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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 deficiencies identified in the 2021 evaluation of **Luxembourg** on the application of the Schengen acquis in the field of management of the **external borders, return, the Schengen Information System, police cooperation**

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 deficiencies identified in the 2021 evaluation of Luxembourg on the application of the Schengen acquis in the field of management of the external borders, return, the Schengen Information System, police cooperation[1].

[1] Available in all official languages of the European Union on the Council public register, doc. 14995/22

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2021 evaluation of Luxembourg on the application of the Schengen *acquis* in the field of management of the external borders, return, the Schengen Information System, 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) 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,

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

Whereas:

(1) A Schengen evaluation in the field of management of the external borders, return, Schengen Information System, police cooperation was carried out in respect of Luxembourg between 29 November and 3 December 2021. Following the evaluation, a report covering the findings and assessments, listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2022) 2610.

(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 report identifies a number of points of interest considered to be good practice. They include the binding instruction 'Choice of communication channel' that gives clear guidance to the staff in international police cooperation on which channel (Europol, SIRENE, Interpol) to use for operational requests. Hotel registers are automatically crosschecked against relevant databases for 72 hours. If a hit occurs, the competent law enforcement department is informed thereof. The Police and Customs Cooperation Centre are supported by a fully automated case management system, which detects links between the different information exchanges in the border regions and provides trends and patterns in criminal activities in the border region.

(4) Further points of interest include the on the spot support provided by the SIRENE Bureau to the officers in the field in the context of joint control operations performed by Luxembourg and French police forces close to the border, with a so called 'Mobile SIRENE' unit, and the dedicated support to SIRENE Bureau provided by an *ad hoc* IT department allowing for quick assistance in case of possible IT related issues and in the everyday implementation and usage of the relevant systems. Furthermore, the on-site team welcomed the impressive linguistic skills shown by all officers interviewed during the evaluation in the different locations visited by the experts.

(5) The report also identifies certain deficiencies in respect of which recommendations should be made on remedial actions to be taken. In light of the importance of complying with the Schengen *acquis*, in the field of management of the external borders priority should be given to implementing the recommendations 5, 7 and 8 concerning, respectively, the establishment of national coordination centre, reinforcing human resources, and training. In the field of the Schengen Information System priority should be given to implementing recommendation 19 concerning the display of the information available in SIS to the end-users. Finally, in the field of police cooperation priority should be given to implementing a robust threat assessment; further automating the data processing activities in the Single Point of Contact as well as granting access to the criminal investigations case management system; providing police officers with mobile access to relevant national and international databases; and developing a widely accessible automated data loader into Europol's Information System.

(6) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within two months of its adoption, Luxembourg 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 Luxembourg should:

In the field of management of the external borders

Contingency planning

1. update the contingency plan to deal with sudden large-scale illegal migration, approve the plan formally and verify its capacity to provide temporary reinforcement of border controls. Ensure that all levels, namely, the strategic, tactical and operational levels are able to provide a clear picture of possible threats and measures to be taken. Ensure that cooperation and coordination of the responsibilities are regulated by legislation or/and cooperation agreements;

Quality control mechanism

2. establish a national quality control mechanism by covering all the components of the European integrated border management, including a proper follow-up and monitoring process;

Risk analysis

3. ensure the functioning of risk analysis at all organisational levels of the border police by integrating strategic key information into a risk analysis product and increasing training of border guards on the production and use of tactical risk analysis (risk profiles, risk indicators);

4. produce risk analysis products in accordance with the Common Integrated Risk Analysis Model (CIRAM 2.1), describing threat, vulnerability and impact at strategic, operational and tactical level. Use the risk analysis for command and control functions, planning and resource allocation; establish concrete risk indicators and risk profiles to support the border control activities and a clear reporting system at local, regional and strategic levels;

National Coordination Centre

5. urgently establish the National Coordination Centre in accordance with Article 21 of Regulation (EU) 2019/1896[1];

6. establish the events layer of EUROSUR in compliance with Article 24(1)(a) of Regulation (EU) 2019/1896 and the analysis layer in accordance with Article 24(1)(c) of Regulation (EU) 2019/1896;

Human resources

7. urgently increase the number of staff performing border checks to ensure an efficient, high and uniform level of control at the external borders in accordance with Article 15 of Regulation (EU) 2016/399 (the Schengen Borders Code[2]) and ensure adequate facilities and sufficient trained staff for thorough second line checks;

Training

8. ensure sufficient, specialised and properly trained border guards in order to ensure an efficient, high and uniform level of control by e.g. bringing the border guards basic training in line with the common core curriculum, developing a continuous training program for staff, allocating adequate staff (trainers) to training activities in all the areas foreseen by the Schengen *acquis*;

9. ensure the training of police officers on the use of the document examination equipment in the second line and improve their overall knowledge on the detection of forged documents. Ensure the availability of document experts during operating hours of the airport;

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1 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.

2 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

Border checks

10. ensure that all passengers subject to a thorough second line check are properly informed of the purpose and the procedure for such checks in accordance with Article 8(5) of the Schengen Borders Code;

11. ensure that in respect of aircrafts departing from the airport of a third country, the general declaration is submitted prior to take off in accordance with Article 19 in conjunction with Annex VI, paragraph 2.3.1 of the Schengen Borders Code;

12. ensure that the checks of authenticity of the chip data in the travel documents of persons enjoying the right of free movement are carried out as provided by Article 8(2) last paragraph of the Schengen Borders Code;

13. ensure that the pilots and other aircraft crew members are checked in accordance with Article 8 and Article 20 in conjunction with Annex VII, paragraph 2(2.2) of the Schengen Borders Code;

14. bring the procedure of issuing visas at the border in compliance with Article 35 of the Visa Code and ensure that the application form is updated in accordance with the template set out in Annex I as required by Article 11 of the Visa Code; ensure that the officers involved in issuing visas are properly trained;

In the field of return

15. conduct systematically a case-by-case assessment when determining the appropriate length of period for voluntary departure according to Article 7(1) of the Directive 2008/115/EC;

16. ensure effective return in accordance with Article 8(1) of Directive 2008/115/EC by bringing detention capacity in line with actual needs and making effective use of alternative measures to detention;

17. ensure that all relevant information on all forced return operations is shared with the monitoring authority in order to increase the effectiveness of the forced-return monitoring system in accordance with Article 8(6) of Directive 2008/115/EC;

In the field of the Schengen Information System

18. increase the automation of processes in the SIRENE Bureau by developing a fully integrated workflow system, namely linked to the creation of alerts, also in order to reduce possible risk of data quality issues;

19. further develop the national application SIGMA in order to display all the information available in SIS to the end-users;

20. further develop the national application SIGMA in order to be more user-friendly;

21. develop hit forms for the structured collection of information in order to help officers on the field to send the necessary information to the SIRENE office;

22. implement the SIS application in order to display in a clear way the information regarding 'misused identity' and the links between SIS alerts;

23. further develop the existing e-learning modules for police officers on the dedicated intranet site;

In the field of police cooperation

Risk assessment strategy, risk analysis and similar analytical products

24. implement a robust threat assessment strategy as the basis for priority setting and the participation in international projects;

Single Point of Contact

25. further automate the data processing activities in and the interoperability between the law enforcement case management systems and databases to reduce manual processing activities;

26. provide the Single Point of Contact with access to the case management system of criminal investigations (*Journal des affaires*) so they can provide a first answer to international requests;

Information management and databases

27. develop a technical solution in order to provide police officers with mobile access to relevant national and international databases, while ensuring security of such access;

28. develop a widely accessible automated data loader into Europol's Information System;

Cross-border operational cooperation

29. ensure, in partnership with the neighbouring countries, the interoperability of cross-border radio telecommunication tools in accordance with Article 44 of the Convention Implementing the Schengen Agreement;

Human resources and training

30. provide more in-depth compulsory continuous training for all relevant staff on the use of international police databases and cooperation tools;

31. raise awareness about the code of conduct and the reporting mechanisms for unethical behaviour;

Done at Brussels,

For the Council
The President