



Brussels, 24.2.2022
COM(2022) 99 final

2022/0059 (NLE)
SENSITIVE*

Proposal for a

COUNCIL IMPLEMENTING DECISION

**setting out a recommendation on addressing the deficiencies identified in the 2021
evaluation of Greece on the application of the Schengen *acquis* in the field of
management of the external borders**

* Distribution only on a 'Need to know' basis - Do not read or carry openly in public places. Must be stored securely and encrypted in storage and transmission. Destroy copies by shredding or secure deletion. Full handling instructions <https://europa.eu/db43PX>

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 7 October 2013, the Council adopted Regulation (EU) No 1053/2013¹, establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*. In line with the Regulation, the Commission has established a multiannual evaluation programme 2020-2024² and an annual evaluation programme for 2021³ with detailed plans for on-site visits to the Member States to be evaluated, areas to be evaluated and sites to be visited.

The areas to be evaluated cover all aspects of the Schengen *acquis*; in particular management of the 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 addition, fundamental rights issues and the functioning of authorities that apply the relevant parts of the Schengen *acquis* are taken into account in all evaluations.

Based on the multiannual and annual programmes, a team of Member State and Commission experts carried out an evaluation of Greece's application of the Schengen *acquis* in the field of management of the external borders between 30 May and 7 June 2021. Their evaluation report⁴ sets out their findings and assessments, including best practices and any deficiencies identified during the evaluation.

Alongside the report, the team made recommendations for remedial action aimed at addressing the deficiencies. This proposal reflects those recommendations.

Against this background, the current proposal for a Council Implementing Decision setting out a recommendation seeks to ensure that Greece applies all Schengen rules related to management of the external borders correctly and effectively.

- **Consistency with existing policy provisions in the policy area**

These recommendations serve to implement the existing provisions in the policy area.

- **Consistency with other Union policies**

These recommendations may have links with the Union's free movement of citizens' policy.

¹ OJ L 295, 6.11.2013, p. 27.

² Commission Implementing Decision C(2020) 8045 of 14 December 2020 amending Implementing Decision C(2019) 3692 establishing the multiannual evaluation programme for 2020-2024.

³ Commission Implementing Decision C(2020) 8046 of 14 December 2020 establishing the first section of the annual evaluation programme for 2021 pursuant to Article 6 of Council Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

⁴ C(2022) 990.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

- **Subsidiarity (for non-exclusive competence)**

Article 15(2) of Council Regulation (EU) No 1053/2013 specifically requests the Commission to submit a proposal to the Council to adopt recommendations for remedial action aimed at addressing any deficiencies identified in the course of the evaluation. Action at Union level is required to strengthen mutual trust between the Member States and to ensure better coordination at Union level in order to guarantee that all Schengen rules are applied effectively by the Member States.

- **Proportionality**

Article 15(2) of Council Regulation (EU) No 1053/2013 mirrors the specific powers of the Council in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

In line with Article 14(5) and Article 21(2) of Council Regulation (EU) No 1053/2013 the Schengen Committee gave their positive opinion on the evaluation report in the written procedure on 7 January 2022.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The protection of fundamental rights when applying the Schengen *acquis* was taken into account during the evaluation process.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

n.a.

Proposal for a

COUNCIL IMPLEMENTING DECISION

setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen *acquis* in the field of management of the external borders

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1053/2013 of 7 October 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 Schengen⁵, and in particular Article 15(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) A Schengen evaluation in the field of management of the external borders was carried out in respect of Greece between 30 May and 7 June 2021. Following the evaluation, a report covering the findings and assessments, listing deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2022) 990.
- (2) Recommendations should be made on remedial actions to be taken by Greece in order to address deficiencies identified as part of the evaluation. In light of the importance of complying with the Schengen *acquis*, in particular, as regards strategic coordination for border control, conduct of risk analysis, strategic management of national capabilities for border control, border check procedures, combating document fraud and use of pre-arrival information, and ensuring effective border surveillance, priority should be given to implementing recommendations (1), (5), (7), (13), (14), (18), (22), (24).
- (3) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within three months of its adoption, Greece should, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy the deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council,

⁵ OJ L 295, 6.11.2013, p. 27.

RECOMMENDS:

Greece should

European Integrated Border Management:

1. appoint one person who is legally and politically empowered to coordinate the integrated border management at the national level supported by the adequate structure at service level; ensure legal coordination powers for the National Coordination Centre to be able to implement horizontal strategic tasks for border control, including a comprehensive overview on the capabilities for border management in order to ensure a strategic planning of border control capabilities and management of the resources;
2. strengthen the fundamental rights component of the national governance structure for the integrated border management by including also a representative from the main organisations responsible for fundamental rights in Greece;

National Quality Control Mechanism

3. develop an integrated national quality control system covering all border control authorities, providing for systematic and well-planned evaluations at the national level ensuring reports issued are followed up based on clear deadlines and responsibilities; assess the level of implementation of the Common Core Curricula;
4. ensure regular and systematic reporting of data to Frontex for the vulnerability assessment, in particular related to the number of passengers (which should be divided per type of traffic), number of queries in the Schengen Information System, the Visa Information System and the Stolen and Lost Travel Document (Interpol) databases, and the number of staff deployed in each border crossing point; include in the reporting for vulnerability assessment information on capabilities shared by the Hellenic Navy for border surveillance to allow a proper assessment;

Risk analysis

5. develop and implement a national methodology for risk analysis in accordance with the Common Integrated Risk Analysis Model to cover all national authorities involved in border control and to ensure a common level of risk analysis and include in the risk analysis threats, vulnerabilities and impact;

National and European situational awareness and early warning system – EUROSUR

6. systematically upload the incidents detected at the border crossing points as of 5 December 2021 as required by Regulation (EU) 2019/1896;

National capabilities for border control

(a) *human resources and training*

7. urgently establish a coherent multi-annual human resources strategy for the Hellenic Police and a clear training system for border control with a view to increasing over

time staff at major land border crossing-points and the quality of border checks; the training system should provide for an obligatory training period for all border guards, as well as systematic and regular refresher and specialised training for border control;

8. increase the number of staff in the Hellenic Police at central level carrying out horizontal tasks (e.g., risk analysis, information management and training);
9. ensure sufficient number of trained staff for risk analysis in the Hellenic Police and provide continuous on-the-job training for analysts; produce tailored risk analysis products, indicators and profile to support border control activities as requested by Article 29(1) of Regulation (EU) 2019/1896;

(b) *infrastructure and equipment*

10. urgently upgrade the infrastructure and modernise the control booths at all visited land border crossing points; ensure at Evzoni border crossing point the availability of fingerprint readers in each control booth and a secure communication channel between the shift leader and the officers in the first line;
11. ensure the availability of proper technical means to detect hidden migrants in vehicles to prevent trafficking of human beings and illegal border crossings; train sufficient number of canine teams specialised in persons' detection and ensure at least one team in each port authority;
12. equip the patrolling vessels of the Hellenic Coast Guard with basic equipment for checks on persons and ships/vessels and grant online access to the relevant databases for risk analysis and border checks;

(c) *document fraud*

13. ensure a sufficient number of trained staff in document examination as required by Articles 15 and 16 of the Schengen Borders Code, in particular at the advance level, ensuring at least one advance level document experts in each border crossing point and the necessary equipment for document examination in the second line;

(d) *contingency planning*

14. urgently finalise and adopt the National Contingency Plan for large-scale illegal border crossings and other challenges at the external border;

Border checks

15. ensure that the checks of authenticity of the chip data in the travel documents of persons enjoying the right of free movement are carried out in accordance with the last paragraph of Article 8(2) of the Schengen Borders Code;
16. carry out more thorough border checks on third country nationals at the land and air borders (Heraklion and Rhodes airports) by ensuring that border guards check the means of subsistence, duration and purpose of the intended stay, duration of previous stays in the Schengen area in accordance with Article 8(3) of the Schengen Borders Code and systematically verify the identity of all persons crossing the border against their travel document in accordance with Article 8(2) and Article 8(3) of the Schengen Borders Code;
17. ensure that the pilots and other aircraft crew members are checked in accordance with Article 20 in conjunction with Annex VII, paragraph 2(2.2) of the Schengen Borders Code and bring the procedures of checking passengers and crew members of cruise ships in accordance with Article 19 in conjunction with Annex VI, point 3.2.3 of the Schengen borders Code;
18. implement Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data;

19. ensure that the visa application form is used and updated in accordance with Article 11 and Annex I of the Visa Code; bring the practice of annulling and revoking visas in compliance with Article 34(5) of the Visa Code; bring the procedure of issuing visas at the border in compliance with Article 35 of the Visa Code; issue a circular/reminder to border crossing points on visa related matters especially on revocation and annulment of visas and incorporate visa-related subjects to the training of the police officers;
20. bring the refusal of entry form and information to be provided concerning the right of appeal in compliance with Article 14(3) and Annex V Part B of the Schengen Borders Code;

Border surveillance

21. efficiently implement the National Integrated Maritime Surveillance System, within the established deadline and with no further delay, including land-based technical surveillance means in areas that are in close proximity to the neighbouring country; strengthen the situational awareness of local coordination centres and establish regional coordination centres;
22. further develop the situational awareness, reinforce command and control functions at regional level, improve the reaction capabilities at the land border and increase the level of technical surveillance with mobile and portable assets (thermo-vision vehicles and cameras, helicopters, drones etc.) as well as the number of service dogs to improve the detection and reaction capability at all land borders as requested by Article 13 of the Schengen Borders Code;
23. implement an integrated border surveillance system at the border with North Macedonia and Albania covering at least the most vulnerable sections of the border, including by increasing the number of patrols to guarantee permanent patrolling activities in the area of responsibility of each border control unit and by equipping the patrol vehicles with a Global Positioning System location system to improve the level of situational awareness and reaction capacity both at regional and local level; replace the analogue radio system with a digital system;

Fundamental rights

24. carry out independent investigations into all serious allegations of ill-treatment by the Hellenic Police and the Hellenic Coast Guard at external borders and ensure that investigations are thorough, prompt, expeditious and capable of leading to the identification and punishment of those responsible;

Specific sites

(a) *Kakavia border crossing point:*

25. urgently install perimeter surveillance at Kakavia border crossing point to prevent possible circumventing of border checks and increase the reaction capability of the border control unit of the Hellenic Police to apprehend persons who try to illegally cross the border in the vicinity of the border crossing point;

(b) *Airports of Heraklion and Rhodes:*

26. ensure that the border guards working in the first and second line at Heraklion airport have adequate level of English language proficiency;
27. ensure efficient border checks by separating the responsibilities for leading the shift and performing second line activities, including document examination at Heraklion and Rhodes airports;
28. at Rhodes airport, carry out border checks of persons enjoying the right of free movement under the Union law in accordance with Article 8 (2) and Article 8(6) of the Schengen Borders Code read in conjunction with Directive 2004/38 .

Done at Brussels,

For the Council
The President