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(EU-Iceland/Norway/Switzerland/Liechtenstein)

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5546/12 SCHENGEN 6 SCH-EVAL 8 FRONT 7 COMIX 30 CODEC 153

Subject: Amended proposal for a regulation of the European Parliament and of the Council on
the establishment of an evaluation and monitoring mechanism to verify the
application of the Schengen acquis
- Draft compromise text

Delegations will find below a revised draft compromise text proposed by the Danish Presidency, taking into account the results of the discussions during the previous presidency and the outcome of the meeting of the Working Party for Schengen Matters (Acquis) – Mixed Committee (EU-Iceland/Norway/Switzerland/Liechtenstein) held on 17 and 18 January 2012.

The text underlined corresponds to modifications incorporated by COM in its Amended proposal as set out in COM(2011) 559 final (14358/11). The text ~~struck through~~ refers to parts deleted by COM in its Amended proposal as set out in COM(2011) 559 final (14358/11).

Text in **bold** refers to modifications incorporated into the Commission proposal under the Polish Presidency.

The new changes (additions and deletions – the latter in ~~double-strike through~~) presented for the first time in the current compromise text are **highlighted**.

General scrutiny reservations have been entered by AT, BE, CZ, DE, EL, ES, FI, HU, LT, LU, LV, MT, NL, PT and SI. Parliamentary reservations are pending from FR, MT and NL.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article
[77(2)(e)]¹ thereof,

Having regard to the proposal from the European Commission,

[Having regard to the opinion of the European Parliament]

After transmission of the draft legislative act to the nNational Parliaments,

[Acting in accordance with the ~~procedure laid down in Article 294 of the Treaty~~ ordinary legislative procedure]

²

Article 1³

Purpose and scope⁴

This Regulation establishes an evaluation and monitoring mechanism to verify application of the Schengen *acquis* in the Member States to which the Schengen *acquis* applies in full.

Experts from the Member States which, in accordance with the relevant Act of Accession, do not yet fully apply the *acquis* shall nevertheless participate in evaluation and monitoring of all parts of the *acquis*.

Article 2

Definitions

For the purpose of this Regulation,

‘Schengen *acquis*’ means the provisions of the Schengen *acquis*, as integrated into the European Union framework by the Protocol annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, together with the acts building upon it or otherwise related to it.

¹ All delegations but two (LU and PT) were in favour of or could accept changing the legal basis to Article 70 TFEU. However there is a broad consensus among the Member States to closely involve the European Parliament.

² The recitals will be analysed at a later stage.

³ CH entered a reservation on this Article.

⁴ BE proposed to add a subparagraph stipulating that experts from candidate Member States should be considered as observers when participating in on-site evaluations.

*Article 3*⁵
Responsibilities⁶

1. The Commission shall be responsible for implementation of this evaluation and monitoring mechanism in **full association** with the Member States **as specified in this Regulation and notably in Article 17** and with the support of **the** EU bodies **involved in the implementation of the Schengen acquis**⁷.
2. Member States **and** the Commission **shall cooperate fully**⁸ ~~in all phases~~ at all stages of **evaluations in order** to carry out the tasks ~~conferred on~~ **entrusted to** **them** by this Regulation. (...).

Article 4
Evaluations

0a. (takes over Article 12) ⁹Evaluations may cover any aspects of the Schengen acquis, including the effective and efficient application by the Member States of accompanying measures in the areas of external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters, and drugs policies, as well as the absence of border control at internal borders.

⁵ EL and ES entered a reservation on this Article.

⁶ A vast majority of MS asked for more balance of powers between the Commission and Member States as well as more clarity about sharing of competences.

⁷ Modifications based on suggestions from CZ and NO (see 8332/11).

⁸ Modifications suggested by CZ and NO (see 8332/11).

⁹ Based on recital (1) (see 14358/11, p. 5). Takes over Article 12.

0b. Evaluations may¹⁰ consist of questionnaires and on-site visits **which may¹¹ be announced or unannounced¹². Announced on-site visits shall be preceded by a questionnaire¹³.**

0c. Both may¹⁴ be supplemented by presentations by the evaluated Member State on the area covered by the evaluation. On-site visits and questionnaires may¹⁵ be used either independently or in combination in relation to specific Member States and/or specific areas. (...).

Article 5¹⁶

Multiannual programme

1. A multiannual evaluation programme covering a period of five years shall be established by the Commission, ~~in accordance with the procedure referred to in Article 15 (2),~~ **where appropriate after consulting Frontex and Europol¹⁷,** not later than six months before the start of the next five-year period. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 17 (2).

2.¹⁸ **Each Member State shall be evaluated during each five-year period.** The multiannual programme shall list **the order** of Member States to be evaluated each year. (...) The order in which the Member States are to be evaluated shall take into account (...) ¹⁹ the time which has elapsed since the previous evaluation and the balance between the different parts of the Schengen *acquis* to be evaluated.

¹⁰ RO expressed concerns about the use of the term “may” in connection with the use of the term “shall” in Article 7.

¹¹ RO expressed concerns about the use of the term “may” in connection with the use of the term “shall” in Article 7.

¹² Some MS want to define the criteria for unannounced visits. FI fully supports unannounced visits as they increase the efficiency of the evaluations and thus mutual trust (sufficient evaluation frequency must be ensured).

¹³ Requested modifications by HU and NO (see 8332/11).

¹⁴ RO expressed concerns about the use of the term “may” in connection with the use of the term “shall” in Article 7.

¹⁵ RO expressed concerns about the use of the term “may” in connection with the use of the term “shall” in Article 7.

¹⁶ DE and NL entered reservation on this Article.

¹⁷ Suggested by FR and NL.

¹⁸ Modifications suggested by AT (see 8332/11); FI would like to keep "risk analysis" as in the previous text, but change the related migratory pressure to illegal immigration.

¹⁹ Deletion supported by EL, PT and RO.

3. The multiannual programme may be adapted, if necessary, (...) ²⁰ in accordance with the procedure referred to in paragraph 1.

3a. ²¹ **The multiannual programme may contain a reference to thematic** ²² **evaluations as referred to in Article 8(1).**

Article 6 (ex-Article 8) ²³

Annual programme ²⁴

1. (...) **An annual evaluation programme shall be established by the Commission by not later than 31 of October of the previous year, taking into account notably the risk analysis provided by Frontex in accordance with Article 7 and where appropriate information provided by Europol or other relevant sources, notably in accordance with Article 7A.**

The programme ~~may~~ **shall include proposals** for evaluation of:

- application of the *acquis* or parts of the *acquis* by one Member State ²⁵, as specified in the multiannual programme;
and, (...) where relevant:
- application of specific parts of the *acquis* ²⁶ across several Member States (thematic evaluations);
- (...)

²⁰ Deletions suggested by AT.

²¹ New paragraph as suggested by AT and BE.

²² BE proposal.

²³ EL and ES entered a reservation on this Article.

²⁴ FI also wants to make thematic and regional evaluations possible here.

²⁵ NL suggested including the proper functioning of competent national authorities involved in applying the *acquis*

²⁶ NL suggested adding: including the proper functioning of institutions involved in application.

- 2²⁷. The first section of the programme, **including a provisional timeschedule of the on-site visits**, ~~adopted in accordance with the procedure referred to in Article 15 (2)~~, shall list the Member States to be evaluated in the next year in accordance with the multiannual programme. This section shall list the areas to be evaluated and the on-site visits. **This implementing act shall be adopted in accordance with the examination procedure referred to in Article 17 (2).**
3. ~~The Commission shall draw up~~ **The** second section of the programme ~~which~~ shall list the unannounced on-site visits to be carried out in the next year. 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 paragraphs 2 and 3.

Article 7 (ex-Article 6)

Frontex²⁸ risk analysis

1. By not later than **31 August** each year, Frontex shall submit to the Commission **and the Member States** a risk analysis taking into account migratory pressure²⁹ and making recommendations for priorities for evaluations in the next year. The recommendations shall refer to specific sections of the external borders and to specific border crossing-points to be evaluated in the next year under the multiannual programme. (...)

²⁷ DE and NL entered a reservation on this paragraph.

²⁸ Based on a suggestion from NL.

²⁹ FI: Change to illegal immigration.

2. By the same deadline as stated in paragraph 1, Frontex shall submit to the Commission a separate risk analysis making recommendations for priorities for evaluations to be implemented in the form of unannounced on-site visits in the next year, **independently of the Member States to be evaluated in accordance with the multiannual programme referred to in paragraph 1**. 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-points. The Commission may at any time request Frontex to submit to it a risk analysis making recommendations for evaluations to be implemented in the form of unannounced on-site visits.

Article 7A^{30 31}

Risk analysis by other EU bodies

The Commission may ask for risk analysis from other EU bodies, involved in the implementation of the Schengen acquis, which could be used for preparing an annual program.

³⁰ New article supported by AT, DE, FR and SE.

³¹ NL suggested adding a new article with the following wording:

Europol risk analysis

By no later than (...) 30 September each year, EUROPOL shall submit to the Commission and the Member States a risk analysis taking into account serious and organised crime and making recommendations for priorities for evaluations in the following year under the multiannual programme. This should be done in accordance with the EU policy cycle for organised and serious international crime.

Article 8 (ex-Article 7)

Questionnaire

1. The Commission shall send a standard questionnaire to the Member States to be evaluated in the next year by not later than **1 July** of the previous year. The standard questionnaires **shall be drafted and updated in close cooperation with the Member States and shall**³² cover the relevant legislation^{33 34} and the organisational and technical means available for implementation of the Schengen *acquis* and statistical data on each field of the evaluation. **Frontex and Europol may be consulted on the draft questionnaire.**
2. Member States shall provide their replies to the questionnaire to the Commission within **ten** weeks of communication of the questionnaire. The Commission shall make the replies available to the other Member States.

Article 9 (ex-Article 10)

Teams responsible for on-site visits

1. (...) The teams **responsible for on-site visits** shall consist of experts **designated by Member States and of Commission representatives.**^{35 36}

³² Addition suggested by HU (see 8332/11).

³³ NL suggested inserting "*the functioning of competent national authorities*".

³⁴ FI suggests that "commonly agreed recommendations and good practices" should also be mentioned.

³⁵ BE suggested adding: "*and of observers as referred to in Article 1*".

³⁶ Modifications supported by AT, DE, EL, NO and PT (see 8332/11).

2. **The Commission shall invite Member States to designate experts who are available for participation in the respective on-site visits, indicating their area of expertise.**

³⁷In the case of announced visits, the **Commission shall invite** Member States to **designate** experts not later than **two months** before the on-site visit is scheduled. Member States shall **designate** experts within one week.

³⁸In the case of unannounced visits, the **Commission shall invite** Member States to **designate** experts not later than **two** weeks before the on-site visit is scheduled. Member States shall **designate** the experts within **72** hours.³⁹

3. The number of **Member States'** experts (...) participating in evaluation visits may not exceed eight persons for announced on-site visits and six persons for unannounced on-site visits.⁴⁰

The number of Commission representatives participating in the evaluation visits may not exceed two⁴¹ persons.

If the number of experts designated by Member States exceeds the aforementioned maximum, the Commission, after consulting the Member States concerned, shall appoint the members of the team on the basis of the geographical balance and the competences of the experts.

4. (...) ⁴²Member States' experts may not participate in an **evaluation mission that includes an on-site visit to the Member State where they are employed.**⁴³

³⁷ Former Article 10(4) in the initial COM proposal (14358/11).

³⁸ Former Article 10(5) in the initial COM proposal (14358/11).

³⁹ Modifications supported by AT, DE, EL, NO and PT (see 8332/11).

⁴⁰ Modifications supported by AT, DE, EL, NO and PT (see 8332/11); FI proposes more flexibility in the number of experts, as the number of experts necessary for proper functionality might vary between the fields to be evaluated. FI wants to add a possibility that an expert might be provided at the MS's own expense. (This would enhance transparency and trust).

⁴¹ SI would prefer only one Commission representative.

⁴² Paragraph moved from Article 10(1) of the initial COM proposal (14358/11).

⁴³ Modification supported by AT, DE, EL, NO and PT.

5. (...) ⁴⁴ The Commission ~~may~~ **may** invite Frontex, (...) Europol, Eurojust or other EU bodies **involved in the implementation of the Schengen acquis** ^{45 46} to designate a representative to take part as an observer in a visit concerning an area covered by their mandate.
6. The leading experts for on-site visits shall be a Commission ~~official~~ representative and an expert from a Member State, who shall be appointed prior to the on-site visit jointly by the members of the team of experts.

*Article 10 (ex-Article 9)*⁴⁷

(...) experts

The experts **participating in on-site visits** shall have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation mechanism, along with sound knowledge of evaluation principles, procedures and techniques, and shall be able to communicate effectively in a common language.⁴⁸ **To this end**, Member States shall ensure that the experts receive **relevant** training.⁴⁹

Article 11

Conduct of on-site visits

1. 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. The Member State concerned shall be notified **of the timetable and programme**:
 - at least two months before an announced on-site visit is due to take place;
 - at least 48 hours before an unannounced on-site visit takes place⁵⁰.

⁴⁴ Text partially moved to third subparagraph of paragraph 2.

⁴⁵ Addition supported by AT, DE, EL, NO and PT.

⁴⁶ BE proposal connected with Art. 1 “**and also candidate members of the Schengen area**”.

⁴⁷ NL entered a reservation on this Article.

⁴⁸ Based on Article 9(4) of the initial Commission proposal (14358/11).

⁴⁹ Based on the second sentence of Article 9(5) of the initial Commission proposal (14358/11).

⁵⁰ AT, ES, HU, IT, NO, PT, RO and SI considered the notification times too short.

3. The members of the on-site visit team shall each carry identification authorising them to conduct on-site visits **as members of the Schengen evaluation team in accordance with this regulation.**
4. The **evaluated** Member State shall ensure that the team of experts can directly address relevant persons. It shall ensure that the team has access to all areas, premises and documents required for the evaluation. It shall ensure that the team is able to exercise its mandate to verify the activities in the areas to be evaluated.
5. The **evaluated** Member State shall, by any means within its legal powers, assist the team in performing its task.
6. In the case of announced on-site visits, the Commission shall provide the Member State **to be evaluated** with the names of the experts in the team in advance. The Member State **to be evaluated** shall designate a contact point for making the practical arrangements for the on-site visit.
7. **The Commission**⁵¹ shall be responsible for making the necessary travel and accommodation arrangements for the ~~in~~ experts **participation participating in the evaluation team.**⁵² The travel and accommodation costs for experts participating in the visits shall be reimbursed by the Commission.

⁵¹ AT, CZ, FR, IT, HU, NO, PT, RO and SE thought that the Commission should be responsible for centralized organisation of travel and accommodation arrangements. FR would prefer to have a different approach as regards announced and unannounced visits (see DS 1747/11). BE would also prefer to limit the responsibility to unannounced visits.

⁵² The Commission proposal: „the MS shall be responsible (...). For unannounced visits, the Commission shall facilitate the accommodation arrangements for experts”

Article 12⁵³ (Moved to Article 4(0a))

~~Verification of the free movement of persons at internal borders~~

~~Notwithstanding Article 9, teams for unannounced on-site visits to verify the absence of controls at internal borders shall consist of representatives of the Commission official and of the Member States⁵⁴.~~

Article 13⁵⁵

Evaluation reports

1. A report shall be drawn up following each evaluation. The evaluation report shall be based on the findings of the on-site visit and the questionnaire, as appropriate⁵⁶. **In case of on-site visits⁵⁷**, the report shall be drawn up by the **team during the visit**. (...) The Commission ~~official~~ representative **and the Member States' experts⁵⁸** shall take overall responsibility for drafting the report and ensuring its integrity and quality. In case of disagreement, the team shall endeavour to reach a compromise..
2. The report shall analyse the qualitative, quantitative, operational, administrative and organisational aspects, as appropriate, and shall list any shortcomings or weaknesses established during the evaluation. The report shall contain recommendations for remedial action and **an indication of the priorities⁵⁹** for implementing them⁶⁰, **as well as examples of good practices where appropriate⁶¹**.

⁵³ AT, BE, BG, CH, DE, EL, ES, IS, IT, NL, NO, RO and SI entered a reservation on this Article. FR requests the removal of this Article (see 15853/11).

⁵⁴ Suggested by CZ, supported by EE, EL, HU, LT and LU; acceptable for COM.

⁵⁵ ES and PT entered reservations on this Article.

⁵⁶ FR considered that decisions on on-site visits should be based on risk analysis.

⁵⁷ BE, supported by NL, was against evaluations only on the basis of questionnaires and suggested deleting this paragraph.

⁵⁸ Suggested by DE, supported by CH, NO and PT.

⁵⁹ Suggested by BG, supported by EE, FI, NO and COM.

⁶⁰ Deletion suggested by DE, supported by EE and NO. The report should not impose a framework and timetable for the recommendations; BG: indicate urgent measures (as a compromise).

⁶¹ Suggested by FI, supported by CZ and FR, NL and UK; acceptable for COM. CH and EL are not in favour; UK wants to see the "best practices" mentioned somewhere in the report (e.g. recital).

3. One of the following **assessments** shall be given to each finding in the report:
- (a) compliant;
 - (b) compliant but improvement necessary;
 - (c) non-compliant.⁶²
4. The Commission shall communicate the draft report to the Member State concerned within six weeks of the on-site visit or of receipt of the replies to the questionnaire, as appropriate. The **evaluated** Member State shall provide its comments on the report within two weeks.⁶³
The comments may be reflected in the report.
- 5⁶⁴. The Commission ~~expert~~ shall present the draft report and the reply from the Member State to the committee established in accordance with Article ~~15~~ 17. Member States shall be invited to comment on the replies to the questionnaire, the draft report and the comments by the Member State **evaluated**⁶⁵.
On this basis, the Commission shall ~~decide on~~ adopt the evaluation report and the recommendations aimed at addressing the possible weaknesses which have resulted in the assessment of the findings referred to in paragraph 3 shall be adopted by the Commission in accordance with the procedure referred to in Article 15 (2). This implementing act shall be adopted in accordance with the examination procedure referred to in Article 17(2).
Within **three** months⁶⁶ after adoption of the report, the Member State concerned shall provide the Commission with an action plan to remedy any weaknesses identified.
After consulting the team of experts, the Commission shall present its assessment of the adequacy of the action plan to the committee established in accordance with Article ~~15~~ 17⁶⁷, within one month of receiving the action plan from the Member State. Member States shall be invited to comment on the action plan.

⁶² CH felt that paragraphs 2 and 3 should be compliant.

⁶³ A drafting meeting should be planned – suggested by CH; ES, CZ, FR: more time; reservation: ES.

⁶⁴ DE, AT reservation on the comitology procedure; BE scrutiny reservation (see 16988/11).

⁶⁵ FI suggested that the MS should be able to comment on the draft report.

⁶⁶ Suggested by AT, supported by CZ, EE, EL NO.

⁶⁷ NL entered a reservation on comitology.

6. The Member State concerned shall report to the Commission on implementation of the action plan within six months of **adoption**⁶⁸ of the evaluation report and shall thereafter continue to report every three months until the action plan is fully implemented. ~~Depending on the severity of the weaknesses identified and the measures taken to remedy them, the Commission may schedule announced visits in accordance with the procedure referred to in Article 15 (2) to verify implementation of the action plan may decide on announced visits to verify implementation of the action plan. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2)⁶⁹. The Commission may also ~~foresee~~ unannounced on-site visits. The Commission shall inform the committee established in accordance with Article 15 17, on a regular basis, about the implementation of the action plan.~~ (moved to paragraph 6b)
- 6a. (ex-Article 15(1)) Notwithstanding the six month⁷⁰ period for reporting on the implementation of an action plan referred to in Article 13(6), if the evaluation report referred to in Article 13(5) concludes that the evaluated Member State is seriously neglecting its obligations ~~to carry out external border control or return procedures~~⁷¹, the evaluated Member State shall report on the implementation of the action plan within three months of receipt of the evaluation report.

⁶⁸ Suggested by AT, supported by NO, accepted by CZ; ES: also follow-up; CH: better distribution of tasks - MS should be more active in the follow-up; conclude follow-up with Council conclusions..

⁶⁹ NL entered a reservation on comitology. CH reservation to comitology.

⁷⁰ CZ – limit to 3 months

⁷¹ Several delegations suggested excluding return procedures from the text. (MT could accept this if it were understood that problems regarding return procedures were to be considered in the context of the difficulties of cooperation with third states rather than as a question of numbers.)

- 6b. *(ex-last three sentences of first subparagraph of paragraph 6)* Depending on the severity of the weaknesses identified and the measures taken to remedy them, the Commission ~~may schedule announced visits in accordance with the procedure referred to in Article 15(2) to verify implementation of the action plan~~ **may** decide on announced visits to verify implementation of the action plan. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2)⁷². The Commission may also **foresee** unannounced on-site visits.
- 6c. *(ex-second subparagraph of paragraph 6)* The Commission shall inform the committee established in accordance with Article ~~15-17~~, on a regular basis, about the implementation of the action plan.
7. If an on-site visit reveals a serious **difficulty or** deficiency⁷³ deemed to have a significant impact on the overall level of security⁷⁴ of one or more Member States, the Commission, on its own initiative or at the request of a Member State, shall inform the Council and the European Parliament as soon as possible.

⁷² NL entered a reservation on comitology. CH reservation to comitology.

⁷³ RO expressed doubts about this concept.

⁷⁴ SI expressed doubts about this concept.

~~Measures at the external borders and Frontex support~~⁸⁰

~~1. Where serious deficiencies in the carrying out of external border control or return procedures⁸¹ are identified in the evaluation report, and with a view to ensuring compliance with the recommendations referred to in Article 13 (5), the Commission may decide to request [to recommend]⁸² the evaluated Member State to take certain specific measures, which may include⁸³ one or more of the following:~~

- ~~— initiation of the deployment of European Border Guard teams in accordance with the provisions of the Frontex Regulation⁸⁴;~~
- ~~— submission of its strategic decisions based⁸⁵ on risk assessment and plans for the deployment of equipment for **opinion**⁸⁶ to Frontex;~~

⁷⁵ FR considered that a link was missing between the current content of this Article and the possibility of taking measures if a Member State refused to accept European teams of border guards, as with Frontex. This refusal should lead to the closure of the internal border. [wording similar to Art. 15(2)]. PT is of the opinion that the article is not in compliance with the conclusions of the EC, who wanted these measures to be taken only as a last resort (which is not correctly reflected here).

⁷⁶ Scrutiny reservations from AT, BE, CH, IT, NL, NO, SI, ES and PT.

⁷⁷ Several delegations expressed concerns as regards the transfer of powers/competences from the MS (sovereignty issue). COM explained that while the request was binding, it was up to the evaluated MS to implement the request (no automatic execution), COM would therefore be open to the FR suggestion of applying Art 15(2) directly if a MS refused to implement the request for practical or legal reasons.

⁷⁸ Several delegations felt that any reference to the reintroduction of checks at the internal borders should be moved to the SBC.

⁷⁹ Deleted from this Proposal and moved to the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances (see 6161/12), as part of a new Article 19A to be added to the Schengen Borders Code.

⁸⁰ Frontex support should be in compliance with the Frontex Regulation (several MS, in particular ES and EL).

⁸¹ Several delegations suggested excluding return procedures from the text. (MT could accept this if it were understood that problems regarding return procedures were to be considered in the context of the difficulties of cooperation with third states rather than as a question of numbers.)

⁸² COM, replying to some delegations, confirmed that this was obligatory in character. DE (supported by AT) sees this as a fundamental new element – strong reservation on that solution; SE – this needs to be discussed; FR wants "initiate" instead of "request".

⁸³ DE, supported by other MS, expressed reservations about the indicative nature of the list of measures.

⁸⁴ FI: must be based on a request by the MS in question. The European BG are currently deployed based on risk analysis - this principle should be kept.

⁸⁵ Suggested by CZ, supported by SE.

~~closing of a specific border crossing point for a limited period of time until the weaknesses are remedied.⁸⁷~~

~~This implementing act shall be adopted in accordance with the examination procedure referred to in Article 17(2).~~

~~2. The Commission shall inform the committee established in accordance with Article 17 on a regular basis on the progress in the implementation of the measures referred to in paragraph 1 and on its impact on the deficiencies identified.~~

Article 15⁸⁸⁻⁹⁰ (moved/deleted)

~~*Serious deficiencies related to external border control or return procedures⁹⁰*~~

~~1. (moved to Article 13(6a)) Notwithstanding the six month⁹⁴ period for reporting on the implementation of an action plan referred to in Article 13 (6), if the evaluation report referred to in Article 13 (5) concludes that the evaluated Member State is seriously neglecting its obligation to carry out external border control or return procedures⁹², the evaluated Member State shall report on the implementation of the action plan within three months of receipt of the evaluation report.~~

~~[2^{93,94}. If, following the three months period referred to in paragraph 1, the Commission finds that the situation persists, Articles 23, 23a and 26 of the Schengen Borders Code apply.]~~

⁸⁶ CZ, FI, HU and SE would prefer it be submitted to Frontex for comments (opinion).

⁸⁷ Many delegations had doubts about allowing COM to oblige a MS to close the border. ES was against closing the BCP; LV, supported by EL, expressed concerns as regards relationships with third countries. RO informed the meeting that in Romania, only the government could close BCPs. AT mentioned that closing a BCP might be counterproductive in the sense that passengers would increasingly try to get across illegally (e.g. green border); FI wanted this to remain a national competence.

⁸⁸ PT, CH, BE, NO, IT and SI entered scrutiny reservations; SK and PT (subsidiarity) had parliamentary scrutiny reservations.

⁸⁹ AT, ES, NL, DE entered reservations.

⁹⁰ Several delegations suggested excluding return procedures from the text. (MT could accept this if it were understood that problems regarding return procedures were to be considered in the context of the difficulties of cooperation with third states rather than as a question of numbers.)

⁹¹ CZ – limit to 3 months

⁹² Several delegations suggested excluding return procedures from the text. (MT could accept this if it were understood that problems regarding return procedures were to be considered in the context of the difficulties of cooperation with third states rather than as a question of numbers.)

⁹³ Deleted from this Proposal and moved to the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances (see 6161/12), as part of a new Article 19A to be added to the Schengen Borders Code.

Article 14-16

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 **EU RESTRICTED/RESTREINT UE**. The Commission, **in agreement with**⁹⁵ the **evaluated** Member States, shall decide which parts of the reports can be made **accessible to the Council or to the European Parliament, in accordance with the applicable security rules on classified information, and which parts can be made** public.

Article 15

Committee

- ~~1. The Commission shall be assisted by a committee made up of representative of the Member States and chaired by the representative of the Commission.~~
- ~~2. Where reference is made to this paragraph, Articles 4, 7 and 8 of Decision 1999/468/EC shall apply.~~

Article 17

Committee^{96 97}

- ~~1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.~~
- ~~2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.~~

⁹⁴ Several delegations felt that any reference to the reintroduction of checks at the internal borders should be moved to the SBC.

⁹⁵ Suggested by BE and ES, supported by DE; acceptable for COM.

⁹⁶ DE, EL, FI, MT, NL and SI were against comitology. These delegations considered that delegated powers should be replaced by joint powers. COM could have competences as regards monitoring the implementation of the recommendations.

⁹⁷ Scrutiny reservation from BE and reservation from ES.

Article ~~16~~18

Transitional provisions

1. The first multiannual programme in accordance with Article 5 and the first annual programme in accordance with Article 8 shall be established six months after this Regulation enters into force. The starting dates for both programmes shall be one year after this Regulation enters into force.
2. 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 this Regulation enters into force.
3. Member States shall designate their experts in accordance with Article 9 not later than three months after this Regulation enters into force.

Article ~~17~~19

Information of the European Parliament and the Council

The Commission shall inform the European Parliament and the Council of the recommendations adopted by the Commission in accordance with Article 13(5).

Article ~~18~~20

Reporting to the European Parliament and the Council

The Commission shall present a yearly summary⁹⁸ report to the European Parliament and the Council on the evaluations carried out pursuant to this Regulation. This report shall be made public and shall include information on:

- the evaluations carried out during the previous year, and
- the conclusions drawn from each evaluation and the state of play with regard to remedial action.

⁹⁸ ES would prefer a report every three years.

Article 1921

Transition and repeal

0a. 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 with effect from one year after the entry into force of this Regulation.

0b. **Notwithstanding paragraph 1, an evaluation scheme regarding a particular Member State which is ongoing on the date of entry into force of this Regulation shall be completed in accordance with the Decision referred to in paragraph 1.**

Article 2022⁹⁹

The Council may decide to carry out the Schengen evaluations referred to in Acts of Accession concluded after the entry into force of this Regulation in accordance with this Regulation.

Article 2123

Entry into force

This Regulation shall enter into force on the twentieth day following that of 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 on the Functioning of the European Union~~ Treaties.

Done at Brussels,

[*For the European Parliament*
*The President***]**

For the Council
The President

⁹⁹ ES entered a general reservation on this article.