

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 1053/2013

of 7 October 2013

establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 70 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) The Schengen area without border control at internal borders relies on the effective and efficient application by the Member States of accompanying measures in the areas of external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters and drugs policies.

(2) By the Decision of the Executive Committee of 16 September 1998 ⁽²⁾ (SCH/Com-ex (98) 26 def) (hereinafter referred to as 'the Decision of 16 September 1998'), a Standing Committee on the evaluation and implementation of Schengen was set up. The Standing Committee was given the mandate, first, to establish whether all the preconditions for lifting border control at internal borders with a candidate State have been fulfilled and, second, to ensure that the Schengen *acquis* is properly applied by the States already implementing it in full.

(3) A specific evaluation and monitoring mechanism to verify application of the Schengen *acquis* is necessary given the need to ensure high uniform standards in its

application in practice and to maintain a high level of mutual trust between those Member States that form part of an area without border control at internal borders. Such a mechanism should build upon close cooperation between the Commission and those Member States.

(4) The Hague Programme ⁽³⁾ invited the Commission to submit, as soon as the abolition of controls at internal borders has been completed, a proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism, ensuring full involvement of Member States experts, and including unannounced inspections.

(5) The Stockholm Programme ⁽⁴⁾ considers that the evaluation of the Schengen area will continue to be of key importance and that it therefore should be improved by strengthening the role of the European Agency for the Management of Operational Cooperation at the External Borders of the European Union ('Frontex'), established by Council Regulation (EC) No 2007/2004 ⁽⁵⁾, in this field.

(6) The evaluation mechanism set up by the Decision of 16 September 1998 should therefore be revised and the Decision of 16 September 1998 be repealed.

(7) The experience gathered during previous evaluations demonstrates the need to maintain a coherent evaluation mechanism covering all areas of the Schengen *acquis* except those where a specific evaluation mechanism already exists under Union law.

⁽³⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁴⁾ OJ C 115, 4.5.2010, p. 1.

⁽⁵⁾ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

⁽¹⁾ Opinion of 12 June 2013 (not yet published in the Official Journal).

⁽²⁾ OJ L 239, 22.9.2000, p. 138.

- (8) In accordance with Article 70 of the Treaty on the Functioning of the European Union (TFEU), objective and impartial evaluation of the implementation of the Union policies within the area of freedom, security and justice should be conducted by Member States in collaboration with the Commission. To be efficient, a proper evaluation process should comprise a proper follow-up and monitoring of the evaluation reports which should be ensured by the Commission.
- (9) In addition, for the evaluation mechanism to be more efficient, uniform conditions for the implementation of this Regulation should be ensured. To that end, some implementing powers should be conferred on the Commission and others on the Council.
- (10) The powers to prepare and plan the evaluations and the power to adopt the evaluation reports should be conferred on the Commission. A number of those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁽¹⁾. In view of the terms of Article 2(2)(b)(iii) of that Regulation, the examination procedure is applicable for the adoption of such acts.
- (11) In order to strengthen mutual trust between the Member States, to ensure their better coordination at Union level and to reinforce peer pressure amongst them, the implementing power to adopt the recommendations for remedial action aimed at addressing any deficiencies identified in the evaluation reports, should be conferred on the Council. Such an implementing power mirrors the specific powers conferred on the Council, under Article 70 of the TFEU, in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice. It reflects adequately the purpose of an evaluation mechanism based on this *lex specialis*, which is, within this particular area, and in parallel with the general power of the Commission to oversee the application of Union law under the control of the Court of Justice of the European Union through infringement procedures, to fulfil a complementary function of monitoring the effectiveness of the practical implementation of Union policies through peer review.
- Moreover, such an implementing power conferred on the Council contributes to giving effect to the wish of the European Council, expressed in its conclusions of 23 and 24 June 2011, that cooperation in the Schengen area be further strengthened by enhancing mutual trust between the Member States, and that the Member States be responsible for guaranteeing that all Schengen rules are applied effectively in accordance with the agreed common standards and with fundamental principles and norms. Such implementing power also contributes, in accordance with the Council conclusions of 8 March 2012, to improving the governance of the Schengen area through political discussions at ministerial level on the correct functioning of the Schengen area, including discussions in situations where evaluation reports have shown serious shortcomings. Such discussions, taking place within the Mixed Committee made up of the EU Member States and the Schengen associated States, should assist the Council in taking decisions within the scope of its competences to ensure the efficient functioning of the Schengen area. Finally, conferring such implementing power on the Council adequately takes into account the potential politically-sensitive nature of recommendations, often touching on national executive and enforcement powers.
- (12) The evaluation mechanism should set up transparent, efficient and clear rules on the method to be applied for the evaluations, the use of highly qualified experts for on-site visits and the follow-up to the findings of the evaluations. In particular, the method should provide for unannounced on-site visits to supplement announced on-site visits, in particular with regard to border controls and visas.
- (13) The evaluation and monitoring mechanism should cover all aspects of the Schengen *acquis*. As regards the issue of borders, the evaluation and monitoring mechanism should cover both the efficiency of border controls at external borders and the absence of border controls at internal borders.
- (14) During the evaluation and monitoring particular attention to respect for fundamental rights in the application of the Schengen *acquis* should be paid.
- (15) The evaluation should guarantee that the Member States apply the Schengen rules effectively in accordance with fundamental principles and norms. Therefore the evaluation mechanism should encompass all relevant legislation and operational activities contributing to the functioning of an area without border control at internal borders.
- (16) In view of strengthening the effectiveness and reliability of the evaluation mechanism, the correct functioning of the authorities that apply the relevant parts of the Schengen *acquis* should be taken into account in all the evaluations. That will increase the ability of the evaluation mechanism to guarantee an effective application of the Schengen rules by Member States in accordance with fundamental principles and norms as

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

requested by the European Council in its conclusions of 23 and 24 June 2011. It will comply with the request of the European Council, set out in its conclusions of 1 and 2 March 2012, that the evaluation mechanism address the required functioning of the institutions involved in the application of the Schengen *acquis*.

- (17) Frontex should support the implementation of the evaluation mechanism, primarily in the area of risk analysis relating to external borders. The evaluation mechanism should also be able to rely on the expertise of Frontex's assistance on an *ad hoc* basis when carrying out on-site visits at the external borders.
- (18) Other Union bodies, offices and agencies, such as the European Police Office ('Europol'), established by Council Decision 2009/371/JHA ⁽¹⁾, and Eurojust, established by Council Decision 2002/187/JHA ⁽²⁾, should, where relevant, support the implementation of the evaluation mechanism in the areas covered by their mandate. The evaluation mechanism should also, where relevant, be able to rely on the expertise of Union bodies, offices or agencies when they assist in carrying out on-site visits relating to areas of the Schengen *acquis* that fall within their mandate. That should for instance be the case of the European Data Protection Supervisor as regards evaluations concerning data protection, in which national data protection authorities may also be involved.
- (19) Member States and the Commission should ensure that experts made available for on-site visits have the necessary experience and have undergone specific training for that purpose, including in respect of fundamental rights. Appropriate training should be provided by the relevant Union bodies, offices or agencies, such as Frontex, and funds should be made available to Member States for initiatives targeted at specific training in the field of evaluating the Schengen *acquis* from the existing financial instruments of the Union and by development of such instruments.
- (20) In view of the particular role entrusted to the European Parliament and to the national parliaments under the last sentence of Article 70 TFEU, as underlined in point (c) of Article 12 of the Treaty on European Union (TEU) as regards the national parliaments, it is necessary to provide that the Council and the Commission will fully inform the European Parliament and the national parliaments of the content and results of the evaluation. In addition, should the Commission submit a proposal to amend this Regulation, the Council would, in accordance with Article 19(7)(h) of its Rules of Procedure, consult

the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before adopting a final text.

- (21) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (22) The United Kingdom is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen *acquis* integrated into the framework of the Union, annexed to the TEU and to the TFEU, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽³⁾.
- (23) Ireland is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the TEU and to the TFEU, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾.
- (24) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽⁵⁾ which fall within the area referred to in Article 1 of Council Decision 1999/437/EC ⁽⁶⁾ on certain arrangements for the application of that Agreement.
- (25) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽⁷⁾ which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁸⁾.

⁽¹⁾ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

⁽²⁾ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

⁽³⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁴⁾ OJ L 64, 7.3.2002, p. 20.

⁽⁵⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁶⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁷⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁸⁾ OJ L 53, 27.2.2008, p. 1.

- (26) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾ which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽²⁾.
- (27) Since, at the date of entry into force of this Regulation, the evaluation of Cyprus will have already commenced under the Decision of 16 September 1998, this Regulation will not apply to Cyprus until 1 January 2016.
- (28) Given that the verification in accordance with the applicable Schengen evaluation procedures concerning Bulgaria and Romania has already been completed pursuant to Article 4(2) of the 2005 Act of Accession, the verification under Article 1(1)(b) of this Regulation will not be carried out in respect of those Member States.
- (29) Experts from Cyprus, Bulgaria, Romania and Croatia should nevertheless participate in the evaluation of all parts of the Schengen *acquis*,

HAS ADOPTED THIS REGULATION:

Article 1

Purpose and scope

1. This Regulation establishes an evaluation and monitoring mechanism, which serves the following purposes:
 - (a) to verify application of the Schengen *acquis* in the Member States to which it applies in full as well as in Member States to which, in accordance with the relevant Protocols annexed to the TEU and to the TFEU, the Schengen *acquis* applies in part;
 - (b) to verify that the necessary conditions for the application of all relevant parts of the Schengen *acquis* have been met in those Member States in respect of which a Council decision stating that the provisions of the Schengen *acquis* are to apply in full or in part has not been taken, with the exception of those Member States whose evaluation will already have been completed at the time of entry into force of this Regulation.
2. The verification referred to in paragraph 1(b) of this Article is without prejudice to the second paragraph of Article 23 as regards Member States in which the evaluation procedures have already commenced at 26 November 2013.

⁽¹⁾ OJ L 160, 18.6.2011, p. 21.

⁽²⁾ OJ L 160, 18.6.2011, p. 19.

3. Experts from the Member States which, in accordance with the relevant Act of Accession, do not yet fully apply the Schengen *acquis* shall nevertheless participate in the evaluation of all parts of the Schengen *acquis*.

Article 2

Definition

For the purpose of this Regulation, 'Schengen *acquis*' means the provisions integrated into the framework of the Union in accordance with Protocol No 19 annexed to the TEU and to the TFEU, together with the acts building upon them or otherwise related to them.

Article 3

Responsibilities

1. The Member States and the Commission shall be jointly responsible for the implementation of the evaluation and monitoring mechanism as specified in this Regulation, with the support of the Union bodies, offices and agencies involved in the implementation of the Schengen *acquis*.
2. The Commission shall have an overall coordination role in relation to establishing annual and multiannual evaluation programmes, drafting questionnaires and setting schedules of visits, conducting visits and drafting evaluation reports and recommendations. It shall also ensure the follow-up and monitoring of the evaluation reports and recommendations in accordance with Article 16.
3. The Member States and the Commission shall cooperate fully at all stages of evaluations in order to carry out the tasks entrusted to them under this Regulation.

Article 4

Evaluations

1. Evaluations may cover all aspects of the Schengen *acquis*, including the effective and efficient application by the Member States of accompanying measures in the areas of external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters, as well as the absence of border control at internal borders. All the evaluations should take into account the functioning of the authorities that apply the relevant parts of the Schengen *acquis*, as set out in this paragraph.
2. Evaluations may consist of questionnaires and of on-site visits which may be announced or unannounced. Announced on-site visits shall be preceded by a questionnaire. The on-site visits and questionnaires may, where appropriate, be used either independently or in combination in evaluating specific Member States and/or specific areas.
3. Both questionnaires and on-site visits may be supplemented by presentations by the evaluated Member State on the area covered by the evaluation.

Article 5

Multiannual evaluation programme

1. A multiannual evaluation programme covering a period of five years shall be established by the Commission, where appropriate after consulting Frontex and Europol, not later than six months before the beginning of the following five-year period. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 21(2). The Commission shall transmit the multiannual evaluation programme to the European Parliament and to the Council.

2. Each Member State shall be evaluated during each five-year period covered by the multiannual evaluation programme. The multiannual evaluation programme shall list the order of Member States to be evaluated each year. The order in which the Member States are to be evaluated shall take into account the time which has elapsed since the previous evaluation and the balance between the different parts of the Schengen *acquis* to be evaluated.

3. The multiannual evaluation programme may be adapted, where necessary, in accordance with the procedure referred to in paragraph 1.

4. The multiannual evaluation programme may contain a reference to thematic evaluations as referred to in Article 6(1)(b).

5. The first multiannual evaluation programme shall be established by 27 May 2014. The starting date of that programme shall be 27 November 2014 and the end date shall be 31 December 2019.

Article 6

Annual evaluation programme

1. The Commission shall establish an annual evaluation programme by 31 October of the year preceding that to which the programme relates, taking into account in particular the risk analyses provided by Frontex in accordance with Article 7 and, where appropriate, the information provided by Europol and other Union bodies, offices and agencies, in particular in accordance with Article 8.

The annual evaluation programme shall include proposals for the evaluation of:

- (a) the application of the Schengen *acquis* or parts thereof by one Member State, as specified in the multiannual evaluation programme; and
- (b) where relevant, the application of specific parts of the Schengen *acquis* across several Member States (i.e. thematic evaluations).

2. The Commission shall establish, by means of implementing acts, the first section of the annual evaluation programme, including a provisional time-schedule of the on-site visits. That section shall list the Member States to be evaluated in the following year in accordance with the multiannual evaluation programme, the areas to be evaluated and the on-site visits. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). The Commission shall transmit the annual evaluation programme to the European Parliament and to the Council.

3. The Commission shall draft and adopt the second section of the annual evaluation programme. That section shall list the unannounced on-site visits to be carried out in the following year. It shall be considered confidential and shall not be communicated.

4. The annual evaluation programme may be adapted, if necessary, in accordance with paragraphs 2 and 3.

5. The first annual evaluation programme shall be established by 27 May 2014. The starting date of that programme shall be 27 November 2014 and the end date shall be 31 December 2014.

Article 7

Frontex risk analyses

1. By 31 August each year, Frontex shall submit a risk analysis to the Commission and to the Member States in accordance with its mandate. Such risk analysis shall take into account, inter alia, illegal immigration and significant changes in the operational environment at the external borders, and shall include recommendations on the priorities for evaluations in the following year. The recommendations shall refer to specific sections of the external borders and to specific border crossing-points to be evaluated in the following year under the multiannual evaluation programme. The Commission shall transmit that risk analysis without delay to the European Parliament and to the Council.

2. By 31 August each year, Frontex shall submit to the Commission a separate risk analysis that is distinct from that referred to in paragraph 1, which shall include recommendations on the priorities for evaluations to be implemented in the form of unannounced on-site visits in the following year, irrespective of the order of Member States to be evaluated each year, as established in the multiannual evaluation programme in accordance with Article 5(2). Those recommendations may concern any region or specific area and shall contain a list of at least ten specific sections of the external borders and at least ten specific border crossing-points. The Commission may at any time request Frontex to submit to it a risk analysis making recommendations for evaluations to be implemented in the form of unannounced on-site visits.

3. The risk analyses, referred to in paragraphs 1 and 2, to be provided by Frontex shall be submitted for the first time to the Commission not later than 27 February 2014.

Article 8

Risk analyses by Union bodies, offices and agencies, other than Frontex

The Commission shall, where appropriate, request Union bodies, offices and agencies, other than Frontex, which are involved in the implementation of the Schengen *acquis* to carry out risk analyses, including on corruption and organised crime, in so far as these may undermine the application of the Schengen *acquis* by the Member States. Such analyses could be used for preparing the annual evaluation programmes.

Article 9

Questionnaire

1. The Commission shall, by means of implementing acts, establish and update a standard questionnaire in close cooperation with the Member States. Frontex and Europol may be consulted on the draft standard questionnaire. The standard questionnaire shall cover the relevant legislation, commonly agreed recommendations and best practices, in particular as stated in the Schengen catalogues, and the organisational and technical means available for the implementation of the Schengen *acquis* and available statistical data on each field of the evaluation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).

2. By 1 July each year, the Commission shall send the standard questionnaire to those Member States which are to be evaluated in the following year. The Member States shall provide the Commission with their replies to the questionnaire within eight weeks of communication of the questionnaire. The Commission shall make the replies available to the other Member States and shall inform the European Parliament of the replies. If so requested by the European Parliament, in particular as a result of the seriousness of the matter, the Commission shall, on a case-by-case basis and in accordance with the applicable rules on relations between the European Parliament and the Commission, also inform the European Parliament of the content of a specific reply.

Article 10

Teams responsible for on-site visits

1. A team responsible for on-site visits (the 'on-site team') shall consist of experts designated by Member States and of Commission representatives.

2. The Commission shall invite Member States to designate experts who are available for participation in the respective on-site visits, indicating their area of expertise.

In the case of announced on-site visits, the Commission shall, no later than three months before the on-site visit is scheduled to commence, invite Member States to designate experts. Member States shall designate experts within two weeks of receiving that invitation.

In the case of unannounced on-site visits, the Commission shall, no later than two weeks before the on-site visit is scheduled to commence, invite Member States to designate experts. Member States shall designate experts within 72 hours of receiving that invitation.

3. The maximum number of Commission representatives participating in an on-site visit shall be two. The maximum number of Member States' experts participating in an announced on-site visit shall be eight and six for an unannounced on-site visit.

If experts designated by Member States exceed the relevant maximum number set out in the first subparagraph, the Commission, after consulting the Member States concerned, shall appoint the members of the team on the basis of a geographical balance and the competences of the experts.

4. Member States' experts may not participate in an evaluation mission that includes an on-site visit to the Member State where they are employed.

5. The Commission may invite Frontex, Europol, or other Union bodies, offices or agencies involved in the implementation of the Schengen *acquis* to designate a representative to take part as an observer in an on-site visit concerning an area covered by their mandate.

6. The leading experts of an on-site team shall be a Commission representative and an expert from a Member State, who shall be appointed jointly by the members of that team as soon as possible after the team has been set up. The leading experts shall be appointed in due time before the detailed programme referred to in Article 13(2) is established.

Article 11

Teams responsible for evaluations on the basis of a questionnaire

1. Where a questionnaire is used independently, i.e. without being followed by an on-site visit as referred to in Article 4(2), the team responsible for evaluating the answers to the questionnaire (the 'questionnaire team') shall consist of experts from the Member States and of Commission representatives.

2. When sending out the questionnaire to the Member State to be evaluated, the Commission shall invite Member States to designate experts who are available to participate in the evaluation, indicating their area of expertise. Member States shall designate experts within two weeks of receiving that invitation. Experts shall be designated in accordance with Article 10(3) and (4).

Article 12

Experts

The experts participating in evaluations shall have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation mechanism, along with sound knowledge of evaluation principles, procedures and techniques, and shall be able to communicate effectively in a common language. To that end, the Member States and the Commission, in cooperation with relevant Union bodies, offices or agencies, shall ensure that experts receive appropriate training, including on respect for fundamental rights.

Article 13

Conduct of on-site visits

1. The on-site teams shall undertake all necessary preparatory activities in order to ensure the efficiency, accuracy and consistency of on-site visits.

2. The detailed programme for announced on-site visits shall be established by the Commission in close cooperation with the leading experts and the Member State concerned. The Member States shall be informed about that programme. The detailed programme for unannounced on-site visits shall be established by the Commission.

The Member State concerned shall be consulted and notified of the timetable and detailed programme:

- (a) at least six weeks before an announced on-site visit is due to take place;
- (b) at least 24 hours before an unannounced on-site visit takes place.

Unannounced on-site visits to the internal borders shall take place without prior notification to the Member State(s) concerned. General guidelines on practical arrangements for such visits shall be established by the Commission in close cooperation with the Member States.

3. The members of the on-site team shall each carry identification authorising them to conduct on-site visits in accordance with this Regulation.

4. The Member State to be evaluated shall ensure that the on-site team is able to exercise its mandate to verify the

activities in the areas to be evaluated. It shall, in particular, ensure that the on-site team can directly address relevant persons and has access to all areas, premises and documents required for the evaluation.

5. The Member State to be evaluated shall, by any means within its legal powers, assist the on-site team in performing its task.

6. In the case of announced on-site visits, the Commission shall provide in advance the names of the experts in the on-site team to the Member State to be evaluated. That Member State shall designate a contact point for making the practical arrangements for the on-site visit.

7. The Commission and the Member States shall be responsible for making the necessary travel arrangements to and from the Member State(s) to be evaluated for their respective experts participating in the on-site team. The travel and accommodation costs for experts participating in the on-site visits shall be reimbursed by the Commission.

The Member State(s) to be evaluated shall be responsible for making the necessary accommodation arrangements and for providing the necessary transport on location. For unannounced on-site visits, the Commission shall facilitate the accommodation arrangements for experts.

Article 14

Evaluation reports

1. An evaluation report shall be drawn up following each evaluation. The evaluation report shall be based on the findings of the on-site visit and the questionnaire, as appropriate. In case of on-site visits, the evaluation report shall be drawn up by the on-site team during the visit.

The Member States' experts and the Commission representatives shall take overall responsibility for drafting the evaluation report and ensuring its integrity and quality. In case of disagreement, the on-site team or the questionnaire team, as appropriate, shall endeavour to reach a compromise.

2. The evaluation report shall analyse the qualitative, quantitative, operational, administrative and organisational aspects, as appropriate, and shall list any deficiencies identified during the evaluation.

3. One of the following assessments shall be given to each finding in the evaluation report:

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

4. The Commission shall communicate the draft evaluation report to the evaluated Member State within six weeks of the on-site visit or of receipt of the reply to the questionnaire, as appropriate. The evaluated Member State shall provide its comments on the draft evaluation report within two weeks of its receipt. A drafting meeting shall be held at the request of the evaluated Member State. The comments of the evaluated Member State may be reflected in the draft evaluation report.

5. The draft evaluation report and the comments on it from the evaluated Member State shall be submitted by the Commission to the other Member States who shall be invited to comment on the reply to the questionnaire, the draft evaluation report and the comments of the evaluated Member State.

On that basis, the Commission, if necessary after making relevant changes to the draft evaluation report, shall adopt, by means of an implementing act, the evaluation report. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 21(2). The Commission shall transmit the evaluation report to the European Parliament.

Article 15

Recommendations

1. When drafting the evaluation report and in the light of the findings and the assessments contained in that evaluation report, Member States' experts and the Commission representatives shall draft recommendations for remedial action aimed at addressing any deficiencies identified during the evaluation and give an indication of the priorities for implementing them, as well as, where appropriate, examples of good practices.

2. The Commission shall submit a proposal to the Council to adopt the recommendations referred to in paragraph 1.

3. The Council shall adopt the recommendations referred to in paragraph 1 and shall transmit them to the European Parliament and to the national parliaments.

Article 16

Follow-up and monitoring

1. Within three months of adoption of the recommendations referred to in Article 15, the evaluated Member State shall provide the Commission and the Council with an action plan to remedy any deficiencies identified in the evaluation report. If the recommendations conclude that the evaluated Member State is seriously neglecting its obligations, that Member State shall provide its action plan within one month of adoption of those recommendations. The Commission shall transmit such action plan to the European Parliament.

2. After consulting the on-site team or the questionnaire team, as appropriate, the Commission shall present its assessment of the adequacy of the action plan to the Council within one month of receiving the action plan from the evaluated Member State. The other Member States shall be invited to comment on the action plan.

3. The evaluated Member State shall report to the Commission on the implementation of its action plan within six months of adoption of the recommendations and shall thereafter continue to report every three months until the action plan is fully implemented.

4. Notwithstanding the six-month period for reporting on the implementation of an action plan referred to in paragraph 3, if the recommendations conclude that the evaluated Member State is seriously neglecting its obligations, that Member State shall report on the implementation of its action plan within three months of adoption of the recommendations.

5. Depending on the seriousness of the deficiencies identified and the measures taken to remedy them, the Commission may schedule announced on-site revisits to verify implementation of the action plan. The Commission shall invite at least four experts who have participated in the on-site visit to participate in the revisit. The Commission may invite observers to participate in the revisit. The Commission shall establish the programme of the revisit. The evaluated Member State shall be notified of the programme at least one month before the revisit is due to take place. The Commission may also schedule unannounced on-site revisits.

6. The Commission shall inform the European Parliament and the Council on a regular basis about the implementation of the action plans or improvement measures referred to in this Article.

7. If an on-site visit reveals a serious deficiency deemed to constitute a serious threat to public policy or internal security within the area without internal border controls, the Commission, on its own initiative or at the request of the European Parliament or of a Member State, shall inform the European Parliament and the Council as soon as possible thereof.

8. Where the Member State has been found to be compliant, but where the recommendations contain indications for possible further improvements in accordance with Article 14(3)(b), the evaluated Member State shall provide to the Commission its assessment on a possible implementation of such indications within six months of adoption of the recommendations.

*Article 17***Sensitive information**

The members of the on-site teams and of the questionnaire teams shall regard as confidential any information they acquire in the course of performing their duties. The evaluation reports drawn up following on-site visits shall be classified as EU RESTRICTED/RESTREINT UE in accordance with applicable security rules. Classification shall not preclude information being made available to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament in accordance with this Regulation shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission. The Commission, after consulting the Member State concerned, shall decide which part of the evaluation report can be made public.

*Article 18***Conditions of participation of the United Kingdom and Ireland**

1. Experts of the United Kingdom and Ireland shall only participate in the evaluation of the part of the Schengen *acquis* in which those Member States have been authorised to participate.

2. The evaluations, as described in Article 4(1), shall only cover the effective and efficient application by the United Kingdom and Ireland of the part of the Schengen *acquis* in which those Member States have been authorised to participate.

3. The United Kingdom and Ireland shall only take part in the adoption of the recommendations by the Council, as provided for in Article 15(3), as regards the part of the Schengen *acquis* in which those Member States have been authorised to participate.

*Article 19***Information of the national parliaments**

The Commission shall inform the national parliaments of the content and results of the evaluation.

*Article 20***Reporting to the European Parliament and to the Council**

The Commission shall present a yearly comprehensive report to the European Parliament and to the Council on the evaluations carried out pursuant to this Regulation. That report shall be made public and shall include information on the evaluations carried out during the previous year, on the conclusions drawn

from each evaluation and on the state of play with regard to remedial action. The Commission shall forward that report to the national parliaments.

*Article 21***Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

*Article 22***Review**

The Commission shall undertake a review of the operation of this Regulation and submit a report to the Council within 6 months of the adoption of all evaluation reports regarding the evaluations covered by the first multiannual evaluation programme referred to in Article 5(5). Such review shall cover all the elements of this Regulation, including the functioning of the procedures for adopting acts under the evaluation mechanism. The Commission shall transmit that report to the European Parliament.

*Article 23***Transitional provisions and repeal**

Without prejudice to the second and third paragraphs of this Article, the Decision of 16 September 1998 is repealed with effect from 26 November 2013.

Part I of the Decision referred to in the first paragraph is to continue to apply until 1 January 2016 with respect to the evaluation procedures of Member States which have already commenced on 26 November 2013.

Part II of the Decision referred to in the first paragraph is to continue to apply until 27 November 2014 with respect to the evaluation procedures of Member States which have already commenced on 26 November 2013.

*Article 24***Entry into force**

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

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

Done at Luxembourg, 7 October 2013.

For the Council
The President
J. BERNATONIS

Statement from the European Parliament, the Council and the Commission

The European Parliament, the Council and the Commission welcome the adoption of the Regulation amending the Schengen Borders Code in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances and of the Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis. They believe that these new mechanisms address adequately the call of the European Council in its Conclusions of 24 June 2011 for an enhancement of the cooperation and the mutual trust between the Member States in the Schengen area and for an effective and reliable monitoring and evaluation system in order to ensure the enforcement of common rules and the strengthening, adaptation and extension of the criteria based on the EU acquis, while recalling that Europe's external borders must be effectively and consistently managed, on the basis of common responsibility, solidarity and practical cooperation.

They state that this amendment to the Schengen Borders Code will reinforce the coordination and cooperation at the level of the Union by providing on the one hand for criteria for any reintroduction of border controls by Member States and on the other hand for an EU-based mechanism to respond to truly critical situations where the overall functioning of the area without internal border controls is put at risk.

They underline that this new evaluation system is an EU-based mechanism and that it will cover all aspects of the Schengen acquis and involve experts from the Member States, the Commission and relevant EU agencies.

They understand that any future proposal from the Commission for amending this evaluation system would be submitted to the consultation of the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before the adoption of a final text.
