

# **SCHENGEN EVALUATION GUIDE**

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## CHAPTER I – INTRODUCTION

The Schengen Evaluation Guide provides for a set of procedures and gives guidance for the evaluation and monitoring activities under the Schengen evaluation and monitoring mechanism as required by Article 26 of Council Regulation (EU) 2022/922 of 9 June 2022<sup>1</sup>.

The purpose of this Guide is to:

- ✓ ensure a common understanding of all stakeholders regarding the implementation of the Regulation;
- ✓ ensure efficiency, accuracy and consistency at all stages of the evaluation and monitoring activities and in particular as regards its main method, the visits;
- ✓ ensure that those visits are carried out in accordance with a set of procedures and practices in a harmonised and transparent manner;
- ✓ provide a useful reference for the Commission, the evaluated Member State and Member State experts for preparing and carrying out evaluation and monitoring activities in order to meet the quality demands and increase efficiency.

This Guide is not legally binding but applicable to all evaluation and monitoring activities under the Schengen evaluation and monitoring mechanism, including unannounced visits and thematic evaluations.

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<sup>1</sup> Council Regulation (EU) 2022/922 of 9 June 2022 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, OJ L160, 15.6.2022, p.1.

## CHAPTER II - GENERAL PROVISIONS

### 1. Terms and abbreviations

For the purpose of this Guide, the following terms and abbreviations should be used:

**Evaluation:** a first-time evaluation, periodic evaluation, unannounced evaluation or a thematic evaluation;

**Schengen *acquis*:** the provisions of the Schengen *acquis* as integrated into the framework of the European Union by the Protocol 19 annexed to the TEU and the TFEU, as well as the acts building upon them or otherwise related to them;

**Regulation:** Council Regulation (EU) 2022/922 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 (hereafter “the Regulation”);

**National Schengen Evaluation Coordinator (National Contact Point):** official contact person in the Member States in charge of ensuring the overall coordination as regards the evaluation and monitoring mechanism (preferably designated representatives in the Schengen Committee). This person should be supported by a 24/7 access point for cases of communication needs related to unannounced evaluations (email address and telephone numbers for 24/7 availability need to be communicated);

**Commission Schengen Evaluation Country Coordinator:** person in the Commission, in charge of ensuring the overall coordination as regards the preparation, implementation and monitoring activities related to the Schengen evaluation of a Member State. The Country Coordinator is the official contact point for the National Schengen Evaluation Coordinator and the Member State Schengen Evaluation Country Coordinator;

**Member State Schengen Evaluation Country Coordinator:** one of the most senior and most experienced of the selected Member State lead experts working with the Commission country coordinator and Member State lead experts, in particular when it comes to the horizontal coordination of the periodic evaluation activity and the presentation of the outcome of that evaluation in the Schengen Committee;

**Team:** a group comprising of experts designated by Member States and Commission representatives who carry out evaluations and monitoring activities;

**Evaluation activity:** a framework for conducting evaluation in relation to one specific Member State (a periodic, first time or unannounced evaluation) or a theme (thematic evaluation) through various means such as visits, analysis of replies to questionnaire(s) or, exceptionally, other remote methods. An evaluation activity for periodic evaluation may be composed of several visits. Each evaluation activity starts with the provision of replies to the questionnaire to the team members once the final composition of a team/teams is confirmed. Each evaluation activity ends with the finalisation of a draft report by the team, or in case of a periodic evaluation, with the finalisation of a first version of the draft comprehensive report which should take place not later than two weeks after the last visit carried out under that evaluation activity is completed;

**Comprehensive report:** one report of the periodic evaluation activity of a Member State, compiled of the intermediate reports drafted by the different teams with horizontal and specific findings and recommendations, assessing the Member State’s overall performance in the application of the Schengen *acquis*.

## 2. Main responsibilities, principles and tools in managing and coordinating the evaluation and monitoring activities (Article 3 of the Regulation)

The Member States and the Commission are **jointly responsible** for the implementation of the evaluation and monitoring mechanism, with the contribution of the relevant Union bodies, offices and agencies.

The **Commission has an overall coordination role** to establish the annual and multiannual evaluation programmes, draft the questionnaires, organise the visits and other preparatory activities (e.g. gathering information and arranging preparatory meetings), conduct the visits and draft evaluation reports and recommendations. The Commission will ensure the comprehensive nature of the reports which will aim at assessing the Member State's overall performance in the application of the Schengen *acquis*. It also ensures the follow-up and monitoring activities.

The **Council** adopts recommendations in cases of serious deficiencies, first-time evaluations, thematic evaluations and where the evaluated Member State substantially contests findings of the draft evaluation report containing draft recommendations. As part of the monitoring phase of the mechanism, the Council adopts decisions on closure of the action plans in cases of serious deficiencies and first-time evaluations.

The Member States and the Commission **cooperate closely** at all stages of evaluation and monitoring activities in order to ensure the effective implementation of the evaluation and monitoring mechanism. The practical modalities of the cooperation are further detailed in this Guide.

The **Member States** should take all measures, general or particular, to support, assist and cooperate with the Commission and the teams in the implementation of evaluation and monitoring activities. They should ensure that the Commission and the teams carrying out evaluation and monitoring activities are able to perform their tasks effectively.

The implementation of the evaluation and monitoring mechanism requires **smooth communication** between all actors involved. To this end, Member States should designate a **National Schengen Evaluation Coordinator who will act as a National Contact Point**.

The National Contact Point should be responsible for the official communications between Member States and the Commission, notably:

- ✓ receiving the calls for designation of experts to the pool of experts or for participating in individual Schengen evaluations and ensuring the designation of the experts in accordance with the requirements and profiles established by the Commission;
- ✓ collecting and transmitting of (restricted) documents, necessary for preparing the evaluation to the national experts selected in on-site teams;
- ✓ communicating with the Commission on the organisational details, when preparing for the evaluation visits;
- ✓ receiving the draft evaluation report and transmitting the official comments of the evaluated Member State, and in particular the Member State's substantial objections on the content of the draft report or the nature of a finding (Article 20(5) of the Regulation);
- ✓ communicating the training needs of national experts to participate in Schengen evaluation training programmes;

- ✓ sending comments related to information provided by Agencies (Article 7(2) of the Regulation).

**Union bodies, offices and agencies** should also designate contact points for the purposes of the Schengen evaluation and monitoring mechanism and inform the Commission thereof.

The Commission operates a **functional mailbox** - [HOME-JUST-SCHENGEN@ec.europa.eu](mailto:HOME-JUST-SCHENGEN@ec.europa.eu) - to facilitate communication. Member States and the Agencies should make sure that all messages related to the Schengen evaluation and monitoring mechanism are also addressed to this mailbox.

However, for the management of the pool of experts (calls, designation, notification etc), a separate **functional mailbox** - [HOME-JUST-SCHEVAL-POOL@ec.europa.eu](mailto:HOME-JUST-SCHEVAL-POOL@ec.europa.eu) should be used.

These arrangements do not prevent individual contact with Commission colleagues, but in these cases, the respective functional mailbox should be put in copy.

### **3. Forms and methods of evaluation and monitoring activities (Articles 4 to 6 of the Regulation)**

#### **Forms of evaluation**

Evaluations may take any of the following forms:

**First time evaluation:** to verify whether a Member State for which internal border controls have not been lifted fulfils the conditions to apply the Schengen *acquis* in full or to verify whether the Member State fulfils the conditions to apply the Schengen *acquis* in part. The Commission should organise such evaluations following the Member State's declaration of readiness to be evaluated. These evaluations should be included in annual evaluation programmes.

**Periodic evaluation:** 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*. Periodic evaluations (through questionnaire and visits) are the primary means of evaluation. Under the Schengen evaluation and monitoring mechanism, it should be possible to produce comprehensive Member State evaluation reports assessing the Member State's overall performance in the application of the Schengen *acquis*. Each periodic evaluation should be implemented as one single evaluation activity within the time span indicated in the respective annual evaluation programme. This single evaluation activity should encompass all the visits in the evaluated Member State covering different policy areas and result in one comprehensive evaluation report of that Member State.

**Unannounced evaluation:** to verify the application of the Schengen *acquis* by any given Member State in one or more policy areas. It is not included in the multiannual and annual evaluation programmes. Chapter VII of this Guide provides specific rules for the organisation and implementation of unannounced evaluations.

**Thematic evaluation:** an evaluation included in the annual evaluation programme, aimed at providing an analysis of Member States' legislation or practices in the application of the Schengen *acquis*, or the application of its specific parts across several Member States. 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 practices of Member States facing similar challenges. Chapter VII of this Guide provides specific rules for the organisation and implementation of thematic evaluations.

### **Forms of monitoring activities**

The **review of action plans and follow-up reports** submitted by the evaluated Member States remains the primary form to monitor the Member States following the evaluation activities. This is a desk exercise and requires regular, detailed, timely and proactive exchange of information between the Member States and the Commission. This communication is supported by the **KOEL-SCHEVAL** IT tool (see point VIII.6 for further details).

To complement the desk review and to increase the efficiency of the monitoring the Commission can (and in certain cases has to) organise revisits or verification visits.

**Revisit** is a supplementary visit that should be organised by the Commission 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*.

Other than revisits, whenever deemed necessary to verify by means of visit the progress of the implementation of an action plan, the Commission may organise **verification visits**. Verification visits should always be organised before the closure of an action plan following an evaluation that identified a serious deficiency and a first-time evaluation.

### **Evaluation and monitoring methods**

The above-mentioned forms of evaluation and monitoring activities can be carried out via the following **methods**:

- ✓ **visits**,
- ✓ **questionnaires** or, exceptionally, **other remote methods**.

The primary method remains conducting visits, if relevant, supported by the analysis of replies to the questionnaire, given that the verification of the operational implementation of the Schengen *acquis* requires observing on the spot how authorities implement EU law. Either by definition or by nature, some of the forms (first time evaluation, revisit, verification visit) have to take place as a visit.

**Questionnaire**-based evaluations should be considered when desk research is sufficient to verify the application and implementation of the rules. This can be the case for instance when EU law requires Member States to draw up documents (e.g. a strategy) and the existence and content of them can be checked via the submission of that document and a follow-up questionnaire. In the area of judicial cooperation in criminal matters, questionnaire-based evaluations should be considered as the main evaluation method.

Under ‘other remote methods’, **meetings via videoconference** are the primary tool. Given that the efficiency of them in carrying out verifications of operational activities is considered lower than on-site visits, organising entire evaluations via a videoconference should be considered exceptional. It should however be recognised that it is a flexible and cost-saving way and should be considered when, in case of *force majeure* or unforeseen circumstances, visits cannot be carried out and the postponement of the evaluation is no longer desirable.

Each **evaluation and monitoring method may be used in combination with another**, as appropriate. Organising videoconferences can complement any kind of visit, e.g. facilitating

preparatory activities or giving presentations that do not necessarily need to be given on-site. Videoconferencing can also complement questionnaire-based evaluations, in particular to provide clarification on written answers provided by Member States.

Point VII.2 of the Guide provides further explanation as regards the implementation of questionnaire-based evaluations.

All the forms and methods provided by the Regulation should be used in a flexible and dynamic manner to increase the efficiency of the evaluation and monitoring mechanism and its capacity to adapt to new circumstances and legislative developments as well as to streamline the use of the resources of the Member States, Commission and the Agencies.

Aiming to enhance the comprehensive assessment of Member States' implementation of the Schengen *acquis*, 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, in exceptional cases, to conduct (partly) remote evaluations, as well as to combine the evaluation of policy areas.

#### **4. Cooperation with the Union bodies, offices and agencies and synergies with other evaluation and monitoring activities (Articles 7 to 10 of the Regulation)**

The implementation of the evaluation and monitoring mechanism requires close and mutual cooperation between the Commission and the Union bodies, offices and agencies. To facilitate the cooperation in implementing the Regulation, the Commission may enter into arrangements with them. Such an arrangement (in the format of an exchange of letters) between the Commission and Frontex already exists and it is regarded as a good example to provide the framework and common understanding regarding the practical modalities of the cooperation.

The Commission may request the Union bodies, offices and agencies to provide relevant information, statistical data and risk analyses in line with their respective mandate. This includes results of vulnerability assessments as well as information on trends or possible challenges. This will improve the situational awareness as well as the planning of evaluation and monitoring activities while supporting the implementation of more targeted ones in the future. The information need is related to the establishment of the annual programme, unannounced evaluations and even more so to the implementation of specific evaluation and monitoring activities (establishing the detailed programme and focusing on issues identified with the support of the agencies). Systematic involvement of Union bodies, offices and agency staff in the evaluations as observers and their support for training activities is crucial. On the request of the Commission, the Union bodies, offices and agencies should be able to send observers having the required expert knowledge and preferably also field experience regarding the relevant policy area, as follows:

<b>Union body, office or Agency</b>	<b>Policy areas</b>
Frontex	Borders and return
eu-LISA	Visa policy and large-scale information

	systems
Europol	Police cooperation
EDPS	Data protection
FRA	Fundamental rights components in the application of the Schengen <i>acquis</i>
Other relevant EU Agencies (i.e. European Monitoring Centre for Drugs and Drug Addiction)	Upon a specific request

The **cooperation between the Commission and the Union bodies, offices and agencies should be reciprocal**. The latter should not only be contributors, but also benefit from being involved in the Schengen evaluation and monitoring mechanism. This implies, among other things, that the Commission can share with them in a secure and timely manner, fully or partially, evaluation reports, action plans and updates on the implementation of the action plans. This information sharing should take place in accordance with the mandates of the Union bodies, offices and agencies.

The Regulation provides more details as regards **Frontex**. In accordance with its Article 8, Frontex should submit to the Council, the Commission and the Member States a risk analysis in view of the establishment of the annual evaluation programme for the upcoming year. This risk analysis should contain recommendations on specific sections of the external borders, specific border-crossing points, and specific sites relevant for evaluating compliance with the Return Directive<sup>2</sup>. The risk analysis should take into account the results of the vulnerability assessment process in light of ensuring synergies between the two mechanisms as part of the European quality control.

Frontex should also submit to the Commission a separate risk analysis, which should contain recommendations for unannounced evaluations in the following year. Those recommendations may concern any region or specific area and should contain a list of at least ten specific sections of the external borders and at least ten specific border crossing-points, plus ten specific sites relevant for evaluating compliance with the Return Directive and any other relevant information.

The Regulation requires that Frontex provides the abovementioned input by 31 August each year, however, given the adoption of the annual evaluation programme by 15 November, in this context Agencies are invited to advance the submission date to 30 June each year in order to ensure its effective preparation.

Frontex also shares with the Commission the results of **vulnerability assessments**. It should be regarded as a complementary instrument to the Schengen evaluation and monitoring mechanism and the Commission should share the results of the vulnerability assessment process with the team of Member State experts carrying out evaluations in the relevant fields as agreed with this Agency. The coordination and cooperation with Frontex should ensure

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<sup>2</sup> 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.

increasing synergies and avoid conflicting recommendations and, to the extent possible, duplication of efforts.

Similarly to Frontex, **Europol**<sup>3</sup>, **the Fundamental Rights Agency** and **eu-LISA**<sup>4</sup> are also invited to provide the Commission with risk analysis and/or relevant data and information by 30 June each year to support the annual planning of the Schengen evaluations for the subsequent year, in particular related to period evaluations. Those Agencies are invited to consult the concerned Member States on the risk analysis for factual checks.

The Commission intends to get access to the results of other relevant mechanisms and instruments too in preparing the evaluation and monitoring activities, to improve awareness on the functioning of the area without internal border controls and to avoid duplication of efforts and conflicting measures. In that spirit, when available, Member States are invited to proactively share with the Commission the results of their **national quality control mechanisms**, which the Commission may use in agreement in the evaluation and monitoring activities. This should happen at the time of providing the answers to the standard questionnaire and, for that sake, when the Commission sends the standard questionnaire to the Member States, it should also request them to provide the results of national quality control mechanisms.

Furthermore, this information is also relevant in the context of developing the detailed programmes for the visits and before the visits so that members of the teams would be equipped with all relevant information in order to avoid duplication of efforts.

It is also important to increase **synergies with the relevant mechanisms and platforms operated by Union agencies and national administrations**, such as the European Multidisciplinary Platform Against Criminal Threats ('EMPACT'), and with 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. The Commission should identify the best ways to achieve that via its internal processes.

## **5. Verification of the activities of the Union bodies, offices and agencies (article 26 (i) of the Regulation)**

While Article 70 of the Treaty on the Functioning of the European Union limits the evaluation and monitoring mechanism to evaluate the implementation of the Schengen *acquis* by Member State authorities, the activities of a Union body, office or agency involved in the implementation of the Schengen *acquis* can and should be verified in **so far as they perform certain functions on behalf of the Member States** to assist in the operational application of provisions of the Schengen *acquis*. This verification should be embedded into the evaluation of a Member State, e.g. during a periodic, thematic or unannounced evaluation.

The verification of the Union bodies', offices', and agencies' activities should be carried out without prejudice to and in full respect of the responsibilities attributed to the Commission and to the relevant governing bodies of the Union bodies, offices and agencies concerned by their establishing regulations and their own evaluation and monitoring procedures therein. To avoid any conflict of interest, observers from the Union body, office or agency concerned

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<sup>3</sup> Article 9 Regulation 2022/922.

<sup>4</sup> Article 10 Regulation 2022/922.

should not participate in the discussions on the findings related to the activity of the observer's Union body, office or agency.

Should evaluations identify deficiencies in relation to functions fulfilled or supported by the Union bodies, offices and agencies and their respective staff on behalf of the Member State, the team should include those findings in the report of that Member State (i.e. in a separate box). The report should provide contextual information and operational details to such findings, in particular on how the activity in question is connected to the performance of the Member States in the implementation of the Schengen *acquis*. After the adoption of the report, the Commission should inform the relevant governing body of the agency by means of a letter which is also communicated to the Council and the European Parliament.

The Union body, office or agency is invited to follow-up to the identified deficiency, in cooperation with the evaluated Member States if necessary. The Union body, office or agency's governing body are invited to inform the Commission and the evaluated Member State without delay on the actions based on the reporting template to be taken to remedy the identified deficiencies and their deadlines. A template for the reporting table should be established by the Commission and the Union bodies, offices, or agencies. The Commission should then inform the Council and the Member States in the Schengen Committee.

This mechanism applies particularly to **Frontex** which deploys staff performing functions on behalf of the Member States to assist in the operational application of provisions of the Schengen *acquis* in accordance with Regulation (EC) 2019/1896. In Article 82, Regulation (EC) 2019/1896 gives the possibility to the Member States to confer to staff members of the European Border and Coast Guard Standing Corps powers and tasks to perform border control and return-related activities, including those requiring executive powers, under the supervision of the host Member State.

Prior to the visit, Frontex provides accurate and detailed information to the respective teams on the operational support delivered to the evaluated Member State where the Agency's deployed staff act on behalf of that Member State. This may encompass all the tasks performed under the supervision of that Member State, including those requiring executive powers, for example on the scope and timeframe of operational activities, on the tasks and numbers of the standing corps staff, and on the support with technical equipment and services.

In addition, the Agency provides other relevant information related to its direct and indirect support to the evaluated Member State in the area of training, the functioning of risk analysis and EUROSUR, pilot and research projects as the information on the organisation of and cooperation with the National Point of Contact in accordance with Article 13 of Regulation (EC) 2019/1896.

- ✓ The following actions are considered to verify the activities carried out by Frontex in the evaluated Member States and on their behalf: The team verifies the functions and activities performed by Frontex on behalf of the evaluated Member State to assist in the operational application of provisions of the Schengen *acquis*. The team may interview all categories of staff deployed by Frontex in the evaluated Member State, in particular the members of the EBCG standing corps, related to relevant aspects of the Schengen *acquis* implementation at national, regional and local level in the visited locations. The verification takes place in all stages of the visit and at national, regional and local level;
- ✓ The team may also take into account the capacity-building support provided by Frontex to the evaluated Member State;

- ✓ The team may interview the evaluated Member State staff to assess if the operational support provided by Frontex is adequate, sufficient, tailored to the needs and timely;
- ✓ The team makes the assessment related to implementation of the Schengen *acquis* in the evaluated Member States taking into account the operational support and capacity building activities delivered by Frontex;
- ✓ The team may issue findings and make suggestions for attention of the Agency to remedy **any deficiency identified during the visits on the operational support delivered by Frontex** to the evaluated Member State where **the activities were performed by the Agency's deployed staff acting on behalf of that Member State**;
- ✓ These findings and suggestions related to functions fulfilled or supported by Frontex in an evaluated Member State should be communicated by the Commission in a form of a letter sent to the Management Board of Frontex inviting the Agency to take remedial actions. The Commission should also inform the Council and the European Parliament;
- ✓ However, in case shortcomings were also identified with regard to the **other support provided directly or indirectly by Frontex** (e.g. capacity building, integrated planning, risk analysis, vulnerability assessment, training system), the team may point out these shortcomings in its assessment, especially when they have an important impact on the performance of the evaluated Member State. The letter sent to the Management Board should also address these elements;
- ✓ Frontex should be invited to provide comments on the draft findings and suggestions identified by the evaluation team within the same timeline applicable to the evaluated Member State;
- ✓ The Management Board of Frontex will be invited to discuss the findings and suggestions of the team as a separate agenda point at one of its meetings taking place after the submission of the Commission's letter with the view of tasking the Agency with remedying the identified deficiencies and implementing the recommendations in a timely manner;
- ✓ Frontex will be invited to submit its action plan (template to be established together with the Commission) and send follow-up reports every six months until the full implementation of suggested actions to the Management Board and the Commission. In case it is needed, the respective Member State to which Frontex was providing the evaluated support can be consulted, so as to ensure timely and effective follow-up of agreed actions. Depending on the nature of the deficiencies, the Commission, in consultation with the Agency, may require a different reporting frequency;
- ✓ The Commission, together with the team, should follow-up on the action plan sent by Frontex and inform the Council and the Schengen Committee; the closure of the action plan should be established by the Commission in most of the cases; or by the Council in case of serious deficiencies or evaluations for the first time.

## 6. Information from third parties (Article 11 of the Regulation)

In the programming and implementation of the evaluation and monitoring activities, the Commission may take into account information related to the implementation of the Schengen *acquis* provided by relevant third parties (e.g. ombudspersons, national human rights

institutions, national preventive mechanisms or any other authorities monitoring respect for fundamental rights, and non-governmental and international organisations).

The **Commission** should **inform the Member States** in the preparatory process of the information received from third parties relevant and intended to be used for the programming and implementation of evaluation and monitoring activities. Member States will then have the opportunity to comment on the substance of this information. The Member State's comments will be considered by the Commission in the process of finalising the detailed programme of the evaluation activity. In preparing the evaluation reports, only information verified during the evaluation activity should be taken into account.

## CHAPTER III - PROGRAMMING

In order to ensure transparency and predictability, evaluation and monitoring activities are based on a 7-year multiannual programme as well as annual programmes for each calendar year. In essence, these programmes provide the tentative sequence and provisional time schedule of the evaluation activities.

They are adopted in the form of Commission implementing acts after the positive opinion delivered by the Member States in the Schengen Committee. 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 through an amending implementing decision. However, the Commission should inform the Council and the European Parliament about such events and their anticipated impact on the scheduling of evaluations under the ‘adapted’ programmes without delay.

### 1. Multiannual evaluation programme (Article 12 of the Regulation)

In each 7-year multiannual evaluation cycle, each Member State should undergo one periodic evaluation and may undergo, when appropriate, one or more thematic or unannounced evaluation(s).

The main objective of the multiannual evaluation programme is to set out a provisional time-schedule. Therefore, the multiannual programme should establish the provisional list of Member States to be evaluated during the 7-year cycle.

In addition, the multiannual evaluation programme may identify, where relevant, ‘specific priority areas’ *within* the policy areas to be covered by the periodic evaluations based, *inter alia*, on the legislative and operational developments at EU level as well as on the information obtained by the Commission or priorities suggested by the Council. This approach is intended to allow for more flexibility, better prioritisation and a more balanced and strategic use of all tools available (Recital 16).

### 2. The annual evaluation programmes (Articles 13 of the Regulation)

The annual evaluation programme should include a provisional time-schedule of:

- ✓ periodic evaluations;
- ✓ first-time evaluations;
- ✓ when appropriate, thematic evaluations, including their theme, the Member States to be evaluated and the intended methods.

The annual programme should be established by 15 November of the year preceding that to which the programme relates, based in particular on the risk analyses and other information obtained by the Commission.

Unannounced visits and monitoring activities (revisits and verification visits) are not subject to programming.

While the sites to be visited are not included into the programme, a fine balance should however be found between flexibility and predictability. Therefore, it is recommended that such visits be determined after consultations with the evaluated Member State at least 12 weeks before the visit is due to take place.



In order to be able to draw a comprehensive picture regarding the Member State's overall performance in the application of the Schengen *acquis*, in principle, the periodic evaluation activity of a Member State should not last more than two to three months. The programme should strive to meet this expectation.

The Regulation provides that Member States for which a Council decision on the full application of the provisions of the Schengen *acquis* has been adopted should be evaluated (through their first periodic evaluation) no later than one year after the date of the full application of the Schengen *acquis* in that Member State. The annual programme should be amended to this end.

### **3. The standard questionnaire (Article 14 of the Regulation)**

**By 1 July** each year, the Commission sends the standard questionnaire to those Member States which are to undergo periodic evaluations in the following year in accordance with the annual evaluation programme. However, given that the questionnaire is a document known and available to all Member States, they may start working on the answers already before receiving this questionnaire from the Commission.

Member States should provide the Commission with their replies by **31 October of the same year**. They should reply preferably **in English**.

On the request of the Commission, the evaluated Member States should **update their replies** to the standard questionnaire and answer, if needed, complementary questionnaires or questions before specific evaluations. They will be invited to **provide the findings of national quality control mechanisms and internal audits**. The statistical data should be updated and sent to the Commission at the latest four weeks prior to the visit. This is to ensure that the scope and programme of the evaluation activity is well prepared and targeted and that teams will have all relevant and up-to-date information at their disposal to efficiently carry out specific evaluations.

As the questionnaire will serve as a key source of information for preparing and planning visits, and in case of evaluations without visits be the only source of information for the findings and the recommendations, Member States are required to provide a sufficient level of detail in their replies.

## CHAPTER IV – RESOURCES, TRAINING AND THE POOL OF EXPERTS

### 1. Resources for performing evaluation and monitoring activities (Article 15 of the Regulation)

The peer-to-peer nature of the Schengen evaluation and monitoring mechanism goes beyond providing the mere possibility for Member States to evaluate the implementation of the Schengen *acquis* in other Member States. It also implies an obligation for all Member States to be **actively involved** and take up a fair share of work by nominating experts for evaluations.

Implementing the evaluation and monitoring mechanism requires **sufficient resources and strong commitment** from all actors: Member States, the Commission and the Agencies.

The team members and observers participating in evaluation and monitoring activities should have **appropriate qualifications**, including:

- ✓ a solid theoretical, procedural and practical knowledge as well as adequate experience in the relevant policy areas;
- ✓ sound knowledge of evaluation principles, procedures and techniques as well as dedicated knowledge of the EU legislation in the respective field of the Schengen *acquis*; and
- ✓ ability to communicate effectively in **English**.

Experts from the Member States whose internal border controls are not lifted yet can participate in evaluation and monitoring activities of all parts of the Schengen *acquis*. Irish experts can participate in evaluation and monitoring activities of the Schengen *acquis* that Ireland applies. When evaluation and monitoring activities cover both Schengen *acquis* that Ireland applies and does not apply (e.g. on data protection), Irish experts are allowed to participate in the complete evaluation and monitoring activities but they can draft only on aspects of the Schengen *acquis* which Ireland applies.

### 2. Training of experts and observers; the trainee expert (Article 16 of the Regulation)

In order to increase the quality of the evaluation and monitoring mechanism, experts should be trained to carry out evaluation and monitoring activities.

The Member States and the Commission should jointly ensure, in cooperation with the Union bodies, offices and agencies, that Member State experts and Commission representatives receive **adequate training** to become Schengen evaluators.

The **Commission cooperates closely with the Union bodies, offices and agencies** in this regard to ensure that, as a rule, training courses for Schengen evaluators are organised for all relevant policy areas subject to periodic evaluations. In particular, CEPOL and Frontex play a major role in the Commission-driven training activities for experts.

Attention should be paid to the following elements as regards training activities:

- ✓ Irrespective of who is in charge for the organisation of the trainings, **the curricula and the training structure should be, to the extent possible, harmonised**. This

implies, but is not limited to, a harmonised structure, objectives, target group, learning outcomes, general presentations such as the ones on the Regulation and its implementation; evaluation methods, techniques and skills; drafting skills; interview techniques, etc;

- ✓ The focus of the training should be on the competencies required to become an evaluator and practical exercises. Lectures on the policy area/EU law in particular on new developments can also be provided. An online preparatory learning phase of the training may be organised prior to the actual contact phase which can give possibilities to enhance the theoretical knowledge and ensure that the trainees enter the contact phase at the same level;
- ✓ The training can comprise also mock evaluation exercises, case studies and drafting reports and recommendations;
- ✓ Training courses should be organised at least once a year covering all relevant policy areas. Courses can be held in-situ or online, taking into account that mock evaluation exercises are important to imitate a real evaluation experience;
- ✓ Training courses should address the functioning of the authorities as well as fundamental rights components. The latter is to be developed in cooperation with the Fundamental Rights Agency;
- ✓ The training curricula should be kept up to date and, if necessary, follow-up and refresher training courses may be organised;
- ✓ Observers from the Union bodies, offices and agencies should have adequate training, and should be invited to attend the relevant trainings if the training capacities allow;
- ✓ Experts who have already participated in previous Schengen evaluations are considered as having received adequate training to become Schengen evaluators. However, they may still participate in the training activities organised for the experts;
- ✓ It should be borne in mind that experts who have received appropriate training should aim to be designated for the pool of experts established for the year following that in which they received the respective training course;
- ✓ Joint “train the trainers” courses could be carried out to increase the level of harmonisation, to improve the skills of the trainers and to share best practices.

Notwithstanding the value of further harmonisation, it must be acknowledged that **training activities should reflect the expertise required to evaluate each policy area** and flexibility should be maintained as to their content.

The Commission should organise a **meeting with the Union bodies, offices and agencies** involved in training activities once a year to take stock of the developments and the areas of improvement, exchange best practices, update of the curricula, etc. Experienced trainers from Member States may be invited to the meeting.

Article 16(2) of the Regulation provides that each team carrying out periodic evaluations may include one **trainee expert** either from a Member State or the Commission. This provision intends to compliment the training courses and provides the opportunity for interested Member State experts and new staff members of the Commission to develop the necessary evaluation skills while taking part in evaluations as a trainee expert by merely observing the activities carried out by team members.

Each team can include only one trainee expert. Should such need arise on the Member State side, a request should be justified and communicated without delay as soon as possible after the adoption of the annual evaluation programme, and confirmed no later than six weeks before the evaluation, to the Commission by sending the expert's CV. The respective Commission Lead expert, if already designated, will then engage with the requesting Member State to see, also in light of upcoming training courses, possible other requests for trainees from other Member States and/or from the Commission, how best to accommodate the request and which evaluation would be the most opportune for the trainee to attend. If their several candidates for a traineeship, the list of preference will be established on the basis of their CVs.

### **3. Management of the Pool of experts (Article 17 of the Regulation)**

In order to ensure the participation of a sufficient number of experienced experts in a fast and less burdensome way, every year a pool of experts is 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 whose professional background cover the policy areas or, when relevant, the 'specific priority areas' in the multiannual programme. In practice, the pool will be organised around **the relevant policy areas**.

In parallel with the presentation of the draft annual evaluation programme for the subsequent year, **the Commission sends an invitation to the National Contact Points (National Schengen Evaluation Coordinators)** to designate one or more qualified experts per policy area for next year's pool of experts.

The invitation contains **specific designation sheets for each policy area**. Member States are expected to designate at least one and **as many qualified experts as possible** to the pool. Member States are encouraged to designate all their experienced Schengen evaluators who might be interested in and available for participating in evaluations in the subsequent year. The nominated experts should have the necessary variety of professional experience as indicated in the invitation.

It is recommended that the Member States designate their **experts who have received appropriate trainings in the prior year**. The Agencies in charge for organising some of the trainings will share with the Commission the list of experts who received certificates within four weeks after the end of the training course. Based on the lists, the Commission may invite the Member States to designate these newly trained experts as pool members.

Each Member State should designate at least one expert per policy area in which it is evaluated unless the designation would substantially affect the discharge of national tasks. Exemption from the obligation to designate experts are limited and they should be interpreted in a narrow manner. Member States are not required to nominate experts in the policy areas in which, for objective reasons, they are not evaluated (e.g. Liechtenstein in the field of visa policy) or if the designation would substantially affect the discharge of national tasks. If a Member State invokes the latter exception, the National Contact Point should provide in writing the reasons and information on such a situation to the Commission.

In the policy-specific designation sheets, Member State may indicate the six-month period in which a designated expert is available and preferences for a particular evaluation. The Commission will take into account these preferences to the extent possible.

Member States should **designate experts within six weeks** of receiving the invitation and ensure that the experts designated have the appropriate qualifications.

Given that the designation sheets are the main source for assessing the experts' knowledge and practical experience, they should be **complete with as much detail as possible**, highlighting not only the denomination of the different functions but also specific tasks related to a certain position, type of function (practical implementation, supervision, regulatory, etc.), periods in which certain tasks were implemented, training courses attended, including the participation in the implementation of different projects at national, EU or international level. Experts are also encouraged to indicate their willingness to exercise the function of Member States lead experts. The designation sheets should be sent back to the Commission in **“Word” format (and not PDF)** and the CVs of the designees should be enclosed to them.

The Commission will assess the designations and **confirm the selection of the experts to the pool within one week** to the National Contact Point with the experts in copy. If a designated expert does not meet the general and specific criteria defined in the Regulation and in the invitation, he/she will not be included in the pool and the Commission will consequently inform the National Contact Point. The Member State concerned may seek additional explanations for such a rejection. Moreover, if necessary, the Commission will repeat the invitation to those Member States who did not designate experts at all or designated experts whose qualification/profiles do not meet the requirements, leading to a situation where the Member State does not ensure that at least one of its experts (per policy area evaluated) is designated to the pool. The Commission will also approach (all) Member States if it considers that the expected professional variety of experts – which was explained in the invitation – has not been (fully) achieved.

Being selected to the pool implies that in case the expert is invited to become a team member for a specific evaluation, the invitation should, as a rule, be accepted; turning the invitations down should be duly justified on serious professional or personal grounds only. It does not imply that the designated experts should not continue working in the national administrations as usual neither that the expert will be invited for a specific evaluation.

The Commission should keep the **list of experts** of the pool up to date. The Commission will inform each Member State about the number of their experts and their profiles in the pool.

If an expert is no longer available for the pool, the Member State concerned should inform the Commission thereof and should designate a qualified replacement.

The Commission will also regularly inform the Member States about the overall number of experts in the pool and their profiles per Member State.

Evaluation and monitoring activities should be targeted and supported through reinforced cooperation with the Union bodies, offices and agencies in order to provide relevant information and expertise for the planning or conduct of evaluation or monitoring activities, including by nominating observers to participate in the evaluations. In parallel with sending the invitation to the Member States, the Commission will therefore also invite Union bodies, offices and **agencies** to designate observers to the pool.

# CHAPTER V – PREPARATION OF THE EVALUATION ACTIVITY

## 1. Introduction

In accordance with Article 1(1) of Regulation (EU) No 2022/922, the **purpose of the Schengen evaluations** is “*ensuring that Member States apply the Schengen acquis effectively, efficiently and correctly, thereby contributing to maintaining mutual trust among Member States and a well-functioning area without internal border control.*”

The scope of the evaluations is, therefore, **all relevant legislation and operational activities which are part of the Schengen acquis** together with the acts building upon them or otherwise related to them and which contribute to the functioning of Schengen area. Each evaluation activity should be tailored to the specificities of the Member States while ensuring that the core elements of the acquis are sufficiently addressed for all Member States.

It is relevant for periodic evaluations, which are the primary means of evaluation, to provide a more comprehensive and **overall picture on the level of implementation of the Schengen acquis** by the evaluated Member State. Therefore, each periodic evaluation should be implemented as **one single evaluation activity** encompassing the analysis of the replies to questionnaire and all the visits by respective teams in the evaluated Member State covering different policy areas. The periodic evaluation should preferably result in one comprehensive evaluation report of that Member State.

**Each evaluation activity starts** with the provision of all the relevant documents to the team members once the final composition of a team/teams is confirmed. **Each evaluation activity ends** with the finalisation of a draft report by the team at the latest within a week after the visit. In case of a periodic evaluation, the end of evaluation activity is marked by the finalisation of a first version of the draft comprehensive report. That should take place no later than two weeks after the last visit carried out under that evaluation activity is completed.

All the teams involved in a single evaluation activity need to **apply a uniform evaluation methodology with** harmonised evaluation methods, techniques and skills, drafting skills, interview techniques, and others. Some key elements of this methodology are defined in the present Guide. The detailed methodology will be addressed in the initial and, if necessary, in refresher trainings, to guarantee that all experts in the respective policy fields and integrated teams are familiar with the main principles of this methodology.

For the periodic evaluations, the **comprehensive approach and close coordination of all teams involved** should apply at all stages of the evaluation and monitoring activities related to the specific periodic evaluation. This process starts with the annual evaluation programme adopting the list of Member States subject to periodic evaluations and their indicative timing. It continues:

- When defining the **scope of evaluation activity**;
- When elaborating the **programmes**;
- When preparing and implementing the **evaluation activity** (including establishment of teams);
- When drafting the comprehensive **report**;
- When **monitoring the remedial actions**, including the review of the action plan and its closure.

To ensure the efficient implementation and close coordination between the teams involved in such a periodic evaluation activity, the Commission should appoint a **Schengen evaluation country coordinator** (hereafter Commission country coordinator) for each Member State. The Commission country coordinator for the evaluated Member State in principle will also act as one of the Commission lead experts for the teams established for the evaluation activity.

## 2. Scope of the evaluation activity (for periodic evaluations)

Each annual evaluation programme identifies the timing of the periodic evaluation activities for the Member States to be evaluated. The exact scope for each evaluation activity must be established by the Commission and communicated to the Member State as part of the preparatory process in the first preparatory meeting.

The **Commission country coordinator** and the other Commission (lead) experts identify and agree, in close cooperation with the Member State Schengen Evaluation Country Coordinator, on the **scope of the evaluation activity and main areas of concern in all policy fields** for the evaluated Member State based on the replies to the questionnaire, previous reports, action plans and follow-up reports, risk and threat assessments, assessments of vulnerabilities and other available documents (e.g. reports on the functioning of Eurosur, additional information received from Frontex, Europol, FRA, and eu-LISA).

In parallel, the arrangements for the establishment of teams necessary for the implementation of the evaluation activity in question should be defined, including a possible number of teams and the required expertise for each visit.

If needed, the composition of “mixed” teams could be considered in order to bring together or complement the expertise from different policy areas for a specific visit and to ensure the integrated approach. The evaluated Member State should be informed.

## 3. Establishment of the team (Article 18 of the Regulation)

The principle of joint responsibility of the Commission and Member States in the implementation of the evaluation and monitoring activities is clearly expressed in the composition of the team. Evaluation and monitoring activities are conducted by teams composed of experts designated by Member States and of Commission representatives who are jointly responsible for the efficient implementation of the tasks entrusted by the Regulation. They are supported by observers from the Union bodies, offices and agencies.

The Regulation provides for flexibility as regards the size of the evaluation and monitoring teams in order to increase the efficiency and to reduce administrative burden. The Commission can define and adapt the size of the teams depending on the needs and challenges related to each evaluation and monitoring activity while maintaining the balance between the number of Commission representatives and Member State experts, in order to reflect the peer-to-peer and shared responsibility principles. The Commission should define the **number of Member State experts** and Commission representatives participating in each team **based on the particularities and needs** of the evaluation or monitoring activity:

- ✓ The **maximum** number of **Commission** representatives participating in a team should be **two**.
- ✓ The **minimum** number of **Member State** experts in a team participating in an announced or an unannounced visit should be **three**.

- ✓ The maximum number of Member State experts is no longer defined by the Regulation. However, only when the nature of the evaluation requires it should it be above eight.

The final number of team members will be confirmed when the composition of the team is consolidated and the relevant communication is sent out.

As a first step, within one month from the setting up of the pool of experts, the Commission should inform the National Contact Points and the experts concerned about the **(pre)selection for the specific periodic and first-time evaluations** planned in the upcoming year. When making the selection, the following considerations should be taken into account:

- ✓ the overall size of the pool and the professional experience of the experts therein;
- ✓ the need for a variety of profiles and the specific needs for the evaluations concerned;
- ✓ the availability and preferences expressed by the experts for a particular evaluation;
- ✓ the need to ensure geographical balance;
- ✓ rotation and balance as regards professional experience (mix of newcomers and experienced colleagues);
- ✓ the capacity of national administrations to provide experts.

Member State experts should not participate in a team carrying out an evaluation or monitoring activity of the Member State where they are employed.

The Commission should also propose the Member State Lead expert. The selected Member States' experts are being informed well in advance to ensure predictability for all actors in the process. However, the exact date of the evaluation might not be known at that time.

As a next step, the Commission should invite, via the National Contact Points, 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. This is also the moment when the exact number of Member State experts should be set definitively.

Invited experts should respond **within one week** of receiving the invitation, in agreement with their designating authorities. The experts invited for specific evaluations and their national authorities should respond positively to invitations; it should be possible to turn down an invitation only if duly justified on serious professional or personal grounds.

In parallel, the Commission may also invite, as its prerogative, respective Union bodies, offices and agencies to designate a representative with relevant professional and field experience to take part as an observer. The same deadlines apply for the invitation and the response and Union bodies, offices and agencies are equally expected to respond positively.

Member State experts for **unannounced** visits should also be selected from the pool. However, as for the “confirmation” of such visits shorter deadline may apply (i.e., the Commission should send the invitations no later than **two weeks** before the visit is scheduled to commence and experts should respond within **72 hours** of receiving the invitation, in agreement with their designating authorities). Further differences as regards the preparation for and implementation of unannounced visits are detailed in point VII.1 of this Guide.

The Commission may invite observers from Union bodies, offices and agencies to take part in the unannounced evaluations.

As a **fall-back procedure**, if the Commission fails to obtain confirmation of the participation of the required number of Member State experts from the pool at least six weeks before the evaluation or monitoring activity is scheduled to commence, or at least one week in case of



unannounced visits, the Commission should without delay invite all Member States to designate qualified experts outside from the pool for the missing places. Member States should respond within 72 hours of receipt of that invitation.

As soon as possible after receiving the response from the experts, the team has to be established and the Member State Lead Expert should be appointed by its members (on a proposal from the Commission). Once this is done, the Commission will inform all Member States on the establishment of the team and indicate the Member State and Commission lead experts (e-mail: “*Selected team for the Schengen evaluation of MS in the field of ...*”).

When establishing the teams for **revisits and verification visits** to a given Member State, the Commission and the Member States should strive to ensure that at least half of the Member State experts in the team are the same as those who participated in the evaluation, in order to ensure the continuity and the coherence of the exercise.

#### **4. Allocation of tasks**

The Commission and Member State lead experts are jointly responsible in particular for the overall planning, preparatory activities, organising the team, carrying out the evaluation, coordination of drafting the evaluation report, presentation of the evaluation report and the recommendations, quality check and follow-up, as well as relevant monitoring activities as appropriate. Following the establishment of the team, they should divide responsibilities among the team members so that they can prepare themselves better for their tasks to be carried out during the visit.

The following roles are defined to facilitate the smooth preparation and in particular the implementation of evaluation (and monitoring) activities:

- ✓ Commission Schengen Evaluation Country Coordinator
- ✓ Member State Country Coordinator
- ✓ Commission lead expert
- ✓ Member State lead expert
- ✓ 2nd Commission expert (if applicable)
- ✓ Member State experts
- ✓ Observer
- ✓ Trainee expert

#### **Commission Schengen Evaluation Country Coordinator**

Main responsibilities:

- ✓ Organise in close cooperation with the other Commission (lead) experts a first preparatory meeting with the evaluated Member State to present and discuss the identified scope of the evaluation activity, main concerns and a first proposal for the locations to be visited;
- ✓ Oversee the establishment of the detailed evaluation programme(s) for the visit(s);
- ✓ Participate in the evaluation activity as one of the Commission lead experts;
- ✓ Lead the process of compiling the comprehensive report out of the intermediate reports with support of the Commission experts and Member State lead experts;
- ✓ Chair the drafting meeting with the evaluated Member State;
- ✓ Coordinate the review process of the adequacy of action plans and other monitoring activities, including the closure of the action plan.

## **Member State Schengen Evaluation Country Coordinator**

One of the most senior and most experienced of the selected Member State lead experts should work with the Commission country coordinator and Member State lead experts, in particular when it comes to the horizontal coordination of the periodic evaluation activity and the presentation of the outcome of that evaluation in the Schengen Committee.

### **Commission and Member State lead experts**

Main responsibilities:

- ✓ prepare the visit in cooperation with the national Schengen evaluation coordinator and/or the coordinator for the specific area of the evaluated Member State, including the establishment of the detailed evaluation programme (Article 19(2) of the Regulation);
- ✓ organise an effective preparatory process involving all team members prior to the evaluation (further described in chapter 4 below);
- ✓ ensure the application of evaluation methods by members of the team;
- ✓ organise a debriefing and drafting session at the end of each day, based on allocated tasks;
- ✓ cooperate with lead experts of other fields, to exchange pertinent information that can support the effectiveness of the evaluation visit, including for horizontal elements;
- ✓ establish the (intermediate) report and ensure the integrity and quality of the report, including the prioritisation and correct qualification of the findings, in cooperation with the 2nd Commission expert;
- ✓ support the Country Coordinators in the establishment of the comprehensive report and give agreement on the comprehensive report;
- ✓ plan and conduct the follow-up procedure and monitoring activities.

The Commission lead expert is the primary contact for the respective National Contact Point for evaluation and/or the coordinator for the specific area during the visit, prepares and distributes the documentation for the visit and, in close consultation with the Member State lead expert, organises the work of the team.

The Member State lead expert participates in revisit/verification visit if organised.

### **Second Commission expert**

Main responsibilities:

- ✓ provide support for the Commission lead expert in activities related to overall planning and establishment of the team as well as the preparatory process;
- ✓ provide support for the Commission and Member State lead expert during the activities as requested by them;
- ✓ implement the tasks assigned as team member;
- ✓ participate in planning and implementation of the follow-up procedure and monitoring activities.

### **Member State experts**

Member State experts are expected to ensure the efficiency, accuracy and consistency of visits, notably by:

- ✓ participating actively in all activities, including the preparatory and follow-up process;
- ✓ cooperating with the Commission and Member State lead expert and following their guidance;
- ✓ carrying out assigned responsibilities effectively and efficiently;
- ✓ documenting all findings and observations;
- ✓ participating actively in drafting and ensuring the quality of the evaluation report
- ✓ providing feedback on the activities carried out;
- ✓ co-operating with the assigned lead experts and other team members at all times during all phases of the evaluation;
- ✓ ensuring confidential treatment of information received from the evaluated Member State;
- ✓ supporting the follow-up procedure by giving comments on the action plan prepared by the evaluated Member State and participating in revisit/verification visit if organised.

### **Observer**

The Commission may invite representatives of Frontex, Europol, eu-LISA, FRA and EDPS to participate as observers in evaluations falling within their mandate. Observers from any other EU body, office or agency can be invited to participate if the scope of the evaluation activity requires specific expertise falling within the respective mandate of that EU body, office or agency.

The role of observer is to provide the team with specialised support taking into account the specific knowledge of certain subjects deemed to be beneficial for the evaluation. The observer's contribution is based on their expertise, specific needs of the team and internal division of work within the team as decided by the leading experts. The observer should:

- ✓ on request of the Commission lead expert, give views and suggestions on the draft programme;
- ✓ if relevant, no later than 3 weeks before the visit, proactively provide additional relevant information to all members of the team, including statistics, and deliver an updated overview of the situation (e.g. updated risk analysis by Frontex) in the evaluated Member State in those areas where the respective Agency, Union body or office has special expertise, including border management and return. The Commission will request the Union bodies, offices and agencies in advance the concrete information required in addition to the update overview; presentation by the observer might be included in the programme of the preparatory meeting;
- ✓ participate in the activities during the visit but also during the preparatory process and follow-up phase;
- ✓ support the drafting process by providing their specialised assistance to the team on the topics in their area of competence;
- ✓ co-operate closely with the lead experts and other team members.

The observer should not participate in internal decision-making process of the team, in particular, when a compromise needs to be reached during the drafting, and not participate in the discussions on findings related to the activity of the observer's agency.

## **Trainee expert**

‘Trainee expert’ is an expert designated by a Member State, or a Commission representative, who joins the evaluation to be trained to become a Schengen evaluator, in particular in cases when trainings are not available. The trainee expert does not act as a fully-fledged evaluator. They

- ✓ should observe the activities under the supervision of Commission and Member State lead experts;
- ✓ on the request of the lead experts can be tasked to provide support as regards logistical issues and documentation of findings and observations.

## **5. Establishment of the detailed programme**

The Commission in close cooperation with the Member States participating in the evaluation and the evaluated Member State, in line with Article 19(2) of Regulation (EU) 2022/922, will establish one single programme for each evaluation activity, including detailed sub-programmes for each visit, in particular as regards the identification of exact sites and locations to be visited.

The Commission Country Coordinator should organise a **preparatory meeting** with the Member States’ country coordinator and the Member State subject to periodic evaluation 4-5 months before the first visit is scheduled to take place, to inform on the general outline of the visits, the priority issues per policy field, related sites to be visited and the necessary administrative and organisational arrangements for the conduct of the visits. Before or immediately following this meeting, the Member State should designate the respective contact points for making the practical arrangements for the visits at a later stage (National coordination team, see point 5).

As a continuation of this meeting, the Commission’s and Member States’ country coordinator and Commission and Member States’ lead Experts will be in close contact with the National Schengen Coordinator and his/her coordination team to ensure the timely preparation of the evaluation activity. The National contact points should duly respond to the requests of the Commission in a reasonable time and proactively raise matters, which are relevant for the preparation and implementation of the visits. Once designated, the Member State lead expert should be involved in the exchanges and discussions concerning all evaluation and monitoring activities. An important matter to agree on is the sites and locations to be visited given that they are no longer indicated in the annual programme. However, to ensure predictability as well as sufficient time for all the necessary logistical preparations, the sites and locations should be determined at least 12 weeks before the visit is due to take place.

The detailed programme is then gradually developed and finalised under the overall coordination of the Commission and Member States Country Coordinator, by the Commission and Member State lead expert (and other Commission experts) in close cooperation with the national Schengen Coordinator and his coordination team. The observer(s) from the relevant Union bodies, offices and agencies may also be consulted. In case of persistent disagreement, the common position of the Commission and the Member State lead experts is decisive.

Following the above-mentioned process, for announced visits, the Commission should notify the evaluated Member State of the detailed programme at least six weeks before the visit is due to take place. The draft programme should contain the names of the members of the team and the observers. It should also contain the details of the contact point(s) responsible for the practical arrangements for the visit on the side of the evaluated Member State.

## Duration of the visits

- ✓ visits during the periodic evaluation activity usually last 4-5 working days (+ travelling days);
- ✓ unannounced evaluation visits last a maximum of 3 working days;
- ✓ remote or questionnaire-based evaluations take 2-5 working days;
- ✓ monitoring activities such as revisits and verification visits take from 1 to 3 working days).

These timeframes are just **indicative**, the duration of the visits should be based on the needs to guarantee efficient and comprehensive evaluation and can be different from one Member State to the other and/or one policy area to the other.

The following elements **should be considered** when drafting the detailed programme:

- ✓ The outcome of **previous evaluations, risk analyses and other relevant information** received from Union bodies, offices and agencies, replies to the standard questionnaire and all other relevant information available should be considered while establishing the programme.
- ✓ It must include the **sites and locations** necessary to visit in order to be able to obtain a good understanding regarding the level of implementation of the Schengen *acquis* in the policy field concerned; The detailed programme does not exclude the possibility to carry out **unforeseen/surprise visit** to a site/location which is not included in the programme; the evaluated Member State should accommodate any such reasonable request made by the lead experts during the visit
- ✓ As a general rule, it can include, either the week before the visit an online **preparatory meeting**, or on the day of arrival of experts, a live meeting with the evaluated Member State and a meeting of the team.
- ✓ It must include sufficient time for daily **drafting sessions**.
- ✓ It may include visits to and meetings with national authorities and bodies, as well as non-governmental and international organisations, other entities, Union bodies, offices and agencies, bodies and private companies supporting the Member State in the implementation of the Schengen *acquis*<sup>5</sup>.
- ✓ It is recommended to organise a **wrap-up meeting** between the team and the representatives of the evaluated Member State to conclude the visit. In this meeting the evaluation team may ask additional information to clarify possible open issues. The Commission lead expert will explain the next steps of the evaluation process (e.g. the timetable for finalising of the draft report) to the experts and representatives of the evaluated Member State but, as a rule, he/she does not explain the outcome (general conclusion, main findings, etc.) of the visit.
- ✓ It is recommended that the **last day of the visit** is mostly or solely dedicated for **drafting sessions** in order to be able to reach a common agreement on all findings and recommendations and to stabilize the text of the draft report as much as possible before leaving the evaluated Member State.

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<sup>5</sup> In the implementation of the evaluations, such as conducts of visits, the entities and third parties supporting the Member States should be understood as those which are legally or contractually linked to the latter and allowed to perform certain tasks on their behalf in the application of the Schengen *acquis*.

## 6. Preparatory activities by the team

In order to create the adequate conditions to produce a comprehensive report from each periodic evaluation activity, preparatory work is essential for the successful implementation of the visits to the evaluated Member State.

This will require in particular the close cooperation of all the Commission and Member States lead experts organised by the Commission and Member States country coordinator as well as the preparatory work within the teams.

Dedicated meetings will be organised to ensure the coordination of the entire evaluation activity and each visit. These meetings will facilitate the preparation of the team, the division of sub-teams, the allocation of tasks and the identification of focus issues. In this regard, it is necessary to identify the essential aspects prior to the evaluation, so that the visits are efficiently carried out, focusing on elements with an important impact on the effectiveness of the system.

Members of all the teams and observers should undertake all necessary preparatory activities in order to ensure that the visits are efficient, accurate and consistent. The main sources of information used in the preparatory phase are the replies of the evaluated Member State to the standard questionnaire, the previous evaluation report(s), the presentations, and the risk analysis and other information received from the Union bodies, offices and agencies.

### Information package

In addition to the evaluated Member State's replies to the standard questionnaire distributed to the team members at the beginning of the evaluation activity, the Commission must prepare the information package for experts and observers to be made available at the latest 2 weeks before the visit is scheduled to commence. This package should consist of:

- ✓ previous evaluation report(s) and recommendations; (in case the report is EU-restricted, the National Contact Point will be asked to provide EU restricted reports to their respective experts);
- ✓ action plan/latest progress report and other relevant documents following the previous evaluation;
- ✓ if applicable, any updates to the evaluated Member State's reply to relevant parts of the standard questionnaire, including the statistical part;
- ✓ if applicable, non classified risk analysis from Agencies and relevant updates;
- ✓ if relevant a checklist;
- ✓ national legislation and respective templates;
- ✓ any other relevant materials (presentations received from the evaluated Member States, updated statistics, etc.);
- ✓ results of the vulnerability assessment concluded by Frontex for the evaluations related to external borders.

The information package should be examined by experts when assessing the application of the Schengen *acquis* and implementation of the commonly agreed best practices and recommendations.

The pre-assessment should cover the effective implementation/transposition and application of relevant legislation, operational procedures in place, administrative measures, technical arrangements, the functioning of the authorities that apply the relevant parts of the Schengen *acquis* and may lead to the adaptation of checklist to be used during the visit. Particular attention should be paid to the functioning of the authorities and the respect for fundamental rights in the application of the Schengen *acquis*.

Possible shortcomings in the information package and sources of information used should be highlighted, to be presented during the preparatory meeting and further on during the visit.

When analysing the information package, experts should prepare and prioritise a set of questions in advance, to be clarified either at the preparatory meeting within the team or during the evaluation itself. Data coming from different sources of information on a certain subject should be cross-checked to reveal inconsistencies (e.g. statistics on refusal of entry based on false documents vs statistics on false documents discovered). If needed, specific statistical data is to be sent by the evaluated Member State in advance at the request of the Commission.

In the case of statistical data related to the implementation of the Schengen *acquis* or important questions for which profound preparation is needed or which may need further discussion, experts should forward their request beforehand to the Commission lead expert who will transmit them to the evaluated Member State. The evaluated Member State should reply before or at the latest during the preparatory meeting.

## **7. Practical arrangements**

### **National coordination team**

The evaluated Member State must establish a national Schengen Evaluation Coordinator and a coordination team for the evaluation activity to deal with organisational matters, but also to ensure the informational support needed for the preparation and performance of the evaluations.

The national Schengen Evaluation Coordinator should regularly be in contact with the Commission country coordinator in HOME.B2. The national coordinators for the specific areas should be in contact with the Commission Lead Experts while keeping the National and Commission Schengen Evaluation Coordinators informed.

### **On-site input by the evaluated Member State**

All theoretical presentations prepared should be short in duration and focused on new developments since the previous evaluations and practical details and should not exceed the allocated time set out in the detailed programme of the visit. Discussions with authorities, caseworkers, officers and staff on the concrete implementation of the Schengen *acquis* and procedures applied, are to be prioritised as a general rule. Therefore, an oral presentation is not always required in each location (e.g. in detention centres or police stations). The need of an oral presentation is to be agreed between the evaluated Member State and the lead experts prior to each visit after having received the presentations.

Targeted presentations reflecting the scope of the evaluation activity and requested additional information should be provided to the team at least 2 weeks before the visit. In this regard, the Commission lead expert may already alert the Member State national Schengen Evaluation Coordinator and relevant contact point prior to the visit, to shorten the material to be presented during the visit (since it is provided already beforehand and studied by the team).

If necessary, a general presentation can provide the team with an overview of the implementation of the policy at the national and strategic level. The presentation should focus on the main aspects relevant for the application of the *acquis* (following, if found suitable by the evaluated Member State, the structure in the standard questionnaire, but without repeating the detailed information already provided).

The regional and local presentations should focus on implementation of operational activities and relevant statistical data. Complementary presentation focused on issues which are specific for that site and might attract the further attention of the team could be prepared.

Information on the implemented recommendations from the last Schengen evaluation should be provided for the team.

As a rule, general presentations should be programmed either as a videoconference preceding the visit or during the first day, while specific presentations of locations should be included at the beginning of each visit at local level. On the request of the lead experts, they could also take place as a videoconference preceding the visit.

### **Interpretation**

The working language of the on-site team is English. If staff members of the evaluated Member State do not speak English at an adequate level or do not feel comfortable speaking English, the host Member State should ensure that professional interpreters or relevant staff with a very good command of English (minimum B2) are available throughout the visit to ensure smooth communication between experts and staff (including staff at the consulate). The evaluated Member State must inform well in advance the Commission lead expert if interpretation is necessary and will be used. In case of unannounced visits, the Commission will make arrangements for interpretation.

### **Items for experts**

Experts must bring the following items: identity card or passport, laptop with internet connection, mobile phone, health insurance documents and if relevant security clearance.

### **Travel arrangements**

The Commission will facilitate the travel arrangements to and from the Member State to the evaluated Member State (or to third countries in case of visa evaluations) for Member State experts, trainee experts and Commission representatives, based on the following rules:

- ✓ up to 400 km from/to the place of residence – by means of land transport;
- ✓ more than 400 km from/to the place of residence – airplane (economic class for flights less than 4 hours, business class for flights having a consecutive segment longer than 4 hours).

After establishment of the detailed programme, in case the information provided in the designation to the pool needs to be adjusted, experts should send to the Commission lead expert details on place of departure/arrival, necessary for issuing the travel tickets, which will be done by the Commission's service provider. The Commission's service provider will send travel offers to the experts based on the detailed programme of the evaluation. It is of utmost importance that experts react quickly to the e-mails sent by the Commission's service provider, especially if that concerns the confirmation to the (final) flight offer. That e-mail should be answered without delay and within 24 hours at the latest. The Commission Lead Expert should be in copy of the correspondence between service provider and experts. The



Commission Lead Expert has to give agreement before the Commission's service provider can issue tickets.

Observers will be responsible for their travel arrangements, which should be communicated in due time to the Commission lead expert.

### **Accommodation**

On the request of the Commission, the evaluated Member State should identify the most suitable hotels for the accommodation. The recommended hotels should be located close to the premises to be visited and easily reachable by transport, have good accommodation standard (preferably 4-star), stable internet connection, properly equipped meeting room for up to 11 persons with sockets for charging laptops, screen and projector and WIFI connection. Hotel rates should correspond to usual prices in the area and should not go beyond the ceilings allowed for by the Commission (except for in duly justified cases).

The Commission makes and pays directly for the necessary accommodation arrangements in the host Member State/third country for the on-site team as soon as the evaluation programme is finalised and confirmed. Where meetings/drafting sessions of the team are to take place in the hotel, the Commission is in charge of making the necessary arrangements. The booking will be done by the Commission's service provider.

Agencies will make their own arrangements and cover travelling and accommodation costs of their observers. They are expected to stay in the same hotel and for that sake the Commission's service provider can arrange the hotel pre-booking (but will not cover the costs).

### **Local transport**

The evaluated Member State is responsible for providing the necessary transport during the visit, i.e., from/to airport, between/to/from locations, and sites to be evaluated. If travel between the sites located in different countries/regions/provinces requires transport by plane, train or ferry, the Commission organises and pays for the necessary transport, except for observers who should make their own arrangements.

### **Catering**

The Commission covers the costs of breakfasts and dinners as well as for lunches at the hotel during the drafting days for the on-site team. The evaluated Member State must organise and pay for all other catering services for the expert team during the visit, and in particular:

- ✓ organise and pay for the lunches of the on-site team (except lunches at the hotel during drafting days);
- ✓ offer some refreshments during the evaluation.

**Lunches** should preferably be provided in the form of a working lunch, if possible at (or within walking distance from) the location visited at that time. Lunch breaks should not last more than an hour. **Dinners** are organised and paid for by the Commission, but the Member State should recommend one or several restaurants close to the hotel, if requested. Should the evaluated Member State wish to host a working dinner, this should be communicated to and arranged with the Commission lead expert ahead of the visit.

### **Daily allowance and transport cost of Member State experts**

The Commission does not provide daily allowance to Member State experts, this should be done by the national authorities. The Member States are strongly encouraged to ensure that

the daily allowance corresponds to the long working hours of the visits and covers the travelling time. As a minimum, Member States should ensure that the transportation costs of the expert to/from the departure airport/railway station in the home country are reimbursed.

Attention is drawn to the possibility to finance relevant costs including any additional/supplementary daily allowances of experts and the staff costs of those replacing the participating experts during their absence, from the national programmes of the Member States under the relevant Union Funds, in accordance with the objectives and applicable rules (BMVI in particular).

The Commission does not cover the transportation cost of experts from their home to the point of departure (i.e. airport/train station) and back, or the petrol costs for experts who travel by car from home to the evaluated Member State and back. These costs should be covered by the respective national authorities while processing the experts' mission orders. Member States should refrain from shifting these costs to the participating experts because this can discourage their participation.

The same recommendation applies for attending Schengen evaluation training courses organised by the Commission.

### **Withdrawal of an expert / cancellation of participation**

Cancellation of participation should be avoided as much as possible, especially once the travel arrangements are made. A justified reason is an unforeseen and serious personal issue, such as an accident, illness or death. Work related reasons (e.g. sudden increase of the workload, finalisation of an important project) cannot justify the withdrawal of an expert.

The same recommendation applies for attending Schengen evaluation training courses.

### **Specific arrangements for visa evaluations in third countries**

The evaluated Member State should assist the team in applying for visas for the third country in question (where necessary), notably by providing invitation letters or other relevant documents/information.

The host Member State should provide **transport** on location for all experts, i.e. to/from the airport, as well as between the hotel and the consulate and, where relevant, the external service provider's premises.

The evaluated Member State should provide a **meeting room** for at least 11 people in the consulate's premises for the entire duration of the visit. The meeting room should be equipped with sufficient electricity sockets (for laptops) and WIFI connection. The room should be accessible to the team until at least 6 pm.

# CHAPTER VI – DURING THE VISIT

## 1. General rules

Both the evaluated Member State and the teams have to fulfil the requirements and tasks laid down in the Regulation. Each team is bound to prepare itself to the best extent possible to ensure efficiency, accuracy and consistency throughout the visit.

The Member States must take all measures, general or particular, to support and assist the Commission and the teams in the implementation of evaluation and monitoring activities. This is particularly valid to the evaluated Member States throughout the entire visit.

Evaluation and monitoring activities are carried out in English. Reports (including draft recommendations) are drafted in English. In this context, all the documents relevant for the evaluation, including additional documents requested e.g., legislation, national reports, should be submitted to the team in English, including the replies to the standard questionnaire. The necessary arrangements for professional interpretation into English during the announced visits are to be carried out by the evaluated Member State.

The evaluation must be based on systematic gathering and thorough analysis of relevant information. The Member State to be evaluated must ensure that the team is able to exercise its mandate to verify the activities in the areas to be evaluated. It should, in particular, ensure that the team can directly address relevant persons and has full and unimpeded access to all areas, premises and documents required for the evaluation. The members of the team should be allowed to observe all relevant working procedures and practices, as well as to interview officials and other relevant authorities.

The team should have the opportunity to take pictures with due regard to national restrictions and should inform the evaluated Member State. The experts should also be able to examine and verify all relevant documentation necessary – including national and internal guidelines and instructions as well as classified materials – to carry out their evaluation. Access to relevant classified information should be granted to team members and observers having appropriate security clearance issued by a competent authority. An EU confidential or similar national security clearance should be seen as appropriate security clearance in this context. If relevant, members of the team and observers are expected to bring their security clearance to the visit.

When assessing the application of the Schengen *acquis*, also the commonly agreed best practices and recommendations included in the Schengen Catalogues and Handbooks should be considered. Local conditions and the best practices developed by the evaluated Member State should be considered.

## 2. Internal preparatory meeting

The visit usually starts with a preparatory meeting of the team at their hotel where the following aspects will be addressed:

- ✓ presentation of detailed programme and goals, including possible last-minute adaptation of the programme and potential unforeseen visits;
- ✓ if applicable, presentation of relevant information and issues covered by the teams carrying out visits under the same evaluation activity, especially if it takes place in the same week;

- ✓ if applicable, any information available (i.e. flash reports) from other teams deployed earlier under the same evaluation activity;
- ✓ update on specific details of the locations to be visited, e.g. points of concern identified during the analysis of preparatory documents received before the visit;
- ✓ key issues to be clarified during the visits;
- ✓ information regarding the evaluation process and methodology;
- ✓ organisation of the team (division of sub-teams, role of each member of the team including leading experts);
- ✓ recalling the code of conduct during the evaluation visit;
- ✓ any other logistical and practical issues.

Preliminary online preparatory meeting(s) can be organised by the Commission Lead before the visit, if considered reasonable.

After the internal preparatory meeting, there will be another preparatory meeting with the hosting Member State representatives. In this meeting Lead experts and representatives of the hosting Member State exchange the latest information concerning the visit.

### 3. Ethical conduct during visits

It is important to create an **open and professional attitude** between the team and the officials of the evaluated Member State. Team members should be flexible and demonstrate **team spirit**.

Each participant is expected to maintain the **highest standard of professional behaviour** to ensure an efficient and effective conduct of the evaluation.

The experts **should not interrupt or hinder the work** of the officials and questions should be asked after officials have finished any on-going tasks. This period of time should be used by the expert to observe the application of procedures.

**Security and safety issues** must always be taken into account during the evaluation. The evaluated Member State should inform the team on all the necessary elements referring to the specific security and safety issues that may occur during the visit (e.g. visit on a border surveillance boat, helicopter, closed centres), provide the necessary equipment and give instructions on the rules to be followed. When interviews with residents from closed centres are conducted, experts should keep in mind the sensitive nature of the situation. Any information received in the course of the evaluation should be treated as **confidential**. Experts must not post any materials or photos on social media or share messages about their work with persons outside the team.

The evaluation team is required to be **neutral and objective**. The report should be based on the facts gathered during the evaluation process, without any influence from external factors or personal opinion in relation with the evaluated Member State, nor from the sending Member State's or Agency's interests or positions. When collecting the necessary information experts should limit themselves to the collection of objective data, without using suggestive or provocative questions. Interviews and discussions should be conducted in a **polite manner**. Objectivity also requires avoiding, **to the extent possible, making comparisons during the evaluation activity**.

Team members must at all times remain within the scope of the evaluation and **remain alert** to any indication of evidence that may influence the evaluation result.

During visits, evaluators should **dress** in a manner that reflects positively on the image of the European Commission or Member State. Safety and weather factors should always be considered. Lead experts should confirm the dress code arrangements before the evaluations as it may be deemed necessary.

Serious failure to comply with the above ethical standards may result in a written notification to National Schengen Coordinator and relevant sending Member State authority, and/or dismissal from the evaluation team and the pool of experts.

At the end of the evaluation activity, the national Schengen evaluations coordinator of the evaluated Member State may provide feedback on the experts of the evaluation team during the evaluation activity and/ or in the wrap up meeting.

#### **4. Data collection and analysis**

When collecting information, experts should always consider responsibilities of the official concerned, his/her knowledge and status in the system (e.g. at central, regional, local level).

**Interviewing** is the main method for the expert during the visit. All participants should bear in mind that an evaluation is usually a stressful situation for all participants.

**Monitoring/observing** is a data collection method which allows a direct evaluation of the application of legislation, procedures, use of facilities by the officials of the evaluated Member State. Observations and the context should be recorded by experts and notes kept for reference until the Member State sends the action plan. Photos may be used, with the consent of the evaluated Member State, to support observations but should not include any personal data or sensitive information.

**Real-life tests** on the spot are an appropriate tool to verify facts. In real-life tests, expert would simulate fictional scenarios and ask officials to apply certain procedures or to operate the equipment available. Real-life tests can be performed during visits included in the detailed programme, or during unforeseen visits.

The aim of such tests should be to:

- ✓ Verify the functionality and capabilities of equipment (e.g. detecting certain characteristics of false/falsified documents);
- ✓ Verify the functioning of national applications used to implement/query EU IT systems;
- ✓ Verify the functionality of communication between different units and authorities;
- ✓ Verify the reliability of provided information on cooperation and operating times (in cases of reinforcement in major incidents, etc.);
- ✓ Verify the application of procedures by officials.

The detailed programme may provide a slot for **unforeseen/surprise visits**. In addition, unforeseen visits may be requested by the lead experts in justified cases, when supplementary data are needed in order to complete the view of the experts on certain substantial organisational, administrative or procedural/operational aspects. This type of visits can be programmed in the same locations which were included in the detailed programme outside the

scheduled visit timeframe (eg. when a flight from a risk third country identified via risk analysis to be a potential source of irregular migration) is programmed to arrive outside timetable of the evaluation visit) or in a nearby location.

To increase the efficiency of data collection, the evaluated Member State should provide to the experts the **presentations** to be made during the visit two weeks before the visit is to take place only if the 6 week-deadline for finalizing the programme indicating the locations and authorities to be visited is respected. The necessary points to be clarified during the discussion session after the presentation should be established by each member of the team.

When formulating questions, experts should be aware that the time reserved for the questions is limited and all the experts should have the occasion to clarify issues that are under their responsibilities. If there are complex issues to be answered by the hosts, the reply should be requested in written form by the end of the visit of the location or before the final drafting session.

Based on the agreed division of work Commission and Member State lead experts should moderate the discussion in terms of giving the floor to members of the team for supplementary questions. If considered necessary, Commission lead experts may ask the speaker to shorten his/her presentation or to skip parts of the presentation to reserve supplementary time for questions or for the field visit.

The **analysis of data collected** should be based on facts and arguments from several sources and analysed through different methods, to avoid a one-sided approach and biased results. If several unrelated sources point to the same direction, this increases confidence that the findings are reliable. In simpler terms, it means that possible deficiencies observed should not just be reported but double-checked against other sources of information.

## 5. The checklist

If relevant, practical field work may be supported by detailed checklists. It may be used by experts during visits when they are conducting practical evaluations to guarantee that all relevant elements necessary for the comprehensive assessment are adequately covered by the team.

This checklist is **by no means exhaustive** and should be considered as an adaptable instrument based on practical needs. The checklist may be adapted for the specific situation in the evaluated Member State by the team, based on the information package received in the preparatory phase. The checklist can be used as a **tool for dividing responsibilities** among the experts as well as to **facilitate the discussions during drafting sessions** on findings, assessments and recommendations.

## 6. Drafting process

The team is responsible for preparing a draft (intermediate) report based on the findings of the visited sites. The draft report should be prepared and finalised during the visit or at the latest within one week after the visit.

The report should be based on a common template by all the teams. For the periodic evaluation activity, each intermediate report should become a composite of the comprehensive report for the evaluation activity. In justified cases, if a visit of one team would fall outside a time span of the main evaluation activity for the Member State concerned, a separate report could be considered.

During the visit, the team formulates the findings and corresponding recommendations to remedy the shortcomings and deficiencies identified during the visit, or to highlight best practices worth sharing with other Member States. In particular, new and innovative measures that significantly improve the implementation of the common rules and that could be put into practice by other Member States should be highlighted as **best practices** for the purposes of the report. The implementation of previous recommendations should be also assessed. If there are still elements not implemented or partially implemented, the report will refer to these as persistent deficiencies.

Drafting of the report is to be carried out daily after the visits and should be organised and led by Commission and Member State lead experts. It is a collective effort by the team based on the contributions of the respective experts. The lead experts should clearly explain who is to draft what and should also establish deadlines. The team should agree on all findings and recommendations. In case of disagreement, the team should endeavour to reach a compromise.

During each drafting session, the team agrees on the main findings of the day, their assessment/qualification (i.e. best practice, improvement necessary, non-compliant, serious deficiency) and the corresponding recommendations and the lead experts should establish the strategy to be followed the next day.

All possible additional information (e.g. documentation) needed from the evaluated Member State should be asked by the lead experts, unless agreed otherwise. The evaluated Member State should provide the answers before the end of the visit.

### **Drafting of findings**

Findings should be short and concise, focusing on the problems and not on lengthy descriptive elements of what actually works. They should be structured as follows:

- ✓ Qualification of the finding (as mentioned above);
- ✓ Presentation of facts (what does not work);
- ✓ Assessment and impact on the application of Schengen *acquis* (reference to the legal provisions infringed upon and what is the problem/result in practical terms).

To achieve the consistency of the reports, the qualification of findings as best practice, improvement necessary, non-compliant and serious deficiency has to be made based on pre-defined and generally applicable criteria:

**Best practice** – new and innovative measures that significantly improve the implementation of the common rules and that could be put in practice by other Member States.

**Improvement necessary** – attributed to a finding which:

- ✓ refers to the implementation of commonly agreed Union standards, or
- ✓ is in line with the Schengen *acquis* or commonly agreed Union standards, but further improvements are identified as necessary to enhance the quality of the application of the Schengen *acquis* or to improve the functionality of a process and/or Schengen system;
- ✓ Emphasis is on the “necessity”.

**Non-compliant** – an assessment of a finding according to which national laws, regulations and administrative measures, or their implementation, do not comply with the legally binding provisions of the Schengen *acquis*.

### **Drafting of recommendations**

When drafting the report and in the light of the findings and assessment, the team must draft corresponding recommendations for remedial actions aimed at addressing any deficiencies identified during the evaluation and give an indication of the priorities for the implementation thereof. Recommendations should:

- ✓ Focus only on substantial issues and ensure each stems from a finding(s);
- ✓ Be written so that the reader can understand them without having to cross-check the corresponding finding;
- ✓ Be SMART (specific, measurable, achievable, realistic and time-limited).

### **Final drafting session**

A final drafting session is organised during the last day of the visit. The draft report, and more specifically, the findings, conclusions and recommendations should be discussed and agreed by the team at the end of the visit. In the event of a disagreement, the team should endeavour to reach a compromise.

In case there are members of evaluations teams operating in parallel in the evaluated Member State, if appropriate and logistically possible, time should be reserved for a final drafting session with all team members to streamline and cross-check each other's main findings, assessment and the recommendations.

## **7. Structure of the draft report, including recommendations**

### **Structure**

Evaluation reports should be **concise and succinct** and, as a general rule, contain recommendations. They should **focus on deficiencies with significant impact** and highlight areas where important improvements could be made.

The same predefined structure/template should be used *mutatis mutandis* for **all the reports**. Following the periodic evaluation activity, the **comprehensive evaluation report** will be produced by the consolidation of **intermediate reports** from individual visits implemented as part of that activity.



A pre-defined **structure of all reports:**

- I. **Executive summary at the beginning** providing the **general assessment** of the implementation of the *acquis* and highlighting the most important findings for the well-functioning of the Schengen area.
- II. **Contextual description** of the evaluated Member State's operational environment (e.g. main risks, return situation, statistics);
- III. **Strategic/horizontal matters** important for the overall performance in the implementation of the Schengen *acquis*;
- IV. **Specific policy sections** with logical and structured **description of the findings**; findings should be grouped per broader subjects (e.g. IT, human resources, training) and sub-grouped per classifications in order to avoid individually labelling every and each finding as non-compliant, improvement necessary, etc.;
- V. **Best practices** should be visibly identified with the use of boxes;
- VI. If the report is to contain **recommendations**, they should be listed in the **final section of the report** following to the extent possible, the sequence of the findings (e.g., horizontal and per policy sections); this does not prevent however to provide recommendations covering several findings or policies (e.g. group findings related to IT or human resources);
  - ✓ In order to increase readability, after the recommendation the number of the corresponding finding(s) should be put in brackets. E.g.: "*Ensure that..... (point II.2.1)*";
  - ✓ In an annex, the evaluation reports may include **documentary and digital material** to support the findings. This should be limited and only used if the visualisation of an issue (typically by photos or obtained documents), considerably contributes to the better understanding of the respective finding and/or considerably simplifies its drafting. The report should not be loaded with photos, links, etc. The team should carefully discuss the matter and find the necessary balance.

As a rule, compliant elements should not be described in detail; however, the positive aspects of strategic/horizontal/systemic matters important for the overall performance in the implementation of the Schengen *acquis* should be noted.

**Minor findings should not be included in the reports.** The team, represented by the Commission and MS lead experts should nevertheless communicate these findings to the evaluated Member State at the end of the evaluation activity either during the wrap-up meeting orally and by sending a short e-mail to record the minor issues. The evaluated Member State is requested to duly address these matters as well and to inform the team by sending email to the functional mailbox of the Commission once these issues have been solved.

In case the visit identifies serious deficiency, or concerns first time or thematic evaluation, the final report will not contain recommendations. Those are to be taken out from the report and will be presented by the Commission in a separate document for the Council's approval. Similarly, if the evaluated Member State, at a later stage, substantially contests the content of the draft report or the nature of a finding, the report to be adopted by the Commission will also be limited to findings and will not contain recommendations. Nevertheless, the team drafts recommendations in these cases, too.

## 8. Specific provisions and procedures for serious deficiencies (chapter IV of the Regulation)

**Serious deficiency** – a general assessment of the situation attributed to one or more non-compliant findings which concern the effective application of the Schengen *acquis*, and

- ✓ which individually or in combination, risk to constitute a violation of fundamental rights, or
- ✓ which has, or risks to have over time, a significant negative impact on one or more Member States or on the functioning of the area without internal border controls.

For each policy field to be evaluated there may be different key elements for the effective implementation of the Schengen *acquis* and different combinations of factors which could trigger the use of the term "serious deficiency". However, in the framework of the periodic evaluation, the gravity of deficiencies should be assessed in the context of overall performance of the evaluated Member State in the implementation of the Schengen *acquis*. Therefore, the classification of a deficiency as serious could be only concluded at the end of the evaluation activity, when the last visit of that evaluation activity is completed, and the comprehensive report is consolidated.

This does not prevent the Commission and Member State lead experts, on behalf of the team to pre-inform the evaluated Member State orally during the wrap-up meeting on possible concerns, which may result in their qualification as a serious deficiency.

The following procedure should be followed in cases where serious deficiencies were found by the team (s):

- ✓ At the end of the evaluation activity (in case of the periodic evaluation after the consolidation of the comprehensive report), the Commission and Member State lead experts, on behalf of the periodic evaluation team, must inform in writing the evaluated Member State that a serious deficiency was identified. The Council must also be informed without delay.
- ✓ The report will not contain recommendations; the latter will have to be adopted by the Council following the adoption of the evaluation report and the Commission's proposal for a draft Council Decision.
- ✓ The evaluation report should start with the findings that led to the determination of a serious deficiency. The title and the conclusion in the executive summary of the report should contain the qualification of the serious deficiency or deficiencies. Furthermore, it should be clearly and substantially justified in the report why the team concluded that the finding(s) is to be regarded as serious deficiency.
- ✓ The evaluated Member State must take immediate remedial actions including, where necessary, mobilising all appropriate operational and financial means. The evaluated Member State must inform without delay the Commission and the Member States about the immediate remedial actions taken or planned. In parallel, the Commission should inform the Agency/ies concerned of the serious deficiency in view of their possible support to the evaluated Member State.
- ✓ Specific rules apply for the adoption of the report, recommendations and also for the monitoring and follow-up process (see point VII. of the Guide for details).

It should be stressed that only serious deficiencies related to the application of the Schengen *acquis* relating to external border management may trigger the application of the procedure provided for in Article 21 of the Schengen Borders Code and, in case of persistent serious deficiencies which are putting the overall functioning of the area without internal border control at risk, trigger the application of Article 29 of the Schengen Borders Code.

If a visit reveals a serious deficiency deemed to constitute a serious threat to public policy or internal security within the area without internal border controls or a risk of a systematic fundamental rights violation, the Commission will immediately inform thereof the European Parliament and the Council.

The Council should urgently discuss this matter, and should strive to adopt, on the basis of a proposal from the Commission, by means of an implementing act, recommendations setting out appropriate measures to remedy or limit the impact of the serious deficiency on public policy or internal security within the area without internal border controls, or the systematic fundamental rights violation within two weeks of receipt of the proposal.

This Council decision setting out the recommendations is without prejudice to Article 29 of the Schengen Borders Code and Article 42(1) of the Regulation on the European Border and Coast Guard.

# CHAPTER VII – SPECIFIC RULES AND PRACTICALITIES REGARDING UNANNOUNCED VISITS, THEMATIC EVALUATIONS AND EVALUATIONS CARRIED OUT BY QUESTIONNAIRE

## 1. Unannounced visits

Unannounced evaluations are regarded as particularly efficient to get a real-life picture on the level of the implementation of the Schengen *acquis*. They are not subject of the annual programmes.

The Commission organises unannounced evaluations, in particular:

- ✓ to evaluate the application of the Schengen *acquis* applicable at internal borders;
- ✓ when it becomes aware of emerging or systemic problems that could potentially have a significant negative impact on the functioning of the area without internal border controls, including circumstances that would constitute a threat to public policy or internal security within this area;
- ✓ when it has grounds to consider that a Member State is seriously neglecting its obligations under the Schengen *acquis*, including when it has grounds to consider that there are serious violations of fundamental rights.

This is **not an exhaustive list**. The unannounced visits **can also be based on other justified grounds** supported by risk analysis and other relevant information (frequent complaints from citizens or stakeholders such as carriers; responses to the standard questionnaire, etc.). The final decision to carry out an unannounced visit is based on a comprehensive and thorough analysis made by the Commission taking into account all available information (incl. the assessment of quality of information sources), operational environment and applicable national legislation, etc. These should be explained in the report.

Unannounced visits should, as a rule, take place with prior notification of at least 24 hours to the Member State concerned. The exceptions are as follows, i.e. when the **visit takes place without prior notification**:

- ✓ visits to the internal borders;
- ✓ visits when the Commission has substantial grounds to consider that there are serious violations of fundamental rights in the application of the Schengen *acquis*;

Visits to the internal borders should always take place without prior notification. This is necessary to get an accurate picture regarding the absence of border controls at internal borders, namely to verify if the exercise of police powers by the competent authorities of the Member States under national law does not have an effect equivalent to border checks, obstacles to fluid traffic flow and in case of reintroduction of internal border control, the scope and the practical implementation of the control.

The **prior notification, if applied, should be sent in writing to the National Contact Point** and it is to be followed-up immediately by a phone call from the Commission to ensure that the information was received.

## Practicalities

Given the unannounced nature of the visit, it is the **Commission's sole responsibility to establish the detailed programme**. Where Member States have been notified, the Commission may consult the timetable and detailed programme with the Member State concerned, but this is not an obligation.

Consequently, **all the logistical burden is on the Commission**: it must arrange the necessary transport at the visited location, and it should ensure the availability of qualified interpreter(s) to support the team.

In general, the preparation for and implementation of unannounced visits differ from announced visits in many ways; the preparatory phase for the experts is very short, detailed task of the team and background information are available to the Member State experts only in the very beginning of the visit (preparatory meeting) and there is no support from the evaluated Member State available prior to the visit.

The **working environment requires high flexibility and adaptability from the team**. This type of evaluation visit is thus much more challenging for individual experts, the team, the Commission and the evaluated Member State.

As a rule, the **team is to be established from experts and observers from the pool**, but the details of the visit should not be revealed to them, except for the date of the visit and the place and the time of the first preparatory meeting.

To ensure access and facilitate the visit, the **Commission issues an authorisation** for participating experts and observers which should contain the detailed evaluation programme for the selected site established by the Commission, names of evaluation team and their identity card or passport numbers.

The travel tickets will be sent to the experts from their place of departure to the place of the **preparatory meeting (in principle in the evaluated Member State)**. The experts need to ensure that they have travel documents at their disposal.

In the preparatory meeting the Commission will explain the task of the team, provide the necessary background documents and information, share the content of the authorisation and detailed programme, present the sites to be visited, propose a division of task among the experts and inform on practical working methods on the spot, including possible security and safety issues related to the operational environment.

**If the visit is truly unannounced** (i.e. comes without 24-hour prior notification), when arriving to the first site to be evaluated, the Commission will contact the National Contact Point and inform that the team responsible for an unannounced visit has arrived and will start the evaluation. The Commission explains how and where the team intends to perform its task and if any support is needed. The Commission also sends the authorisation without the programme to the National Contact Point by email.

After the consultation with the National Contact Point, the Commission contacts the local representatives of the evaluated country and presents the team and the authorisation for the visited site. The Commission explains how and where the team intends to perform its tasks and what kind of support will be needed. The Commission also hands over the contact details of the concerned National Contact Point. The local authorities may seek further information on the mandate from the National Contact Point.

It is also possible to observe the situation on the spot before contacting the local representatives of the evaluated Member State.

If considered necessary by the team during the preparatory meeting, the evaluated Member State is invited (via the National Contact Point) to nominate a local liaison officer to support the team and to facilitate the evaluation mission in all relevant means (e.g. to facilitate access to the visited sites). The possible use of the local liaison officer and the practical issues will be agreed between the Commission, acting on behalf of the team, and the National Contact Point. The local liaison officer should by no means prejudice the efficiency and effectiveness of the evaluation activities.

In case of visits to the internal borders, Commission will not contact the local representatives of the evaluated Member State when the scope of the visit is limited to the verification of obstacles to fluid traffic flow at road crossing points.

When the on-site part of the unannounced visit is accomplished and the team leaves the site, the Commission will inform the National Contact Point of the evaluated Member State.

**During the visit**, all members of the team must carry a copy of the authorisation and their identity card/passport with them and present these documents to the authorities of the evaluated Member State when requested. The representatives of the Commission should also carry their Commission badge.

## 2. Thematic evaluations

Thematic evaluations are included in the annual evaluation programme, mentioning their theme, the Member States to be evaluated and the intended evaluation methods.

Thematic evaluations aim at providing an analysis of Member States' legislation or practices in the application of the Schengen *acquis*, or the application of its specific parts across several Member States. In particular, the implementation of significant legislative changes or issues across policy areas or practices of Member States facing similar challenges might be assessed during thematic evaluations.

Thematic evaluations are based on risk analyses following the adoption of new legislation or on information obtained by the Commission in accordance with the Regulation.

The Commission drafts a concept note for each thematic evaluation, which lays down its scope, objectives and methodology. Evaluation methods might involve both questionnaires and visits. The concept note must include a tentative timeline of evaluation activities planned together with information on possible follow-up actions. The Commission presents the draft concept note to the Schengen Committee Members for their comments.

If a thematic evaluation requires specialised expertise and experience involving different policy areas, the Commission might request Member States to designate qualified experts from outside of the already established pool of experts to become members of an evaluation team.

Where applicable, the evaluation team prepares a tailored questionnaire and a detailed checklist covering elements relevant for the scope of thematic evaluation. Information provided by EU bodies, offices and agencies participating in the implementation of the Schengen *acquis*, as well as information related to the implementation of the Schengen *acquis* received from third parties (including independent authorities, non-governmental

organisations and international organisations) will be taken into account. The questionnaire and the checklist should be consulted with the Schengen Committee.

In some specific cases, announced visits might also take place in accordance with the above explained procedures with the involvement of limited number of Member States' experts only. Not all evaluation team members might be invited for participating in specific visits, but they will be involved in preparatory process and in the analysing phase of the results in the view to drafting the final report for the entire evaluation activity. This could be the case when a big team has been established for a thematic evaluation implemented through a questionnaire and specific visits.

The draft evaluation report prepared by the evaluation team will be presented to the Schengen Committee for a discussion and a formal opinion. The Commission adopts the final report together with a proposal for the Council Decision establishing a recommendation based on the Commission's report.

Specific provisions of Article 23(1), (2) and (3) of the Regulation apply, *mutatis mutandis*, to thematic evaluations. If the thematic evaluation identifies a serious deficiency, Article 22 of the Regulation applies.

A political follow-up will be facilitated by the State of Schengen Report and the Schengen Barometer, among others.

### **3. Questionnaire-based evaluation**

Questionnaire-based evaluations are envisaged to be carried out in particular for a specific policy area, by requesting the Member States to complete a questionnaire, developed specifically for the purpose. Replies to the standard questionnaire might be used as additional source of information but might not be sufficient to address identified needs. A team meeting in case of an evaluation based on a questionnaire will either be organised online (videoconference) or physically in Brussels.

If necessary, the Commission will also ensure a videoconference connection with the evaluated Member State for supplementary clarifications. The Commission will, in this respect, establish a time and programme for the videoconference with the evaluated Member State, specifying, among others, which questions need to be clarified.

The rules and principles applicable for document analysis and drafting in the course of a regular evaluation visit will also be used for the drafting sessions of questionnaire-based evaluations, where only written materials, such as the reply to the standard questionnaire and dedicated questionnaire(s) will be analysed and assessed. By the end of the drafting meeting in Brussels the draft report must be finished and agreed on by the team.

If the evaluation team concludes that the replies to the questionnaire(s) give rise to serious additional questions, which need to be examined more thoroughly, and which cannot be answered quickly by the evaluated Member State, the evaluation team may suggest a visit, taking place according to the procedures explained above, as the appropriate evaluation tool to follow-up the matter and address the information gap. The evaluation team should prepare a concise note on facts, findings and conclusions which have led the evaluation team to conclude that only a visit can make it possible to finish the evaluation report, for the information of the Schengen Committee.

## CHAPTER VIII - AFTER THE EVALUATION ACTIVITY

### 1. End of the evaluation activity/finalisation of the draft report/consolidation of one single comprehensive report (article 20 of the Regulation)

For periodic evaluations, the Commission country coordinator will collect all intermediate evaluation reports drafted during the visits carried out during that evaluation activity and, together with other Commission and Member States Lead experts, will start consolidating them as soon as possible into **one single comprehensive report for the evaluation activity**.

**The end of evaluation activity** is marked by the finalisation of the draft report at the latest within a week after the visit or, in case of the periodic evaluations, with the finalisation of a first version of the draft comprehensive report. For the latter, that should take place no later than two weeks after the last visit carried out under that evaluation activity is completed.

In particular, it should be ensured that the **structure and quality** of the draft report complies with the standards and relevant template and carries out linguistic and legal checks.

The Commission country coordinators should organise a meeting between all Commission and Member State Lead experts to ensure that the different findings are comprehensively covered and making sure that the comments of the teams are reflected in a comprehensive manner in the report.

The text of a report (marked as draft) will be circulated in a password-protected document by e-mail to all the experts and observers, indicating the expected classification status of the final report. The lead experts should decide jointly on any outstanding questions after having received the experts' feedback.

At the latest **within four weeks** after the end of evaluation activity, the Commission country coordinator will transmit the draft (comprehensive) evaluation report (with the draft recommendations included, as a general rule) to the evaluated Member State for their comments.

The evaluated Member State should provide its comments on the draft evaluation report within two weeks of its receipt. In case of serious deficiency, these deadlines are shorter: the Commission must transmit the draft evaluation report within two weeks of the end of the evaluation activity and the evaluated Member State should provide its comments within ten working days of its receipt.

In accordance with Article 28 of the Regulation, the Commission also assesses the **classification** status of the document. By default, it should be **sensitive non-classified** in accordance with Decision (EU, Euratom) 2015/443<sup>6</sup>. However, it may also be classified as 'EU RESTRICTED/RESTREINT UE' within the meaning of Decision (EU, Euratom) 2015/444<sup>7</sup> pursuant to Article 5(3) of that Decision.

The evaluated Member State should provide its comments and justified proposals for amendments or changes in a **separate document (table)** provided by the Commission.

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<sup>6</sup> [Commission Decision \(EU, Euratom\) 2015/443 of 13 March 2015 on Security in the Commission](#), OJ L 72, 17.3.2015, p. 41–52.

<sup>7</sup> [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. 53–88.



Furthermore, the Member State may also submit a duly justified request for the report to be classified as ‘EU RESTRICTED/RESTREINT UE’.

The comments of the evaluated Member State should be circulated among the experts of the team. After receiving their feedback, the Commission and Member State lead experts must decide jointly which proposed amendments will be taken into account. **The Commission should transmit the revised draft report to the evaluated Member State.**

## **2. Drafting meeting**

If requested by the evaluated Member State in writing, a drafting meeting will be held in Brussels or via videoconference **no later than five working days** from the receipt of the comments from the evaluated Member State. All the Commission and Member State lead experts should participate in this meeting. Subject to the request of the Member State lead experts, other experts from their respective teams should be invited. Amendments suggested by the evaluated Member State may be taken up.

If the meeting is taking place physically in Brussels, the related costs (travel, accommodation) must be borne by the evaluated Member State for its delegation and by the Commission for Member States lead experts (flights).

## **3. Specific procedure in case where the evaluated Member State substantially contest the draft report**

As regards draft reports containing recommendations, during the drafting meeting but not later than ten working days from it, the evaluated Member State may substantially contest the content of the draft report or the nature of a finding and may request invoking the use of Article 20(5) of the Regulation.

The contestation of a Member State of the draft report or the nature of a finding should be considered substantial when it concerns a matter of political importance and general interest for the functioning of the Schengen area, which should be brought to the attention of the Council.

In this context, matters of political importance could be, for example, related to the organization and exercise of power of a Member State and its political institutions, internal processes of decision-making, governance and inter-service coordination or concerning the rule of law, corruption, fundamental rights.

The notification of contestation should be sent by the national coordinator on behalf of the evaluated Member State to the Commission represented by the Schengen Coordinator with a copy to the functional mailbox ([HOME-JUST-SCHENGEN@ec.europa.eu](mailto:HOME-JUST-SCHENGEN@ec.europa.eu)).

If the Member State invokes this provision, the recommendations will be adopted by the Council in accordance with Article 20 (5) of the Regulation on the basis of the Commission’s proposal.

## **4. Presentation of the draft report in the Schengen Committee and its adoption by the Commission**

The draft report will be presented by the Commission and Member State lead experts to the Schengen Committee. The costs related to the participation of the Member State lead expert will be covered by the Commission.

Following the positive opinion of the Committee, the Commission will adopt the evaluation report by means of an implementing act. The evaluation report should be adopted no later than four months after the end of the evaluation activity.

If the report contains serious deficiency, the Commission must adopt the evaluation report no later than six weeks after the end of the evaluation activity. In the latter case, the Commission must adopt an implementing act which should apply immediately, without its prior submission to the Schengen Committee, and should remain in force for a period not exceeding six months. At the latest 14 days after its adoption, the chair should submit the report to the Schengen Committee to obtain its opinion. In the event of the Committee delivering a negative opinion, the Commission should immediately repeal the adopted implementing act.

While the report is a formal Commission document, it should be kept in mind throughout its finalisation following the evaluation that it is essentially the product of the team comprising mainly experts from the Member States. The team shall take the overall responsibility for drafting the evaluation report and ensuring its integrity and quality. The Commission has an important role in the final stages to ensure legal and linguistic clarity, coherence as well as the translation of the report.

As a general principle, after consulting the Member State concerned on the draft report, executive summary and recommendations of the report will be made public by the Commission after the adoption of the corresponding implementing act. In case of any request for public access to other part of the report, the Commission will consult the Member State concerned separately in accordance with the applicable Regulation<sup>8</sup>.

## **5. Adoption of recommendations by the Council**

Contrary to the general rule, it is for the Council to adopt the recommendations on the basis of the proposal from the Commission in the following cases:

- ✓ the evaluated Member State contests the content of the draft report or the nature of a finding and invokes Article 20(5) of the Regulation;
- ✓ the evaluation identified serious deficiency/ies;
- ✓ in case of first-time evaluations;
- ✓ in case of thematic evaluation.

The Commission should submit a separate proposal to the Council for the adoption of recommendations by means of an implementing decision.

In these abovementioned cases, following the end of the evaluation activity there should in principle be a high-level meeting between the Commission Schengen Coordinator and the senior representative of the evaluated Member State with the participation of the national and Commission Schengen Evaluation Coordinators.

In case of serious deficiency, this is to happen in parallel to the adoption of the evaluation report, which is also to be presented within six weeks of its adoption to the Council, together with a proposal for recommendations for remedial actions aimed at addressing the serious deficiencies and an indication of the priorities for implementing them. In all the other cases,

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<sup>8</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48.

the Commission has to submit its proposal to the Council to adopt the recommendations no later than four months after the end of the evaluation activity.

In case of serious deficiency/ies, the Council should adopt recommendations within one month of receipt of the proposal. The Council should set proportionate 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. In other three cases, the Regulation does not set a deadline.

In the above mentioned four cases except the first one (Article 20(5)) the Council should transmit the recommendations to the European Parliament and to the national Parliaments.

## **6. Follow-up and monitoring**

### **The action plan and its review by the Commission**

The evaluated Member State should submit to the Commission and to the Council an **action plan** to implement **all** the recommendations (including the ones related to “improvement necessary” findings). This must be done within two months of the adoption by the Commission of the evaluation report including recommendations, or of the adoption of the Council recommendations if the Member State invoked Article 20(5), or in case of first-time evaluation or thematic evaluation. In case of serious deficiency, the deadline is one month and the Commission should transmit the action plan to the European Parliament.

The submission of the action plan for the Commission should be done via the **KOEL-SCHEVAL tool** by encoding actions into this IT tool. This will help to distribute the document in the Council as well as to transmit it to the European Parliament in case of serious deficiency.

Under the coordination of the Commission country coordinator, Commission (lead) experts for each policy field, together with Member State (lead) experts will monitor the follow-up of the process until the full implementation of the action plan. Commission experts for each policy field will assess together with Member State experts the respective parts of the Action Plan and upload the results in the **KOEL-SCHEVAL tool**;

The other Member States must be invited to comment on the action plan.

After consulting the team, which has carried out the evaluation, the Commission should review the adequacy of the action plan and, within one month (or in case of serious deficiency within two weeks) from its submission, must inform the evaluated Member State thereof.

After the review of each action plan, the Commission will communicate its assessment to the Member State in the format of a **specific letter** addressed to the Permanent Representative of the evaluated Member State, with copy to the National Contact Point, to increase the awareness and get the political commitment for the implementation of the recommendations. The review of the action plan is sent to the Member State via the **KOEL-SCHEVAL tool**.

If the Commission does not consider that the action plan is adequate, the evaluated Member State should submit a revised action plan within one month of the receipt of the review (or in case of serious deficiency within two weeks).

The review of the action plan should also be presented to the Council. In case of serious deficiency, the review will also be sent to the European Parliament.

## Follow-up reports

As a general rule, the evaluated Member State should report to the Commission and the Council on the implementation of its action plan every six months from the date of notice of receipt of the review of the action plan until the Commission considers the action plan fully implemented. In case of serious deficiency/ies, the Council should set proportionate time limits for the implementation of the recommendations related to it/them.

As an exception to the six months reporting rule, depending on the nature of the deficiencies and the state of implementation of the recommendations, the Commission, in consultation with the evaluated Member State, may require of the evaluated Member State a different reporting frequency.

The follow-up reporting is to be carried out via the **KOEL-SCHEVAL tool**. The Commission should provide regular feedback as regards the updates.

If the evaluated Member State does not report regularly on the implementation of the action plan, the Commission will inform the Council and the European Parliament that the evaluated Member State is not fulfilling its obligations.

## Revisits and verification visits

**Revisit** should be organised by the Commission 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*. In the former case, the revisit is to take place no later than one year from the date of the evaluation activity. For first time evaluations, the Regulation does not set a deadline.

A revisit report should be adopted by the Commission by means of an implementing act and may be accompanied by recommendations, if necessary.

Other than revisits, whenever deemed necessary to verify by means of visit the progress of the implementation of an action plan, the Commission may organise **verification visits**. Verification visits should be organised (mandatory) before the closure of an action plan following an evaluation that identified a serious deficiency and a first-time evaluation.

Verification visits **may take place without prior notification** to the Member State concerned, as allowed by Article 19(4) of the Regulation.

Verification visits should not lead to new findings or require the adoption of a report.

The Commission should still inform the Member State concerned and also the Council in writing on the outcome of the verification visits. This is to take place in a form of a letter at appropriate level depending on the outcome of the visit with the copy to the evaluated Member State.

## Closure of the action plan

As a general rule, where the Commission considers the action plan fully implemented, it must inform the Member States about the closure of the action plan. The action plan will be closed when all recommendations issued in all the policy fields are implemented as considered by the Commission and the team members. Once the view is taken that the evaluated Member State has satisfactorily taken the measures necessary to implement the Action Plan, the action plan would be formally closed by means of a Commission Communication (adopted either individually, or collectively, as part of the annual State of Schengen Report).

As noted above, following an evaluation that identified a serious deficiency and a first-time evaluation, the Commission should organise a verification visit before the closure of an action plan. In these two cases, the Commission should also inform the European Parliament that the action plan can be closed. Furthermore, the Council should, on the basis of the Commission proposal, while taking into account the outcome of the verification visit, adopt an implementing decision approving the closure of the action plan, as provided for in Article 22(9) of the Regulation.

## **CHAPTER IX – APPLICATION AND UPDATE OF THE GUIDE**

In accordance with Article 31(3) of Regulation (EU) 2022/922, for evaluations carried out before 1 February 2023, adoption of evaluation reports and recommendations should be carried out on the basis of the relevant provisions of Regulation No 1053/2013 notwithstanding the fact that Regulation (EU) 2022/922 started to apply on 1 October 2022. Therefore the 2018 Schengen Evaluation Guide (Rev 1) should continue to provide guidance on these matters until the adoption of the last corresponding report and recommendations under Regulation No 1053/2013.

In accordance with the same provision, as from 1 October 2022, for the follow-up and monitoring activities, starting with the submission of the action plans, the respective provisions of Regulation (EU) 2022/922 apply as well as the present Guide.

For all the evaluations carried out after 1 February 2023 Regulation (EU) 2022/922 and this Guide apply in their entirety for the adoption of the reports and recommendations and the corresponding activities.

This Guide will be reviewed when necessary, to provide up-to-date support based on practical experience to the efficient implementation of the Schengen evaluation and monitoring mechanism. The review should take into account, but not be limited to, the analysis of the feedback from the Commission and Member State Schengen experts, observers and other stakeholders.