

Proposal for a

COUNCIL REGULATION

on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing Regulation (EU) No 1053/2013

COMPROMISE 1 - Article 1 Subject matter and scope and Recitals from (1) to (4) and (6)

AMs covered: AM 97 (Bettina Vollath, Sylvie Guillaume, Maria Grapini, Isabel Santos, Tanja Fajon) and AM 142 (Bettina Vollath, Sylvie Guillaume, Maria Grapini, Isabel Santos, Tanja Fajon)

AMs fall: AM96 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), AM98 (Grapini), AM 99 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), AM 100 (Brudzi ski, Jaki, Wi niewska, Kempa) and AM 101 (Vollath, Guillaume, Grapini, Santos, Fajon)

Article 1

Subject matter and scope

1. This Regulation establishes an evaluation and monitoring mechanism for the purpose of ensuring that Member States apply the Schengen *acquis* effectively ***in order to ensure*** a well-functioning area without internal border controls, ***and with full respect for fundamental rights. (covers SD AM 97)***
2. The mechanism established shall provide for objective and impartial evaluations and monitoring activities aimed at:
 - (a) verifying the application of the Schengen *acquis* in the Member States to which it applies in full as well as in Member States to which, in accordance with the relevant Protocols annexed to the TEU and to the TFEU, the Schengen *acquis* applies in part;
 - (b) 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 stating that the provisions of the Schengen *acquis* are to apply in full or in part has not been taken;
3. 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, as well as the absence of border control at internal borders. All evaluations shall comprise an assessment of compliance with fundamental rights in the context of the aspects covered. and take into account the functioning of the authorities that apply the Schengen-acquis. (covers S&D AM 97 and S&D AM 142)***

Recitals

AMs covered: 41 (Vollath, Guillaume, Grapini, Santos, Fajon), 43 (Vollath, Guillaume, Grapini, Santos, Fajon) 45 (Vollath, Fajon)

AMs fall: 40 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 41 Vollath, Guillaume, Grapini, Santos, Fajon), 42 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari) 46 (Marquardt, Strik)

- (1) The Schengen area without border control at internal borders relies on the effective and efficient application by the Member States of the Schengen *acquis*. That *acquis* comprises measures in the area of external borders, compensatory measures for the absence of controls at internal borders and a strong monitoring framework, which together ~~facilitate ensures~~ free movement *as well as* ~~and ensures~~ a high level of security, justice and protection of fundamental rights, including the protection of personal data. *(covers SD AM 41)*
- (2) A peer-to-peer evaluation and monitoring of the application of that *acquis* has been a core element of the Schengen area since 1998 as a tool to maintaining a high level of accountability and ownership of results as well as to strengthening mutual trust among Member States.
- (3) A specific Schengen evaluation and monitoring mechanism was established by Council Regulation (EU) No 1053/2013¹, which became operational in 2015.
- (4) In order to increase its effectiveness and efficiency, the Schengen evaluation and monitoring mechanism should be enhanced. The revised evaluation and monitoring mechanism should aim at maintaining a high level of mutual trust among Member States by guaranteeing that Member States apply the Schengen *acquis* effectively following the agreed common standards, fundamental principles and norms, *in order to ensure* thereby contributing to a well-functioning Schengen area *in full respect for fundamental rights and without internal border controls*. *(covers SD AM 43)*
- (6) The evaluation and monitoring mechanism ~~may should~~ cover all areas of the Schengen *acquis* - present and future - except those where a specific evaluation mechanism already exists under Union law. *The evaluation and monitoring mechanism should cover both the efficiency of border controls at external borders and the absence of border controls at internal borders.* The evaluation and monitoring mechanism should encompass all relevant legislation and operational activities contributing to the functioning of *an area without border control at internal borders* ~~Schengen area~~. *(covers SD AM 45)*

COMPROMISE 2 - Article 2 Definitions and Recitals (16) to (18)

AMs covered: AM 9 (Skyttedal), AM 10 (Skyttedal), AM 11 (Skyttedal), AM 12 (Skyttedal) AM 104 (Vollath, Guillaume, Grapini, Santos, Fajon), AM 105 (Marquardt, Strik) AM 106 (Vollath, Guillaume, Grapini, Santos, Fajon), 107 (Marquardt, Strik), AM 108 (Daly, Barrena Arza), AM 109 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld,

¹ 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 Schengen (OJ L 295, 6.11.2013, p. 27).

Tudorache, Chastel), AM 110 (Vollath, Guillaume, Grapini, Santos, Fajon), AM 112 (Marquardt, Strik), AM113 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), AM 114 (Daly, Barrena Arza), AM 115 (Vollath, Guillaume, Grapini, Santos, Fajon) and AM116 (Daly, Barrena Arza)

AMs fall: 102 (Marquardt, Strik), 103 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), ~~107 (Marquardt, Strik)~~, 111 (Hidvéghi)

Article 2

Definitions

For the purpose of this Regulation:

- (a) ‘Schengen *acquis*’ means the provisions integrated into the framework of the Union in accordance with Protocol No 19 annexed to the TEU and to the TFEU, together with the acts building upon them or otherwise related to them;
- (b) ‘first time evaluation’ means an evaluation to verify whether a Member State bound by the Schengen *acquis* and for which internal border controls have not been lifted fulfils the conditions to apply the Schengen *acquis* in full or, in the case of a Member State not bound by the Schengen *acquis* and that has opted in to apply parts of the Schengen *acquis*, to verify whether the Member State fulfils the conditions to apply the Schengen *acquis* in part;
- (c) ‘periodic evaluation’ means an evaluation included in the multiannual evaluation programme and annual evaluation programmes to verify the application of the Schengen *acquis* by a Member State with a view to assessing the Member State’s overall performance in the application of the Schengen *acquis*;
- (d) ‘unannounced evaluation’ means an evaluation, which *is conducted without any prior notice and which (covers AM 9 EPP, AM 104 SD and AM 105 Greens)* is not included in the multiannual and annual evaluation programmes, to verify the application of the Schengen *acquis* by one or more Member States in one or more policy fields;
- (e) ‘thematic evaluation’ means an evaluation aimed at providing a comparative analysis of Member States’ legislation or practices, or the application of specific parts of the Schengen *acquis* across several Member States;
- (f) ‘visit’ means a visit to a Member State or to its consulates for the purposes of carrying out an evaluation or a monitoring activity;
- (fa) ‘short-notice visit’ means a visit, which is conducted with a maximum 24-hour advance notice and with the purposes of carrying out a random check of the implementation of the Schengen acquis by a Member State; (covers AM 10 EPP and AM 106 SD)*
- (g) ‘revisit’ means a visit carried out to monitor the progress of the implementation of an action plan following an evaluation that identified a serious deficiency or following a first time evaluation which concluded that the evaluated Member State did not fulfil the necessary conditions to apply the Schengen *acquis*;
- (h) ‘verification visit’ means a visit, other than a revisit, carried out to monitor the progress of the implementation of an action plan;

- (i) ‘serious deficiency’ means one or more deficiencies which concern the effective application of of the Schengen *acquis*, **or part of it, including upholding the Charter of Fundamental Rights**, and which individually or in combination negatively impact or risk to *negatively* impact on *freedom of movement*, on the ~~fundamental~~ rights of individuals or on the functioning of the Schengen area; **(covers AM 10 EPP, AM 110 SD, AM 109 Renew, AM 107 Greens and the AM 108 Left)**
- (j) ‘evaluation activity’ means a specific visit, questionnaire-based or other remotely conducted evaluation;
- (k) ‘team’ means a group comprising experts designated by Member States and **by the Commission, and observers designated by relevant Union institutions, bodies or agencies**, representatives who carry out evaluations and monitoring activities. **(covers AM 112 Greens, AM 114 the Left 114 and AM113 Renew)**
- (ka) ‘Union observer’ means an individual designated by a Union institution, body, office or agency as referred to in Article 7(1) participating in an evaluation or monitoring activity. (covers AM 12 EPP, AM 115 SD and AM 116the Left)**

Recitals

AMs covered: 7 (Skyttedal), 66 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 68 (Vollath, Fajon)

AMs fall: 65 (Marquardt, Strik), 67 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 69 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 70 (Vollath, Fajon),

- (16) Evaluation and monitoring activities should be carried out by teams consisting of Commission representatives and experts designated by Member States **and Union observers**. These representatives, ~~observers~~ and experts should have appropriate qualifications, including a solid theoretical knowledge and practical experience, **and have undertaken the appropriate training. In order to ensure the integrity of evaluation reports drawn by teams following an evaluation, where the activities of a Union body, office or agency involved in the implementation of the Schengen acquis are evaluated together with the authorities of a Member State, Union observers should not have any conflict of interest.** In order to ensure the participation of sufficient number of experienced experts in a faster and less burdensome way, a pool of experts should be established and maintained by the Commission in close cooperation with the Member States. The pool should be the primary source of experts for evaluation and monitoring activities. **(covers EPP AM 7, Renew AM 66, S&D AM 68)**
- (17) More flexibility should be provided as regards the size of the evaluation and monitoring teams in order to increase the efficiency and to reduce administrative burden. Therefore, the Commission should define and adapt the size of the teams depending on the needs and challenges related to each evaluation and monitoring activity. When setting up the teams, geographical balance and rotation should, to the extent possible, be ensured by the Commission and account should be taken of the capacity of national administrations and the need for a variety of profiles. The principle of shared responsibility, predictability and the commitment taken when nominating experts to the pool implies

that the experts invited for specific evaluations and their national authorities should respond positively to invitations; turning the invitations down should be duly justified on serious professional or personal grounds only.

- (18) The operational costs related to the evaluation and monitoring activities (travel, accommodation and food) should be borne by the Union budget. Any additional daily allowances of national experts participating in evaluation and monitoring missions and the staff costs of those replacing these experts during their absence could be covered by the national programmes of the Member States under the relevant Union Funds, in accordance with the objectives and applicable rules of those Funds.

COMPROMISE 3 - Article 3 Responsibilities and duty of cooperation

AMs covered: 13(Skyttedal), 119(Marquardt, Strik), 120 (Vollath, Guillaume, Grapini, Santos, Fajon), 121(Vollath, Guillaume, Santos, Fajon)

AMs fall: 117 (Brudzi ski, Jaki, Wi newska, Kempa), 118 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 122 (Grapini), 123(Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 124 (Daly, Barrena Arza),, 125(Daly, Barrena Arza), 126 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari)

Article 3

Responsibilities

1. The Member States and the Commission shall be jointly responsible for the implementation of the evaluation and monitoring mechanism, with the contribution of the relevant Union bodies, offices and agencies in accordance with their respective mandates.
2. The Commission shall be responsible for the establishment of the annual and multiannual evaluation programmes, the drafting of questionnaires, the setting of schedules of visits, the conducting of visits and the drafting of evaluation reports and recommendations. It shall also ensure the follow-up and monitoring activities.
3. The Member States, the Commission ***and the Council*** shall cooperate fully at all stages of evaluations in order to ensure the effective implementation of this Regulation, ***while ensuring that the European Parliament is kept fully informed of all substantive developments. (covers AM 119 Greens and AM 120 SD)***
4. The Member States shall take all measures, general or particular, to support and assist the Commission and the teams in the implementation of evaluation and monitoring activities.

They shall ensure that the Commission and the teams carrying out evaluation and monitoring activities are able to perform their tasks effectively, in particular by granting the possibility to the Commission and the teams to address directly ***and individually*** relevant persons and by providing full and unimpeded access to all areas, premises and documents to which access has been requested, including national and internal guidelines and instructions, also classified ones. ***(covers AM 121 SD)***

5. The Commission shall be responsible for making the necessary travel arrangements to and from the visited Member State for the Commission representatives and Member State experts in the teams.

The Commission shall bear the travel and accommodation costs for experts *as well as for* the observers referred to in Article 16(2) *and Union observers* participating in the visits. **(covers AM 13 EPP)**

The visited Member State shall be responsible for providing the necessary transport on location.

COMPROMISE 4 - Article 4 Forms of evaluations

AMs covered: 14 (Skyttedal), 127 (Vollath, Guillaume, Grapini, Santos, Fajon), 130 (Daly, Barrena Arza), 131(Vollath, Guillaume, Grapini, Santos, Fajon), 134 (Marquardt, Strik), 138(Vollath, Guillaume, Grapini, Santos, Fajon), 139(Marquardt, Strik), 140(Vollath, Guillaume, Grapini, Santos, Fajon), 143(Marquardt, Strik)

AMs fall: 128 (Marquardt, Strik), 129 (Brudzi ski, Jaki, Wi newska, Kempa), 132 (Marquardt, Strik), 133 (Brudzi ski, Jaki, Wi newska, Kempa), 135 (Brudzi ski, Jaki, Wi newska, Kempa), 136 (Hidvéghi), 137 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 141 (Vollath, Guillaume, Grapini, Santos, Fajon), 142 (Vollath, Guillaume, Grapini, Santos, Fajon),

Article 4

Forms of evaluations

1. Evaluations may take any of the following forms:
 - (a) first time evaluations;
 - (b) periodic evaluations;
 - (c) unannounced evaluations;

(ca new) evaluations conducted with short-notice (covers AM 127 SD)

 - (d) thematic evaluations.
2. The Commission may organise unannounced evaluations, in particular:
 - (a) to evaluate practices at internal borders; *in particular where internal border controls have been in place for longer than 180 days ~~what is provided in the schengen borders code regulation~~ and locations where there are evidence of fundamental rights violations (Left AM 130, S&D AM 131)*
 - (b) when it becomes aware of emerging or *existing* problems that could potentially have a negative impact on the functioning of the Schengen area, *including circumstances that could give rise to internal security threats. (covers AM 14 EPP and AM 134 Greens)*
 - (c) when it has grounds to consider that a Member State is neglecting its obligations under the Schengen *acquis*, *in particular* allegations of serious fundamental rights violations at the external borders. **(covers AM 138 SD, AM 139 Greens and AM140 Renew)**

3. The Commission may organise thematic evaluations in particular to assess the implementation of significant legislative changes, as they start to apply, and of new initiatives, or to assess issues across policy areas, or *similar policies and practices across* Member States (*covers AM 143 Greens*)

Article 5

Forms of monitoring activities

Monitoring activities may include any of the following:

- (a) the review of action plans and follow-up reports submitted by the evaluated Member States;
- (b) revisits;
- (c) verification visits.

<i>COMPROMISE 5 - Article 6 Evaluation and monitoring methods</i>
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AMs covered: 15 (Skyttedal), 146 (Vollath, Guillaume, Grapini, Santos, Fajon),

AMs fall: 145 (Marquardt, Strik)

Article 6

Evaluation and monitoring methods

Evaluations and monitoring activities referred to in Articles 4 and 5 may be carried out by means of announced, *short-notice* or unannounced visits, and questionnaires or other remote methods. *This should only be done when physical visits are not deemed necessary.* (*covers AM 15 EPP and AM 146 SD*)

Each evaluation and monitoring method may be used independently or in combination with one other, as appropriate.

<i>COMPROMISE 6 - Article 7, Article 8, Article 9 and Article 9a Compromise on cooperation</i>

AMs covered: 16 (Skyttedal), 17 (Skyttedal), 18 (Skyttedal), 149 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 153 (Vollath, Guillaume, Grapini, Santos, Fajon), 155 (Marquardt, Strik), 157 Vollath, Guillaume, Grapini, Santos, Fajon)

AMs fall: 144 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 147 (Marquardt, Strik), 148 (Marquardt, Strik), 150 (Marquardt, Strik), 151 (Hidvéghi), 152 (Vollath, Guillaume, Grapini, Santos, Fajon), 154 (Marquardt, Strik), 156 (Marquardt, Strik)

Article 7

Cooperation with Union bodies, offices and agencies

1. The Commission shall cooperate with relevant Union bodies, offices and agencies which are involved in the implementation of the Schengen *acquis* as well as with the European Union Agency for Fundamental Rights.

The Commission ***shall may*** enter into arrangements with the Union bodies, offices and agencies to facilitate the cooperation, ***and invite a ~~at least one~~ Member of the Union bodies, offices or agencies to participate in the teams carrying out evaluation and monitoring activities, when relevant.*** (covers AM 16 EPP and AM Renew 149).

2. The Commission may request Union bodies, offices and agencies referred to in paragraph 1 in accordance with their respective mandates to provide information, statistical data or risk analyses to improve situational awareness within the meaning of Regulation (EU) 2019/1896 regarding the implementation of the Schengen *acquis* by the Member States.

Article 8

Cooperation with Frontex

1. By 31 August each year, Frontex shall submit to the Commission and the Member States risk ***analyses*** in view to the annual evaluation programme referred to in Article 13 of this Regulation. (covers AM 17 EPP)
2. The risk ***analyses*** referred to in paragraph 1 shall cover all aspects ***of the European*** integrated border management, ***as laid down in Article 3(1) of Regulation (EU) 2019/1896, and include a fundamental rights component***, and it shall also contain recommendations for unannounced ***or short-notice*** visits in the following year, irrespective of the order of Member States to be evaluated each year, as established in the multiannual evaluation programme in accordance with Article 12. (covers AM 18 EPP and AM 153 SD)

Those 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, specific sites relevant for evaluating compliance with Directive 2008/115/EC², and other relevant information.

The Commission shall transmit risk analyses without delay to the European Parliament and to the Council in accordance with the EBCG Regulation 2019/1896.
(covers Greens AM 155)

Article 9

Cooperation with Europol

In accordance with Article 4(1), point (s), of Regulation (EU) 2016/794 of the European Parliament and of the Council³, Europol shall provide expertise, analysis, reports and other relevant information to support the implementation of this Regulation.

Article 9 a (new)

² Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

³ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

Cooperation with the Fundamental Rights Agency

In accordance with Article 4(1)(a) and (d) of Council Regulation (EC) No 168/2007, the Fundamental Rights Agency shall submit, by 31 August each year, conclusions on its overall fundamental rights assessment in relation to the implementation of the Schengen acquis, with a view to providing to the Commission when drawing up the annual evaluation programme, referred to in Article 13. (coverts S&D AM 157)

COMPROMISE 7 - Article 10 Synergies with other evaluation and monitoring activities

AMs covered: 19 (Skyttedal), 162 (Vollath, Guillaume, Grapini, Santos, Fajon),

AMs fall: 158 (Marquardt, Strik), 159 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 160 (Daly, Barrena Arza), 161 (Brudzi ski, Jaki, Wi newska, Kempa), 163 (Marquardt, Strik), 164 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 165 (Grapini), 166 (Daly, Barrena Arza)

1. The Commission shall use the results of relevant mechanisms and instruments, including evaluation and monitoring activities of Union bodies, offices and agencies which are involved in the implementation of the Schengen *acquis* and of the European Union Agency for Fundamental Rights as well as of independent national monitoring mechanisms and bodies and other national quality control mechanisms in preparing the evaluation and monitoring activities *in determining the need for unannounced evaluation or evaluations at short-notice and* to improve awareness on the functioning of the Schengen area and to avoid the duplication of efforts and conflicting measures. *(covers AM 162 SD)*
2. Recommendations under this Regulation shall be complementary to recommendations made pursuant to Article 32(7) of Regulation (EU) 2019/1896 under the vulnerability assessment.
3. The Commission may share with relevant national and Union bodies, offices and agencies referred to in paragraph 1 in a secure and timely manner details of evaluation reports, action plans and updates on the implementation of the action plans.

The information sharing shall take place in accordance with the mandates of the Union bodies, offices and agencies concerned. *Such information sharing shall be done to ensure enhanced situational awareness on the part of, and an enhanced operational response by, those bodies, offices and agencies.* *(covers AM 19 EPP)*

COMPROMISE 8 - Article 11 Information from third parties

AMs covered: partially 20 (Skyttedal), 171 (Vollath, Guillaume, Grapini, Santos, Fajon), partially 170 (Marquardt, Strik) and 172 (Daly, Barrena Arza)

AMs fall: 167 (Hidvéghi), 168 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 169 (Brudzi ski, Jaki, Wi newska, Kempa)

In the programming and implementation of the evaluations and monitoring activities, *in particular in determining the need for unannounced evaluations in accordance with Article 4(2) and Article 4(2a)*, the Commission shall take into account information *and recommendations* provided by *relevant (rapporteur)* third parties, including independent authorities, non-governmental organisations and international organisations *such as the United*

Nations' and the Council of Europe' institutions and bodies. Where the evaluation confirms shortcomings highlighted by third parties in the information they provide, Member States shall have the opportunity to comment. (covers AM 171SD and partially AM 20 EPP and AM 170 Greens and AM 172 Left)

CHAPTER II PROGRAMMING

COMPROMISE 9 - Article 12 and Article 13 Multiannual and annual evaluation programmes

AMs covered: 21 (Skyttedal), 174 Marquardt, Strik), 177 (Vollath, Guillaume, Grapini, Santos, Fajon), 179 (Marquardt, Strik)

AMs fall: 173(Grapini), 175 (Brudzi ski, Jaki, Wi newska, Kempa), 176 (Marquardt, Strik), 178 (Marquardt, Strik) 21 (Skyttedal), 22 (Skyttedal), 180 (Marquardt, Strik), 181 (Brudzi ski, Jaki, Wi newska, Kempa), 182 (Grapini), 183 (Marquardt, Strik)

Article 12

Multiannual evaluation programme

1. The Commission, where appropriate after consulting the relevant Union bodies, offices and agencies, shall establish a multiannual evaluation programme covering a period of seven years at least six months before the beginning of the following seven-year period.

In each multiannual evaluation cycle, each Member State shall undergo one periodic evaluation and at least one unannounced evaluation *or short-notice visit, as well as one or more* thematic evaluations. *Unannounced evaluations pursuant to Articles ~~4(2)(b) and 4(2)(e)~~ shall be organised by the Commission whenever the circumstances provided for in those articles arise. (covers AM 21 EPP and AM 174 Greens)*

2. The Commission shall adopt the multiannual evaluation programme by means of an implementing act. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(3). The Commission shall transmit the multiannual evaluation programme to the European Parliament and to the Council.
3. The multiannual evaluation programme shall identify *in accordance with Article 4(2b), those aspects of the Schengen Acquis* to be covered by the periodic evaluations and shall include a provisional time-schedule of those evaluations. *(covers AM 177 SD)*

It shall set out a provisional list of Member States to be subject to periodic evaluations, *along with the relevant Union institutions, bodies, offices and agencies performing functions related to the implementation of the Schengen acquis in the relevant Member States*, without prejudice to adjustments made under paragraph 4, in a given year. The provisional order in which the Member States are to be subject to a periodic evaluation shall take into account the time which has elapsed since the previous periodic evaluation. It shall also take into account the outcome of previous evaluations, the pace of implementation of the action plans and other relevant information at the

Commission's disposal as regards the practices of the Member States. (*covers AM 179 Greens*)

4. In the event of *force majeure* preventing the conduct of evaluations in accordance with the provisional time-schedule established pursuant to paragraph 3, the Commission may, in agreement with the Member States concerned, make adjustments to the time-schedule for the evaluations concerned.

The Commission shall inform the European Parliament and the Council about such events and of their anticipated impact on the scheduling of evaluations under the multiannual evaluation programme without delay.

Article 13

Annual evaluation programme

1. The Commission shall establish, by means of an implementing act, an annual evaluation programme by 15 November of the year preceding that to which the programme relates, based on in particular ~~on the general annual risk analysis, strategic risk analysis for European integrated border management and on the vulnerability assessment by Frontex and other~~ risk analyses, ~~as well as~~ other **relevant** information obtained by the Commission in accordance with Articles 7, 8, 9, 10 and 11. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(3). (*covers AM 22 EPP*)
2. The annual evaluation programme shall include a provisional time-schedule of the following evaluations:
 - (a) periodic evaluations of Member States as specified in the multiannual evaluation programme;
 - (b) first time evaluation of a Member State following its declaration of readiness to be evaluated;
 - (c) at least one thematic evaluation.
3. The Commission shall transmit the annual evaluation programme to the European Parliament and to the Council.

In the event of *force majeure* preventing the conduct of evaluations in accordance with the provisional time-schedule established pursuant to paragraph 2, the Commission may, in agreement with the Member States concerned, make adjustments to the time-schedule for the evaluations concerned.

The Commission shall inform the European Parliament and the Council about such events and of their anticipated impact on the scheduling of evaluations under the annual evaluation programme without delay.

<i>COMPROMISE 10 - Article 14 Standard questionnaire and Recital (10) and (11)</i>

AMs covered: 184 (Marquardt, Strik), 186 (Vollath, Guillaume, Grapini, Santos, Fajon),

AMs fall: 185 (Marquardt, Strik)

Article 14

Standard questionnaire

1. The Commission shall by means of an implementing act, establish and update a standard questionnaire.

In drawing up the questionnaire, the Commission may consult relevant Union bodies, offices and agencies referred to in Article 7. ***The Commission, in cooperation with the European Union Agency for Fundamental Rights, shall include in the questionnaire specific benchmarks against which the evaluation teams assess the fundamental rights' compliance. (covers 184 Greens)***

2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 29(2).
3. The standard questionnaire shall cover the implementation of the relevant legislation and the organisational and technical means available for the implementation of the Schengen *acquis*, including the ones referred to in Handbooks, the Schengen catalogues and relevant statistical data.
4. By 1 August each year, the Commission shall send the standard questionnaire to those Member States which are to undergo periodic evaluations in the following year in accordance with the annual evaluation programme.

Those Member States shall provide the Commission with their replies within three months from the receipt of the standard questionnaire.

The Commission shall make the replies available to the other Member States ***and to the European Parliament and the Council (covers AM 186 SD)***

5. On the request of the Commission, the evaluated Member States shall update their replies to the standard questionnaire and answer, if requested, complementary questions before specific evaluations, as well as provide the findings of national quality control mechanisms and internal audits.

Recital

AMs covered: partially 53 (Marquardt, Strik) **54(Marquardt, Strik)**,

AMs fall: ~~54(Marquardt, Strik)~~, 55 (Hidvéghi), 56 (Daly, Barrena Arza)

- (10) During the evaluation, particular attention should be paid to verifying respect for fundamental rights in the application of the Schengen *acquis* in addition to the evaluation of the correct implementation and application of the data protection requirements of the Schengen *acquis* carried out by separate evaluations. To increase the capacity of the evaluation and monitoring mechanism to identify violations of fundamental rights in relevant policy areas, additional measures should be implemented. Schengen evaluators should be properly trained in this regard, relevant information from the European Agency for Fundamental Rights should be better utilised and its experts better involved in the design and implementation of evaluations. ***In particular, the Commission, in cooperation with the European Union Agency for Fundamental Rights, should develop specific benchmarks to be included in the standard questionnaire, against which compliance with fundamental rights can be assessed.*** Furthermore, evidence which is made public or provided through independent monitoring mechanisms or by relevant third parties at their own initiative such as ombudspersons, authorities monitoring the respect of fundamental rights, non-

governmental and international organisations, should be taken into account in the programming, design and implementation of evaluations. (*covers partially Greens AM 54*)

- (11) The evaluation and monitoring mechanism should set up transparent, efficient and clear rules on the forms and methods to be applied for the evaluation and monitoring activities, the use of highly qualified experts and the follow-up to the findings of the evaluations.

COMPROMISE 11 - Article 15, Article 16 and Article 17

AMs covered: 24 (Skyttedal), 189 (Vollath, Guillaume, Grapini, Santos, Fajon), 191 (Vollath, Guillaume, Grapini, Santos, Fajon), 192 (Vollath, Guillaume, Grapini, Santos, Fajon), 193 (Vollath, Guillaume, Grapini, Santos, Fajon),

AMs fall: 22 (Skyttedal) 23 (Skyttedal) 187 (Grapini), 188 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 190 (Brudzi ski, Jaki, Wi newska, Kempa)

CHAPTER III

COMMON PROVISIONS FOR EVALUATIONS AND MONITORING ACTIVITIES

Article 15

Member State experts

1. The Member State experts participating in evaluation and monitoring activities shall have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation and monitoring mechanism, along with sound knowledge of evaluation principles, procedures and techniques, and shall be able to communicate effectively in a common language.
2. Experts from the Member States, which, in accordance with the relevant Act of Accession, are bound by but do not yet fully apply the Schengen *acquis* may participate in evaluation and monitoring activities of all parts of the Schengen *acquis*.

Article 16

Training of experts

1. The Member States and the Commission, in cooperation with relevant Union bodies, offices or agencies, shall ensure that Member State experts and Commission representatives receive adequate training to become Schengen evaluators. ***Completion of this training shall be mandatory for all experts participating in a team carrying out an evaluation or monitoring activity in accordance with Article 18. (covers AM 189 SD)***

The training courses for Schengen evaluators shall include fundamental rights components developed with the participation of the European Union Agency for Fundamental Rights.

The Commission, in cooperation with ~~the Member States and~~ relevant Union bodies, offices or agencies, shall keep up to date the initial training curricula and where needed provide follow-up and refresher training. ~~(covers AM 23 EPP)~~

2. For training purposes, each team carrying out periodic evaluations may include an 'observer' either from a Member State *from* the Commission *or from a Union body, office or agency involved in the implementation of the Schengen acquis* (covers AM 24 EPP).

Article 17

Pool of Member State experts

1. The Commission, in cooperation with the Member States, shall establish every year a pool of experts whose professional background *include those aspects of the Schengen acquis to be covered in accordance with* the multiannual evaluation programme. (covers AM 191 SD)
2. In parallel to the establishment of the annual evaluation programme in accordance with Article 13(1), on the invitation of the Commission, Member States shall designate at least one qualified expert per each *aspect of the Schengen acquis to be evaluated as laid down* in the multiannual evaluation programme for next year's pool of experts. (covers AM 192 SD)
3. Depending on the evaluations included in the annual evaluation programme, the Commission may further specify in the invitation the professional requirements for the experts to be designated.
4. Member States shall designate experts within four weeks of receiving the invitation referred to in paragraph 2.
5. Member States shall ensure that the experts designated fulfil the conditions referred to in Article 15 and the specific requirements set out in the invitation for establishing the pool.
6. Experts who have received appropriate trainings referred to in Article 16 shall be designated for the pool of experts established for the year following that in which they received the respective training course.
7. The Commission may also invite respective Union bodies, offices and agencies referred to in Article 7 to designate experts to the pool.
8. The Commission shall assess the experts designated and confirm the selection of the experts to the pool within one week.
9. Where none of the experts for the specific areas fulfils the requirements referred to in paragraph 3, the Commission shall invite the Member State concerned to designate a new expert for the specific priority area concerned.
10. Member States shall ensure that the designated experts are available for evaluations.
If an expert is no longer available for the pool, the Member State concerned shall designate a replacement without delay.
11. The Commission shall keep the list of experts of the pool up to date and inform Member States, *the European Parliament and the Council* (covers AM 193 SD) about the number of experts and their profiles designated per Member State.

COMPROMISE 12 - Article 18 Establishment of the teams

AMs covered: 25 (Skyttedal), 26 (Skyttedal), 27 (Skyttedal), 195 (Vollath, Guillaume, Grapini, Santos, Fajon), 197 (Vollath, Guillaume, Grapini, Santos, Fajon), ~~199 (Marquardt, Strik)~~, partially 200 (Marquardt, Strik), 202 (Vollath, Guillaume, Grapini, Santos, Fajon), 204 (Vollath, Guillaume, Grapini, Santos, Fajon)

AMs fall: 194 (Brudzi ski, Jaki, Wi newska, Kempa), 196 (Vollath, Guillaume, Grapini, Santos, Fajon), 198 (Vollath, Guillaume, Grapini, Santos, Fajon), ~~199 (Marquardt, Strik)~~, 201 (Brudzi ski, Jaki, Wi newska, Kempa), 203 (Marquardt, Strik), 205 (Brudzi ski, Jaki, Wi newska, Kempa)

Article 18

Establishment of the teams

1. The Commission shall define the number of Member State experts and Commission representatives participating in a team based on the particularities and needs of the evaluation or monitoring activity. The Commission shall select experts from the pool of experts to become members of a team. ***All members of the team, with the exception of observers or Union observers, shall have undergone the adequate training in accordance with Article 16(1). (AM 195 SD)***
2. In selecting experts, the Commission shall have regard to the profiles needed for a particular evaluation or monitoring activity taking account of the need to ensure geographical balance, balance as regards professional experience and the capacity of national administrations.

Member State experts shall not participate in a team carrying out an evaluation or monitoring activity of the Member State where they are employed. ***Moreover, where the activities of an Union body, office or agency present in the Member State are being evaluated as part of that Member State's evaluation, no expert or observer from that Union body, office or agency shall also participate in the evaluation. (covers AM 197 SD)***
3. The Commission shall invite the selected experts immediately after the date of the evaluation or monitoring activity is set and no later than 10 weeks before the evaluation or monitoring activity is scheduled to commence. Invited experts shall respond within one week of receiving the invitation, in agreement with their designating authorities.
4. In the case of unannounced ***or short-notice*** visits, the Commission shall send the invitations no later than two weeks before the visit is scheduled to commence. Experts shall respond within 72 hours of receiving the invitation, in agreement with their designating authorities. ***(covers AM 25 EPP)***
5. The Commission may invite respective Union bodies, offices and agencies referred to in Article 7 to designate a representative with relevant professional and field experience to take part as an observer in an evaluation or monitoring activity. The deadlines set out in paragraphs 3 and 4 shall apply for the invitation and the response.
6. If a Member State wishes to designate an observer for training purposes referred to in Article 16(3), it shall communicate that to the Commission at least six weeks before the evaluation is scheduled to commence.

6a. ***The Commission shall also invite the European Parliament to send a representative to observe revisits as a Union observer. (AM 26 EPP, AM 202 S&D and partially AM 200 Greens)***

7. The observers referred to in paragraphs 5 and 6 shall support the team as requested by the lead experts, but they shall not participate in the internal decision-making process of the team.

8. If the Commission fails to obtain confirmation of the participation of the required number of experts from the pool at least six weeks before the evaluation or monitoring activity is scheduled to commence, or at least **7 days** in case of unannounced **or short-notice (covers AM 27 EPP)** visits, the Commission shall without delay invite all Member States to nominate qualified experts outside from the pool for the missing places.

9. Member States shall respond within 72 hours of receipt of that invitation.

The Commission shall designate a Commission lead expert and propose the Member State lead expert. The Member State lead expert shall be appointed by the members of the team as soon as possible after the team has been set up. ***The Commission shall designate an expert responsible for the fundamental rights elements of the visit or evaluation.(covers AM 204 SD)***

The lead experts shall be responsible in particular for the overall planning, preparatory activities, organising the team, carrying out the evaluation, coordination of drafting the evaluation report, quality check and follow-up and relevant monitoring activities as appropriate.

COMPROMISE 13 - Article 19 Conduct of visits

AMs covered: 28 (Skyttedal), 29 (Skyttedal), 206 (Marquardt, Strik), 211 (Vollath, Guillaume, Grapini, Santos, Fajon), 212(Marquardt, Strik), 213 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 217 (Daly, Barrena Arza), 218(Marquardt, Strik), 219 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 220 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel)

AMs fall: 207 (Hidvéghi), 208 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 209 (Marquardt, Strik), 210 (Daly, Barrena Arza), 214 (Hidvéghi), 215(Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 216 (Brudzi ski, Jaki, Wi niewska, Kempa)

Article 19

Conduct of visits

1. The teams shall undertake all necessary preparatory activities in order to ensure that the visits are efficient, accurate and consistent.

2. The detailed programme for the visits in a Member State or in its consulates shall be established by the Commission in close cooperation with the lead experts and the Member State concerned. ***The Commission shall send the detailed programme also to the relevant national Parliament. (covers AM 206 Greens)***

It may include visits to and meetings with national authorities and bodies, non-governmental and international organisations as well as other entities, agencies and

bodies involved in, participating in or concerned by the implementation of the Schengen *acquis* while cooperating with the Member State subject to the evaluation or monitoring activity.

3. For announced visits, the Commission shall consult and notify the Member State concerned of the timetable and detailed programme at least four weeks before the visit is due to take place. It shall provide in advance the names of the members of the team and the observers. The Member State concerned shall designate a contact point for making the practical arrangements for the visit.
4. Unannounced visits shall take place without prior notification to the Member State concerned. *The Commission shall establish the detailed programme for unannounced visits (covers AM 28 EPP, AM 211 SD, AM 212 Greens, AM 213 Renew, AM 217 The Left, AM 218 Greens, AM 219 Renew).*
5. The Commission, in close cooperation with the Member States, may establish and update Guidelines for conducting unannounced *or short-notice* visits *and may consult with Member States.*(covers AM 29 EPP and AM 220 Renew).

COMPROMISE 14 - Article 20 Remote methods

AMs covered: 30 (Skyttedal),

AMs fall: 221 (Vollath, Guillaume, Grapini, Santos, Fajon), 222 (Marquardt, Strik), 223 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel)

Article 20

Remote methods

The Commission, in cooperation with the Member States, may establish guidelines for conducting evaluation and monitoring activities by questionnaire or other remote methods, *as complimentary methods. Remote methods shall only be used where physical visits are not deemed necessary (covers AM 30 EPP).*

COMPROMISE 15 - Article 21 Evaluation reports

AMs covered: 32 (Skyttedal), 33 (Skyttedal), 224(Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 228 (Marquardt, Strik), 229(Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 232 (Marquardt, Strik),

AMs fall: 31 (Skyttedal), 225 (Marquardt, Strik), 226 (Brudzi ski, Jaki, Wi niewska, Kempa), 227 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 228 (Marquardt, Strik), 230 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 231(Brudzi ski, Jaki, Wi niewska, Kempa), 233 (Marquardt, Strik),

Article 21

Evaluation reports

1. The team shall draft an evaluation report following each evaluation.

The Commission shall adopt the evaluation report by means of an implementing act in accordance with the examination procedure referred to in Article 29(3). The evaluation

report shall be adopted no later than four months after the end of the evaluation activity.

The Commission shall transmit the evaluation report to the national Parliaments, the European Parliament and the Council *no later than 14 days after the report is adopted. (covers AM 224 Renew)*.

2. In preparing the evaluation report, the teams shall take account of the replies to the standard questionnaire, any additional information obtained in accordance with Articles 7, 8, 9, 10 and 11 and the findings of the evaluation activity. The evaluation reports may include documentary and digital material to support the findings. Where an evaluation is carried out by means of a visit, the team shall draft the evaluation report during the visit.

The teams 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.

3. The evaluation report shall analyse the qualitative, quantitative, operational, administrative and organisational aspects and shall list the deficiencies, areas of improvement and best practices identified during the evaluation.

4. Findings may be assessed as one of the following:

- (a) best practice;
- (b) compliant but improvement necessary;
- (c) non-compliant.

5. The evaluation report shall contain recommendations for remedial actions aimed at addressing the deficiencies and areas for improvement identified during the evaluation and give an indication of the priorities for implementing them. The evaluation report *shall also (covers AM 32 EPP and Renew 229)*. set deadlines for the implementation of recommendations. Where the evaluation identifies a serious deficiency, the specific provisions set out in Article 23 shall apply.

6. The Commission shall transmit the draft evaluation report to the evaluated Member State within four weeks of the end of the evaluation activity. The evaluated Member State shall provide its comments on the draft evaluation report within two weeks of its receipt. A drafting meeting shall be held at the request of the evaluated Member State, no later than five working days from the receipt of the comments from the evaluated Member State. The comments of the evaluated Member State *shall be fully* reflected in the evaluation report *(covers Greens AM 232)*.

- 6a. *Where the draft evaluation report includes findings related to the activities of a Union body, office or agency involved in the implementation of the Schengen acquis, the procedure set out in paragraph 6 shall apply mutatis mutandis (covers AM 33 EPP)*.

COMPROMISE 16 - Article 22 Follow-up and monitoring and Recital (5)
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AMs covered: 34 (Skyttedal), 235 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 240 (Marquardt, Strik), partially 242 (Marquardt, Strik)

AMs fall: 234 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 236 (Marquardt, Strik), 237 (Hidvéghi), 238 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 239(Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 241 (Brudzi ski, Jaki, Wi niewska, Kempa)

Article 22

Follow-up and monitoring

1. Within two months of the adoption of the evaluation report, the evaluated Member State shall submit to the Commission and the Council an action plan to implement all the recommendations included in the evaluation report.
2. After consulting the team, which has carried out the evaluation activity, the Commission shall provide observations on the adequacy of the action plan and, within one month from its submission, shall inform the evaluated Member State about its observations. The Council ~~may~~ shall invite *other* Member States to *comment* on the action plan *in the framework of enhanced political dialogue (covers AM 34 EPP and AM 235 Renew)*.

If the Commission does not consider that all the recommendations have been sufficiently addressed, the evaluated Member State shall submit a revised action plan within one month of the receipt of the observations.

3. The evaluated Member State shall report to the Commission and the Council on the implementation of its action plan every six months from the adoption of the evaluation report until the Commission considers the action plan fully implemented. Depending on the nature of the deficiencies and the state of implementation of the recommendations, the Commission may require the evaluated Member State a different reporting frequency. *If, after 24 months from the evaluation report, the Commission does not consider that all the recommendations have been sufficiently addressed and the action plan fully implemented the European Parliament and the Council shall express their position on the matter through a reasoned decision. (covers AM 240 Greens)*

Where the Commission considers the action plan implemented, it shall inform the evaluated Member State about the closure of the action plan.

The Commission shall inform the European Parliament, the Council *and the national parliaments concerned* at least twice a year about the state of implementation of the action plans. The Commission shall in particular provide information about its observations on the adequacy of the action plans referred to in paragraph 2, the outcome of revisits and verification visits and whether it observes considerable lack of progress in the implementation of an action plan. *(covers partially AM 242 Greens)*

Recital

AMs covered: 1 (Skyttdal)

AMs fall: 42 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari)

- (5) The evaluation and monitoring mechanism should achieve these goals through objective and impartial evaluations that are able to quickly identify deficiencies in the application of the Schengen *acquis* that could disrupt the correct functioning of the Schengen area, ensure that these deficiencies are swiftly addressed, and provide the basis for a *genuine*

political dialogue, *among Member States*, on the functioning of the Schengen area as a whole. This requires close cooperation between the Member States and the Commission, a balanced distribution of shared responsibilities and maintaining the peer review nature of the system. It also requires a closer involvement of the European Parliament. Given the extent of the changes, Regulation (EU) No 1053/2013 should be repealed and replaced by a new Regulation. (*covers EPP AM 1*)

CHAPTER IV

SERIOUS DEFICIENCY AND SPECIFIC FORMS OF EVALUATION

COMPROMISE 17 - Article 23, Article 24 and Article 25 Serious deficiency and specific forms of evaluation and Recital (22)

AMs covered: 35 (Skyttedal), 36 (Skyttedal), 37 (Skyttedal), 38 (Skyttedal), 244 (Marquardt, Strik), 251(Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel) 252 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 254 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel)257 (Daly, Barrena Arza), 258 (Vollath, Guillaume, Grapini, Santos, Fajon), 259(Marquardt, Strik), 260(Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 263 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 266 (Vollath, Guillaume, Grapini, Santos, Fajon)

AMs fall: 243 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 245 (Brudzi ski, Jaki, Wi niewska, Kempa), 246 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 247(Marquardt, Strik), 248 (Daly, Barrena Arza), 249(Marquardt, Strik), 250(Marquardt, Strik), ~~251(Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel)~~, 253(Daly, Barrena Arza), ~~254(Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel)~~, 255(Marquardt, Strik), 256(Marquardt, Strik), 261 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 264(Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 265(Marquardt, Strik), 267(Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 268 (Marquardt, Strik), 269 (Marquardt, Strik), 270 (2 Brudzi ski, Jaki, Wi niewska, Kempa) 71 (Marquardt, Strik), 272 (Marquardt, Strik), 273 (Marquardt, Strik), 274 (Marquardt, Strik),

Article 23

Specific provisions in case of a serious deficiency identified by the evaluation report

1. The rules laid down in paragraphs 2 to 7 shall apply in relation to evaluations that identified a serious deficiency.
2. At the end of the evaluation activity, the Commission and the Member State lead experts, on behalf of the team, shall inform the evaluated Member State that a serious deficiency was identified.

The evaluated Member State shall take immediate remedial actions including, where necessary, mobilising all available operational and financial means. The evaluated Member State shall inform without delay the Commission and the Member States about the immediate remedial actions taken or planned. In parallel, the Commission

shall inform the respective Union bodies, offices and agencies referred to in Article 7 of the serious deficiency in view of their possible support to the evaluated Member State. The Commission shall also *immediately* inform the Council and the European Parliament *and Member States' national parliaments of the identified serious deficiency and the remedial actions, if any, already taken by the evaluated Member State. (covers AM 35 EPP and AM 244 Greens)*

3. The evaluation report drafted in accordance with Article 21(2), (3) and (4) shall focus on the findings that lead to the determination of a serious deficiency. It shall not contain recommendations. The Commission shall transmit the draft evaluation report to the evaluated Member State within two weeks of the end of the evaluation activity.

The evaluated Member State shall provide its comments on the draft evaluation report within five working days of its receipt.

On duly justified imperative grounds of urgency relating to the serious deficiency, the Commission shall adopt the evaluation report no later than six weeks after the end of the evaluation activity by means of an implementing act in accordance with the procedure referred to in Article 29(4).

4. In light of the findings, the team shall draft recommendations for remedial actions aimed at addressing the serious deficiency identified in the draft evaluation report.

The Commission shall submit a proposal to the Council to adopt the recommendations concerned.

5. The Council shall adopt recommendations ~~within two weeks~~ *no later than ten days* of receipt of the proposal. *(covers Renew AM 251)*

It shall transmit the recommendations to the European Parliament and to the national parliaments.

The Council shall *urgently discuss the matter and* set *short* time limits for the implementation of the recommendations related to a serious deficiency and specify the frequency of the reporting by the evaluated Member State to the Commission and the Council on the implementation of its action plan. *(covers AM 36 EPP and AM 252 Renew)*

6. The evaluated Member State shall submit to the Commission and the Council its action plan within ~~one month~~ *three weeks* of the adoption of the recommendations. The Commission shall transmit that action plan to the European Parliament *without any delay (covers AM 37 EPP, AM 254 Renew)*.

The Commission shall provide the evaluated Member State observations on the adequacy of the action plan within two weeks from its submission. The Commission shall transmit its observations to the Council and the European Parliament.

7. To verify the progress made in the implementation of the recommendations related to the serious deficiency, the Commission shall organise a revisit that is to take place no later than *180 days*) from the date of the evaluation activity. *(covers AM 257 The Left, 258 SD, 259 Greens, 260 Renew)*

The Commission shall adopt, by means of an implementing act a revisit report in accordance with the examination procedure referred to in Article 29(3). The Commission shall submit the revisit report to the Council.

8. The Council shall express its position on the *evaluation* report *and may invite the Commission to submit a proposal for recommendations for remedial actions aimed at addressing serious persisting deficiencies identified in the revisit report. Where the Commission submits such a proposal, paragraphs 6 and 7 shall apply. (covers AM 38 EPP)*
- 8a (new). In cases where, after a revisit, the implementation of the action plan following an evaluation that identified a serious deficiency is not completed by a Member State to a satisfactory level, the Commission when it considers that a Member State has failed to fulfil an obligation ~~shall~~ should launch an infringement procedure against that Member State in accordance with the Treaty on the Functioning of the European Union Article 258 TFEU. (covers AM 262 Greens, Renew AM 263).*
9. The Commission shall inform the European Parliament and the Council of its intention to close the action plan.
- The Commission shall invite the Council to express its position on the proposed closure.
- In deciding whether to close the action plan, the Commission shall take into account that position.
10. If the serious deficiency is deemed to constitute a serious threat to public policy or internal security within the area without internal border controls, or a serious and systematic fundamental rights violation, the Commission, on its own initiative or at the request of the European Parliament or of a Member State, shall immediately inform ~~thereof~~ the European Parliament and the Council, *thereof including information on infringement proceedings that are underway or will be brought against the evaluated Member State. (covers AM 266 SD).*

Article 24

Specific provisions for first time evaluations

1. The rules laid down in paragraphs 2 and 3 shall apply in relation to first time evaluations.
2. The evaluation report drafted in accordance with Article 21(2), (3) and (4) shall not contain recommendations. In light of the findings, the team shall draft recommendations for remedial actions identified in the draft evaluation report. The timelines in Article 21(1) and (6) shall apply.
- The Commission shall submit a proposal to the Council to adopt the recommendations concerned.
3. The Council shall adopt recommendations within two months of receipt of the proposal.
- It shall transmit the recommendations to the European Parliament and to the national parliaments.
- The Council may set time limits for the implementation of specific recommendations.
- The Commission shall organise a revisit in case the evaluation report concluded that the evaluated Member State did not fulfil the conditions necessary to apply the

Schengen acquis. The Commission shall adopt, by means of an implementing act the revisit report in accordance with the examination procedure referred to in Article 29(3). The Commission shall submit the revisit report to the Council.

4. The Commission shall carry out a verification visit before the closure of the action plan.

The Commission shall inform the European Parliament and the Council of the outcome of the verification visit and its intention to close the action plan.

5. The Commission shall invite the Council to express its position on the proposed closure.

In deciding whether to close the action plan, the Commission shall take into account that position.

Article 25

Specific provision for thematic evaluations

Article 24(2) and (3) shall apply to thematic evaluations.

If the thematic evaluation identifies a serious deficiency, Article 23 shall apply.

Recital

AMs covered: 76 (Marquardt, Strik),77 (Vollath, Fajon)

AMs fall:78(Daly, Barrena Arza),

- (22) In addition, where evaluations identify a serious deficiency, specific provisions should apply to ensure the prompt adoption of remedial measures. Given the risk posed by such deficiency, as soon as the evaluated Member State is informed about a serious deficiency, the evaluated Member State should start immediately implementing actions to remedy the deficiency including, where necessary, mobilising all available operational and financial means. Remedial action should be subject to tighter deadlines and closer political scrutiny and monitoring throughout the process. In this regard, the Commission should immediately inform the Council and the European Parliament when an evaluation establishes the existence of a serious deficiency and ***report on any infringement proceedings that are ongoing or to be brought against the evaluated Member State. The Commission should also*** organise a ‘serious deficiency’ revisit no later than ***180 days ~~one year~~*** from the date of the evaluation to verify whether the Member State has remedied the shortcomings concerned. The Commission should present a revisit report to the Council ***and the Parliament*** following the revisit. ***Considering the severe impact that a serious deficiency might have on the Schengen area the Commission should launch without delay an infringement procedure in accordance with ~~action pursuant to article 258 of the Treaty on the Functioning of the European Union~~ in order to address the identified shortcomings. (covers Greens AM 76, S&D AM 77)***

COMPROMISE 18 - from Article 26 to Article 30 Final provisions

AMs covered: 275 (Vollath, Guillaume, Grapini, Santos, Fajon), 276 (Marquardt, Strik), 277 (Vollath, Guillaume, Grapini, Santos, Fajon)

AMs fall: 278 (Marquardt, Strik),

CHAPTER V

FINAL PROVISIONS

Article 26

Sensitive information

1. The teams shall regard as confidential any information they acquire in the course of performing their duties.
2. The classification status of the reports shall be determined in accordance with Decision (EU, Euratom) 2015/444. ***In exceptional cases, parts of the evaluation reports*** may also be classified as 'EU RESTRICTED/RESTREINT UE' on a duly justified request of the evaluated Member State. ***(covers AM 275 SD)***
3. The transmission and handling of classified information and documents for the purposes of this Regulation shall take place in compliance with the applicable security rules. Such rules shall not preclude information being made available to the European Parliament, ***national parliaments*** and to relevant Union bodies, offices and agencies referred to in Article 7. , ***(covers AM 276 Greens)***

Article 27

Conditions for the participation of Ireland

1. Experts of Ireland shall only participate in the evaluation of the part of the Schengen *acquis* in which Ireland has been authorised to participate.
2. The evaluations shall only cover the effective and efficient application by Ireland of the part of the Schengen *acquis* in which it has been authorised to participate.
3. Ireland shall only take part in the adoption of the recommendations by the Council as regards the part of the Schengen *acquis* in which it has been authorised to participate.

Article 28

Reporting to the European Parliament and to the Council

The Commission shall submit annually a comprehensive report to the European Parliament and to the Council on the evaluations carried out pursuant to this Regulation. That report shall be made public and shall include information on the evaluations carried out during the previous year, on the conclusions drawn from them and on the state of play with regard to remedial actions taken by the Member States. The Commission shall transmit that report to the national Parliaments. The Council shall discuss the report and adopt conclusions.

Article 29

Committee procedure

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 4 of Regulation (EU) No 182/2011 shall apply.
3. 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.
4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 30

Review

The Commission shall undertake a review of the application of this Regulation and submit a report to the Council within six months of the adoption of all evaluation reports regarding the evaluations covered by the first multiannual evaluation programme adopted in accordance with this Regulation. Such review shall cover all the elements of this Regulation, including the functioning of the procedures for adopting acts under the evaluation mechanism. The Commission shall submit that report to the European Parliament *without any delay*. (covers AM 277 SD).

Article 31

Transitional provisions

1. The first multiannual evaluation programme under this Regulation shall be established by [1 November 2022] and it shall start on [1 January 2023].
That programme shall take into account the evaluations already carried out under the second multiannual programme adopted under Regulation (EU) No 1053/2013 and shall be drawn up as a continuation of that programme.
2. The standard questionnaire adopted under Regulation (EU) No 1053/2013 shall be used until the standard questionnaire provided for under Article 14 of this Regulation has been established.

Article 32

Repeal

Council Regulation (EU) No 1053/2013 is repealed from [1 September 2022].

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex.

Article 33

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [1 September 2022].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

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,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament⁴,

Having regard to the opinion of the European Data Protection Supervisor,

Acting in accordance with a special legislative procedure,

Whereas:

COMPROMISE A - Recitals from (7) to (9)

AMs covered: 2 (Skyttedal), 3 (Skyttedal), 47 (Daly, Barrena Arza), 48 (Vollath, Fajon)

AMs fall: 49 (Marquardt, Strik), 51(Daly, Barrena Arza), 50 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari) 52(Marquardt, Strik)

- (7) The correct functioning **and compliance to the Charter of Fundamental Rights of the EU** of the authorities that apply the Schengen *acquis* should be taken into account in all the evaluations in line with the European Council conclusions of 1 and 2 March 2012. The evaluation should also cover the practices of private entities, such as airlines or external service providers, as far as they are involved in or affected by the implementation of the Schengen *acquis* while cooperating with the Member States. Equally, given the increasing role of Union bodies, offices and agencies in the implementation of the Schengen *acquis*, the evaluation and monitoring mechanism should support the verification of the activities of these Union bodies, offices and agencies in so far as they perform functions on behalf of the Member States to assist in the operational application of provisions of the Schengen *acquis*. Verification of these activities in this regard should be embedded into the evaluation of the Member States and carried out without prejudice to and in full respect of the responsibilities attributed to the Commission and to the relevant governing bodies of the agencies, offices and bodies concerned by their establishing regulations and their own evaluation and

⁴ OJ C , , p. .

monitoring procedures therein. Should evaluations identify deficiencies in relation to functions fulfilled or supported by Union bodies, offices and agencies, the Commission should *include this in the evaluation report and involve* ~~inform~~—their relevant governing bodies. *(covers EPP AM 2, Left AM 47, S&D AM 48)*

- (8) Evaluation and monitoring activities should be targeted, taking into account the results of previous evaluations and the results of national quality control mechanisms. They should be supported by reinforced cooperation with Union bodies, offices and agencies, their systematic involvement in Schengen evaluations and by improved risk analyses and information sharing. This cooperation and involvement concerns in particular the European Border and Coast Guard Agency ('Frontex'), the European Union Agency for the Operational Management of Large-Scale IT Systems (eu-LISA), the Union Agency for Law Enforcement Cooperation (Europol), the European Agency for Fundamental Rights and the European Data Protection Supervisor. The cooperation should also become more reciprocal and the agencies should not only be contributors, but also benefit from being involved in the evaluation and monitoring mechanism.
- (9) The vulnerability assessment carried out by Frontex is a complementary mechanism to the evaluation and monitoring mechanism established by this Regulation for guaranteeing quality control at Union level and ensuring constant preparedness at both Union and national levels to respond to any challenges at the external border. *That vulnerability assessment should feed into the annual evaluation programme and thus ensuring an up-to-date situational awareness.* Both mechanisms constitute a component of the European Integrated Border Management. Synergies between the vulnerability assessment and the evaluation and monitoring mechanism should be maximised with a view to establishing an improved situational picture of the functioning of the Schengen area, avoiding, to the extent possible, duplication of efforts and conflicting recommendations. For that purpose, regular exchange of information between Frontex and the Commission on the results of both mechanisms should take place. Increasing the strategic focus and more targeted evaluation design also requires increasing synergies further with the relevant mechanisms and platforms operated by Union agencies and national administrations, such as the European Multidisciplinary Platform Against Criminal Threats ('EMPACT') or the oversight conducted by the Commission with the support of eu-LISA as regards the preparation of the Member States for the implementation of relevant IT systems as well as the findings of the national quality control mechanisms. *(covers EPP AM 3)*

COMPROMISE B - Recitals from (12) to (15)

AMs covered: 4 (Skyttedal), 5 (Skyttedal), 6 (Skyttedal), 57 (Marquardt, Strik), 58 (Marquardt, Strik), 61 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 62(Daly, Barrena Arza), 63(Marquardt, Strik), 64(Vollath, Fajon)

AMs fall: 59 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 60 (Hidvéghi),

- (12) The forms of evaluations and methods should be made more flexible to increase the efficiency of the evaluation and monitoring mechanism and its capacity to adapt to new circumstances and legislative developments and to streamline the use of the resources

of the Member States, Commission and the Union bodies, offices and agencies. Periodic evaluations through visits should be the primary means of evaluation. The proportion of unannounced visits and thematic evaluations should be gradually increased to ensure a more balanced use of available tools. The forms of evaluation should be clearly defined. Depending on the policy area and the nature of the evaluation and monitoring activity, the evaluation and monitoring mechanism should allow the evaluation of several Member States at the same time and conduct entirely or partly remote evaluations *as complementary evaluation methods to physical visits*, as well as to combine the evaluation of policy fields. The evaluation and monitoring mechanism should strive towards drawing comprehensive Member State evaluation reports assessing the Member State's overall performance in the application of the Schengen *acquis*. (covers Greens AM 57)

- (13) Thematic evaluations should be used more frequently to provide a comparative analysis of Member State practices. They should take place to assess the implementation of major legislative changes as they start to apply and of new initiatives, as well as to assess issues across policy areas or *similar policies and practices of across the Member States facing similar challenges*. (covers Greens AM 58)
- (14) Unannounced visits, being one of the most effective tools to verify Member States practices should, ~~depending on their purpose~~, take place without prior notification to the Member State concerned ~~or with only short prior notification~~. Unannounced visits ~~without prior notification~~ should take place for 'investigative' purposes in order to verify compliance with obligations under the Schengen *acquis*, including, in response to indications as regards the emergence of systemic problems that could potentially ~~have a significant negative~~ impact on the functioning of the Schengen area or *lead* to fundamental rights violations, in particular allegations of serious violations of fundamental rights at the external borders. ~~In such cases, the provision of advance notice would defeat the objective of the visit. Unannounced visits with a 24-hour advance notice should take place if the main purpose of the visit is to carry out a random check of the Member State's implementation of the Schengen acquis.~~ (covers EPP AM 4, Renew AM 61 and partially Left AM 62, Greens AM 63, S&D AM 64).

(14a) new A maximum of 24 hours' notice should be given to a Member State prior to a short notice visit, which is a complementary tool. Short-notice visits should take place only where the main purpose of the visits is to carry out a random check of the implementation of the Schengen acquis by a Member State. (covers EPP AM 5)

- (15) Programming the activities carried out under this Regulation via multiannual and annual evaluation programmes has already proven its added value to ensure predictability and certainty. Therefore, the Commission, in cooperation with the Member States should adopt multiannual and annual evaluation programmes. These programmes should also provide the necessary flexibility to be able to adapt to the dynamic nature of the Schengen *acquis* over time. In the event of *force majeure* adjustments to the programmes should be made in agreement with the Member States concerned without the need for a formal amendment of the programmes. The multiannual evaluation programme, adopted for seven years, should identify the specific priority areas to be covered by the periodic evaluations. This approach should allow for more flexibility,

adaptability based on the up-to-date information collected by the various analyses with a view to establishing an improved situational picture of the functioning of the Schengen area, better prioritisation as well as ~~and~~ a more balanced and strategic use of all tools available. The extension of the multiannual evaluation programme from five to seven years should also lead to an increased, closer and more targeted monitoring of the Member States without reducing the level of scrutiny. (covers EPP AM 6)

COMPROMISE C - Recitals from (19) to (21)

AMs covered: 71 (Marquardt, Strik), 72 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel), 74(Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache, Chastel)

AMs fall: 73 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 75 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari),

- (19) Evaluation reports should be concise and *give an account of ~~succinct. They should focus on~~ deficiencies identified with significant impact and highlight areas where important improvements should could be made. Minor findings should not form part of the reports.* The team should nevertheless communicate these findings to the evaluated Member State at the end of the evaluation activity, including to the authorities responsible for the relevant national quality control mechanism. The team should actively seek to identify best practices which should be added to the reports. In particular, new and innovative measures that significantly improve the implementation of the common rules and that could be put in practice by other Member States should be highlighted as a best practice for the purposes of the report. *(covers Green AM 71, Renew AM 72)*
- (20) Evaluation reports should, as a rule, contain recommendations on how to remedy deficiencies identified *(including fundamental rights violations)* and be adopted in a single act by the Commission by means of implementing acts through the examination procedure in accordance with Article 5 of Regulation (EU) No 182/2011⁵ *and without unnecessary delay. Attention should in particular be paid to identifying and remedying fundamental rights violations.* The consolidation of the report and recommendations within a single document and subject to a single adoption procedure reinforces the intrinsic connection between the evaluation findings and recommendations. In addition, the accelerated publication of the recommendations should enable Member States to address the deficiencies faster and more efficiently. At the same time, the use of the examination procedure should ensure Member State's engagement in the decision-making process leading to the adoption of the recommendations. *(covers Renew AM 74)*
- (21) Nevertheless, given the crucial role of the Council in exerting peer-pressure and the need for political discussion, the Council should adopt recommendations in cases of political importance and general interest for the functioning of the Schengen area. Such cases should be considered to arise where an evaluation concludes that there exists a serious deficiency, in cases of thematic evaluations, or in cases where an evaluation take places for the purposes of verifying whether a Member State bound by the Schengen *acquis*

⁵ OJ L 55, 28.2.2011, p. 13.

and for which internal border controls have not been lifted fulfils the conditions to apply the Schengen *acquis* in full or, in the case of a Member State not bound by the Schengen *acquis* and that has opted in to apply parts of the Schengen *acquis*, to verify whether the Member State fulfils the conditions to apply the Schengen *acquis* in part.

COMPROMISE D - Recitals from (23) to (39)

AMs covered: 8 (Skyttedal), 79 (Marquardt, Strik), 80 (Vollath, Guillaume, Grapini, Santos, Fajon), 87 Vollath, Fajon, 89 (Vollath, Guillaume, Grapini, Santos, Fajon), 92(Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache),

AMs fall: 81(Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 82 (Marquardt, Strik), 83 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache), 84(Marquardt, Strik), 85 (Oetjen, Körner, Azmani, Vautmans, uriš Nicholsonová, in 't Veld, Tudorache), 86 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 88 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 90(Marquardt, Strik), 91 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 93 (Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 94(Garraud, Bay, Vilimsky, Fest, Vandendriessche, Huhtasaari), 95 (Marquardt, Strik)

- (23) The identification of a serious deficiency requires a thorough case-by-case assessment on the basis of clear criteria regarding the nature, scale and potential impact of the problems, which may be different for each policy area. Different ~~key~~ elements for the effective implementation of the Schengen *acquis* and different combination of factors could lead to the classification of a finding as a serious deficiency. However, if it is considered that a shortcoming identified is or in a short-term has the potential of putting the overall functioning of the area without internal border control at risk, or ***of negatively impacting have a significant negative impact on fundamental rights*** or the rights of individuals, such shortcoming is to be regarded as a serious deficiency. Where a serious deficiency in the carrying out of external border control is identified in an evaluation report, Articles 21 and 29 of Regulation (EU) 2016/399 of the European Parliament and of the Council⁶ may apply. ***(covers EPP AM 8, Greens AM 79, S&D AM 80)***
- (24) The evaluation and monitoring mechanism should comprise a robust follow-up and monitoring component which should be ensured by the Commission, in close cooperation with the Council and the European Parliament, without creating a disproportionate burden for the actors involved. Evaluations should be followed up by action plans. While drawing up the action plans, the evaluated Member States should fully take into consideration the funding possibilities provided by the Union and make the best use of these resources. To speed up the process, the Commission should provide observations on the adequacy of the action plans for example in the form of a letter. In order to ensure a timely follow up, if the Commission services do not consider the action plan adequate, the Member State concerned should be required to submit a revised action plan within one month from the receipt of the observations. The frequency of the

⁶ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

follow-up reporting by the Member State to the Commission and the Council on the implementation of the action plans should, as a rule, be six months.

- (25) As part of its monitoring activities, it should be possible for the Commission to organise revisits and verification visits. Revisits should be organised to monitor the progress of the implementation of an action plan following an evaluation that identified serious deficiency or following an evaluation which precedes the full Schengen accession of a Member State ('first time evaluation') and concluded that the evaluated Member State did not fulfil the necessary conditions to apply the Schengen *acquis* in the respective evaluated policy area. The revisit report should be limited to present the progress made to implement the recommendations. Otherwise, verification visits may be carried out to monitor the implementation of an action plan, following an evaluation that did not identify serious deficiency where deemed necessary. Verification visits should always be organised before the closure of an action plan following a first time evaluation. In terms of the organisational and reporting requirements, verification visits should be lighter than evaluation visits. In particular, they should comprise smaller teams and should not lead to new findings or require the adoption of a separate report. The Council should be more actively involved in the monitoring phase and should express its position on the proposed closure of action plans.
- (26) It is essential and desirable that the European Parliament and the Council regularly hold discussions at political level in order to raise awareness of the importance of the implementation of the Schengen *acquis*, hold Member States who persistently breach the common rules accountable, and increase pressure on them to remedy the deficiencies identified. ***Both institutions should be fully, and equally, informed of all developments in the implementation of the Schengen acquis in the Member States.*** The Commission should provide adequate input to facilitate these discussions including through the adoption of a comprehensive annual report covering the evaluations carried out during the previous year and state of implementation of recommendations, which would be part of the 'State of Schengen' report. The European Parliament is encouraged to adopt resolutions and the Council should adopt conclusions to increase pressure on Member States making insufficient progress. The 'Schengen Forum', as a unique stage to discuss Schengen at high level with representatives of the European Parliament, Member States and the Commission should provide a platform for informal discussions aiming at better implementation of the Schengen *acquis*. ***(covers S&D AM 87)***.
- (27) The evaluation and monitoring mechanism established by this Regulation should fulfil a complementary function of monitoring the effectiveness of the practical implementation of Union policies through peer review. The general power of the Commission to oversee the application of Union law under the control of the Court of Justice of the European Union through infringement procedures should not be affected.
- (28) The classification status of the evaluation and revisit reports should be determined in accordance with the applicable security rules set out in Commission Decision (EU, Euratom) 2015/444⁷. The evaluated Member State should, ***in exceptional cases, nevertheless*** retain the possibility to request the classification of all or parts of the report in accordance with the applicable security rules. ***(covers AM 89 S&D)***

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Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

- (29) In view of the particular role entrusted to the European Parliament and to the national parliaments under the last sentence of Article 70 of the Treaty on the Functioning of the European Union (TFEU), as underlined in Article 12, point (c), of the Treaty on European Union (TEU) as regards the national parliaments, the Council and the Commission should fully inform the European Parliament and the national Parliaments of the content and results of the evaluations ***no later than 14 days after the procedure is concluded***. In addition, should the Commission submit a proposal to amend this Regulation, the Council would, in accordance with Article 19(7), point (h), of its Rules of Procedure⁸, consult the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before adopting a final text. (***covers AM 92 Renew***)
- (30) Regulation (EU) 2016/679 of the European Parliament and of the Council⁹ applies to the processing of personal data by the Member States when carrying out their responsibilities under this Regulation. Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁰ applies to the processing of personal data by the institutions, bodies, offices and agencies of the Union when carrying out their responsibilities under this Regulation.
- (31) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt the multiannual and annual evaluation programmes, to establish and update a standard questionnaire and to adopt evaluation and revisits reports. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹¹.
- (32) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a serious deficiency, imperative grounds of urgency so require.
- (33) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, as annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (34) Ireland is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union,

⁸ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325 11.12.2009, p. 35).

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

¹⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

¹¹ 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 powers (OJ L 55, 28.2.2011, p. 13).

annexed to the TEU and to the TFEU, and Article 6(2) of Council Decision 2002/192/EC¹².

- (35) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC¹³.
- (36) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of 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* which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁴.
- (37) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of 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* which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁵.
- (38) As regards Cyprus, Bulgaria, Romania and Croatia, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.
- (39) Given that the verification in accordance with the applicable Schengen evaluation procedures concerning Bulgaria, Cyprus, Romania and Croatia, has already been completed pursuant to their respective Act of Accession, the verification under Article 1(2)(b) of this Regulation should not be relaunched in respect of those Member States,

¹² 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* (OJ L 64, 7.3.2002, p. 20).

¹³ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of 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* (OJ L 176, 10.7.1999, p. 31).

¹⁴ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of 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* (OJ L 53, 27.2.2008, p. 1).

¹⁵ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of 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*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

