



Council of the  
European Union

Brussels, 16 May 2023  
(OR. en)

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#### COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 May 2023
To:	General Secretariat of the Council
No. Cion doc.:	COM(2023) 274 final
Subject:	ANNEX to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - <b>Annex 1 - State of Schengen Report 2023</b>

Delegations will find attached document COM(2023) 274 final Annex 1.

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Encl.: COM(2023) 274 final Annex 1



EUROPEAN  
COMMISSION

Brussels, 16.5.2023  
COM(2023) 274 final

ANNEX 1

## **ANNEX**

*to the*

**Communication from the Commission to the European Parliament, the European  
Council, the Council, the European Economic and Social Committee and the Committee  
of the Regions**

**State of Schengen Report 2023**

## ANNEX 1

### **The Schengen evaluation and monitoring mechanism: main developments and next steps**

The Schengen evaluation and monitoring mechanism is the key safeguard to ensuring that the Schengen area functions well, allowing for the timely identification and remedying of strategic vulnerabilities. Teams of Member State and Commission experts, supported by EU agencies and bodies, evaluate every Member State and Schengen Associated Country fully applying the Schengen *acquis* at least once every seven years. It is also the framework for verifying if the necessary conditions for the application of the Schengen *acquis* have been met in Member States in respect of which there is no Council decision to apply the Schengen *acquis* in full or in part yet, except for those Member States whose evaluation was already completed when the new Schengen evaluation monitoring mechanism Regulation (Regulation)<sup>1</sup> entered into force.

In accordance with Article 25 of the Regulation, the Commission shall report on the evaluations carried out during the previous year and the conclusions drawn from there, on the functioning of the pool of experts, including the availability of Member State experts and on the state of play regarding remedial actions taken by the Member States.

#### ***Evaluation activities carried out in 2022***

In 2022, the Commission concluded the second programming cycle of Schengen evaluations, with visits to Spain, Norway, Sweden, Iceland, Denmark and Portugal. In addition, Greece, Italy, Malta, Luxembourg, Cyprus, Belgium, Austria, France and The Netherlands were evaluated on their implementation of the common visa policy<sup>2</sup>. Luxembourg also underwent an evaluation to assess the implementation of data protection requirements.

These Member States each received evaluation teams assessing if external borders are managed up to the required standards and evaluating measures within the Schengen area, including the effective implementation of the return policy, police cooperation and the Schengen Information System. Measures in third-countries under the visa policy were also part of the evaluation activities. Particular attention was paid to verifying respect for fundamental rights in the application of the Schengen *acquis*, including the implementation of the applicable data protection requirements.

During all evaluations carried out in 2022, strategic elements at national level were addressed to provide the evaluation teams with a good understanding of the central organisation and strategy of the authorities, including elements such as training and human resources, risk analysis and contingency planning, for the implementation of the Schengen *acquis*. These

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<sup>1</sup> 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.

<sup>2</sup> The mentioned Member States could not be evaluated on their implementation of the common visa policy in 2020 or 2021, as for the other policy areas, due to travel restrictions following the COVID-19 pandemic.

points were assessed with visits to central authorities, including the national operational coordination centres, police headquarters, ministries and the SIRENE bureaus. The visits at strategic level were implemented hand in hand with visits to the operational level, such as key border crossing points and international airports, police stations and detention centres.

Results of other monitoring mechanisms, in particular the Frontex vulnerability assessment, were duly taken into account in preparing and conducting the evaluation activities, thus ensuring up-to-date situational awareness.

The Schengen evaluations in 2022 provide an overall picture of the implementation of the Schengen *acquis* in the Schengen area, across Member States. While overall the level of implementation of the Schengen *acquis* is at a high level, during the 2022 evaluations, **serious deficiencies** were identified on three occasions. The closure of action plans that concern serious deficiencies<sup>3</sup> is an absolute priority for the Schengen area. The majority of the serious deficiencies identified during the last year have either been resolved or are currently being addressed. In particular, in the area of external border management, the evaluation of Spain revealed low quality and deficient border checks at the majority of the visited border crossing points. Swift remedial steps have been taken to resolve the connectivity and other technical problems of the border check systems and the Commission will carry out a revisit this year to assess these developments. Furthermore, in the case of Iceland, serious deficiencies were identified in the field of police cooperation due to the ineffectiveness of the search capabilities of the Icelandic police force. As a consequence, police officers were not capable of systematically detecting active alerts in the Schengen Information System alerts. As soon as they were notified, the Icelandic authorities have taken steps to address this issue. A verification visit is also scheduled for this year. Finally, the serious delays in granting appointments by external service providers to lodge visa applications in the Netherlands were considered a serious deficiency. The Dutch authorities committed to address this issue as a priority and the Commission is further monitoring the remedial actions being implemented.

Furthermore, based on the results of the evaluations it is possible to identify some common issues in several Member States, which require special attention:

- The 2022 evaluations of the management of the **external borders** showed weak governance of the European integrated border management in some Member States and low inter-agency cooperation. The overall low quality of border checks, in particular at the sea borders, weak sea border surveillance combined with a lack of coherence in risk analysis and scattered situational awareness in most of the evaluated Member States in 2022, remain the main issues of concern.
- Evaluations revealed that there is an increased commitment to work towards a more effective **return policy**, as compared to evaluations carried out in previous years.

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<sup>3</sup> When serious deficiencies are identified, the evaluated Member State is subject to stricter scrutiny by the evaluation team and the Council. It has to report more frequently and will be revisited to identify the progress made in addressing the deficiencies.

However, there is no sufficient focus yet to improving the internal aspects of return and the available tools are not fully exploited. The limitations in cooperation as well as the absence of effective return case management systems hamper considerably the possibility to carry out returns.

- While most Member States showed good compliance with the relevant Schengen *acquis* in the field of **police cooperation**, a recurrent issue was the limited or lacking access of police units to the Visa Information System for the prevention, detection and investigation of terrorist offences and other serious criminal offences. Many Member States did not have a system in place to guarantee such access.
- A constant in all **visa evaluations** in 2022 was the significant delays in granting appointments for visa applicants to submit their applications and/or in processing them. The cooperation of Member State consulates with External Service Providers and the monitoring was often found suboptimal.
- The evaluations verifying the use of the **Schengen Information System** brought to light that many Member States do not yet use the fingerprint search functionality sufficiently. The display of all available data, such as photographs and fingerprints, in the national SIS applications is not yet optimal.
- Evaluations verifying the respect of the **data protection** requirements in the implementation of the Schengen *acquis* showed that some Member States still need to provide the data protection authorities with sufficient human and financial resources to enable them to carry out their Schengen-related tasks, in particular as the data protection authorities cannot always conduct the mandatory data protection audits.

In accordance with the reinforced Schengen evaluation and monitoring mechanism, which became applicable in October 2022, the Commission also organised in February 2023 the first **verification visit** to Belgium to monitor the progress made in the implementation of the action plan related to the 2020 evaluation in the field of external borders management. Progress was observed with regards to strategic coordination and actions are ongoing to consolidate the national coordination and inter-agency cooperation.

No **unannounced visits** were carried out in 2022.

#### **Schengen evaluations: the way forward**

Following the entry into force of the new Schengen evaluation Regulation, the **new multiannual evaluation programme** for periodic evaluations to be carried out in 2023-2029 was adopted. Finland, Lithuania, Latvia and Estonia will be evaluated in 2023. Cyprus will also be evaluated for the first time in the field of the Schengen Information System, following its connection in July 2023. Ireland will be subject to evaluations in the remaining policy areas it requested to take part in. In early 2024, Croatia will be evaluated following its accession.

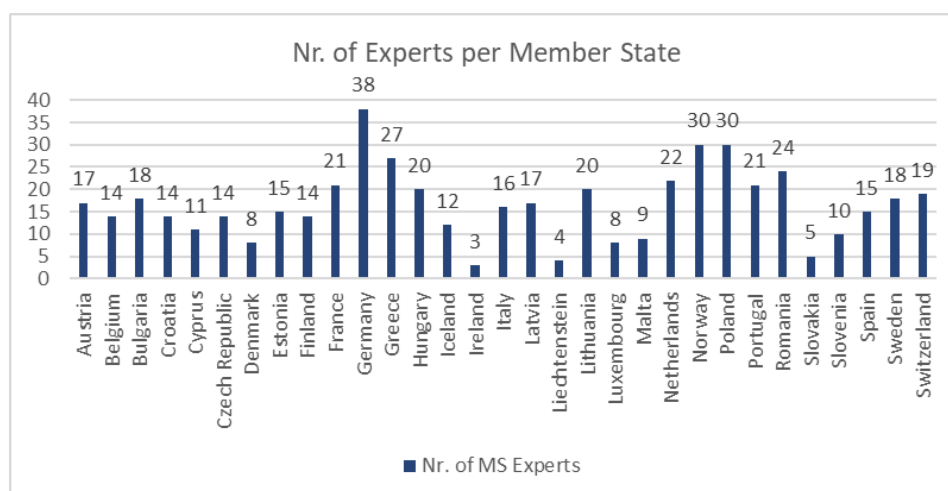
The adoption of the renewed mechanism also triggered the ongoing revision of the **Schengen evaluation guide** and the **Schengen standard questionnaire** as well as further harmonisation of **training** activities leading to a single Schengen evaluation certification. These instruments have been upgraded to align them with the new principles and requirements and provide evaluation teams with the necessary tools to carry out strategic and comprehensive assessments of Member States.

Following a consultation process with Member States and taking into account the priorities set out in this Communication, the following **thematic evaluations** could be considered for 2024: i/ best practices in law enforcement cooperation to tackle the principal sources and routes of illicit firearms; ii/ best practices to address common obstacles which limit the effectiveness and speed of the return system; iii/ solutions to overcome the risk of criminals going ‘dark’ by creating online safe havens of impunity.

### ***Functioning of the pool of experts***

Following the adoption of the new Schengen evaluation and monitoring mechanism Regulation, the Commission established the 2023 pool of experts to ensure the participation of a sufficient number of experienced experts in a faster and less burdensome way.

All Member States designated at least one expert per policy area in which they are evaluated unless the designation would substantially affect the discharge of national tasks<sup>4</sup>. In total, 570 national experts were designated out of which 514 were selected for the 2023 pool, taking into account the general and specific criteria defined in the Regulation and in the designation invitation to the Member States<sup>5</sup>.



The pool is the primary source of experts for evaluation and monitoring activities to be carried out in 2023. An additional call for experts was launched to find specific experts for the thematic evaluation on drug trafficking.

### ***Overview of remedial action by Member States***

<sup>4</sup> In accordance with Article 17(2) of the Regulation, ‘Member States shall not be required to designate experts in the areas in which, for objective reasons, they are not evaluated or, in exceptional situations, if the designation would substantially affect the discharge of national tasks. If a Member State invokes the latter, it shall provide in writing the reasons and information on the exceptional situation to the Commission’.

<sup>5</sup> Article 15(1) of the Regulation stipulates that the experts ‘shall have appropriate qualifications, including a solid theoretical knowledge and experience in the areas covered by the evaluation and monitoring mechanism, along with sound knowledge of evaluation principles, procedures and techniques, and shall be able to communicate effectively in a common language’. In accordance with Article 17(5), Member States must designate experts who fulfil these conditions.

Following the evaluation activity, Member States need to address the identified deficiencies and submit an action plan to the Council and the Commission with the remedial actions to be implemented. With the publication of this second State of Schengen report, the monitoring of remedial action by Member States following Schengen evaluations is transferred to the online KOEL-SCHEVAL tool. This transition away from paper handling will enable a better overview of the state of implementation of recommendations and better compliance with the reporting requirements under the new Regulation.

Since the launch of the first Schengen evaluations under the Commission's coordination in 2015, the evaluation teams were able to close more than 50 action plans. Following the latest assessments of follow-up reports submitted by Member States, **the Commission hereby closes the action plans of Portugal, Lithuania, Malta, Norway, Czechia, Hungary and Slovakia in the field of the common visa policy, the Estonian action plans in the field of borders and return as well as the Hungarian action plan in the field of management of the external borders**, following the full implementation of all recommendations.

**In addition, the Commission also closes all action plans addressing recommendations of evaluations that were carried out in 2015 and 2016<sup>6</sup>.** This closure is, however, technical since it relates to action plans that still have outstanding actions from previous evaluations while a new evaluation for that Member State in that policy area already took place and new recommendations have been formulated. These actions are carried over to the action plan of the new evaluation to prevent duplication of reporting obligations. In that same spirit, once Member States submit their action plans related to recent evaluations, all old action plans will be technically closed in the review of the adequacy of the new action plan<sup>7</sup>.

	2015	2016	2017	2018	2019	2020	2021	2022
<b>Closed<sup>8</sup></b>	26	30	17	9	5	0	0	0
<b>Open</b>	2	6	19	21	25	22	37	36
<b>Total</b>	28	36	36	30	30	22	37	36

<sup>6</sup> The following action plans are technically closed: Austria – Schengen Information System and data protection (2015); Belgium – Schengen Information System (2015); Germany – return (2015); Liechtenstein – return and data protection (2015); The Netherlands – data protection (2015); Greece – return, police cooperation, Schengen Information System (all 2016); France – management of the external borders, return, Schengen Information System (all 2016); Italy – management of the external borders, return, Schengen Information System (all 2016); Luxembourg – Schengen Information System (2016); and Malta – management of the external borders, return, police cooperation and Schengen Information System (all 2016). The action plan of the 2016 evaluation of Greece in the field of management of the external borders could not be closed due to the significant number of actions not yet implemented. The actions plans on data protection for Belgium, Germany, Greece, France, Italy, Luxembourg and Malta (related to 2015 and 2016 evaluations) could not be closed due to delays in the adoption of the evaluation reports or recommendations after the evaluations in 2020 and 2021.

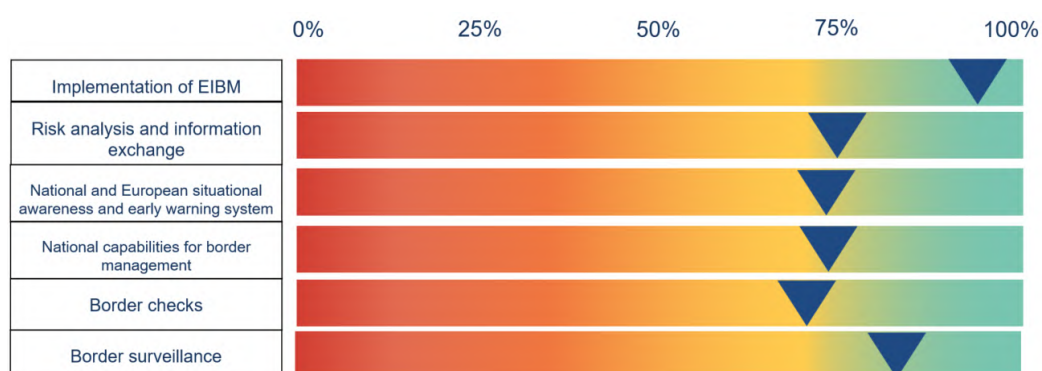
<sup>7</sup> This technical closure can already now be announced for the action plans related to the 2017 evaluations of Iceland, Norway and Sweden regarding the Schengen Information System and Spain in the field of the common visa policy following the new evaluations in 2022.

<sup>8</sup> Table reflects the number of action plans stemming from periodic evaluations that have been closed by the Commission, including those closed in the 2023 State of Schengen report.

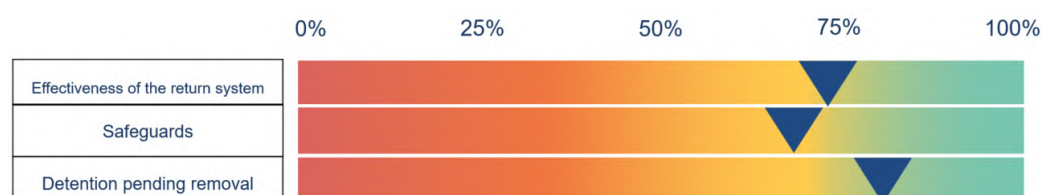
As shown in the table above there are still an important number of action plans open (168 out of 255). However, it is important to note that in general, the Commission can only close action plans when all recommendations are fully implemented<sup>9</sup>. The state of play of individual action plans shows that significant progress has been made and the overall implementation rate is to a large extent above 75%. Priority areas for enhanced implementation include border checks, border surveillance, EUROSUR and the effectiveness of the return system.

### Overview of implementation rate of Scheval recommendations by policy area

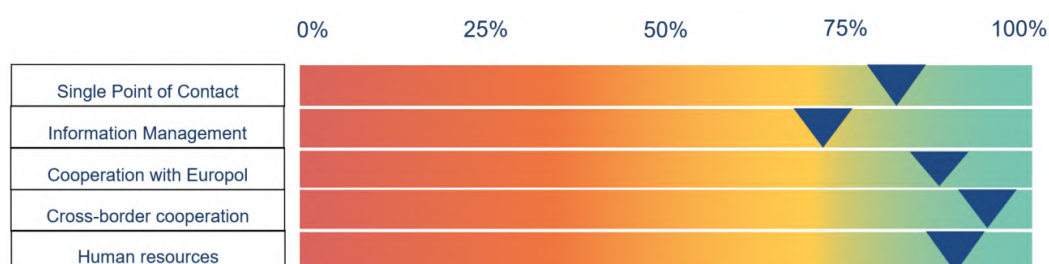
#### *Management of the external borders:*



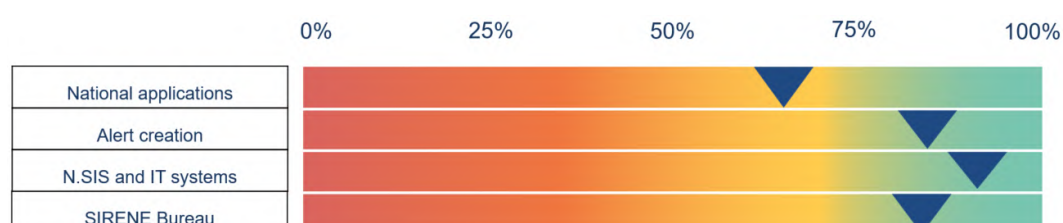
#### *Return:*



#### *Police cooperation:*



#### *Large-scale information systems:*



<sup>9</sup> Except in the case of technical closures, as outlined above, though in that case the Member States are required to report on the open recommendations in the new report.



Common Visa Policy:

