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From:	European Commission
To:	Working Party for Schengen Matters / Mixed Committee (EU-Iceland/Norway/Switzerland/Liechtenstein)
No. prev. doc.:	12302/23, 12281/23, 12280/23
Subject:	Schengen evaluation of Spain - Review of the adequacy of the action plans of Spain to remedy the deficiencies identified in the 2022 evaluation on the application of the Schengen <i>acquis</i> in the fields of police cooperation , return and the Schengen Information System

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (03.11.2023)

Delegations will find annexed the review of the adequacy of the action plan of Spain to remedy the deficiencies identified in the 2022 evaluation on the application of the Schengen *acquis* in the fields of police cooperation, return and the Schengen Information System, provided by the Commission in accordance with Article 21(2) of Council Regulation (EU) 2022/922.

The review of the action plan was provided to Spain by Commission letter of 18 September 2023 (Ref. Ares(2023)6291923), as set out in the annex.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION AND HOME AFFAIRS

The Director-General

Brussels,
HOME/B2/2023

*Ambassador Marcos Alonso
Permanent Representative of Spain to the EU*

Subject: Review of the adequacy of the action plans of Spain to remedy the deficiencies identified in the 2022 evaluation on the application of the Schengen *acquis* in the fields of police cooperation, return and the Schengen Information System

Your Excellency,

We thank you for the action plans of Spain to remedy the deficiencies identified in the 2022 evaluation on the application of the Schengen *acquis* in the fields of police cooperation, return and the Schengen Information System, which were submitted to the Commission and the Council on 30 May and 30 July 2023, respectively. Please find attached, pursuant to Article 21(2), first subparagraph of Council Regulation (EU) 2022/922, the review of the adequacy of those action plans.

Please note that in accordance with Article 21(3), first subparagraph of Council Regulation (EU) 2022/922, Spain is to report to the Commission and the Council on the implementation of these action plans every six months from the date of notice of receipt of the attached review of the action plans until the Commission considers the action plans fully implemented.

The Commission services are at the disposal of the Spanish authorities to facilitate the implementation of these action plans.

Yours faithfully,

Monique Pariat

Contact: **DELETED, DELETED, DELETED**

Cc: **DELETED, DELETED**

*Annexes: Review of the adequacy of the action plans of Spain to remedy the deficiencies identified in the 2022 evaluation on the application of the Schengen *acquis* in the fields of police cooperation, return and the Schengen Information System.*

Three action plans submitted by Spain.

Review of the adequacy of the action plans of Spain to remedy the deficiencies identified in the 2022 evaluation on the application of the Schengen *acquis* in the fields of police cooperation, return and the Schengen Information System

(Article 21(2) of Council Regulation (EU) 2022/922)

1. Introduction

Council Regulation (EU) No 1053/2013¹ established an evaluation and monitoring mechanism to verify Member States' application of the Schengen *acquis*.

In accordance with the multiannual² and annual³ evaluation programmes implementing the Regulation, a team consisting of Commission and Member State experts and supported by observers from Europol, Frontex and the Fundamental Rights Agency carried out visits to verify Spain's application of the Schengen *acquis* in the fields of police cooperation (21 – 25 February 2022), return (27 February – 5 March 2022) and the Schengen Information System (13 – 18 March 2022).

Reports listing the findings and assessments identified during the evaluations in the fields of police cooperation, return and the Schengen Information System were, respectively adopted by Commission Implementing Decisions C(2023) 120 final of 17 March 2023, C(2023)150 of 15/03/2023 of 15 March 2023 and C(2022) 5556 of 8 November 2022. Following the evaluation reports and proposals from the Commission, the Council adopted on 28 March and 1 June 2023 Implementing Decisions⁴ setting out recommendations on addressing the deficiencies identified in the respective evaluation reports (Article 15(3) of Council Regulation (EU) 1053/2013).

In the meantime, Council Regulation (EU) No 1053/2013 was replaced by Council Regulation (EU) 2022/922⁵, which started to apply on 1 October 2022. In accordance with Article 21(1) first subparagraph (EU) 2022/922, Spain submitted to the Commission and the Council action plans to remedy the deficiencies on 30 May for police cooperation and on 30 July 2023 for return and the Schengen Information System.

¹ OJ L 295, 6.11.2013, p. 27.

² Commission implementing Decision C(2019) 3692 of 17.5.2019 amended by Commission implementing Decision C(2019) 7278 of 15.10.2019 establishing the multi-annual evaluation programme 2020-2024 in accordance with Article 5 of Council Regulation (EU) No 1053/2013 of 7 October 2013.

³ Commission Implementing Decision C(2021) 7727 of 4.11.2021 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 Council documents: 7930/23 (police cooperation), 9998/23 (return) and 9999/23 (SIS).

⁵ OJ L 160, 15.6.2022, p. 1.

Consequently, after consulting the members of the respective teams that carried out the evaluations and in accordance with Article 21(2) first subparagraph of Regulation (EU) 2022/922, a review of the adequacy of the action plans is provided below.

2. Police cooperation

a. General remarks and adequacy

The Council Implementing Decision contains **19 recommendations** for Spain in the field of police cooperation, aimed at improving its application of the Schengen acquis. In light of the importance of complying with the Schengen acquis, in particular the organisation and functioning of the Single Point of Contact (SPOC), the case management system (CMS), information management and the use of databases, the use of the Visa Information System for law enforcement purposes and cross-border operational police cooperation, priority should be given to implementing recommendations 8, 9, 10, 12, 15 and 17.

The action plan covers all recommendations but provides only succinct information on the actions that Spain has already taken or will take to remedy the observed deficiencies. The Commission services considers that overall, **the action plan presents adequate remedial actions** to address the deficiencies that were identified in a timely manner. Nevertheless, for several recommendations the actions and the deadlines should be additionally clarified, as indicated in the detailed assessment.

b. Detailed review

Recommendation 1 (*development of comprehensive risk and threat assessment strategy*): Text in the action plan does not respond to the recommendation given in the Council Implementing Decision. Reference to political Master Plan cannot be considered as a risk and threat assessment strategy mentioned in the recommendation. Spain is invited to reconsider their action to be in line with the recommendation.

Recommendation 2: (*ensure the exchange of all strategic knowledge and analytical products*): Spain is invited to provide more information on how this recommendation is implemented in practice between its own law enforcement authorities and in the border regions.

Recommendation 3: (*whistle blowers protection*): The Commission services take a positive note on the legislative development made by Spain. Spain is invited to deliver further information on how this new legislation will be operationalised within the Spanish law enforcement authorities and how this legislation strengthens the possibilities of the law enforcement authorities to report witnessed misconducts anonymously.

Recommendation 4: (*establish internal affairs function at the regional level to deal with cases of corruption by police officers*): According to information given by Spain in the action plan, there are no intentions to change current system. Spain is invited to provide more information on how it is monitored that all cases are treated (investigated) in an impartial way at the regional (local) level.

Recommendation 5: (*setting up the process for anonymous reporting concerning law enforcement officers' misconducts*): Spain is invited to provide more detailed information on the current possibilities and process to report law enforcement authorities' possible misconduct or corruption cases anonymously through internet.

Recommendation 6: (*remove the limitations for cross border hot pursuit with France and Portugal*): The Commission services welcome the internal consultation launched by Spain on this action. Spain is invited to continue the implementation of this recommendation and make full use of the Council Recommendation (EU) 2022/915 of June 2022 on operational law enforcement cooperation⁶ when negotiating with Portugal and France. Spain is invited to deliver more detailed information on the results of the internal consultation and inform what are the concrete steps to be taken with those two neighbouring Member States.

Recommendation 7: (*implementing the Council Decision 2003/170/JHA of 27 February 2003 on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States*⁷): According to the action plan, Spain is ready to share liaison officers in third countries whenever this is considered reasonable. Spain is invited to actively seek possibilities to activate the implementation of the Council Decision and make good use of the tools provided by this instrument.

Recommendation 8 (priority) (*Single Point of Contact is not fully integrated*): Main concern related to current situation of SPOC is the weak national ability to monitor and reply to requests from all international police cooperation channels on a 24/7 basis and to ensure sufficient exchange and exploitation of the international information. Taking into account that this prioritised recommendation was made **already in the previous evaluation**, Spain is invited to speed up the development process and provide more detailed information on the timetable and implementation plan. Directive (EU) 2023/977 on the exchange of information between the law enforcement authorities of Member States should be taken fully into account.

Recommendation 9 (priority) (*setting up the electronic case management system for SPOC*): The Commission services take positive note of the first steps taken by Spain. This action is directly linked to the previous action and, taking into account the importance of a single electronic case management system for the functioning of SPOC, Spain is invited to speed up the development process and to provide more detailed information on the implementation of this action.

⁶ OJ L 158, 13.6.2022, p. 53.

⁷ OJ L 67, 12.3.2003, p. 27.

Recommendation 10 (priority) (*development of single search functionality*): Main concern of the recommendation was related to development of a single search functionality for law enforcement authorities. This part of the recommendation is not covered by the action introduced in the Spanish action plan. Spain is invited to prepare missing actions and provide detailed information on the implementation of the recommendation.

Recommendation 11 (*prepare written guidelines*): Spain is invited to provide follow-up information on the development phase of the recommended written guidelines and its operationalisation.

Recommendation 12 (priority) (*extended direct access to SIENA*): The action introduced by Spain does not cover the whole recommendation. Action(s) related to extension of SIENA to the investigative units and to ensuring the capacity to monitor of incoming messages is missing. Spain is invited to prepare missing actions and provide detailed information on the implementing of this action (coverage, timetable). Directive (EU) 2023/977 on the exchange of information between the law enforcement authorities of Member States should be taken fully into account when planning the implementation.

Recommendation 13 (*grant search access into the EIS and Europol's search engine Quest*): The Commission note positively the implementation related to actions on granting access to Quest. However, presented action does not respond to the entire recommendation. To cover the whole recommendation, Spain is invited to provide concrete information related to actions planned to improve the automated data loader and to start feeding the Europol Information System (EIS) with active investigation.

Recommendation 14 (*implementation of the Council Framework Decision 2006/960/JHA*): Spain is invited to provide follow-up information on the implementation of the action.

Recommendation 15 (priority) (*establish the national procedure for lawful access to VIS*): Action described in the action plan does not deliver comprehensive information on the establishment of the lawful national procedure for law enforcement access to VIS. Spain is invited to further develop this action to cover the whole national procedure and provide a concrete timeline for the implementation of this action.

Recommendation 16 (*interoperable cross border radio telecommunication with France and Portugal*): the information provided in the action plan on this point is limited to describing the state of play (obstacles) concerning the interoperability. Therefore, Spain is invited to provide the Commission with detailed information on the measures already taken and that will be taken with respect to this recommendation along with an indicative timeline in the completion of relevant steps. In addition, clarification of the content of the bilateral discussions with those two neighbouring Member States related to the implementation of Article 44 should be indicated.

Recommendation 17 (priority) (*compulsory continuous training for all relevant staff on the use of international police databases and cooperation tools*): The Commission services take note on the action and its current implementation status. Spain is invited to clarify how the developed in-depth compulsory training will be operationalised and delivered to different law enforcement authorities.

Recommendation 18 (*increase language training courses*): Introduced action covers only the actions taken by the police. Spain is invited to deliver more information on how the other law enforcement authorities language training has been planned to be delivered.

Action 19 (*examine all requests for cross border surveillance notwithstanding prior refusal of a request in the same case*): Based on the delivered information, the Commission services consider this action completed but underline the importance of the practical implementation by the responsible officers.

3. Return

a. General remarks and adequacy

The Council Implementing Decision setting out a recommendation to address the deficiencies identified in the 2022 Schengen evaluation of Spain in the field of return listed 16 recommendations. To ensure compliance with the Schengen *acquis* on return, notably with the standards and procedures set by Directive 2008/115/EC⁸, the Council considered that priority should be given to implement recommendations 1, 2, 3, 7, 9 and 14. While the action plan provided by Spain presents an overview of the Council recommendations, the Commission services consider that **it does not provide an adequate basis** to ascertain that Spain will duly and in timely manner rectify the identified deficiencies. The action plan lacks concrete information on several actions, for a number of recommendations no specific remedial action is proposed, and the deadlines related to the implementation of certain priority actions are considered to be excessive.

b. Detailed review

Following a review of the action plans by Commission services, Spain is invited to take note of the specific comments and requests on the following items, and respond to them in the follow-up report to be submitted through the KOEL platform:

⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

Recommendation 1 (*issuance of return decisions*): the Spanish authorities are requested to submit a copy of the instructions provided to the regional units. Furthermore, in order to understand the practical implementation of this recommendation, please provide monthly statistics for 2022 and 2023 on the number of cases that were submitted to the Government Delegations/Sub-Delegations for the issuance of a return decision, the number of return decisions issued, the average time for the issuance of the return decision, the number of cases pending a decision of the Government Delegations/Sub-Delegations and the average time these cases have been pending. Furthermore, please provide statistics on the number of third-country nationals whose applications for asylum or residence permit were rejected in 2022 and 2023 and on the number of cases where these third-country nationals have received a return decision, including the average time it takes for the issuance of such decisions.

Recommendation 2 (*return decisions*): the Commission services consider the proposed remedial action and deadline not to be adequate. Therefore, the Spanish authorities are requested to take swift actions to amend the national law. In order to understand the practical implications of this recommendation, please provide statistics on the number of fines that were issued due to illegal stay in 2022 and 2023.

Recommendation 3 (*effective enforcement of return decisions*), **4** (*return decisions to minors*), **7** (*transposition of Article 3 of the Return Directive*), **9** (*detention*), **15** (*postponement of removal*) and **16** (*forced-return monitoring*): the Commission services consider the proposed remedial actions and deadlines not to be adequate. Therefore, the Spanish authorities are requested to take swift actions to address these recommendations and to provide detailed information on the measures (to be) taken.

Recommendation 5 (*geographical scope of return decisions*) and **6** (*geographical scope of entry bans*): the Spanish authorities are requested to submit a copy of the instructions provided to the regional units as well as anonymised copies of compulsory exit/mandatory departure decisions, expulsion orders and entry bans.

Recommendation 8 (*right to be heard*): the Spanish authorities are requested to submit a copy of the instructions provided to the regional units. Furthermore, in the absence of a common template, the Commission services would like to receive further information on the additional guarantees put in place to ensure that this practice is followed in all cases.

Recommendations 10 and 12 (*detention conditions*): the Spanish authorities are requested to provide information on the measures that have been implemented or are planned to be implemented following the 2022 visit. Furthermore, with regards to the situation in the holding facility at Madrid airport, the Spanish authorities are requested to explain how the effective and adequate privacy of detainees is ensured in practice, **DELETED**.

Recommendation 11 (*information in detention*): the Commission services would like to receive a copy of the updated informative bulletin with the rights and obligations regarding isolation.

Recommendation 13 (*detention of families*): since the deficiencies observed during the evaluation concern the holding facility at Madrid airport, the Spanish authorities are requested to provide further information concerning measures in this centre.

Recommendation 14 (*contact from detention*): the Spanish authorities are requested to provide further information on the available phones in the holding facility at Madrid airport as well as a copy of the instructions allowing detainees to request access to their mobile phone.

4. Schengen Information System

a. General remarks and adequacy

The Council Implementing Decision contains **34 recommendations** for Spain in the field of the Schengen Information System, aimed at improving its application of the Schengen acquis. In light of the importance of complying with the Schengen acquis, priority should be given to implementing recommendations 1, 2, 3, 5, 8, 12, 13, 14, 15, 16, 18, 19, 21, 27, 30 and 33.

The action plan covers all recommendations but provides only succinct information on the actions that Spain has already taken or will take to remedy the observed deficiencies. The Commission services consider that overall, **the action plan presents adequate remedial actions** to address the deficiencies that were identified in a timely manner. Nevertheless, for several recommendations the actions and the deadlines should be additionally clarified, as indicated in the detailed review below.

b. Detailed review

Following a review of the action plan by the Commission services, Spain is invited to take note of the specific comments and requests on the following items and respond to them in the first follow-up report to be submitted through the KOEL platform.

Recommendation 1 (priority) (*adopt a security plan*): the Commission services invite Spain to specify **DELETED**.

Recommendation 3 (priority) (*implement and roll out to end-user authorities searches with fingerprints*): the Commission services invite Spain to provide a detailed explanation of the state of play of the roll-out of SIS-AFIS to end users.

Recommendation 4 (*semi-automatic statistics collection system*): Spain is requested to specify if this recommendation has been fully addressed, and which actions have been taken for this purpose (action 2).

Recommendation 7 (*more automation in the SIRENE workflow and a common workflow with Interpol, Europol and national cases*): Spain is requested to provide information on the case manager development and specify a new timeframe for the implementation.

Recommendation 8 (priority) (*when creating alerts in ARGOS it is possible to create links between alerts*): Spain is requested to **DELETED**.

Recommendation 9 (*train the end-users of Mossos d'Esquadra and Guardia Civil on the linking functionality*): Spain is requested to follow-up on the estimated timeframes and specify how end-users will be trained about the possibility of creating links (action 1). Moreover, the Commission services invite Spain to provide more detailed information on the training and the estimated timeframe (action 2).

Recommendation 10 (*Ertzaintza autonomous police direct access to the national AFIS and direct access to the AFIS of the Ertzaintza*): the Commission services invite Spain to provide a more detailed **DELETED**.

Recommendation 12 (priority) (*implement tools or procedures for attaching fingerprints contained in ADEXTTRA*): the Commission services invite Spain, after the necessary analysis, to specify **DELETED**.

Recommendation 13 (priority) (*ensure that photographs are systematically uploaded at alert creation*): the Commission services invite Spain to detail the awareness process and indicate which measures were taken to ensure the full implementation of this recommendation, including monitoring of available statistics (action 1). Moreover, Spain is invited to specify further the estimated timeframe and steps planned, after the necessary analysis for the implementation of the recommendation (action 2).

Recommendation 14 (priority) (*create alerts on boat engines in ARGOS and SIGO*) and **Recommendation 15 (priority)** (*alert and links creation in NIP*): **DELETED**.

Recommendation 16 (priority) (*connectivity and speed of ARGOS*): in order to consider the action as implemented, Spain is invited to specify the actions already undertaken.

Recommendation 19 (priority) (*fuzzy, any name and multicategory search functionalities*): the Commission services invite Spain to **DELETED**.

Recommendation 23 (*improve the SIRENE, ARGOS, SIGO, NIP and SIP in the display of misused identity*): Spain is invited to provide information on the SIRENE application (action missing); additionally, Spain is requested to send screenshots of the applications mentioned as completed (ARGOS, SIGO), to confirm it is fully implemented (actions 1 and 4).

Recommendation 25 (*display of information in SIP*): Spain is invited to provide more detailed information on **DELETED**.

Recommendation 27 (priority) (*mobile applications' display*): Spain is invited to provide more information on the expected roll-out, the functionalities and the timeframe.

Recommendation 29 (*procedures at ABC gates with a discreet check*): the Commission services invite Spain to clarify whether the mentioned system has been installed, what actions have been taken in this regard and what is the current timeframe.

Recommendation 30 (priority) (*end-to-end hit reporting process*): the Commission services invite Spain to provide more information on the use of this tool and the roll-out (action 1). Moreover, Spain is invited to provide a more detailed timeframe as well as more information on the nature of such tool (action 2).

Recommendation 31 (*Immigration Office's direct access to alerts on refusal of entry and stay in the EU and on issued or blank documents*): the Commission services invite Spain to provide more information in the follow-up, after the necessary analysis.

Recommendation 32 (*process of assessing applications for stay or residence in the EU*): Spain is invited to provide more detailed information on the project.

Recommendation 33 (priority) (*process of following up on deportation orders in order to enter SIS alerts on invalidated documents*): the Commission services invite Spain to specify the actions taken and planned to improve the process.

Recommendation 34 (*training for police forces*): the Commission services take a positive note on the fact that the training activities have been overall increased and invite ES to continue providing a high level of quality training for both SIRENE and end-users. However, Spain is invited to provide a timeframe of the implementation of the training platform (action 2). The Commission services invite Spain to provide some statistics for the training already done (number of people trained and topics) and if there are plans for refreshment courses and annual plans (action 4) and to provide more information on the initiative (action 5).

5. Conclusion

The Commission services conclude that the action plans in the fields of police cooperation, and the Schengen Information System provided by Spain, are considered adequate, but that additional information and specified deadlines are needed on a series of actions listed above to illustrate and/or confirm the implementation of particular actions.

However, with regards to the action plan in the field of return, the Commission services conclude that it is not adequate as it does not include sufficient information and lacks concrete remedial actions.

In accordance with Article 21(3) of Council Regulation (EU) 2022/922, Spain is to report to the Commission and the Council every 6 months from the date of notice of the receipt of this review until the Commission considers the action plans fully implemented. The subsequent steps should take place through KOEL, the newly established IT platform supporting the monitoring process.

At the same time, some of the recommendations of the previous evaluations in the fields of police cooperation, return and the Schengen Information System, have not been implemented in full yet. With regards to **police cooperation**⁹, this concerns recommendations related to the establishment of the Single Point of Contact (SPOC), a case management system for the SPOC and the use of the Visa Information System for law enforcement purposes. Concerning **return**¹⁰, the majority of the open recommendations have been taken over by the new evaluation, except for recommendations 9 and 10 related to entry bans. In the case of the **Schengen Information System**¹¹, the recommendations which were not implemented have been repeated in the new recommendations and qualified as persistent deficiencies. In particular, this concerns recommendations related to security plan, business continuity, access control to SIRENE Bureau, hit reporting procedures, Mossos d'Escuadra applications, access to Immigration Office, SIRENE workflow, statistics, and linking.

These recommendations and actions are to be merged under the current action plan, to avoid reporting twice, and Spain is requested to report on the implementation of these actions in the first follow-up report. Consequently, the Commission services express the intention of the Commission to technically close the action plans related to the 2017 Schengen evaluation of Spain in the field of Police Cooperation and of the Schengen Information System.

In accordance with Article 21(2), second subparagraph of Council Regulation (EU) 2022/922, the Commission will present the review of these action plans to the Council.

⁹ Council document nr: 15814/18.

¹⁰ Council document 12287/18.

¹¹ Council document nr: 13004/18; recommendations n.1 (current n.1), rec. n.2 (current n.2), rec. n.3 (current n.5), rec. n.5 (current n.30), rec. n.10 (current n.21 and 27), rec. n.15 (current n.31), rec. n.17 (current n.7), rec. n.18 (current n.6), rec. n.22 (current n.9).