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NOTE

From:	Presidency
To:	Delegations

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Subject:	Commission Implementing Decision establishing the report of the 2017 evaluation of the United Kingdom on the application of the Schengen acquis in the field of the Schengen Information System

Further to the request by the Government of the United Kingdom of Great Britain and Northern Ireland¹, the Council adopted in 2000 a decision authorising the United Kingdom to take part in some of the provisions of the Schengen acquis².

On 10 February 2015, the Council adopted Council Implementing Decision (EU) 2015/215³, which allowed, on a provisional basis for evaluation purposes, for non-border SIS data to be made available to the UK and provided that the UK could enter data in the SIS⁴.

¹ Letters to the President of the Council of 20 May 1999, 9 July 1999 and 6 October 1999.

² Council Decision 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, as amended by Council Decision 2014/857/EU of 1 December 2014, OJ L 131, 1.6.2000, p. 43

³ Council Implementing Decision (EU) 2015/215 on the putting into effect of the provisions of the Schengen acquis on data protection and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland, OJ L 36, 12.2.2015, p. 8.

⁴ Article 2(2) of Council Implementing Decision 2015/2012 provided that "[...] in so far as they relate to the functioning of the SIS, evaluation visits shall be carried out in the United Kingdom in accordance with the relevant procedures provided for in the Decision of 16 September 1998, in order to verify whether the SIS is functioning and whether Decision 2007/533/JHA is being applied correctly."

A successful outcome of the evaluation was set as a pre-condition for the final putting into effect of the relevant SIS provisions in the UK⁵.

Further to the SIS/SIRENE evaluation that took place from 7 to 13 June 2015, the Evaluation Committee concluded that the UK had only partially implemented the Schengen acquis related to SIS and that a further visit is necessary in order to complete the evaluation satisfactorily.

At its meeting on 8-9 October 2015, the Council took note⁶ of the state of play and in its Conclusions of 4 December 2015⁷, the Council agreed with the assessment of the Evaluation Committee, including the need for a further visit before the decision on the full application of SIS provisions could be taken. The Council also noted that its competences for carrying out Schengen evaluations under the "old" legal framework would cease on 1 January 2016, in accordance with Article 23(2) of Council Regulation (EU) No 1053/2013⁸ on Schengen evaluations and that the continuation of the evaluation process must take place under the new evaluation mechanism provided for in that Regulation. The Council invited the Commission to take into account the results of the evaluations mentioned above in its future dealing with the UK and to carry out the recommended visit under the new mechanism.

The evaluation mechanism set out in Regulation (EU) No 1053/2013 provides for clear steps in the evaluation of the application of the Schengen acquis by Member States, both for the purpose of verifying the application of the Schengen acquis in those Member States to which it applies in full or in part, and the purpose of verifying 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 on the application of Schengen provisions, in full or in part, has not been taken.

⁵ Article 2(3) of Council Implementing Decision (EU) 2015/215 provides that "upon the successful completion of the above evaluations, the Council shall, by 31 October 2015, examine the situation with a view to adopting an implementing decision setting the date for their final putting into effect."

⁶ 12246/15

⁷ 13378/1/15 adopted at the JHA Council of 3-4 December 2015

⁸ Council Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

On this basis and in line with the new evaluation mechanism and the Commission annual evaluation program for 2017⁹, experts from the Commission and the Member States and an observer from eu-LISA (the on-site team) carried out a Schengen evaluation revisit in the UK from 5 to 10 November 2017. The ensuing report was presented and discussed by the Schengen Committee on 12 April 2018 and was adopted by Commission Implementing Decision C(2018) 2250 of 16 May 2018.

In accordance with Article 15 of the Council Regulation (EU) No 1053/2013 on Schengen evaluations, when drafting the report and in light of the findings and the assessments contained in the evaluation, Member States experts and the Commission representatives should draft recommendations for remedial action aimed at addressing any deficiencies identified during the evaluation and a proposal to adopt these recommendations should be submitted to the Council. No such proposal has been submitted yet.

The Working Party for Schengen Matters (Schengen Evaluations) discussed the report at its meeting of 19 June 2018. The Commission presented the main findings of the report, underlining that non-compliances identified in the 2015 report have not been remedied and identifying four main categories of non-compliances: lack of reciprocity and mutual recognition; risk to the integrity and security of the SIS data; selective approach to SIS data; and outdated IT infrastructure, which is non-compliant with SIS requirements. The Commission concluded that the report identified very serious deficiencies and asked for guidance from the Council as to the follow-up to be given to the report.

The Working Party had a first discussion on the report and the best way forward and the Presidency also offered Member States the possibility to provide written contributions. It results from the positions expressed by a large number of delegations that the best way forward is to continue the evaluation procedure, and to follow the steps provided for in the Schengen evaluation mechanism set out in Regulation (EU) No 1053/2013.

⁹ Commission Implementing Decision C(2016) 7387.

In the light of the above, the Presidency invites the delegations to confirm on 3 September 2018 (Working Party for Schengen Matters (Schengen Evaluations)) that the evaluation process should continue. On this basis, the Presidency will suggest that Coreper recommends, as a I/A-item, that the Council invite the Commission to present a proposal for a Council Implementing Decision setting out a recommendation to address the very serious deficiencies identified in the evaluation of the United Kingdom in view of fulfilling the conditions necessary for the application of the Schengen acquis in the field of the Schengen Information System, pursuant to Article 15 of Regulation (EU) No 1053/2013.
