 final



EUROPEAN
COMMISSION

Brussels, 9.6.2023
COM(2023) 26 final

2023/0176 (NLE)
SENSITIVE*

Proposal for a

COUNCIL IMPLEMENTING DECISION

setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of Sweden on the application of the Schengen *acquis* in the field of police cooperation

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 7 October 2013, the Council adopted Regulation (EU) No 1053/2013,¹ establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*. In line with Regulation No 1053/2013, the Commission has established a multiannual evaluation programme 2020-2024² and an annual evaluation programme for 2022³ with detailed plans for on-site visits to the Member States to be evaluated, areas to be evaluated and sites to be visited.

The areas to be evaluated cover all aspects of the Schengen *acquis*; in particular management of the external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters, as well as the absence of border control at internal borders. In addition, fundamental rights issues and the functioning of authorities that apply the relevant parts of the Schengen *acquis* are taken into account in all evaluations.

Based on the multiannual and annual programmes, and in accordance with Article 14 of Regulation (EU) No 1053/2013, a team of Member State and Commission experts carried out an evaluation of Sweden application of the Schengen *acquis* in the field of police cooperation between 21. – 25. March 2022. Their evaluation report⁴ sets out their findings and assessments, including best practices and any deficiencies identified during the evaluation.

Alongside the report, the team made recommendations for remedial action aimed at addressing the deficiencies.

A new Council Regulation (EU) 2022/922⁵ was adopted on 9 June 2022. Article 31(3) of this Regulation contains transitional provisions according to which for evaluations carried out before 1 February 2023, the adoption of evaluation reports and recommendations should be carried out in accordance with Regulation (EU) No 1053/2013. The follow-up and monitoring activities of such evaluations, starting with the submission of the actions plans, should be carried out in accordance with Regulation (EU) 2022/922.

Consequently, the recommendations set out in this Council Implementing Decision should still be adopted in accordance with Regulation No 1053/2013, whereas the follow-up and monitoring activities of such evaluations, starting with the submission of the actions plans, should be carried out in accordance with Regulation (EU) 2022/922.

¹ OJ L 295, 6.11.2013, p. 27-37.

² Commission Implementing Decision C(2020) 8045 of 14 December 2020 amending Implementing Decision C(2019) 3692 establishing the multiannual evaluation programme for 2020-2024.

³ Commission Implementing Decision C(2021) 7727 of 4 November 2021 establishing the first section of the annual evaluation programme for 2022 in accordance with Article 6 of Council Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

⁴ C(2023) 260.

⁵ Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) N° 1053/2013, OJ L160 of 15.6.2022, p. 1.

This proposal contains the recommendations which seek to ensure that Sweden applies all Schengen rules related to police cooperation correctly and effectively.

- **Consistency with existing policy provisions in the policy area**

These recommendations serve to implement correctly and effectively the existing provisions in the policy area.

- **Consistency with other Union policies**

These recommendations do not have links with other key Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 15 of Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

- **Subsidiarity (for non-exclusive competence)**

Article 15(2) of Council Regulation (EU) No 1053/2013 specifically requests the Commission to submit a proposal to the Council to adopt recommendations for remedial action aimed at addressing any deficiencies identified in the course of the evaluation. Action at Union level is required to strengthen mutual trust between the Member States and to ensure better coordination at Union level in order to guarantee that all Schengen rules are applied correctly and effectively by the Member States.

- **Proportionality**

Article 15(2) of Council Regulation (EU) No 1053/2013 mirrors the specific powers of the Council in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice. In that light, this proposal for a Council Implementing Decision is proportionate to the objective pursued.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

Member States gave their positive opinion on the evaluation report in the Schengen Committee.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The protection of fundamental rights when applying the Schengen *acquis* was taken into account during the evaluation process.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

n.a.

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setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of Sweden on the application of the Schengen *acquis* in the field of police cooperation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen⁶, and in particular Article 15(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) A Schengen evaluation in the field of police cooperation was carried out in respect of Sweden in March 2022. Following the evaluation, a report containing the findings and assessments, listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2023) 260
- (2) Several best practices were identified during the visit; 1) Sweden developed a methodology to identify and assess areas where organised crime has a high impact on communities, 2) Sweden established a structured framework for multi-agency cooperation in the field of tackling serious and organised crime, 3) The Swedish Police Authority uses efficient bilateral and multilateral contacts with the police forces of the Nordic countries and other regional partners, 4) The Swedish police deploys International Case Officers (ICO's) at regional level, 5) Swedish Liaison officers abroad have direct access to national databases and Europol's Secure Information Exchange Network Application (SIENA), 6) Sweden does not impose territorial or temporal restrictions on hot pursuit into Swedish territory and 7) Sweden developed a "local to local" cooperation concept to address region-specific challenges.
- (3) Recommendations should be made on remedial actions to be taken by Sweden in order to address deficiencies identified as part of evaluation. It is important to remedy each of the deficiencies, but in light of the importance of complying with the Schengen *acquis*, priority should be given to implementing recommendation(s) 1, 2 and 3.

⁶ OJ L 295, 6.11.2013, p. 27.

- (4) On 9 June 2022, the Council adopted a Recommendation on operational law enforcement cooperation.⁷ Even though this Recommendation had not yet been adopted at the time of the evaluation, Sweden is invited to take this into account when implementing the relevant recommendations formulated in this Decision.
- (5) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States.
- (6) Council Regulation (EU) 2022/922⁸ applies as of 1 October 2022. In accordance with Article 31(3) of that Regulation, the follow-up and monitoring activities of evaluation reports and recommendations, starting with the submission of the action plans, should be carried out in accordance with Regulation (EU) 2022/922.
- (7) Within two months of the adoption of this Decision, Sweden should, pursuant to Article 21(1) of Council Regulation (EU) 2022/922, establish an action plan to implement all recommendations and to remedy the deficiencies identified in the evaluation report. Sweden should provide that action plan to the Commission and the Council.

RECOMMENDS:

Sweden should:

Single Point of Contact

1. continue to automatisation of the information processing at the Single Point of Contact including the integration of Europol's Secure Information Exchange Network Application with the Case Management System DAR;

Information management and databases

2. improve the national search application (PMF) on desktop and mobile devices in order to carry out single searches for objects and individuals, whilst also ensuring that checks into the Schengen Information System as well as into Interpol databases are automatic. The mobile application mPMF should also allow for searches on foreign vehicles and searches in Interpol's Stolen and Lost Travel Documents database;
3. grant search access to the Europol Information System and/or QUEST to further investigators on need to know basis, along with corresponding training of end-users;
4. set-up an automated data loader feeding information into Europol's Information System, including information on active investigations cases falling under Europol's mandate ;
5. ensure direct access to Europol's Secure Information Exchange Network Application to all officers whose work on criminal networks would benefit from this access;

⁷ OJ L 158, 13.6.2022, p. 53–64

⁸ Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) N° 1053/2013, OJ L160 of 15.6.2022, p. 1.

6. grant and expand access to Customs' intelligence database to police officers in compliance with national law;
7. increase the number of Automatic Number Plate Recognition (ANPR) cameras capable of cross checking (inter)national police databases given the constant cross-border traffic of criminal gangs in compliance with national law;
8. develop a technical solution in order to provide law enforcement officers with computerised access to registers of establishments providing accommodation for short-term stay of third-country nationals in Sweden in compliance with national law should the need arise, subject to adequate data protection safeguards;

Radio telecommunication

9. ensure, in partnership with Denmark, the use of interoperable cross-border radio telecommunication tools in accordance with Art 44 of the Convention Implementing the Schengen Agreement;

Human resources and training

10. provide more in-depth compulsory continuous training (materials) for all relevant staff on the use of international police databases and cooperation tools (such as access to VIS for law enforcement, Article 45 of the of the Convention for the Implementation of Schengen Agreement, Council Framework Decision 2006/960/JHA) tailored to the different task descriptions;
11. improve the user friendliness and the content of the intranet site for the Swedish Police (Intrapolis), including topics related to International Police Cooperation to continue to disseminate information and to support and promote the tools of International Law Enforcement Cooperation;

Cross-border police cooperation

12. establish a registration system for cross-border operations under Articles 40 and 41 of the Convention for the Implementation of Schengen Agreement that allows for compiling reliable national statistics for those operations.

Done at Brussels,

*For the Council
The President*