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SCHENGEN 25
COMIX 709**

NOTE

from : Council Secretariat
to : Schengen Evaluation Working Party

No. Cion prop. : 7348/09 SCHEVAL 39 SCHENGEN 2 COMIX 210

Subject : Proposal for a Council Regulation on the establishment of an evaluation
mechanism to verify the application of the Schengen acquis

Delegations will find attached the Commission proposal with comments made by the delegations during the meetings of the Schengen Evaluation Working Party reflected in the footnotes.

Proposal for a
COUNCIL REGULATION¹

**on the establishment of an evaluation mechanism to verify the application of the
Schengen *acquis***

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Hague programme² invited the Commission 'to submit, as soon as the abolition of controls at internal borders has been completed, a proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism, ensuring full involvement of Member States experts, and including unannounced inspections'.
- (2) By decision of the Executive Committee of 16 September 1998³, a Standing Committee on the evaluation and implementation of Schengen was set up. The Standing Committee was given the mandate, firstly, to establish whether all the preconditions for lifting internal border controls with a candidate State have been fulfilled, and secondly, to ensure that the Schengen *acquis* is properly applied by the States already implementing the *acquis* in full.

¹ DE, FR, IRL, UK: parliamentary scrutiny reservation
DE, CY, ES, HU, IT, PT, SI, CH: general scrutiny reservation (also on the Proposal for a Council Decision on the establishment of an evaluation mechanism to monitor the application of the Schengen *acquis*)

NO: expressed its general concern in relation to the provisions contained in this proposal and in the Proposal for a Council Decision.

IT questions if the Hague Programme gives the Commission the power to amend and/or replace the evaluation mechanism or whether it gives the Commission a mere supplementing power. For more elaborated comments, see the written contribution by IT.

BE welcomes the proposal but finds that it exceeds the request by the Hague Programme (it replaces it rather than supplementing). However, BE considers that the Hague Programme is not the only mandate for this proposal and welcomes every CION initiative to improve the Schengen evaluation.

² OJ 53, C 3.3.2005, p. 1 (point 1.7.1)

³ OJ L 239, 22.9.2000, p. 138

(3) A specific evaluation mechanism to verify the application of the Schengen *acquis* is necessary given the need to maintain a high level of mutual trust between those Member States that form part of an area without internal border controls and the need to ensure high uniform standards in the application of the Schengen *acquis* in practice. Such a mechanism should build upon close cooperation between the Commission and those Member States⁴, without prejudice to the powers of the Commission under Article 226⁵ of the Treaty establishing the European Community.

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(4) The evaluation mechanism set up in 1998 should therefore be revised as regards the second part of the mandate given to the Standing Committee. The first part of the mandate given to the Standing Committee should continue to apply as laid down in part I of the Decision of 16 September 1998.

(5) The Schengen *acquis* contains both provisions covered by the Treaty establishing the European Community and provisions covered by the Treaty on European Union. The experience gathered during previous evaluations demonstrates the need to maintain a coherent evaluation mechanism covering both pillars.

(6) This Regulation constitutes the necessary legislative basis for implementing the evaluation mechanism in respect of matters falling within the scope of the Treaty establishing the European Community. Council Decision XXXX/XXX/JHA of ... establishing an evaluation mechanism to verify the application of the Schengen *acquis* constitutes the necessary legislative basis for implementing the evaluation mechanism in respect of matters falling within the scope of the Treaty on European Union.

(7) The fact that the legislative basis necessary for setting up the evaluation mechanism consists of separate instruments does not affect the principle that all evaluations should be implemented as part of one single mechanism. Certain provisions of these instruments should therefore be identical.

(8) The evaluation mechanism should set up transparent, efficient and clear rules on the methodology to be applied for the evaluations, the use of highly qualified experts for on-site visits, and the follow-up to be given to the findings of the evaluations. Notably, the methodology should provide for unannounced on-site visits to complement the announced on-site visits, in particular with regard to border controls and visas.

⁴ DE proposes to delete the rest of the sentence

⁵ FR: does not understand the successive references to this article in numerous clauses of this proposal.

⁶ DE proposes new paragraph:

(3a) Both abolishing the internal border controls and the possibility of temporarily reintroducing border controls under Regulation (EC) 562/2006 have a direct impact on the internal security and national interests of the Member States. The Member States must therefore retain a deciding role in evaluating the implementation of the Schengen *acquis*. As guardian of the Treaties, the Commission nonetheless bears responsibility for monitoring the Member States' implementation of Community law. As a result, an appropriate division of competences between the Commission and the Member States must be found with regard to verifying that the Schengen *acquis* is being correctly applied by the Member States after lifting internal border controls; this balance must do justice not only to the legal and practical requirements, but also and in particular to the security policy interests of the Member States.

- (9)⁷ The scope of the evaluation mechanism should also include verification of the relevant legislation on the abolition of controls at internal borders and checks within national territory. In view of the specific nature of these provisions, which do not affect the internal security of the Member States, the relevant on-site visits should be entrusted exclusively to the Commission.
- (10) The European Agency for the management of operational cooperation at the external borders of the Member States of the European Union ⁸ (hereinafter referred to as Frontex) should support the implementation of the mechanism, primarily in the area of risk analysis relating to external borders⁹. The mechanism should also be able to rely on the expertise of the Agency for carrying out on-site visits at the external borders on an ad hoc basis.
- (11) ¹⁰ Member States should ensure that experts made available for on-site visits have the necessary ¹¹ experience and have undergone specific training for this purpose. ¹² Appropriate training should be provided for by the relevant bodies (e.g. Frontex) and funds should be made available to Member States for initiatives targeted at specific training in the field of the evaluation of the Schengen *acquis* through the existing financial instruments and their development.
- (12) This Regulation and the Decision of the Executive Committee of 16 September 1998, in so far as it is not repealed by this Regulation, are without prejudice to the Commission's powers under the Treaty establishing the European Community as regards the application of those provisions of the Schengen *acquis* referred to in Article 3(1) of the 2003 Act of Accession as regards the Republic of Cyprus and in Article 4(1) of the 2005 Act of Accession as regards the Republic of Bulgaria and Romania.
- (13) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is therefore not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of that Protocol, decide within a period of six months after the adoption of this Regulation whether it will implement it in its national law.

⁷ DE proposes to delete this paragraph.

⁸ Council Regulation (EC) No 2007/2004 of 26 October 2004 (OJ L 349 of 25.11.2004, p. 1).

⁹ DE: add: 'and should enable participation by an Agency representative in accordance with the Regulation'.

¹⁰ DE proposes to add as first sentence to this paragraph: 'The Commission should develop an appropriate training mechanism involving the relevant bodies (e.g. Frontex).

¹¹ DE: add: 'practical'.

¹² DE proposes to delete the rest of this paragraph.

- (14) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which the United Kingdom participates to the extent that the Schengen *acquis* subject to evaluation is included in Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ¹³, and subsequent Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen *acquis* by the United Kingdom of Great Britain and Northern Ireland ¹⁴. The United Kingdom is therefore taking part in its adoption and is bound by it or subject to its application only to this extent.
- (15) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which Ireland participates to the extent that the Schengen *acquis* subject to evaluation is included in Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ¹⁵. Ireland is therefore taking part in its adoption and is bound by it or subject to its application only to this extent.
- (16) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ¹⁶ which falls within the areas referred to in Article 1, point A to G of Council Decision 1999/437/EC ¹⁷ of 17 May 1999 on certain arrangements for the application of that Agreement, with the exception of Article 13 (7) and the third indent of Article 16.
- (17) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* ¹⁸, which fall within the areas referred to in Article 1, points A to G, of Council Decision 1999/437/EC as read in conjunction with Article 3 of Council Decision 2008/146/EC ¹⁹ of 27 February, with the exception of Article 13 (7) and the third indent of Article 16.
- (18) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which falls within the areas referred to in Article 1, points A to G, of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC ²⁰ of 26 March 2008, with the exception of Article 13 (7) and the third indent of Article 16.

¹³ OJ L 131, 1.6.2000, p. 43.

¹⁴ OJ L 395, 31.12.2004, p. 70.

¹⁵ OJ L 64, 7.3.2002, p. 20.

¹⁶ OJ L 176, 10.7.1999, p. 36.

¹⁷ OJ L 176, 10.7.1999, p. 31.

¹⁸ OJ L 53, 27.2.2008, p. 52

¹⁹ OJ L 53, 27.2.2008, p. 1.

²⁰ OJ L 83, 26.3.2008, p. 3.

- (19) As regards Cyprus, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.
- (20) As regards Bulgaria and Romania, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

Purpose and scope ²¹

This Regulation establishes an evaluation mechanism to verify ²² the application of the Schengen *acquis* in the Member States to which the Schengen *acquis* applies in full and in the Member States which have been authorised by the Council to take part in some of the provisions of the Schengen *acquis*.

Member States which have been authorised to take part in some of the provisions of the Schengen *acquis* shall only participate in the evaluation of the provisions that are covered by the authorisation and which they already apply.

Member States which do not yet fully apply the *acquis* shall only participate in the evaluation of those parts of the *acquis* which they already apply. ²³

²¹ NL, NO, PT, CH: in favour of one, common system covering both the 1st and 2nd Schengen evaluation mandate as well as the 1st and 3rd pillar. BE wonders to which extent the separation between the first and second mandate contributes to the aim of coherence.
AT: the (exact) role of the Associated states should be clarified. SK: supports the position expressed by AT regarding the term 'Member States'. In order to assure legal precision of the wording, a definition of 'Member States' should be inserted in Article 2, so as to include the Associated states
NO: propose that the same wording be used in both instruments.
CZ, FI, FR, NL, PT: the purpose of the evaluation should be broadened and the scope of the mechanism should not be limited to verification but should include the issuance of recommendations and the identification of best practices.

FR expressed concerns about the overall consistency and fears a 2 speed process.

²² NO: replace by "monitor".
FR: requests a precise definition of "verify" and wishes to insert before 'verify': 'evaluate and' and after verify: 'implementation of the'.
NL: requests reviewing the NL translation of "verify" which it considers to lean more towards 'inspect'.

²³ AT, BE, CZ, DE, EE, ES, FR, GR, IRL, FI, NL, PT, RO, UK, SK: reservation; the MS in question should be allowed to participate, at least as observers, to gain experience. BG and CY wish to participate on equal footing, not as an observer.

Article 2
Definitions^{25 26}

For the purposes of this Regulation the following definition applies:

'Schengen *acquis*', means the provisions of the Schengen *acquis* as integrated into the framework of the European Union by the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, as well as the acts building upon it or otherwise related to it, in so far as those provisions and acts have their legal basis in the Treaty establishing the European Community;

²⁴ FR proposes to insert the following text: Member States which have been authorised to take part in some of the provisions of the Schengen *acquis* and Member States which do not yet fully apply that *acquis* shall be eligible for observer status in evaluations carried out on those parts of the Schengen *acquis* which they do not, or do not yet, apply. Observer status means that they may take part in every stage of the evaluation mechanism but shall not be entitled to put questions during on-site visits or in writing to the representatives of the Member State being evaluated, nor to take part in the drafting of the evaluation report.

This Regulation shall apply without prejudice to other existing evaluation mechanisms [references to be given in a footnote, e.g. evaluation exercises under Joint Action 97/827/JHA of 5 December 1997].

²⁵ DE proposes to rename this article into 'Definition of the Schengen *acquis*'

²⁶ FR proposes introducing a reference to the applicable voting regime.

*Article 3*²⁷
Responsibilities^{28 29}

1. The Commission³⁰ is³¹ responsible for the implementation of this evaluation mechanism. This mechanism is coordinated by a group, hereinafter referred to as "coordination group", which consists of representatives of the Member States and of the Commission.

²⁷ CY, DE, ES, IT, NL, PT, SI, FR: general scrutiny reservation. NB the positions expressed on the current article regarding the coordination group are valid for all articles where reference is made to the coordination group. BE: the basis of this article is a political issue which should be discussed at appropriate level.

DE considers the article should be redrafted on the basis that MS play a decisive role, no new structure is set up i.e. the appropriate Council structures are maintained, however with a more active role for the Commission in various fields (support BE), e.g. follow-up and training - NL supports this idea. NO prefers one common system for the total evaluation system, not a double track with 2 parallel processes.

CH expresses serious doubts about the effectiveness and efficiency of the proposed introduction of a new coordination group in parallel to the existing SCHEVAL WP. CH clearly prefers a single track evaluation system. Nevertheless, should the coordination group be established, then it should be provided with overall responsibility for the implementation of the mechanism rather than being a consultative body only. MS should continue to play an important role in the evaluation process as under the current system and on equal footing with the Cion.

NL has serious concerns about the role of MS and Council in relation to the Cion and considers this proposal does not correspond to what was asked in the Hague Programme, nor to what was expressed at the Cion hearing in spring 2008. It is against a transfer of powers to the Cion in the manner currently proposed. Furthermore, the benefits of the current system should be taken on board in these proposals. NL wonders what will be the impact of the Lisbon Treaty and of the Stockholm Programme, how two parallel powers/responsibilities (Cion, MS) can co-exist and where there is room for manoeuvre; it asks the CLS to shed some light on this, notably in the question whether the Decision of September 1998 (establishing Scheval), as part of the Schengen Acquis as such also became the EU-acquis meaning that the position of the Commission as the guardian of the Treaty does not imply that the competences of the Commission as proposed in the text of regulation should replace current evaluation system and cause a complete turnover of the powers towards the Commission. NL would like to see more balance between the responsibilities of the Council, MS and Cion and wonders what effect has the article 70 of the Treaty of Lisbon to this draft.'

ES shares the NL concerns about the Hague Programme.

SK: in favour of maintaining the current model of Schengen evaluation, in which primary responsibility of the mechanism lies with the MS. The proposed transition of that responsibility to the CION would substitute evaluation with supervision as a leading principle of the evaluation. SK supports entrusting the leading role in the coordination group to the MS holding the Council Presidency. See SK written contribution for SK position on the Commission Proposals in general.

²⁸ DE proposes renaming this article by adding: 'for applying and coordinating the evaluation mechanism. DE asks the CLS to suggest a possible voting mechanism in this article which takes into account foreseeable developments (Lisbon) as well as special requirements of Schengen evaluation (Commission as guardian of the treaties vs the security interests of the MS)

²⁹ AT: proposes a decision making procedure based on existing forms of cooperation between MS and CION.

CZ, ES, FR, GR, PT: participation of MS should be increased through sharing of the responsibilities for the implementation of this mechanism.

³⁰ CZ, FR, PT, SI, NL: insert "and Member States (are ...)".

³¹ FR: replace 'is' by 'shall by jointly'.

The group is chaired by a representative of the Commission. The Commission³² may invite Frontex to participate in the coordination group.^{33 34}

2. Member States^{35 36} shall cooperate³⁷ with the Commission within the coordination group to allow the Commission to carry out the tasks conferred on it by the present regulation. Member States shall also cooperate with the Commission during the preparatory, on site visit, reporting and follow up phases of evaluations³⁸.

³² CZ, FR, PT: insert ", in agreement with representatives of the MS,(...)".

³³ SI: proposes insertion of a new para 1bis:

"The coordination group shall decide by voting on the initiative of the chair. Only one representative of a Member State has the right to vote. The coordination group shall take its decisions by a qualified majority of its members with a general right to vote. The Commission has the right to adopt different decision and present it to the coordination group within three weeks from the adoption of the decision by the coordination group."

CZ: supports this proposal.

FI: suggests adding a para to clearly define the role and tasks of the coordination group (support BE); MS should be considered as partners and not only as assistants. EE, PL support this idea.

FR: agrees on the need to define the role, tasks and remit of the coordination group and who is to preside; this should be clarified also in relation to the Council cq the Schengen evaluation WP. BG, CY, ES, GR, PT, RO, NL support this.

- CY requests clarification of the working system of the Coordination group, the role of observers and changes made to the system.

- RO requests more clarity on the role of MS and suggests the decision making procedure of the Europol management board as possible solution.

BG, FR, PL, CH: the type/scope of participation of Frontex should be defined.

³⁴ FR proposes to delete this last sentence

³⁵ DE proposes this paragraph to be as follows: ' This mechanism is coordinated by the Commission and the representatives of the Member States in the competent Council bodies.'

³⁶ FR proposes to replace this paragraph by the following: 'Member States and the Commission shall cooperate closely within the coordination group to allow the latter to carry out the tasks conferred on it by the present Regulation. Their cooperation shall also cover the preparatory, on-site visits, reporting and follow-up phases of evaluation.'

³⁷ AT: this cooperation should be defined; proposes a special provision on procedure, which requires the participation of MS. BE supports AT and suggests to clarify which decision-making procedure shall be established.

³⁸ NO: refers to its comments under Article 1 and expresses doubts on the extent of CION competences regarding Associated states. CH supports this position.

SI: proposes that this para. read: "The coordination group shall carry out the tasks conferred on it by the present regulation during the preparatory, on site visit, reporting and follow up phases of evaluations."

CZ: proposes that this para. read: "Member States and the Commission shall closely cooperate within the coordination group to carry out the tasks conferred on them by the present regulation. The cooperation shall also cover the preparatory, on site visit, reporting and follow up phases of evaluations."

Article 4
Evaluations ³⁹.

1. Evaluations may ⁴⁰ consist of questionnaires and ⁴¹ on-site visits. Both may be supplemented by presentations by the evaluated Member State of the area covered by the evaluation. On-site visits and questionnaires may be used independently [or in combination in relation to specific Member States and specific areas] ⁴². On-site visits may be announced or unannounced ⁴³.
2. The specific areas that may be covered by evaluations are listed in the Annex to this Regulation, in so far as these areas relate to acts or provisions that have their legal bases in the Treaty establishing the European Community. The Annex contains a non ⁴⁴-exhaustive list of such areas ⁴⁵.

³⁹ FR: general reservation. Considers there is an inconsistency with the Hague Programme and the Decision regarding unannounced visits (which should only regard external borders).
FI supports unannounced visits and proposes adding such a provision to the Decision. NO and BE support this position.
CH: considers that on-site visits, if led by the Cion, will have to be specifically regulated for the Associated states, since the EC Treaty cannot serve as a legal basis for such visits in Associated states.
NL opposes unannounced visits to Embassies / Consular posts.

⁴⁰ DE: replace 'may' by 'will'

⁴¹ DE, FR: add: ", if necessary,".

⁴² DE: delete.

⁴³ FR proposes to add at the end of the sentence: the latter shall be conducted exclusively in connection with evaluations at the external borders

⁴⁴ FR proposes to delete 'non-'

⁴⁵ CH is in favour of an exhaustive list in the Annex and misses a clear reference to the Schengen acquis. Furthermore CH is against the evaluation of internal borders.
FI wants to clarify the Annex as regards External Borders (see FI text proposals)

Article 5

Multiannual programme

1. A multiannual evaluation programme covering a period of five years shall be established⁴⁶ by the Commission⁴⁷ in close cooperation with the [coordination group]⁴⁸, not later than three⁴⁹ months before the start of the next five-year period⁵⁰.
2. The multiannual programme shall contain the list of Member States to be evaluated each year. Each Member State shall be evaluated⁵¹ at least once during each five-year period. The order of the Member States to be evaluated will be based⁵² on⁵³ a risk analysis⁵⁴ [taking into account]⁵⁵ the migratory pressure, the time elapsed since the previous evaluation and the balance between the different parts of the Schengen acquis to be evaluated.⁵⁶
3. A standard questionnaire shall be attached to the multiannual programme⁵⁷.
4. The multiannual programme⁵⁸ may be adapted, if necessary⁵⁹, in close cooperation with the coordination group⁶⁰.

⁴⁶ FR: replace 'established' by 'proposed'

⁴⁷ DE: add: "and the representatives of the MS in the competent Council bodies".

SI: considers the programme should be formally approved by the Council. FR supports SI; Council should have a bigger role in establishing this programme.

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FI: the coordination group should have more responsibility in establishing the programme.

CH refers to its comments on Art. 3: the coordination group or the SCHEVAL WP respectively should preserve the overall responsibility for the evaluation mechanism (including the elaboration of a multiannual programme) in accordance with the current system in place.

⁴⁹ CZ, NL, SE, SK: replace by "six".

CH, FR: against setting time limits, prefers flexibility.

⁵⁰ SI: proposes that this para. read: " A multiannual evaluation programme covering a period of five years shall be, based on the proposal of the coordination group, adopted by the Council not later than three months before the start of the next five-year period."

⁵¹ FI: add: "in all areas of the Schengen acquis".

⁵² FR: add 'in particular'

⁵³ DE: delete 'a risk analysis taking into account the migratory pressure'

⁵⁴ BE suggests that a risk analysis is used to indicate the most important Border Crossing Points within the MS, instead of using it for indications on the order of MS to be evaluated.

⁵⁵ FR replace by: "or on".

⁵⁶ AT, PL: requests clarification of the exact method of assessment; PL considers internal security should also be taken into account.

DE, EE, GR, PL consider the described risk assessment too restrictive/limited.

CY, EE, IT, NL, NO, SE request clarification of "migratory pressure" and when it constitutes a threat FI proposes including a reference to other relevant risk analyses e.g. by Europol and Eurojust also (EE suggests Eurodac and the SIS statistics also).

NL, NO: suggest using the same wording in the Decision.

⁵⁷ CZ: include a reference to the regular updating of the questionnaire.

⁵⁸ CZ: add: "as well as the questionnaire".

⁵⁹ DE: delete rest of the sentence

⁶⁰ FI: the coordination group should have more responsibility in adapting the programme.

Article 6
Risk analysis

1. Not later than 30 September each year, Frontex⁶¹ shall submit to the Commission⁶² a risk analysis⁶³ taking into account migratory pressure with recommendations for⁶⁴ priorities for evaluations in the coming year. The recommendations shall refer to specific sections of the external borders and to specific border crossing points to be evaluated in the coming year under the multiannual programme⁶⁵. The Commission shall make this risk analysis available to the Member States^{66, 67}.
2. By the same deadline in paragraph 1, Frontex shall submit to the Commission⁶⁸ a separate risk analysis with recommendations for priorities for evaluations to be implemented through unannounced on-site visits in the coming year. These recommendations may concern any region or specific area and shall contain a list of at least ten specific sections of the external borders and ten specific border crossing points⁶⁹.

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⁶¹ AT proposes including (here and in the Decision) a reference to other relevant risk analyses also (Europol).

(CY, CZ, EE agree).

CH would like Frontex' role as well as the content of the risk analysis to be more clearly defined.

⁶² DE: add 'and the competent council bodies'. FR: replace 'Commission' by 'the Coordination group'

⁶³ SK generally supports the use of FRONTEX expertise at preparing annual programmes. However, the competence of FRONTEX is limited to land, air and sea borders and does not include several other areas of the Schengen acquis. Risk analysis submitted by FRONTEX can therefore not be considered to be a sufficient basis for annual programmes. SK supports an explicit reference to other sources to be taken into account when preparing these programmes. SK supports calls for a more detailed specification of the content of that risk analysis.

⁶⁴ DE: replace 'priorities for' by 'geographic'

⁶⁵ FI believes all areas of the integrated border management concept should be covered, not just specific sections.

FR proposes establishing a maximum number of evaluations per year per MS.

⁶⁶ DE: delete last sentence.

⁶⁷ FR wonders whether this is sent *a priori* or *a posteriori* to the coordination group.

⁶⁸ FR: replace 'Commission' by 'the Coordination group'.

⁶⁹ ES, IT, NL, PT, RO, SI, BE, consider that the spirit of mutual trust entails that such risk analyses are intended to help MS and should hence not be hidden/kept secret.

⁷⁰ FR proposes a new paragraph (3): At the coordination group's request other agencies may, under certain conditions, contribute alongside Frontex to the risk analysis necessary for establishing a work programme.

Article 7

Annual programme⁷¹

1. Taking into account the risk analysis provided by Frontex⁷² in accordance with Article 6⁷³⁷⁴, an annual evaluation programme shall be⁷⁵ established⁷⁶ by the Commission⁷⁷, not later than 30 November of the previous year⁷⁸⁷⁹. The⁸⁰ programme may provide for the evaluation of:
 - the application of the *acquis* by one Member State, as specified in the multiannual programme;and in addition, where relevant:
 - the application of specific parts of the *acquis* across several Member States (thematic evaluations);
 - the application of the *acquis* by a group of Member States (regional evaluations).
2. A first section of the⁸¹ programme,⁸² established by the Commission⁸³ in close cooperation with the coordination group⁸⁴, will enumerate the Member States to be evaluated in the coming year in accordance with the multiannual programme. This section shall contain a list of the areas to be evaluated and include the questionnaire to be communicated to the Member States concerned. If an assessment is possible at that stage, the programme shall contain a list of on-site visits to be carried out⁸⁵.

⁷¹ CH refers to its comment on Art. 5 regarding deadlines.

⁷² CZ, NL: include other relevant sources/information.

⁷³ DE: add (1).

⁷⁴ FR: add: 'and any other relevant information'

⁷⁵ SI: replace 'established by the Commission' by 'based on the proposal of the Commission, adopted by the coordination group'.

⁷⁶ FR: replace 'established' by 'proposed'.

⁷⁷ DE: add: 'in agreement with the representatives of the Member States in the competent Council bodies'

⁷⁸ CZ, NL: prefer 30 October.

AT, CZ, DE, NL, PT, SI: consider that MS/the appropriate Council working party must be involved in the adoption of the programme.

SI proposes that this para. read:; "Taking into account the risk analysis provided by Frontex in accordance with Article 6, an annual evaluation programme shall be, based on the proposal of the Commission, adopted by the coordination group , not later than (...)". CZ: suggests: "in close cooperation with the coordination group".

⁷⁹ FR: add: 'and shall be adopted by the coordination group'.

⁸⁰ DE: add: 'annual'

⁸¹ DE: add: 'annual'

⁸² DE proposes deletion of: 'established by the Commission in close cooperation'.

⁸³ FR: replace 'Commission' by 'the coordination group'

⁸⁴ BE: clarification needed on what is meant by 'in close cooperation'

⁸⁵ DE proposes to delete this sentence and the following sentences ('The Commission not. An on-site ...concerned.)

The Commission ⁸⁶ shall decide, after analysis of the replies to the questionnaire, whether an on-site visit is to take place or not. ⁸⁷

An on-site visit shall not take place earlier than four months after communication of the questionnaire by the Commission ⁸⁸ to the Member State concerned.

3. ⁸⁹ The Commission shall draw up a second section of the programme, which lists the unannounced on-site visits to be carried out in the coming year ⁹⁰. This section shall be considered confidential and shall not be communicated to the Member States.
4. The annual programme may be adapted, if necessary, in accordance with the provisions of paragraphs 2 ⁹¹ and 3.

Article 8

List of experts ⁹²

1. ⁹³ The Commission shall establish a list ⁹⁴ of experts designated by Member States for participation in on-site visits. The list ⁹⁵ shall be communicated to the coordination group.

⁸⁶ FR: replace 'Commission' by 'the coordination group'.

⁸⁷ FI: the coordination group should have a role in deciding whether a visit is needed or not.

AT: on-site visits should be fixed in agreement with the MS in question.

⁸⁸ FR: replace 'Commission' by 'the coordination group'

⁸⁹ DE proposes as a first sentence of this paragraph: 'Taking into account the risk analysis provided by Frontex in accordance with Article 6 (2), the (...)'.
⁹⁰ BE suggests to keep flexibility within the programme for unannounced visits to organise these also on the basis of outcomes of 'classical' evaluations (e.g. to check the follow-up).

⁹¹ DE: replace '2' by '1'.

⁹² DE: reservation; considers MS should have the 'last say' over their personnel. DE proposes to rename this article as follows: 'Requesting and deployment of experts'.

AT: considers that the choice of the expert to be sent on mission should be made by the MS concerned.

CH does not consider it useful to establish permanent lists independent of concrete missions.

CZ: recommends that the list be periodically reviewed by MS.

NL and BE: MS should be involved in establishing this list and should maintain possibility to agree or not to participation in a particular mission.

FR wonders whether there is room for participation of Frontex/Europol and about MS' input.

⁹³ DE proposes to replace this paragraph by the following:

1. At the request of the Commission, the Member States shall provide experts for participation in on-site visits.

1.a. For each on-site visit, the Commission shall establish a list of participating experts and shall communicate this list to the competent Council working party.

⁹⁴ FR: replace 'establish a list' by 'compile a register of'.

⁹⁵ FR: replace 'The list' by 'It shall establish a list, which (...) '.

⁹⁶ FR: replace 'The list' by 'It shall establish a list, which (...) '.

- 2 ⁹⁶. Member States shall indicate the respective areas of expertise of each expert with reference to the areas listed in the Annex to this Regulation. Member States shall notify the Commission of any changes as soon as possible.
- 3 ⁹⁷. Member States shall indicate which experts can be made available for unannounced on-site visits in accordance with the requirements set out in Article 9(5).
4. The experts shall have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation mechanism, as well as sound knowledge of evaluation principles, procedures and techniques, and shall be able to effectively communicate in a common language ⁹⁸.
5. Member States shall ensure that their designated experts meet the requirements specified in the previous paragraph, ⁹⁹including by indicating the training the experts have received ¹⁰⁰. In addition, Member States shall ensure that the experts receive continuous training to maintain their compliance with these requirements. ¹⁰¹

Article 8a ¹⁰²

⁹⁶ DE: proposes to delete this paragraph

⁹⁷ DE: proposes to delete this paragraph

⁹⁸ BE suggest to leave some 'room' for 1 or 2 experts who want to learn the 'metier'. An input of new experts who still have to learn is needed to keep the system going at a longer term.

⁹⁹ DE proposes to delete the rest of this paragraph

¹⁰⁰ BE: the training experts have received is not the only indicator for being a good expert.

¹⁰¹ FR proposes to add the following sentence: 'Similarly, agencies authorised to designate experts for the evaluation mechanism must also meet these requirements.'

¹⁰² DE proposes a new paragraph 8a:

Training courses and exercises

1. The Commission shall carry out relevant training courses and exercises for the Member State experts with reference to the areas listed in the Annex to this Regulation.
2. In agreement with the representatives of the Member States in the competent Council bodies and no later than 30 November of the preceding year, the Commission shall draw up an annual programme of training courses and measures.
3. The Member States shall ensure that their experts attend the training courses and exercises.

Article 9¹⁰³

Teams responsible for on-site visits

1. ¹⁰⁴ On-site visits shall be carried out by teams appointed by the Commission ¹⁰⁵. ¹⁰⁶The teams shall consist of experts ¹⁰⁷ drawn from the list of experts referred to in Article 8 and ¹⁰⁸ Commission official(s). The Commission shall ensure the geographical balance and competence of the experts taking part in each team. Member State experts may not participate in an on-site visit to the Member State where they are employed. ¹⁰⁹
2. The Commission may invite Frontex ¹¹⁰ to designate a representative of the agency to take part in a visit to external borders as an observer. ¹¹¹
3. The number of experts participating in evaluation visits may not exceed ¹¹² ¹¹³ eight persons ¹¹⁴ for the announced on-site visits and ¹¹⁵ six persons ¹¹⁶ for the unannounced on-site visits ¹¹⁷.

¹⁰³ FI, NL: reservation; FI considers MS should always have the right to send experts ES in favour of a bigger role for MS.

CH refers to its comment on Art. 5 regarding deadlines.

¹⁰⁴ SI: insert 'Announced on-site visits'.

¹⁰⁵ FR: replace 'the Commission' by 'the coordination group on a proposal from the Commission.'

¹⁰⁶ SI: insert new phrase: 'Unannounced visits shall be carried out by the teams appointed by the Cion'.

¹⁰⁷ DE proposes to delete: 'drawn from the list of experts'.

¹⁰⁸ DE: add: 'one or two'.

¹⁰⁹ CH, DE, SI: replace "Commission" by: "coordination group".

AT, CH, CY, DE, FR, NL, RO, BE: MS should be able to decide which expert they send on which mission.... (NL, CH) and whether in a given mission they wish to participate at all.

FR: selection to be done by MS.

AT, PL: MS not yet applying the *acquis* should also be able to participate as observers.

¹¹⁰ DE: add: 'in accordance with Council Regulation (EC) 2007/2004 of 26 October 2004

¹¹¹ CY: role to be specified.

¹¹² DE: replace 'may not exceed' by 'should not be more than'

¹¹³ SI: replace the rest of the sentence by: 'shall be determined for each visit based on the scope'

¹¹⁴ DE: delete 'for the announced on-site visits

¹¹⁵ DE: add: 'and not less than'

¹¹⁶ DE proposes to delete the rest of the phrase (after persons).

¹¹⁷ CH, CZ, DE, EE, FI, FR, NL, PL, RO, SI, BE: hesitate restricting the no. of experts to 8; flexibility is required depending on the evaluation.

4. In the case of announced visits, the Member States whose¹¹⁸ experts have been appointed in accordance with paragraph 1¹¹⁹ shall be notified¹²⁰ by the Commission not later than 4¹²¹ weeks before the on-site visit is scheduled. Member States shall confirm the availability of the experts within one¹²² week.¹²³
5. In the case of unannounced visits, the¹²⁴ experts appointed in accordance with paragraph 1¹²⁵ shall be notified¹²⁶ by the Commission not later than one¹²⁷ week before the on-site visit is scheduled. Member States shall confirm the availability of the experts within 48 hours.¹²⁸
6. ¹²⁹ The coordinating¹³⁰ expert for on-site visits shall be a Commission official¹³¹.

¹¹⁸ DE: delete 'whose'.

¹¹⁹ DE: delete 'have been appointed in accordance with paragraph 1'.

¹²⁰ DE: replace 'notified' by 'requested'.

¹²¹ DE: replace 4 by 8.

¹²² DE: replace 'one' by 'two'.

¹²³ DE, IT, NL, NO: consider these deadlines too tight and prefer that MS be notified asap.

IT, NL: 3 months instead of 4 weeks.

DE: there should be no distinction between announced and unannounced visits.

NO: wonders whether MS can also 'refuse' or only 'confirm'.

¹²⁴ DE: add: 'Member States'.

¹²⁵ DE: delete 'have been appointed in accordance with paragraph 1'.

¹²⁶ DE: replace 'notified' by 'requested'.

¹²⁷ AT, DE: replace 'one week' by 'four weeks'.

¹²⁸ CY, IT: replace 48hrs by 2 working days. DE: replace 48hrs by one week.

IT, NL, RO: consider that the deadlines are too tight.

¹²⁹ FR proposes to replace this paragraph by the following text: *Before an on-site visit the coordinating expert for on-site visits shall be designated by common agreement from among the members of the team. By default, in the absence of such agreement, the coordinating expert shall be a Commission official.*

¹³⁰ SI: replace this paragraph by: 'The coordination of the on-site visits shall be done by the Commission official and an expert of a MS selected from the group of experts participating in on-site visits (coordinator).

¹³¹ EE, RO, SI, CH prefers this to be a shared responsibility between the Cion and a MS representative (CH: e.g. the Presidency). DE proposes to rephrase this paragraph to: 'The Commission shall assume the function of coordinating on-site visits.'

*Article 10*¹³²

Conduct of on-site visits

1. ¹³³ The on-site visit teams shall undertake all necessary preparatory activities in order to ensure the efficiency, accuracy and consistency of on-site visits.
2. Prior to the on-site visits the Member States ¹³⁴ shall be notified:
 - at least 2 ¹³⁵ months before an announced on-site visit is due to take place;
 - at least 24 ¹³⁶ hours before an unannounced on-site visit takes place.
3. ¹³⁷ The members of the on-site visit team shall each carry ¹³⁸ identification ¹³⁹ authorising on-site visits on behalf of ¹⁴⁰ the Commission ¹⁴¹.

¹³² CH is in principle opposed to parallel structures and setting up a new structure. Subsequently, this point will come back in other articles too. According to CH, unannounced visits may not be an appropriate supplement to the current mechanism since they might not provide a sound basis for mutual trust. In addition CH wonders how such visits could be effectively realized; in any case more detailed rules are needed should these visits be introduced. CH also has reservations on the proposed deadlines - more flexibility is needed.

PT (supported by EE) asks clarification about the activities of the inspection teams, more information on the deadlines for the notification and on who will be notified, especially in case of unannounced visits. Both deadlines should be lengthened to the ones currently used. PT wonders who will be the contact person responsible for the practical arrangements in case of unannounced visits.

EE (like PT) to which extent a MS should actually organise anything?

NL: it appears that the visits are carried out on behalf of the CION; do experts act on behalf of the CION or of the Council? NL referred to its comments and written contribution regarding article 3 and the discussion on the role of the CION and the MS. Further, NL asks what is the difference between these visits and those mentioned in art 12.

HU enters a scrutiny reservation. Both the entire proposal and this article are inflexible and unrealistic.

FR: does not consider it useful nor understandable that CION will lead the missions and wonders whether this should be mentioned in a legal text.

¹³³ DE proposes a first sentence as follows: 'In accordance with Article 11 (3), an on-site visit shall not be conducted earlier than four months after the decision of the competent Council working party

¹³⁴ DE: add: 'concerned'.

¹³⁵ CZ: replace 'two' by 'three'. NL: replace 'two' by 'six'.

¹³⁶ DE, CY, PT, SK: replace 24 by 48. NL: replace 24 hours by 'at least one week'. LT, FR and HU: 24 hrs is far too tight. MT: replace 24 by 72.

¹³⁷ DE: add: 'When conducting on-site visits, the'.

¹³⁸ DE: add: 'special'.

¹³⁹ NO wonders who issues the ID-document (paragraph 3) and asked if authorizing the visits means that the ID-document gives access to any site on the territory of a MS. Referring to its status as non-EU member, NO asked if the costs of Associated States will be covered by CION (CION will check this).

¹⁴⁰ DE: replace 'authorising on-site visits of behalf of' by 'issued by'.

¹⁴¹ DE (supported by PL): add: 'as specified in Annex 1 to show their authorisation.

The identification document shall include the following information:

- a) Name and nationality
- b) Rank
- c) A recent photo
- d) Duration and geographical area of validity

4. The Member State concerned shall ensure that the team of experts can directly address relevant persons. It shall ensure access of the team to all areas, premises and documents as required for the evaluation. It shall ensure that the team is able to exercise its mandate to verify the activities related to the areas to be evaluated.
5. The Member State concerned shall, by any means within its legal powers, assist the team in accomplishing its task.
6. In the case of announced on-site visits, the Commission shall provide the relevant Member States with the names of the experts of the team in advance. The Member State concerned shall designate a contact point for making the practical arrangements for the on-site visit.
7. The Member States ¹⁴² shall be responsible ¹⁴³ for making the necessary arrangements for travel and accommodation for their experts. The costs of travel and accommodation ¹⁴⁴ for experts participating in the visits shall be reimbursed by the Commission. ¹⁴⁵

Article 11

Questionnaire

1. The questionnaires ¹⁴⁶ shall cover the relevant legislation and the organisational and technical means available for the implementation of the Schengen *acquis* and statistical data for each field of evaluation ¹⁴⁷.

After the on-site visit is over, the identification document shall be returned to the Commission.

¹⁴² DE: replace 'Member States' by 'Commission'.

¹⁴³ BE: the CION does not take into account all the costs related to transport within the country, the reservation of drafting rooms etc which are currently paid by the evaluated MS. BE wonders what the intention of the CION is and whether it could also take these costs into account.

¹⁴⁴ At request PL who will bear per diem and other mission related costs, the Commission states that that is up to the MS.

¹⁴⁵ FI: MS should always be able to send experts to a mission 'at the costs of the MS' in case the coordination group did not choose the expert.

¹⁴⁶ DE: replace 'The questionnaires' by the following introductory sentences: 'The Commission shall draft the questionnaires for evaluating the Member States concerned in agreement with the competent Council working party. The questionnaire shall be based on the standard questionnaire in the annex to the multiannual programme in accordance with Article 5 (3) and shall

¹⁴⁷ FI (supported by PT): add in this paragraph: 'as well as recommendations and best practices'.

2. Member States¹⁴⁸ shall provide their replies to the questionnaire to the Commission¹⁴⁹ within six¹⁵⁰ weeks of its communication.¹⁵¹

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¹⁴⁸ DE: add 'concerned'

¹⁴⁹ CZ: replace 'Commission' by Coordination Group (support NL). The assessment of replies provided by evaluated countries should continue to be carried out also by other MS so CZ would prefer if the replies are provided to the whole coordination group. Both MS and Cion would have the opportunity to assess the replies to the questionnaire, ask additional questions etc.

SI: replies of a MS must also be sent to other MS who in turn should be able to forward additional questions to the MS to be evaluated (support CH, CZ, PT, PL, NL, EE, BE).

BE: in addition to the questionnaires, the updated questionnaires should permanently be available to all MS so that answers can be prepared already in advance of the 6 weeks as proposed by the CION. A multi-annual program as mentioned before in combination with questionnaires permanently available shall allow MS to prepare much earlier than 6 weeks.

FR: MS must be able to benefit from the answers from a MS; the role of the coordination group should be discussed first (article 3).

¹⁵⁰ DE: replace 'six' by 'eight'. CH enters a reservation on the proposed period. it is against setting time limits, prefers more flexibility. PT: replace 'six weeks' by '3 months' (support NL).

¹⁵¹ IT: replace 'communication' by 'receipt'.

DE: add the following sentence: 'The Commission shall inform the competent Council working party of the questionnaire's content.'

SI: add new sentence: 'The Commission shall make these replies available to the Member States. The Commission and the Member States have the right to put additional questions to the MS concerned.'

¹⁵² DE proposes to insert a new paragraph: (3) Taking into account the Commission's recommendation and based on the results of evaluating the questionnaire, the competent Council working party shall decide whether an announced on-site visit shall be conducted.

*Article 12*¹⁵³

Verification of the free movement of persons at internal borders

Notwithstanding Article 9, on-site visit teams for unannounced on-site visits to verify the absence of controls at internal borders shall consist of Commission officials only^{154 155}.

*Article 13*¹⁵⁶

Evaluation reports¹⁵⁷

1. A¹⁵⁸ report shall be drawn up following each evaluation¹⁵⁹. The¹⁶⁰ report shall be based on the findings of the on-site visit and the questionnaire as relevant.

¹⁵³ DE proposes to delete Article 12.

CY: the reason for including this article should be further explained.

¹⁵⁴ CZ fully supports this article (see also CZ written comments) but would equally support if MS experts could participate to the visits as well.

AT does not understand why only CION officials should participate

HU supports the proposal but wonders how mutual trust can be guaranteed if only CION officials participate (EE supports both HU and CZ).

CH: is against the evaluation of internal borders (see also comment on art. 4 para 2); if internal borders are evaluated, MS must be involved.

SI, IT: at least the MS being evaluated should be able to participate.

FR: general reservation on this article (DK idem). Should the article be adopted, then MS' participation if needed.

PT shares concerns DE and FR; MS should participate in these visits (support HU and MT).

NL is against this article; it is up to the MS to excise controls and there is no reason to mention this separately in this CION proposal. The Lisbon Treaty reflects the wishes of the MS on future evaluation (article 70). NL asks CLS to explain to which extent future evaluations conflict with this proposal.

¹⁵⁵ SI: add new sentence: Representatives of the MS which internal border is verified could act as an observer.

¹⁵⁶ CH refers to its comments on article 3. With regard to para 7, CH points out that the dispute settlement procedures according to the Association Agreements will be applicable for the Associated states; therefore CH favors deletion of this paragraph. Finally, the proposed deadlines in this article are too short; more flexibility is needed (support PL).

PT: scrutiny reservation on this article (which is closely linked to art. 3).

LT idem (more clarification is needed on the role of the CION in paragraphs 2, 4, 5 and perhaps not mention deadlines at all in this article).

¹⁵⁷ SK: the proposed way to adopt the reports does not include a specific role for experts representing MS. SK considers it essential to specify the decision making process, in order to ensure a decisive role for the MS experts.

AT: Throughout the adoption procedure of evaluation reports MS should have a greater say.

¹⁵⁸ DE: insert 'draft'.

¹⁵⁹ SI refers to its written comments: more participation/a bigger role of the MS is needed (support CH). SI is in favour of participation of the MS in the drafting during the visit (para 1, support MT)), even in case of unannounced visits (support DE, PT, PL).

FI asked (supported by FR) for clarification of the role of the experts in the unannounced visits and whether or not they can participate in drafting. The report should reflect the position of the entire team (FI would like a similar text as in the Decision). FI proposes to insert 'best practices and their implementation' into the text (support FR, DE, CZ, PT).

¹⁶⁰ DE: insert 'draft'.

- (a) If the evaluation is based only on the questionnaire or an unannounced visit ¹⁶¹, the ¹⁶² report shall be drawn up by the Commission;
 - (b) ¹⁶³ In the case of announced ¹⁶⁴ on-site visits, the ¹⁶⁵ report shall be drawn up by the team during the visit. The Commission official ¹⁶⁶ shall take overall responsibility for drafting the report as well as ensuring its integrity and quality ¹⁶⁷.
2. The report shall analyse ¹⁶⁸ the qualitative, quantitative, operational, administrative and organisational aspects as relevant and shall list any shortcomings or weaknesses established during the evaluation ¹⁶⁹. The report shall contain recommendations for remedial action ¹⁷⁰ as well as respective deadlines for their implementation ¹⁷¹.
 3. One of the following classifications ¹⁷² shall apply to each of the findings of the report:
 - (a) compliant;
 - (b) compliant but improvement necessary;
 - (c) non-compliant, with serious deficiencies.

¹⁶¹ DE: delete 'or an unannounced visit'.

SI: replace 'or an unannounced visit' by 'on site visits according to article 12.

¹⁶² DE: replace 'the' by 'a draft'.

¹⁶³ FR favors that not only the CION would have overall responsibility, but also a Leading Expert appointed by the team.

¹⁶⁴ DE, SI: add: 'or unannounced'.

¹⁶⁵ DE: insert 'draft'.

¹⁶⁶ SI: add: and coordinator.

¹⁶⁷ DE proposes to delete this sentence

EE asks for clarification of the second sentence (support NL). The CION Official would take over the role of the Council Secretariat, and throughout the entire evaluation the role of the Leading Expert is missing. Frontex is actually training Leading Experts, cause he/she draws up the substance of the report. The LE should come from a Member State.

NL: the experience and knowledge of the Council Secretariat should be maintained.

¹⁶⁸ LT: what is meant with the assessment by the CION - is this linked to the classifications mentioned in this para?

¹⁶⁹ CZ: add: 'as well as examples of good and best practices identified and worth sharing with the other MS. Support DE.

FI proposes to insert: 'recommendations must be based on the Schengen acquis and the Schengen Catalogue'.

¹⁷⁰ CZ: Delete in last sentence: ' as well as respective deadlines' and 'for'. See CZ written comments for further clarification. Support PL, LT.

¹⁷¹ NL: the Council Working Party should set deadlines; difficult for experts to estimate how much time is needed to remedy shortcomings.

¹⁷² FR: The classifications used are too simplistic; this paragraph should be deleted.

4. ¹⁷³ The ¹⁷⁴ report shall be notified by the Commission to the Member State concerned within four weeks of the on-site visit or the receipt of replies to the questionnaire as relevant. The Member State concerned shall provide its comments on the report within two ¹⁷⁵ weeks.

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Within six ¹⁷⁷ weeks of receipt ¹⁷⁸ of the report ¹⁷⁹, the Member State concerned shall provide an action plan on how to remedy any weaknesses identified to the Commission ¹⁸⁰.

5. ¹⁸¹ The report and the reply of the Member State concerned shall be presented by the Commission expert ¹⁸² to the coordination group. The Commission shall present its assessment of the adequacy of the action plan. Member States shall be invited to comment ¹⁸³ on the report and the action plan.

¹⁷³ NO does not understand how the procedure mentioned in para 4 will work; i.e. how comments from the MS will be treated. It must be possible to amend the report after receiving comments (for instance in case of misunderstandings). The starting date must be the date when the report is received by the MS. The deadlines are too short; drawing up an Action Plan is time consuming and requires national coordination (support MT).

FR: add: a Leading Expert working together with the CION but this also depends on the role of the Coordination Group.

PL: add in this para that bilateral meetings take place between the evaluated MS and the Cion.

¹⁷⁴ DE: insert 'draft'.

¹⁷⁵ DE: replace 'two' by 'four'. PT and NL: extension needed (NL: add: 'in principle')

¹⁷⁶ DE proposes to insert the following sentence: The competent Council working party shall take into account the comments of the Member State concerned and adopt the report following consultation.

¹⁷⁷ DE: replace 'six' by 'eight'. AT: this period should be extended to at least 4 months (support CY, MT, BE). BE: in BE, and probably in other MS too, more than 1 organisation is normally involved in an evaluation. This means that procedures can be long (especially when it coincides with a holiday period): two or three months is more reasonable.

¹⁷⁸ DE: delete 'of receipt'.

¹⁷⁹ DE: add: report's adoption by the competent Council working party.

¹⁸⁰ CZ: replace 'Commission' by 'coordination group'.

SI: replace 'to the Commission' by 'in the evaluation report'

¹⁸¹ DE proposes to rephrase this paragraph as follows: *"The Member State concerned shall present the action plan to the competent Council working party. The competent Council working party shall assess the action plan and adopt it following consultation."*

PL: add in this para that bilateral meetings take place between the evaluated MS and the CION.

¹⁸² SI: add: 'and coordinator'.

¹⁸³ NL: what status have these comments?

6. ¹⁸⁴ The Member State concerned shall report to the Commission ¹⁸⁵ on the implementation of the action plan within six months of receipt of the report ¹⁸⁶, and shall thereafter continue to do so every three months as long as the action plan is not fully implemented.
¹⁸⁷ Depending on the severity of the weaknesses identified and the measures taken to remedy those weaknesses, the Commission may schedule ¹⁸⁸ announced or unannounced on-site visits to verify the implementation of the action plan ¹⁸⁹.
7. ¹⁹⁰ Paragraphs 1 to 6 are without prejudice to the powers of the Commission under Article 226 of the Treaty establishing the European Community ¹⁹¹.
8. ¹⁹² If an on-site visit reveals a serious deficiency deemed to have a significant impact on the overall level of security ¹⁹³ of one or more Member States applying the Schengen *acquis* in full, the Commission ¹⁹⁴ shall ¹⁹⁵ inform the ¹⁹⁶ Council as soon as possible.

Article 14

Sensitive information

The teams shall regard as confidential any information they acquire in the course of performing their duties. The reports drawn up following on-site visits shall be classified as restricted. The Commission, after consulting the Member State concerned, shall decide which part of the report can be made public ¹⁹⁷.

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- ¹⁸⁴ PT: more flexibility needed as regards the deadline mentioned in this para.
¹⁸⁵ CZ: replace 'Commission' by 'coordination group' (support NL).
 SI: add 'and coordination group'.
¹⁸⁶ DE: replace 'receipt of the report' by 'the action plan's adoption'.
 NO: replace 'within six months of receipt of the report' by 'from the time the comments are received'.
¹⁸⁷ DE proposes to insert the following sentence: The Commission shall forward the reports of the Member State concerned to the competent Council working party. The competent working party shall assess these reports.
¹⁸⁸ CZ: add: 'in close cooperation with the coordination group'.
 SI: replace 'schedule' by 'propose to the coordination group to adopt plan for'.
¹⁸⁹ DE: add the following phrase: In doing so, the Commission shall take into account the comments in accordance with paragraphs 5 and 6.
¹⁹⁰ DE proposes to delete this paragraph.
 FR: wonders why a reference to article 226 is needed in the text and does not consider this paragraph to be really useful.
¹⁹¹ SK: this paragraph is superfluous; secondary legislation can not in any way limit powers stemming from the Treaties. Furthermore, the proceedings according to Article 226 TEC do not apply to Associated states.
¹⁹² FR wants to add the role of the Coordination Group to go hand in hand with the role of the CION
¹⁹³ LT: what kind of security doe CION assess? And what kind of follow-up is expected from the Council?
¹⁹⁴ NL: why the Commission and not the Council WP or coordination group?
¹⁹⁵ CZ: add: 'on behalf of the coordination group'
¹⁹⁶ SI: add: 'coordination group and the'
¹⁹⁷ NO supports the idea of making some of the report public after discussion with the evaluated country.
 NO wonders why "based on the questionnaire" does not figure in the text.
 CH (see discussion on art. 3): the decision on the publication of a report or parts of it should be taken by the Coordination Group or the SCHEVAL WP respectively, not only by the CION.
 FR pleads for a bigger role of the Coordination Group in this article in taking the decision.
 NL supports CH and FR: it is either the task of the Working Party or the Coordination Group.

Article 15

Transitional provisions

1. The first multiannual programme in accordance with Article 5 and the first annual programme in accordance with Article 7 shall be established six months after the entry into force of this Regulation. The starting dates for both programmes shall be one year after the entry into force of this Regulation.
- 2¹⁹⁸. The first risk analysis to be provided by Frontex in accordance with Article 6 shall be provided to the Commission not later than three months after the entry into force of this Regulation.
3. Member States shall designate their experts in accordance with Article 8 not later than three months after the entry into force of this Regulation.

Article 16

Reporting to the Parliament and the Council

The Commission shall present a yearly report to the Council and the European Parliament on the evaluations carried out pursuant to this Regulation. The report shall be made public ¹⁹⁹ and shall include information on:

- the evaluations carried out during the previous year,
- the conclusions in relation to each evaluation and the state-of-play with regard to remedial actions ²⁰⁰, and
- any infringement procedures initiated by the Commission as a result of the evaluations.

Article 17 ²⁰¹

Repeal

Where this relates to the Schengen *acquis* as defined in Article 2, part II of the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/Com-ex (98) 26 def.), entitled ‘Implementation committee for the states already applying the convention’, shall be repealed as of one year after the entry into force of this Regulation.

¹⁹⁸ DE proposes to delete this paragraph

¹⁹⁹ AT finds the publishing of the report awkward (support CH which refers at the same time to the discussion on art. 3 with regard to the role and responsibility of CION and MS).

SI doubts about the last indent and prefers it to be deleted (support DE, FR. FR: the EP and Council are anyway informed about an infringement procedure).

²⁰⁰ DE proposes to delete as from ‘,and’ (including the last sentence)

²⁰¹ CH repeats its fundamental reservation against setting up a new evaluation mechanism in parallel to the existing one.

NL supports CH; the mechanism can remain under one umbrella. NL is against a new mechanism, setting up a new WP, a new mandate etc. PL supports CH and NL.

Article 18

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States, in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council
The President

²⁰² DE proposes to add a new *Article (17a): Assessment*
The Commission shall assess the application of this Regulation one year after its entry into force and shall report to the European Parliament and the Council, if necessary with proposals for amending this Regulation.

- ²⁰⁴ **Internal borders:**
 - Abolition of checks at internal borders
 - Abolition of obstacles at internal borders
- **External borders:**
 - Strategy and organisational and functional structure of border services
 - Risk analysis, intelligence and data flow management;
 - Readmission, expulsion and illegal immigration, including carrier's liability
 - Provisions for carrying out checks at border crossing points
 - Infrastructure of border crossing points
 - Technical means available at the external borders for border control
 - Numbers and training of border guards
 - Surveillance systems at borders
 - Existing forms of cooperation with neighbouring third countries
- **Visas:**
 - Provisions on the issuance of visas
 - Consultation of the Schengen Information System and Visa Information System
 - Security of Consulate premises
 - Provisions and practical arrangements for the procurement of Schengen visa stickers and storage conditions
 - Numbers and training of consular staff
 - IT equipment for detecting false and falsified documents
 - Consular cooperation

²⁰³ AT, DE, FR, NL, PT: reservation. Against inclusion of internal borders (CH, NO support this position).

FI, CH, FR, PT request clarification of the Annex; this should be an exhaustive list.

CH requests an explicit reference to the Schengen acquis.

²⁰⁴ DE proposes to delete the bullet point on Internal borders.

- **Data protection**

- Legal, organisational and technical aspects of the protection of personal data
- Measures to prevent access to information systems and to data stored
- Data subject rights and complaints handling;
- Supervisory role (on-site visits)
- Data protection in relation to visa issuance
- Cooperation with other Data Protection Authorities (DPA)

- **Schengen Information System (SIS) / Sirene**

- Security of data
- Security of IT systems and networks where data are processed
- Security of premises
- Legislative and regulatory provisions regarding the SIS
- Data handling, entry, modification, deletion of alerts, data quality measures
- Technical availability and operational capacity of the Sirene Bureaux
- End-user access to relevant SIS data
- Training

- **Drugs**

- Implementation of the Schengen medical certificate and obstacles encountered

p.m.: "Legislative financial statement for proposals having a budgetary impact exclusively limited to the revenue side" - see doc. 7348/09 SCHEVAL 39 SCHENGEN 2 COMIX 210