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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 12 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of Spain on the application of the Schengen <i>acquis</i> in the field of police cooperation

Delegations will find attached document COM(2023) 12 final.

Encl.: COM(2023) 12 final



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Brussels, 17.2.2023
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2023/0039 (NLE)
SENSITIVE*

Proposal for a

COUNCIL IMPLEMENTING DECISION

setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of Spain 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 1053/2013¹, establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*. In line with the Regulation, 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 Spain's application of the Schengen *acquis* in the field of police cooperation between 21 and 25 February 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.

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) 120.

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 Spain 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**

The evaluation report was presented to the Schengen Committee on 24 November 2022 and obtained the positive opinion of the Committee by written procedure ending on 21 December 2022.

- **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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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 Spain in February 2022. 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(2023) 120.
- (2) At strategic level, Spain has set up an elaborate system to ensure strategic alignment and operational coordination between its various law enforcement agencies. Both National Police and Guardia Civil have a network of experts on international police cooperation to assist and advise the criminal intelligence units at regional level on the use of the instruments of international police cooperation. Spain has a specific system related to gender violence supported by dedicated teams at regional level.
- (3) Recommendations should be made on remedial actions to be taken by Spain in order to address deficiencies identified as part of the evaluation. Priority should be given to implementing recommendations 8-10, 12, 15 and 17.
- (4) On 24 May 2022, the Council adopted Recommendation (EU) 2022/915 on operational law enforcement cooperation.⁷ The Spanish authorities are invited to take this Recommendation into account when implementing the relevant recommendations set out in this Decision.

⁶ OJ L 295, 6.11.2013, p. 27.

⁷ OJ L 158, 13.6.2022, p. 53–64.

- (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 its adoption, Spain should, pursuant to Article 21(1) of Regulation (EU) 2022/922, establish an action plan to implement all recommendations and to remedy the deficiencies identified in the evaluation report. Spain should provide that action plan to the Commission and the Council,

RECOMMENDS:

Spain should

Risk assessment strategy, risk analysis and similar analytical products

1. develop a comprehensive risk and threat assessment strategy, identifying the needs to augment police cooperation with other Schengen States and third countries, based on relevant and objective criteria;
2. ensure the exchange of all strategic knowledge and analytical products between its own law enforcement agencies and with other Schengen States, in particular with regards to criminality in the border regions and itinerant criminal groups;

Ethics

3. continue the efforts to put in place legislation for the protection of whistle blowers;
4. establish an internal affairs function at regional level and provide relevant continuous training to law enforcement officers for prevention purposes;
5. set up a process through which individuals can anonymously report law enforcement officers' misconduct or corruption;

Bilateral agreements

6. adapt its declarations to the Convention Implementing the Schengen Agreement to remove the limitations for cross border hot pursuit by the French and Portuguese police on Spanish soil and/or reinstate negotiations to amend its bilateral agreements with Portugal and France in order to extend the possibilities for cross border hot pursuit so that these meet the needs of its police forces and become an effective tool to fight cross border crime in the Schengen area.

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.

7. implement the Council Decision 2003/170/JHA in order to better represent the interests of Spain and the other Member States.

Single Point of Contact

8. further develop the Spanish Single Point of Contact by integrating the different international channels into one unit.

Case management systems

9. set up an electronic case management system for the Spanish Single Point of Contact and the Police and Customs Cooperation Centres, which will ensure the automation of information processing, tracking of deadlines and monitoring of back-log, incorporating all channels of international information exchange. Spanish liaison officers should have access to this system;

Information management and databases

10. develop a single search functionality by speeding up the current project of the National Police and by improving the existing system of the Guardia Civil, with full access to national and international databases, with clear actions to be taken and with warning markers, both for desktop computers and mobile devices. Provide this functionality to Spanish liaison officers abroad.
11. prepare written guidelines (listing for instance practical examples) regarding the choice of international police cooperation tools and communication channels;
12. extend direct access to Europol's Secure Information Exchange Network Application to the investigative units of the competent authorities and also to Police and Customs Cooperation Centres bordering with Portugal, taking advantage of the full capacity of this tool, and ensure the 24/7 monitoring of incoming messages;
13. grant search access into the Europol Information System and Europol's search engine QUEST (Querying Europol's Systems) to investigative units, along with corresponding training of end-users, and improve the automated data loader feeding information into Europol's Information System, so that it includes information on active investigations;
14. improve information exchange with the police authorities of the other Schengen States on the basis of the national implementation of Council Framework Decision 2006/960/JHA, respecting all conditions laid down in this instrument;
15. establish the national procedures to ensure lawful access to the Visa Information System (VIS), including searches with biometric data, for law enforcement purposes in line with the Council Decision 2008/633/JHA;

Radio telecommunication

16. ensure, in partnership with France and Portugal, the interoperability of cross-border radio telecommunication tools in accordance with Art 44 of the Convention Implementing the Schengen Agreement;

Human resources and training

17. provide more in-depth compulsory continuous training for all relevant staff on the use of international police databases and cooperation tools (such as VIS for law enforcement and the Council Framework Decision 2006/960/JHA) tailored to the different task descriptions. Priority should be given to staff members of the Single Point of Contact;
18. increase the number of training courses in foreign languages and facilitate the access to such training at regional level;

Cross-border police cooperation

19. examine all requests for cross border surveillance notwithstanding prior refusal of a request in the same case.

Done at Brussels,

*For the Council
The President*