



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: Presidency
to: Coreper/Mixed Committee

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

Delegations will find below a revised draft compromise text, taking into account the outcome of the informal meetings with the European Parliament and the Commission which took place in October and November and lastly on 4 and 12 December 2012 and the meetings of the JHA Counsellors on 26 November and 10 December 2012.

Changes to the version which resulted from the Council (JHA) on 7 and 8 June 2012¹ are indicated as follows: additions in **bold**; deletions in ~~strike through~~. Changes to the version which was discussed at the JHA Counsellors on 10 December 2012² are **highlighted**.

Furthermore, in the context of the early involvement of the DQL (Directorate Quality of Legislation) with a view to improving drafting quality, this revision contains also modifications regarding the language – which have no substantial impact. They are marked as underlined.

¹ 11846/1/12 REV 1.

² 11846/2/12 REV 2.

General scrutiny reservations are pending from ES and SI. Parliamentary reservations are pending from FR, MT, NL and UK.

Coreper is invited to request the delegations to consider lifting their reservations and to agree the compromise text below.

~~Amended~~ proposal for a

COUNCIL REGULATION
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 on the Functioning of the European Union, and in particular Article 70 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 national Parliaments,

Whereas,

- (1) The Schengen area without border control at internal borders relies on 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.
- (2) By Decision SCH/Com-ex (98) 26 def 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, first, to establish whether all the preconditions for lifting border control at internal borders with a candidate State have been fulfilled and, second, to ensure that the Schengen *acquis* is properly applied by the States already implementing the *acquis* in full.

³ OJ L 239, 22.9.2000, p. 138.

- (3) A specific evaluation and monitoring mechanism to verify application of the Schengen *acquis* is necessary given the need to ensure high uniform standards in application of the Schengen *acquis* in practice and to maintain a high level of mutual trust between those Member States that form part of an area without border control at internal borders. Such a mechanism should build upon close cooperation between the Commission and those Member States.
- (4) The Hague Programme⁴ 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’.
- (5) The Stockholm Programme⁵ ‘considers that the evaluation of the Schengen area will continue to be of key importance and that it therefore should be improved by strengthening the role of Frontex in this field’.
- (6) The evaluation mechanism set up in 1998 should therefore be revised.
- (7) The experience gathered during previous evaluations demonstrates the need to maintain a coherent evaluation mechanism covering all areas of the Schengen *acquis* except those where a specific evaluation mechanism already exists within EU law.
- (8) In accordance with Article 70 of the Treaty on the Functioning of the European Union (TFEU), objective and impartial evaluation of the implementation of the Union policies within the area of freedom, security and justice should be conducted by Members States in collaboration with the Commission. To be efficient, a proper evaluation process should comprise a proper follow-up and monitoring of the evaluation reports which should be ensured by the Commission.

⁴ OJ C 53, 3.3.2005, p.1 (point 1.7.1).

⁵ OJ C 115, 4.5.2010, p. 1 (point 5.1.).

- (8a) In addition, for the evaluation mechanism to be more efficient, uniform conditions for the implementation this Regulation should be ensured. In order to do so, some implementing powers should be conferred on the Commission and some on the Council.
- (8b)⁶ The powers to prepare and plan the evaluations **and the power to adopt the evaluation report** should be conferred on the Commission. These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁷. In view of the terms of Article 2(2)(b)(iii) of that Regulation, the examination procedure should be applicable for the adoption of such acts.
- (8c) In order to strengthen mutual trust between the Member States, to better coordinate them at the level of the Union and to reinforce the peer pressure amongst them, the power to adopt the ~~evaluation reports, including the recommendations, drafted by the Member States' experts and~~ **for remedial actions aimed at addressing possible any⁸ deficiencies as identified in the Commission representatives findings of the evaluation report**, should be conferred on the Council.

Such an implementing power mirrors the specific powers conferred on the Council by the Treaty, through Article 70 TFEU, in the field of mutual evaluation of the implementation of the Union policies within the area of freedom, security and justice. It reflects adequately the purpose of an evaluation mechanism based on this *lex specialis*, which is, within this particular area, and in parallel with the general power of the Commission to oversee the application of Union law under the control of the Court of justice through infringements procedures, to fulfill a complementary function of monitoring the effectiveness of practical implementation of Union policies through peer review.

⁶ At the JHA Counsellors meeting on 10 December 2012, MT entered a reservation on this recital.

⁷ OJ L 55, 28.2.2011, p. 13.

⁸ Modified to ensure consistency with Articles 13(2), 13AA and 13A(1).

Moreover, such an implementing power conferred on the Council contributes to give effect to the wish of the European Council, expressed in its Conclusions of 24 June 2011,⁹ that the cooperation in the Schengen area be further strengthened by enhancing the mutual trust between the Member States, and that the Member States be responsible for guaranteeing that all Schengen rules are applied effectively in accordance with the agreed common standards and with fundamental principles and norms. Such implementing power also contributes, in accordance with the Council Conclusions of 8 March 2012,¹⁰ to improve the governance of the Schengen area through political discussions at Ministerial level on the correct functioning of the Schengen area, including in situations where the evaluation reports have shown serious shortcomings, such discussions taking place within the Mixed Committee, made up of the EU Member States and the Schengen associated States, with a view to the Council taking decisions within the scope of its competences to ensure the efficient functioning of the Schengen area. Finally, conferring such power on the Council adequately takes into account the potential politically sensitive nature of ~~the evaluation reports, and of the recommendations,~~ often touching on national executive and enforcement powers, they may contain.

- (9) The evaluation mechanism should set up transparent, efficient and clear rules on the method to be applied for the evaluations, the use of highly qualified experts for on-site visits and the follow-up to the findings of the evaluations. In particular, the method should provide for unannounced on-site visits to supplement the announced on-site visits, notably with regard to border controls and visas.
- (10) ~~The main focus as regards the evaluations in the area of borders~~ **The evaluation and monitoring mechanism** should be on the external borders. ~~However, the evaluation and monitoring mechanism covers all aspects of the Schengen acquis. As regards the issue of borders, the evaluation and monitoring will cover both the efficiency of border controls at external borders and the absence including the abolition~~ of border controls at internal borders.

⁹ EUCO 23/1/11 REV 1 CO EUR 14 CONCL 4, p. 7.

¹⁰ 7417/12 JAI 154 SCHENGEN 20 COMIX 159.

- (11) The evaluation and monitoring should pay particular attention to respect of fundamental rights in the application of the Schengen *acquis*.
- (12) The evaluation should guarantee that the Member States apply the Schengen rules effectively in accordance with fundamental principles and norms. Therefore the evaluation encompasses all relevant legislation and operational activities contributing to the functioning of an area without border control at internal borders.
- (12a) In view of strengthening the effectiveness and reliability of the mechanism the correct functioning of the authorities that apply the relevant parts of the Schengen *acquis* should be taken into account in all the evaluations. This will increase the ability of the mechanism to guarantee an effective application of the Schengen rules by Member States in accordance with the fundamental principles and norms as requested by the European Council of 24 June 2011 and in accordance with the required functioning of the institutions involved in the application of the Schengen *acquis* as requested by the European Council of 1 and 2 March 2012.
- (13) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter referred to as ‘Frontex’) should support implementation of the mechanism, primarily in the area of risk analysis relating to external borders. The mechanism should also be able to rely on the expertise of Frontex’s assistance when carrying out on-site visits at the external borders on an *ad hoc* basis.

- (13a)¹¹ Other EU bodies, **offices and agencies**, like Europol and Eurojust, should where relevant support the implementation of the mechanism in the areas covered by their mandate. The mechanism should also, where relevant, be able to rely on the expertise of an EU body, **office or agency** when assisting in carrying out on-site visits concerning areas of the Schengen *acquis* covered by the EU body's, **office's or agency's** mandate. **This should for instance be the case of the European Data Protection Supervisor as regards evaluations concerning data protection, for which national data protection authorities may also be involved.**
- (14) *(deleted)*
- (15) Member States and the Commission should ensure that experts made available for on-site visits have the necessary experience and have undergone specific training for this purpose, **including in respect of human fundamental¹² rights**. Appropriate training should be provided by the relevant bodies, **offices or agencies** (e.g. Frontex) and funds should be made available to Member States for initiatives targeted at specific training in the field of evaluation of the Schengen *acquis* from the existing financial instruments and by development thereof.
- (15a) In view of the particular role entrusted to the European Parliament and the national parliaments under the last sentence of Article 70 of the Treaty on the Functioning of the European Union, as underlined in Article 12(c) of the Treaty on European Union as regards the national parliaments, it is necessary to provide that the Council and the Commission will fully inform the European Parliament and the national parliaments of the content and results of the evaluation.

¹¹ At the JHA Counsellors meeting on 10 December 2012, DE entered a scrutiny reservation on this recital.

¹² Wording in line with recital (11) and Article 10.

- (16) In accordance with Articles 1 and 2 of the Protocol (n° 22) on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in adoption of this Regulation and is therefore not bound by it or subject to application thereof. Given that this Regulation builds upon the Schengen *acquis*, under Title V of Part Three of the Treaty on the Functioning of the European Union, Denmark should, in accordance with Article 4 of that Protocol, decide within six months after adoption of this Regulation whether it will implement it in its national law.
- {(17) In accordance with Article 3(1) third subparagraph of the Protocol (n° 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, this Regulation should lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the Schengen *acquis*.}
- {(18) Therefore, the United Kingdom is taking part in this Regulation in accordance with Article 5(1) of the Protocol (n° 19) on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 8(2) of 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.}
- {(18a) Therefore, Ireland is taking part in this Regulation in accordance with Article 5(1) of the Protocol (n° 19) on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 6(2) of 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*¹⁴.}

¹³ OJ L 131, 1.6.2000, p. 43

¹⁴ OJ L 64, 7.3.2002, p. 20

- (19) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by 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*.
- (20) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement 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*.
- (21) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Protocol 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*.
- (22)¹⁵
- (23) ~~As regards Cyprus, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 3(2) of the 2003 Act of Accession.~~ Since that at the date of entry into force of this Regulation the evaluation of Cyprus had already commenced under the Decision of the Executive Committee of 16 September 1998 (SCH/Com-ex (98) 26 def), this Regulation will not apply to Cyprus until 1 January 2016.

¹⁵ Recital (22) missing in the original Commission proposal (14358/11).

- (24) ~~As regards Bulgaria and Romania, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 4(2) of the 2005 Act of Accession.~~
- (24a) Given that the verification in accordance with the applicable Schengen evaluation procedures concerning Bulgaria and Romania has already been completed pursuant to Article 4(2) of the 2005 Act of Accession, Article 1(0b) will not apply to those Member States.
- (25) Experts from Cyprus, Bulgaria and Romania should nevertheless participate in the evaluation of all parts of the Schengen *acquis*,

HASVE ADOPTED THIS REGULATION:

Article 1

Purpose and scope

This Regulation establishes an evaluation and monitoring mechanism, which serves the following purposes:

- 0a. To verify application of the Schengen acquis in the Member States to which the Schengen acquis applies in full as well as in Member States to which, in accordance with the relevant Protocols annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the Schengen acquis applies in part.
- 0b. To verify that the necessary conditions for the application of all relevant parts of the Schengen acquis have been met in those Member States in respect of which a Council decision stating that the provisions of the Schengen acquis shall apply in full or in part has not been taken, with the exception of those Member States whose evaluation had already been completed at the time of entry into force of this Regulation.
- 0c. The verification referred to in paragraph 0b is without prejudice to the specific provisions provided for in Article 21(0b) as regards a Member States in which the evaluation procedures have already commenced at the date of entry into force of this Regulation.

Experts from the Member States which, in accordance with the relevant Act of Accession, do not yet fully apply the Schengen acquis shall nevertheless participate in evaluation of all parts of the Schengen 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 of the European Union by ~~the~~ Protocol (No 19) 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.

Article 3

Responsibilities

1. The Member States and the Commission shall be jointly responsible for ~~the~~ implementation of the evaluation and monitoring mechanism as specified in this Regulation, with the support of the EU bodies, **offices and agencies** involved in the implementation of the Schengen acquis.
2. Member States and the Commission shall cooperate fully at all stages of evaluations in order to carry out the tasks entrusted to them by this Regulation.

Article 4

Evaluations

- 0a. Evaluations may cover all 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, as well as the absence of border control at internal borders. In all the evaluations the functioning of the authorities that apply the relevant parts of the Schengen acquis as mentioned in this paragraph ~~above~~ should be taken into account.

- 0b. Evaluations may consist of questionnaires and of on-site visits which may be announced or unannounced. Announced on-site visits shall be preceded by a questionnaire. The on-site visits and questionnaires may, where appropriate, be used either independently or in combination in evaluating specific Member States and/or specific areas.
- 0c. Both questionnaires and on-site visits may be supplemented by presentations by the evaluated Member State on the area covered by the evaluation.

Article 5

Multiannual evaluation programme

1. A multiannual evaluation programme covering a period of five years shall be established by the Commission where appropriate after consulting Frontex and Europol, not later than six months before the start of the next five-year period. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 17(2).~~The Council shall be informed of the multiannual programme.~~ **The Commission shall transmit the multiannual evaluation programme to the European Parliament and the Council.**
2. Each Member State shall be evaluated during each five-year period covered by a multiannual evaluation programme. The multiannual evaluation 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 the time which has elapsed since the previous evaluation and the balance between the different parts of the Schengen acquis to be evaluated.
3. The multiannual evaluation programme may be adapted, if necessary, in accordance with the procedure referred to in paragraph 1.
- 3a. The multiannual evaluation programme may contain a reference to thematic evaluations as referred to in Article 6(1).

Article 6 (ex-Article 8)
Annual evaluation programme

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~~ **Union bodies, offices and agencies**, notably in accordance with Article 7A.

The evaluation programme shall include proposals for evaluation of:

- (a) the application of the Schengen acquis or parts thereof ~~the acquis~~ by one Member State, as specified in the multiannual evaluation programme;
and where relevant:
 - (b) the application of specific parts of the Schengen acquis across several Member States (thematic evaluations).
2. The first section of the annual evaluation programme, including a provisional time-schedule of the on-site visits shall list the Member States to be evaluated in the next year in accordance with the multiannual evaluation programme. ~~That~~ section shall list the areas to be evaluated and the on-site visits. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 17(2). ~~The Council shall be informed of the annual programme.~~ **The Commission shall transmit the annual evaluation programme to the European Parliament and the Council.**
3. The second section of the annual evaluation programme which shall list the unannounced on-site visits to be carried out in the next year. ~~That~~ section shall be drafted and adopted by the Commission. It shall be considered confidential and shall not be communicated ~~to the Member States or to the Council.~~
4. The annual evaluation programme may be adapted, if necessary, in accordance with paragraphs 2 and 3.

Article 7 (ex-Article 6)

Frontex risk analysis

1. Not later than 31 August each year, Frontex shall submit to the Commission and the Member States a risk analysis taking into account **illegal migration** and significant changes in the operational environment at the external borders, 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 evaluation programme. **The Commission shall transmit the risk analysis without delay to the European Parliament and the Council.**
2. Not later than 31 August each year ~~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 evaluation 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 at least 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 7A¹⁶

Risk analysis by other ~~EU~~Union bodies, offices and agencies

The Commission ~~may~~ **shall, where appropriate, ask for risk analysis, including regarding corruption and organised crime, in so far as these corruption and organised crime may undermine the application of the Schengen acquis by the Member States,** from other ~~Union EU~~ bodies, **offices and agencies**, involved in the implementation of the Schengen acquis, which could be used for preparing an annual evaluation programme.

¹⁶ At the JHA Counsellors meeting on 10 December 2012, BG entered a reservation on this Article.

Article 8 (ex-Article 7)

Questionnaire

1. Not later than 1 July of the previous year, 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 cover the relevant legislation, commonly agreed recommendations and best practices, in particular as stated in the Schengen catalogues, and the organisational and technical means available for implementation of the Schengen acquis and available statistical data on each field of the evaluation. Frontex and Europol may be consulted on the draft standard questionnaire.
That implementing act shall be adopted in accordance with the examination procedure referred to in Article 17(2).

- 2.¹⁷ Member States shall provide their replies to the questionnaire to the Commission within ~~ten~~ **eight** weeks of communication of the questionnaire. The Commission shall make the replies available to the other Member States **and shall inform the European Parliament of the replies. If so requested by the European Parliament, notably due to the seriousness of the matter, on a case-by-case basis and in accordance with the applicable rules on relations between the European Parliament and the Commission, the Commission shall also inform the European Parliament of the content of a specific reply.**

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.

¹⁷ At the JHA Counsellors meeting on 10 December 2012, DE entered a scrutiny reservation on this paragraph.

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.

In the case of announced on-site visits, the Commission shall, not later than three months before the on-site visit is scheduled to commence, invite Member States to designate experts. Member States shall designate experts within two weeks of receiving this invitation. In the case of unannounced on-site visits, the Commission shall, not later than two weeks before the on-site visit is scheduled to commence, invite Member States to designate experts. Member States shall designate experts within 72 hours of receiving this invitation.

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

The number of Commission representatives participating in the evaluation on-site visits may not exceed two 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. Member States' experts may not participate in an evaluation mission that includes an on-site visit to the Member State where they are employed.
5. The Commission may invite Frontex, Europol, or other EU bodies, **offices or agencies** involved in the implementation of the Schengen acquis to designate a representative to take part as an observer in an on-site visit concerning an area covered by their mandate.
6. The leading experts for on-site visits shall be a Commission representative and an expert from a Member State, who shall be appointed jointly by the members of the team of experts as soon as possible after the team has been set up. The leading experts shall be appointed in due time before the detailed programme as mentioned in Article 11(2) is established.

Article 9A

Teams responsible for evaluations on the basis of a questionnaire

1. In case a questionnaire is used independently, i.e. without being followed by an on-site visit as referred to in Article 4(0b), the team responsible for evaluating the answers to the questionnaire shall consist of experts from the Member States and of Commission representatives.
2. When sending out the questionnaire to the Member State to be evaluated, the Commission shall invite Member States to designate experts who are available for participation in the evaluation, indicating their area of expertise. Member States shall designate experts within two weeks of receiving this invitation. The designation of experts shall take place in accordance with the procedures laid down in Article 9(3) and (4).

Article 10 (ex-Article 9)

Experts

The experts participating in evaluations 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. To this end, Member States and the Commission, **in cooperation with relevant Union bodies, offices or agencies**, shall ensure that the experts receive **appropriate relevant training, including about respect for fundamental rights**.

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 detailed programme for announced on-site visits shall be established by the Commission in close cooperation with the leading experts and the Member State concerned. The Member States shall be informed about the detailed programme. The detailed programme for unannounced on-site visits shall be established by the Commission.

The Member State concerned shall be consulted and notified of the timetable and detailed programme:

- (a) at least **six weeks** ~~two months~~ before an announced on-site visit is due to take place;
- (b) at least **24 48** hours before an unannounced on-site visit takes place;

Unannounced on-site visits to the internal borders shall take place without prior notification to the Member State(s) concerned. General guidelines on practical modalities for such visits shall be established by the Commission in close cooperation with the Member States.

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 **is able to exercise its mandate to verify the activities in the areas to be evaluated. It shall, in particular, ensure that the team** of experts can directly address relevant persons **and** ~~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 and the Member States shall be responsible for making the necessary travel arrangements to and from the evaluated Member State(s) for their respective experts participating in the evaluation team. The travel and accommodation costs for experts participating in the on-site visits shall be reimbursed by the Commission.

The evaluated Member State(s) shall be responsible for making the necessary accommodation arrangements and for providing transport on the spot. For unannounced on-site visits, the Commission shall facilitate the accommodation arrangements for experts.

Article 12

(deleted – covered by Article 4(0a))

Article 13

Evaluation reports

1. An evaluation 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 appropriate. In case of on-site visits, the evaluation report shall be drawn up by the team during the visit.

The Member States' experts and the Commission representatives shall take overall responsibility for drafting the evaluation report and ensuring its integrity and quality. In case of disagreement, the team shall endeavour to reach a compromise.

2. The evaluation report shall analyse the qualitative, quantitative, operational, administrative and organisational aspects, as appropriate, and shall list any deficiencies established during the evaluation.
3. One of the following assessments shall be given to each finding in the evaluation report:
 - (a) compliant;
 - (b) compliant but improvement necessary;
 - (c) non-compliant;

4. The Commission shall communicate the draft evaluation 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 draft evaluation report within two weeks. A drafting meeting shall be held at the request of the evaluated Member State. The comments of the evaluated Member State may be reflected in the draft evaluation report.
5. The draft evaluation report and the reply from the evaluated Member State shall be submitted by the Commission to the Member States who shall be invited to comment on the replies to the questionnaire, the draft evaluation report and the comments by the evaluated Member State.

On this basis, the Commission, if necessary after making relevant changes to the draft evaluation report, shall ~~send the draft to the Council. The Council shall adopt the evaluation report, including the recommendations aimed at addressing possible deficiencies which have resulted in the assessment of the findings referred to in paragraph.~~ **That implementing act shall be adopted in accordance with the examination procedure referred to in Article 17(2). The Commission shall transmit the evaluation report to the European Parliament.**

Article 13AA

Recommendations

1. **When drafting the evaluation report referred to in Article 13(1) and in the light of the findings and the assessments contained in that evaluation report, Member States' experts and the Commission representatives shall draft recommendations for remedial actions aimed at addressing possible any¹⁸ deficiencies and an indication of the priorities for implementing them, as well as examples of good practices where appropriate.**

¹⁸ Modified to ensure consistency with Articles 13(2) and 13A(1).

2. **The Commission shall submit a proposal to the Council to adopt the recommendations referred to in paragraph 1.**
3. **The Council shall adopt the recommendations and shall transmit them to the European Parliament and the national parliaments.**

Article 13A

Follow-up and monitoring

1. Within three months after adoption of the **recommendations report¹⁹** referred to in **Article 13AA(3)**, the Member State concerned shall provide the Commission and the Council with an action plan to remedy any deficiencies identified. If the **recommendations evaluation²⁰ report** ~~referred to in Article 13(5)~~ concludes that the evaluated Member State is seriously neglecting its obligations, the evaluated Member State shall provide the action plan within one month. **The Commission shall transmit such action plan to the European Parliament.**
2. After consulting the team of experts, the Commission shall present its assessment of the adequacy of the action plan to the Council within one month of receiving the action plan from the Member State. Member States shall be invited to comment on the action plan.
3. The Member State concerned shall report to the Commission on implementation of the action plan within six months of adoption of the **recommendation evaluation report** and shall thereafter continue to report every three months until the action plan is fully implemented.

¹⁹ Modified to ensure consistency with Articles 13 and 13AA.

²⁰ Modified to ensure consistency with Articles 13 and 13AA.

4. Notwithstanding the six month period for reporting on the implementation of an action plan referred to in ~~Article 13~~ (**paragraph 3**), if the **recommendations evaluation report** referred to in ~~Article 13(5)~~ concludes that the evaluated Member State is seriously neglecting its obligations, the evaluated Member State shall report on the implementation of the action plan within three months of **the adoption receipt** of the **recommendationsevaluation report**²¹.
5. Depending on the **seriousness severity**²² of the deficiencies identified and the measures taken to remedy them, the Commission may schedule announced on-site revisits to verify implementation of the action plan. The Commission shall invite at least four experts who have participated in the on-site visit to participate in the revisit. Observers may participate on invitation by the Commission. The Commission shall establish the programme of the revisit. The Member State concerned shall be notified of the programme at least one month before the revisit is due to take place. The Commission may also foresee unannounced on-site revisits.
6. The Commission shall inform the **European Parliament and the Council** on a regular basis about the implementation of the action plans **or improvements measures referred to in this Article**.
7. If an on-site visit reveals a serious deficiency deemed to constitute a serious threat to public policy or internal security within the area without internal border controls, the Commission, on its own initiative or at the request of **the European Parliament or** a Member State, shall inform the European Parliament and the Council as soon as possible thereof.
- 7a. Where the Member State has been found to be compliant, but where the **evaluation report** ~~contains~~ recommendations **contain indications** for possible further improvements, the evaluated Member State shall provide to the Commission its assessment on a possible implementation of **such indications** ~~the recommendations~~ within six months of adoption of the **recommendations evaluation report**.

²¹ Modified to ensure consistency with Articles 13 and Article 13AA.

²² Modified to ensure consistency with terminology in Article 8(2).

Article 14

(deleted – moved to SBC)

Article 15

(deleted – moved to SBC)

Article 16

Sensitive information

The teams shall regard as confidential any information they acquire in the course of performing their duties. The evaluation reports drawn up following on-site visits shall be classified as EU RESTRICTED/ RESTREINT UE **in accordance with applicable security rules. That eClassification shall not preclude information from being made available to the European Parliament. Information and documents transmitted to the European Parliament in accordance with this Regulation shall be treated in compliance with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.**²³ The Commission, after consulting the Member State concerned, shall decide which part of the evaluation report can be made public.

Article 16A

Conditions of participation of the United Kingdom and Ireland

1. Experts of the United Kingdom and Ireland shall only participate in the evaluation of the part of the Schengen acquis in which those Member States have been authorised to participate.
2. The evaluations referred to in Article 4(0a) shall only cover the effective and efficient application by the United Kingdom and Ireland of the part of the Schengen acquis in which those Member States have been authorised to participate.

²³ Following suggestion from the Council Legal Service.

3. The United Kingdom and Ireland shall only take part in the adoption of the **recommendations** ~~evaluation report~~²⁴ by the Council, as provided for in Article 13AA(53)²⁵, as regards the part of the Schengen acquis in which those Member States have been authorised to participate.

Article 17

Committee

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. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 18

Transitional provisions

1. The first multiannual evaluation programme in accordance with Article 56²⁶ and the first annual evaluation 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 67²⁷ shall be provided to the Commission not later than three months after this Regulation enters into force.
3. (deleted)

²⁴ Modified to ensure consistency with Articles 13 and 13AA.

²⁵ Modified to ensure consistency with Articles 13 and 13AA.

²⁶ Modified in accordance with the renumbering of the Articles operated under Danish Presidency.

²⁷ Modified in accordance with the renumbering of the Articles operated under Danish Presidency.

Article 19

Information of the ~~European Parliament and~~ of national parliaments

The ~~Council~~ **Commission** shall inform ~~the European Parliament and~~ the national parliaments of the content and results of the evaluation, ~~including recommendations adopted in accordance with Article 13(5).~~

Article 20

Reporting to the European Parliament and the Council

The Commission shall present a yearly ~~summary~~ **comprehensive** 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.

The Commission shall forward this report ~~of to~~ the national parliaments.

Article 21

Transition and repeal

0a. 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~~²⁸, **with the exception of Part II** (Implementation Committee for the States already applying the Convention) **thereof**, shall be ~~repealed with effect from one year after the entry into force of this Regulation, except insofar as provided for in paragraph 2. The provisions of the Decision referred to in paragraph 1 shall continue to apply until 1 January 2016 at the latest, unless it is repealed before that date,~~ with respect to evaluation procedures of a Member State which have already commenced ~~at the date of entry into force of this Regulation... .~~

²⁸ OJ L 239, 22.9.2000, p. 138.

* OJ: please insert the date of entry into force of this Regulation.

0b. **Part II of the Decision referred to in paragraph 0a shall be repealed from...**[†]

Article 22

(deleted)

Article 22A

Review

The Commission shall undertake a review of the operation of this Regulation and submit a report to the Council within 6 months after the adoption of all reports regarding the evaluations covered by the first multiannual evaluation programme mentioned in Article 18(1). Such review shall cover all the elements of this Regulation, including the functioning of the procedures for adopting acts under the mechanism. **The Commission shall transmit the report to the European Parliament.**

Article 23

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 Treaties.

Done at Brussels,

For the Council

The President

[†] OJ: please insert the date: one year after the date of entry into force of this Regulation.