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NOTE

From:	General Secretariat of the Council
To:	National Parliaments
Subject:	Council Implementing Decision setting out a recommendation on addressing the (serious) deficiencies identified in the 2022 evaluation of **Spain** on the application of the Schengen acquis in the field of **management of the external borders**

In accordance with Article 15(3) of Council Regulation 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 Schengen, the Council hereby transmits to national Parliaments the Council Implementing Decision setting out a recommendation on addressing the (serious) deficiencies identified in the 2022 evaluation of Spain on the application of the Schengen acquis in the field of management of the external borders[1].

[1] Available in all official languages of the European Union on the Council public register, doc. 14970/22

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the (serious) deficiencies identified in the 2022 evaluation of Spain on the application of the Schengen *acquis* in the field of management of the external borders

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to 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[1], and in particular Article 31(3) thereof,

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 Schengen[2], 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 management of the external borders was carried out in respect of Spain between 14 and 20 February 2022. Following the evaluation, a report covering the findings and assessments, listing good practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2022) 4320.

[1] OJ L 160, 15.6.2022, p. 1–27.
[2] OJ L 295, 6.11.2013, p. 27.

(2) Article 31 (3) of 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 foresees that for evaluations carried out before 1 February 2023, the adoption of evaluation reports and recommendations shall be carried out in accordance with Regulation (EU) No 1053/2013 and in particular Article 15 thereof.

(3) The Spanish authorities manage cross-border crime and the migration flow coming from the Western African countries, in particular Senegal and Mauritania through the implementation of a regional concept of border surveillance. The concept includes the deployment of liaison officers both from Spain and these countries, as well as the deployment of Guardia Civil' units in the territorial waters and on land of Senegal and Mauritania and joint patrolling. It is supported by a significant number of vessels of the Maritime Safety and Rescue Society (SASEMAR) and a comprehensive information exchange aiming at preventing the departure of small vessels. Given the high level of cooperation with third countries and its operational efficiency, the regional concept is considered a good practice.

(4) Recommendations should be made on remedial actions to be taken by Spain in order to address deficiencies identified as part of evaluation. In light of the importance of complying with the Schengen acquis and the serious deficiency identified, priority should be given to implementing recommendations related to risk analysis (7), training (14), the functioning of the border check system (16) and quality of border checks (17).

(5) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within two months of its adoption, Spain 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 and provide that action plan to the Commission and the Council.

RECOMMENDS:

that Spain should

Interagency cooperation

1. enhance the inter-agency cooperation between the National Police and Guardia Civil at all levels (national, regional and local) to improve the overall situational awareness and the national governance and coordination structure for operationalising the European integrated border management concept in Spain by ensuring:

   (a) regular and systematic information and intelligence exchange;

   (b) timely exchange of relevant information of the results of debriefing, registration and identification activities (on the local level);

   (c) elaboration and adoption of a cooperation agreement (e.g. memorandum of understanding) and, where relevant, standard operating procedures to support and improve the operationalisation of inter-agency cooperation at all levels in the field of border management;

2. further enhance the cooperation between the Guardia Civil and the Customs Administration by coordinating the planning of the assets for sea border surveillance in Ceuta and Melilla;

3. ensure that direct information of Frontex coordinated actions is available at regional and local level and that the national authorities which coordinate these operations regularly exchange operational and analytical information;

Contingency planning

4. ensure that the current contingency plan for border management covers the entire territory of Spain including the land border, includes a possible request for European support and covers all national authorities involved in border management; regularly test the national contingency plan together with all relevant national stakeholders to ensure a timely response time and comprehensive planning of national capacities;

Quality control mechanisms

5. improve the national quality control mechanism by:

   (a) covering all parts and functions of the national border management system and developing monitoring and follow-up procedures;

   (b) enhancing the participation of Spanish national experts in Schengen evaluations of other Member States, i.e. increasing the number of trained experts for this purpose and designating them, and hosting a Schengen evaluators training;

6. ensure coherent and comprehensive data collection for the vulnerability assessment process covering all national authorities involved in border control in accordance with Article 32(3) of Regulation 2019/1896 and develop a national mechanism for centralised reporting;

Risk analysis

7. develop and implement a national risk analysis methodology based on the Common Integrated Risk Analysis Model in accordance with Article 29 of Regulation (EU) 2019/1896 and establish a national system for training on the Common Integrated Risk Analysis Model to ensure harmonised and coherent risk analysis at all levels; reinforce the risk analysis capacity by ensuring a sufficient number of trained staff of the Guardia Civil and the National Police for risk analysis in accordance with Article 16 of the Schengen Borders Code to regularly produce tailored risk profiles and risk indicators;

8. develop procedures for a regular exchange of risk analysis information and data among all authorities responsible for border control activities, as well as for distributing risk analysis products to the staff performing border checks; develop a strategic risk analysis product for border control at the national level covering all border control authorities;

National and European situational awareness and early warning system - EUROSUR

9. systematically upload the incidents and other relevant information on border checks in the Eurosur system to establish a comprehensive national situational picture for the Spanish external borders in accordance with Articles 24 and 25 of Regulation (EU) 2019/1986 and ensure a timely and permanent exchange of information between all national authorities involved in border control, in particular between the National Police and the Guardia Civil to guarantee a comprehensive implementation of Eurosur in accordance with Article 21 (3) (a, b and d) of Regulation (EU) 2019/1896;

National capabilities

(a) Human and technical resources

10. establish measures to prevent the high staff turnover of trained border guards at the Airport of Barcelona and the border crossing point La Seu d'Urgell;

11. increase the use of detection equipment for clandestine entry at the sea border crossing points and deploy and train a sufficient number of canine teams specialised in persons' detection to ensure the availability of at least one canine team in each port;

12. ensure the availability of an adequate number of functional document examination equipment at all visited border crossing points (first and second line) and provide training to border guards in the use of the equipment;

(b) Education and training

13. provide sufficient English and/or other relevant language training (e.g. French, Arabic) to all border guards to ensure a sufficient quality level of first-line border checks and a constant readiness to efficiently cooperate with the European Border and Coast Guard;

14. establish an annual regular refresher training system for police officers involved in border checks and ensure that all police officers receive the basic induction training before being deployed to perform border checks in accordance with Article 16 (1) of the Schengen Borders Code;

15. deliver sufficient specialised training for border guards, in particular on document examination and ensure that at least one border guard with advanced level document expertise is present during each shift;

Border checks

16. urgently resolve the connectivity and other technical problems affecting the proper functioning of the border check systems in the first line and ensure that all passengers are systematically checked in the Schengen Information System and other relevant databases and the check of the authenticity of the chip data in the travel documents of persons enjoying the right of free movement is carried out in compliance with Article 8(2) and 8(3) of the Schengen Borders Code;

17. improve the quality of border checks and bring these in compliance with Article 8(2) and 8(3) of the Schengen Borders Code, for example by providing the necessary training on the Schengen Borders Code, document examination, English language and risk analysis;

18. ensure that at the airports of Barcelona and Valencia the pilots and other aircraft crewmembers are checked against the relevant databases in accordance with Article 8(2) and 8(3) in conjunction with Annex VII, paragraph 2(2.2) of Schengen Borders Code;

19. urgently increase the number of staff to perform border checks at the airport of Lanzarote in accordance with Article 15 of the Schengen Borders Code and perform systematic border checks on departing passengers in accordance with Article 8 (2) and 8(3) of the Schengen Borders Code; adjust the infrastructure at the airport to ensure a physical separation of the flow of passengers on internal flights from the flow of passengers on other flights at the departure area of the airport of Lanzarote;

20. bring the procedure of checking the United Kingdom nationals in accordance with Article 8 (3) and Article 11 (1) of the Schengen Borders Code;

21. bring the procedure of issuing visas at the border in compliance with Article 35 of the Visa Code and ensure that the standard application form is used in accordance with Annex I of the Visa Code;

22. bring the procedure of checking the pleasure boats in accordance with Articles 8 and Article 19 in conjunction with Annex VI point 3.2.4 and point 3.2.5 of the Schengen Borders Code;

23. bring the procedure of imposing sanction on carriers in accordance with Article 26(2) of the Schengen Convention and Article 4 of the Council Directive 2001/51/EC of 28 June 2001;

24. increase the number of staff supervising the automated border control gates at Madrid and Barcelona airports and adjust the position of the control booths at Barcelona airport of the border guards operating the automated border control gates in order to allow proper profiling of passengers;

25. ensure the proper use and registration of the stamps at Valencia airport and at the border crossing point La Seu d'Urgell in accordance with article 8(7), Annex II (f) of and Annex IV of the Schengen Borders Code;

Border surveillance

26. enhance the maritime situational awareness of the Guardia Civil by integrating in the operational picture of the border surveillance system the area of responsibility of the local coordination centres and Search and Rescue zones, including the positioning of the vessels tasked to perform search and rescue activities, in particular the assets belonging to the Maritime Safety and Rescue Society of Spain;

Fundamental rights

27. close down the Centre for the Temporary Assistance of Foreigners (CATE) in Lanzarote and put into operation the already built new facility to ensure appropriate temporary reception conditions at the CATE in Lanzarote, including sufficient personal space for the detainees and provide for suitable support services and equipment allowing basic leisure activities for the detainees;

Specific sites visited

(a) Barcelona-El Prat Airport

28. ensure a proper channel of communication between first line booths and the second line office, so that the first line border guards can communicate with the second line without leaving the control booth;

(b) Palma de Mallorca Airport

29. adjust the working positions of the border guards carrying out the border checks in the first line to ensure they are able to oversee the passenger queue; ensure that during winter time second line checks are performed in close proximity of the first line control booths in the winter terminal; ensure an appropriate physical separation of passengers flows on entry and exit and Schengen Non-Schengen in accordance with Article 19 in conjunction with Annex VI, point 2.1.1 of the Schengen Borders Code, to avoid circumvention of border checks; ensure that the General Declarations are systematically submitted prior to take off in accordance with the provisions of Article 19 in conjunction with Annex VI 2.3.1 of the Schengen Borders Code;

(c) Las Palmas Airport

30. improve the infrastructure for arriving passengers waiting for border checks and increase the space at the arrival area in front of the first line; ensure that the four control booths are operational and ensure a proper profiling of the passenger flow;

(d) La Seu d'Urgell border crossing point

31. place the fingerprint readers at the first line control booths in such a way that the unauthorised observation of the border guards computer screens is prevented.

Done at Brussels,

For the Council
The President