



Brussels, 26 May 2023
(OR. en)

9534/1/23
REV 1

LIMITE

SCH-EVAL 109
COMIX 246
JAI 646
SCHENGEN 25

NOTE

From: Presidency
To: Permanent Representatives Committee/Council

Subject: Presidency note in preparation for the Schengen Council of 8-9 June 2023 – Overall state of the Schengen area
Considerations for the Schengen Council cycle June 2023 – April 2024

One year ago, the French Presidency initiated the Schengen Council¹, with the aim of improving the political governance of the Schengen area and ensuring coherence between its political and operational management. In light of the *State of Schengen Report 2022* published by the Commission on 25 May 2022², the Schengen Council discussed a set of priorities for the cycle June 2022 - May 2023³ and approved the Schengen Council cycle⁴. At its meeting on 8-9 June 2023, a year after this launch, the Schengen Council should:

- Take note of the Commission's *State of Schengen report 2023*;
- Agree on a limited number of areas addressed in this report that require additional focus and impetus;
- Agree on the way forward for these areas under the Schengen Council cycle 2023/2024.

¹ 6234/22

² COM(2022) 301 final/2.

³ 9802/22

⁴ 12522/22

Areas in need of additional focus and impetus for the next Schengen Council cycle

In its *State of Schengen report*, the Commission identifies a number of priority actions required to address the main challenges of the Schengen area. The priority fields referred to in the report are all of equal importance, and the prompt development of JHA information systems and their interoperability is a horizontal prerequisite for the efficiency of all the priority fields. However, some areas would benefit from a renewed or additional impetus.

Regarding visas, in March 2023 the Schengen Council called for a stronger monitoring of the EU's visa-free regimes and invited the Commission to present a legislative proposal to amend the Visa regulation in relation to the visa suspension mechanism. Work will proceed in this regard, on the basis of a Commission Communication and of the Schengen Council discussion of 8 June 2023 on Visa policy and monitoring of visa free regimes.

In addition, the Presidency, in coordination with the upcoming Spanish and Belgian presidencies, has identified issues that should receive special attention from the Schengen Council during the upcoming cycle.

1. Governance of the Schengen area and application of the acquis

Political governance

The first Schengen Council has been an important first step to reinforce the governance of the Schengen area. Building on these developments, it has become clear to the Presidency that there is a need to consolidate the Schengen Council by streamlining and anticipating its preparation process in Council instances. The points that require political steering or a decision on impactful actions should be identified by applying a holistic approach. The Schengen Council cycle should allow for proper planning. Predictability in the process is important to ensure effective political steering, and well-prepared discussions will contribute to a better understanding of issues, thereby contributing to mutual trust. In this regard the following tools should be assessed and further streamlined:

- the “*Schengen Barometer +*”, which is designed to identify and analyse challenges and trends, and must be made available by the Commission at least six weeks ahead of the March, October and December Schengen Council meetings. Work by the Commission with the support of the Presidency should continue in the interest of further improvement.

- The Commission's *State of Schengen Report*, which aims to identify areas for further improvements both at national level and for the Schengen area on the basis of, among other things, the results of the Schengen evaluations, and is to be made available by the Commission in March or April at the latest.
- *Schengen evaluations*, which should make it possible to identify systemic difficulties and trigger operational responses in the event of an expected or emerging crisis affecting the Schengen area. The professional and peer-to-peer nature of the evaluations should be maintained.
- a *Schengen Scoreboard*, which aims to further promote mutual trust between Member States and allow the prioritisation of outstanding remedial action. The Presidency calls on the Commission to develop this tool and establish an agreed and transparent methodology, in close cooperation with the Council and the Member States.

In addition, the Schengen Coordinator's role and mandate to support the work of the Schengen Council and Member States' application of key issues of the Schengen acquis must be further discussed. We welcome the regular information provided by the Schengen Coordinator and his team and look forward to intensifying work with him and his team.

Full application of the Schengen acquis

On 8 December 2022, the Schengen Council decided on the full application of the provisions of the Schengen acquis by Croatia. Checks on persons between Croatia and the other countries in the area without internal border controls were lifted from 1 January 2023 at internal land and sea borders, and from 26 March 2023 at internal air borders. In April 2023, the Council adopted a decision on the application of the provisions of the Schengen acquis relating to the Schengen Information System (SIS) in the Republic of Cyprus, setting the dates from which Cyprus will be connected to the SIS. For the next Schengen Council cycle, discussions should continue as a matter of priority with a view to the full application of the Schengen acquis by Bulgaria and Romania. The incoming Spanish Presidency will address this as a matter of urgency.

2. Making the return systems more effective

Numerous steps have been taken over the last year to address internal issues hampering the possibilities to carry out returns of third-country nationals with no right to stay. However, in 2022, the return rate in the EU continued to be below 20 %. While there is growing awareness of the need to prioritise measures in this field as the main means to prevent secondary movements and deter irregular migration, the existing loopholes must be conclusively addressed. Operational action is urgently required. In particular:

- The Return Coordinator and the High-Level Network for Return should compile a Schengen model for an effective return system exploring practical solutions on the identified persistent shortcomings, building on the experience and good practices of Member States.
- Based on the guidance of the Commission recommendation of March 2023, test the potential of the mutual recognition of return decisions, now facilitated by the new possibilities under the Schengen Information System.
- Adopt the renewed return legal framework based on the recast Return Directive, to allow for smoother and swifter return procedures.
- Further promote voluntary return and reintegration, including through Frontex support for voluntary returns and the establishment of return and reintegration counselling structures to guide returnees into assisted voluntary return and reintegration programmes, in view of increasing the overall number of returns.
- Analyse to what extent Member States use operational and practical Frontex support in the area of return and reintegration, including the use of Frontex-led return charters, in order to identify and agree on measures to increase use.
- Make full use of the mechanism provided for by Article 25a of the Visa Code, including the possibility of introducing restrictive visa measures in relation to third countries that do not cooperate on returns, in the context of the overall relations with these countries.

3. Boosting law enforcement cooperation to fight cross border, serious and organised crime and address illicit drug trafficking

The trafficking of illicit drugs continues to be one of the main threats to the internal security of the Schengen area. Drug trafficking generates an estimated annual revenue of EUR 31 billion in the EU. Criminals' infiltration into the legal economy and public institutions through the extensive use of corruption and extreme violence has far-reaching and destabilising consequences for society, the rule of law and trust in public authorities. The EU Drugs Strategy and related Action Plan 2021-2025 set out the EU's balanced approach on drugs. In the area of law enforcement cooperation, drug trafficking is one of the EU crime priorities to be tackled under the European Multidisciplinary Platform Against Criminal Threats (EMPACT). To further strengthen the fight against organised criminal groups trafficking in drugs, the Commission is currently exploring possible additional policy initiatives to complement and reinforce the actions already set out in the EU's abovementioned Strategy and Action Plan and in the EU Strategy to Tackle Organised Crime 2021-2025 on dismantling criminal networks engaged in drug trafficking.

In this light, we welcome the fact that the thematic Schengen evaluation in 2023 will identify best practices in Member States capabilities to combat drug trafficking. The Council calls on the Commission to revert to the Schengen Council within the Schengen Council cycle 2023/2024 with concrete proposals on how to further strengthen the Union's efforts and improve implementation of the EU Drugs Strategy and Action Plan 2021-2025 in relation to dismantling criminal networks and drug trafficking.

Lastly, the increasingly wide reach of organised crime groups involved in drug trafficking, the poly-criminality involving other forms of trafficking such as firearms trafficking and human trafficking, the links with violence, corruption and intimidation, and the infiltration of the legal economy, make it clear that fighting drug trafficking can only be efficient if addressed in the context of these wider ramifications. This is why law enforcement cooperation should be boosted further in the framework of EMPACT to fight serious and organised crime across the board.

4. Enhancing the management of EU borders

The effective management of EU external borders is essential for a well functioning Schengen area. In recent years, despite the occurrence of major events challenging the management of EU borders, the Schengen area has demonstrated its resilience. The European border management system implemented by Member States successfully enabled hundreds of millions of people to legally travel to the Schengen area in 2022. However, that same year, irregular border crossings on nearly all established migratory routes saw a substantial increase compared to previous years. In February 2023, the European Council took stock of this situation and agreed to strengthen and accelerate work on migration and border management. In this regard, special emphasis should be placed on the following actions:

- On the basis of the technical and operational strategy by Frontex (September 2023), increase the effectiveness of national governance on returns and border management by updating the national integrated border management strategies by March 2024 and implementing related strategic processes, such as national capability development planning.
- Assess existing capabilities dedicated to border control and provide for adequate financial and operational arrangements to ensure the successful implementation of the already existing national capability development plans in line with key priorities at external borders.
- Ensure that systematic checks against the databases are performed at the external borders and improve the quality of border checks at the external borders by providing adequate training for border guards, ensuring adequate use of information systems and improving cooperation with third countries.
- Enhance European and national situational awareness through the implementation of risk analysis and information exchange within the European border surveillance framework.
- Implement the new IT architecture and interoperability for border management:
 - eu-LISA is to deliver as quickly as possible the missing critical central component of the Entry/-Exit System and to operationalise the European Travel Information and Authorisation System (ETIAS);
 - Commission and eu-LISA are to deliver a proposal for a revised, realistic timeline for the overall implementation, including alternative scenarios for the entry into operation of systems and components.

- Ensure internal border controls are measures of last resort maintained for a limited period and accompanied by mitigating measures, where necessary, by strengthening the management of external borders, including through the adoption of new tools, such as the revised Schengen Borders Code (SBC) and Screening Regulation.
- Promote accompanying and alternative measures to internal border controls to ensure the smooth functioning of the Schengen area.
- Bolster, through EMPACT, the fight against the organised crime groups that smuggle people into EU territory disregarding the safety of people.

The Schengen Council is invited to exchange views and agree on the proposed areas for additional impetus for the next Schengen Council cycle 2023-2024.
