Council of the European Union

Brussels, 15 December 2023
(OR. en)

16896/23

Interinstitutional File: 2023/0389(NLE)

PARLNAT 252

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of **Portugal** 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 deficiencies identified in the 2022 evaluation of Portugal on the application of the Schengen *acquis* in the field of the management of the external borders[1].

[1] Available in all official languages of the European Union on the Council public register, doc. 16761/23.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2022 evaluation of Portugal 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) 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 Portugal in November 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) 4300].

2 **OJ L 295, 6.11.2013, p. 27.**

(2) Recommendations should be made on remedial actions to be taken by Portugal in order to address deficiencies identified as part of the evaluation. In light of the importance of complying with the Schengen *acquis*, in particular the protection of the external borders and the carrying out of checks of persons on entry, priority should be given to implementing recommendations related to the national governance of the European integrated border management (1), interagency cooperation (4), risk analysis (8), national situational picture (13), human resources (15), specialised and refresher training (16 and 17), and document fraud detection (18 and 19).

(3) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States.

(4) Council Regulation (EU) 2022/922[3] 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.

(5) Within two months of the adoption of this Decision, Portugal 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. Portugal should provide that action plan to the Commission and the Council.

3 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) No 1053/2013, OJ L160 of 15.6.2022, p. 1.

RECOMMENDS:

Portugal should

1. **European Integrated Border Management:** urgently establish a strategic coordination for border control (border checks and border surveillance) and allocate a sufficient number of trained staff to ensure effective governance of the European Integrated Border Management and coherent national overview and coordination of horizontal border control functions, such as quality control mechanism, vulnerability assessment, uniform application of procedures, training, risk analysis and information management;

2. **National quality control mechanism and vulnerability assessment:** ensure effective implementation of the national quality control mechanism covering all national authorities involved in border management; ensure that the border control procedures will be systematically evaluated under the national quality control mechanism after the cessation and transfer of competences of the Immigration and Border Service;

3. **National quality control mechanism and vulnerability assessment:** establish the necessary national capacity to provide all requested data related to vulnerability assessment, in particular related to aerial border surveillance and planning of border control capacities;

4. **Interagency cooperation:** ensure effective interagency cooperation between all national authorities involved in border management, in particular by implementing the provisions of the Cooperation Protocol for EUROSUR and the Protocol on cooperation between the Immigration and Border Service and the Tax and Customs Authority and by concluding specific arrangements and annual action plans comprising of clear actions, responsible bodies, deadlines, monitoring mechanism, evaluation and remedial actions in order to comply with Article 12(1) in conjunction with Article 3(1)(e) and Article 7(1) of Regulation (EU) 2019/1896 on European Border and Coast Guard[4];

5. **Risk analysis:** establish and implement a standardised procedure to elaborate risk analysis products related to border checks at the air and sea borders, in particular risk profiles and indicators related to individuals and means of transport crossing the external border, to be implemented by all relevant stakeholders;

6. **Risk analysis:** develop and implement a national methodology for risk analysis in accordance with the Common Integrated Risk Analysis Model, covering border checks and border surveillance and encompassing all national authorities involved in border control in order to ensure a common approach towards risk analysis at all levels of their organisational structures;

7. **Risk analysis:** develop a national strategic risk analysis product covering border checks and border surveillance;

[4] 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. 1–131.*

8. **Risk analysis:** ensure sustainability and uniformity of practical application of risk analysis by: developing and implementing a national risk analysis training program based on Common Integrated Risk Analysis Model accessible to analysts at all levels; increasing the number of staff dedicated to carry out risk analysis task at all levels of organisational structures of relevant border control authorities; establishing a standardised procedure to share risk analysis products between all levels of organisational structures of all relevant stakeholders as required by Articles 15 and 16 of the Schengen Borders Code[5];

9. **Risk analysis:** implement the Common Integrated Risk Analysis Model in the National Republican Guard to carry out risk analysis for border surveillance as set out in Article 29(1) of Regulation (EU) 2019/1896 on European Border and Coast Guard;

10. **EUROSUR:** ensure that all incidents detected during the border check procedures are reported in close to real time to the National Coordination Centre;

11. **EUROSUR:** establish the operational layer for EUROSUR by including relevant information from all national authorities involved in maritime surveillance (the Maritime Police, the Navy and the Air Force);

12. **EUROSUR:** establish and feed the analytical layer of EUROSUR in accordance with Article 24(1)(c) of Regulation (EU) 2019/1896 on European Border and Coast Guard;

13. **National Situational Picture**: establish comprehensive and complete national situational picture by including relevant information from all relevant authorities involved in border control (the Immigration and Border Service, the Maritime Police, the Navy, the Air Force) in accordance with Article 25(2)(e) of Regulation (EU) 2019/1896 on European Border and Coast Guard;

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5 Regulation (EU) 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) (codification), *OJ L 77, 23.3.2016, p. 1*.

14. **National Capability Development Plan:** establish a national capability development plan by integrating all relevant data from all national authorities involved in border management;

15. **Human resources:** ensure a sufficient number of staff based on a national strategic plan for human resources to implement an efficient, high and uniform level of border checks at external borders;

16. **Specialised and refresher training:** establish a regular and systematic refresher training system for border check procedures, including document expertise, and ensure capacity at national level to regularly provided these trainings to border guards; ensure that the knowledge acquired in specialised trainings organised by Frontex is duly disseminated amongst the relevant staff;

17. **Specialised and refresher training:** further develop the training programs for the Public Security Police and the National Republican Guard in accordance with the Frontex' Common Core Curriculum, in order to provide a sufficient level of knowledge and expertise to perform effective border checks and border surveillance in line with the Schengen Borders Code; training should be delivered regularly and be based on annual planning; it should include trainings on border checks in the first and second line, risk analysis, detection of document fraud, use of equipment and other relevant subjects;

18. **Document fraud detection:** ensure sufficient number of trained document experts at all border crossing points;

19. **Document fraud detection:** ensure that all the necessary equipment for detection of document fraud in first and second line border checks is available and systematically used in all border crossing points in order to ensure the capacity to identify document fraud;

20. **Equipment for border surveillance:** establish and implement a plan for acquisition, maintenance and modernisation of mobile assets used for border surveillance and modernise the equipment according to the plan also by making efficient use of the EU funding instruments;

21. **Contingency planning:** revise the National Contingency Plan to include all necessary components to comprehensively address possible emergency situations at external borders;

22. **Border check quality and procedure:** improve the quality of the first line border checks of third country nationals and ensure a uniform and high level of border checks;

23. **Border check quality and procedure:** perform thorough checks of those third country nationals who use the Automated Border Control gates, in accordance with Article 8(3) of the Schengen Borders Code;

24. **Border check quality and procedure:** update the Passe software to ensure the proper verification of the authenticity of the travel documents in compliance with Article 8 paragraphs (2) and (3) of the Schengen Borders Code;

25. **Nominal checks of crew and passengers at sea borders:** develop an automated solution to check crew and passenger lists in order to perform sea border checks in an efficient way;

26. **Visa processing at the border:** ensure that the issuing of visa at the border to family members of EU citizens is free of charge, in accordance with Article 5(2) of Directive 2004/38/EC[6];

27. **Carriers' liability**: set up an automatic Advance Passenger Information targeting system to avoid manual processing and to enhance the quality of border checks;

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[6] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, *OJ L 158, 30.4.2004, p. 77*.

28. **Carriers' liability:** ensure that all the necessary measures are taken to oblige the air carriers to transmit Advance Passenger Information for the purpose of carrying out checks on persons at the external borders, and apply sanctions for those companies which do not comply with their legal obligation as required by Council Directive 2004/82/EC of 29 April 2004[7], for example by setting up implementation guidelines for carriers and a more robust system of fines to be imposed in case of persistent failure to transmit Advance Passenger Information;

29. **Sea border surveillance:** improve the cooperation between neighbouring local and regional units and the situational awareness by sharing information more efficiently on the positioning of assets and other relevant data on situational awareness; upgrade the access level of local and regional units in the Integrated Surveillance, Command and Control System (SIVICC);

30. **Lisbon Airport:** ensure a sufficient number of border guards at Lisbon Airport to perform border checks and to take part in continuous training;

31. **Lisbon Airport:** improve the second line check procedures at Lisbon Airport to shorten the waiting time for the passengers subject to second line checks;

32. **Lisbon Airport:** provide the necessary equipment and personnel for second line checks in terminal 2 at Lisbon Airport;

33. **Lisbon Airport:** ensure the mandatory biometric verification against Visa Information System at Lisbon Airport, in accordance with Article 8(3)(b) of Schengen Borders Code;

[7] 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*.

34. **Port of Lisbon:** improve the infrastructure and equipment for first and second line border checks at the Port of Lisbon and provide sufficient number of booths to allow for efficient border checks.

Done at Brussels,

For the Council

The President