

IMPLEMENTING THE NEW SCHENGEN EVALUATION MECHANISM

I. Legal framework

The new evaluation mechanism is implemented according to the provisions of the *Council Regulation no. 1053/2013 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.*

1. Responsibilities

The Member States and the Commission are jointly responsible for the implementation of the evaluation and monitoring mechanism, with the support of the Union bodies, offices and agencies involved in the implementation of the Schengen *acquis*.

The Commission has an overall coordination role in establishing the annual and multiannual evaluation programmes, drafting questionnaires and establishing schedules of visits, conducting them and drafting evaluation reports and recommendations. In addition, the Commission ensures that the follow-up and monitoring of the evaluation reports and recommendations are carried out appropriately.

The Member States and the Commission cooperate fully at all stages of the evaluation, especially through participation in the evaluation teams, but also in the framework of the activities of the Committee for the implementation of the new evaluation mechanism - **Schengen Committee** (EU and associated Member states representatives), that assists the Commission in the process of implementing the new Schengen evaluation mechanism. So far, the Committee held 13 reunions, Romania being represented by the Ministry of Home Affairs / Schengen Directorate.

All the acts adopted by the Commission (implementing acts) have the approval of the Committee (opinion): the multiannual evaluation programme, the first section of the annual evaluation programme¹, the Schengen Questionnaire, the evaluation reports, the action plans to remedy any deficiencies. Also, the *Schengen Evaluation Guidelines* and the *General Guidelines on practical arrangements for the unannounced visits at the internal borders* were drafted and adopted with the Committee involvement.

2. Schengen evaluations. Evaluated fields

Evaluations may cover all aspects of the Schengen *acquis*, including the effective implementation of the accompanying measures in the fields of: *external borders, visa policy, Schengen Information System (SIS), data protection, police cooperation, return, as well as the absence of controls at internal borders*. During all the evaluations, the aspects related to the functioning of the authorities applying the Schengen *acquis* are taken into account.

Evaluations may consist of questionnaires and on-site visits, which may be **announced** or **unannounced**. The on-site visits are preceded by a questionnaire. According to the needs, the on-site visits and the questionnaire may be used either independently or in combination in evaluating specific Member States and/or specific areas.

The multiannual evaluation programme is set for a period of 5 years. The multiannual programme shall be established not later than 31 of October of the year preceding that to which the programme relates.

The programmes are adopted by the Commission, with the opinion of the Committee, and are sent to the European Parliament and EU Council.

¹ The second section of the annual programme (unannounced visits) is classified.

3. The stages of the Schengen evaluation process:

- Establishing the evaluation team (2 representatives of the Commission, maximum 8 Member State's experts for announced visits / 6 for unannounced visits, representatives of the European agencies with responsibilities in the evaluated field - FRONTEX, eu-LISA, EUROPOL); designation of the 2 coordination experts (leading experts) from the Commission, respectively the Member States;
- Establishing the evaluation programme / agenda by the Commission and the evaluated Member State (based also on FRONTEX and other agencies analyses).
- Conducting the on-site visits or the evaluations based on the questionnaire;
- Drafting the evaluation report and the recommendations during the visit, by the evaluation team:
 - ✓ **Evaluation report** – the findings must be included into the following categories: (a) compliant (especially best practices); (b) compliant, but improvement necessary; (c) non-compliant (incorrect /lack of application of the Schengen acquis);
 - ✓ **Recommendations for remedial action** of the deficiencies identified during the evaluation;
- Adopting the report by the Commission, with the opinion of the Committee (*Implementing Decision*);
- Adopting the recommendations by the Council, after discussions in the working group Schengen Matters Evaluation / Sch-Eval (*Implementing Decision*);
- Transmitting the recommendations to the European Parliament and national Parliaments;
- Follow-up activity:
 - elaborating and monitoring the Action Plan in order to remedy the deficiencies identified in the evaluation report;
 - informing the European Parliament and the Council regarding the implementation of the action plan or the improvement measures.

II. SCHENGEN EVALUATION

2014-2019 multiannual evaluation programme² sets the following timetable:

2015: Austria, Belgium, Nederland, Germany, Liechtenstein;
2016: Luxemburg, Croatia, Italia, Greece, France, Malta;
2017: Denmark, Island, Norway, Portugal, Spain, Sweden;
2018: Switzerland, Estonia, Finland, Latvia, Lithuania;
2019: Czech Republic, Slovakia, Slovenia, Poland, Hungary.

Besides the announced visits carried out in the scheduled states, in **2015** were carried out **8 unannounced visits** (5 in the field of external border management – Sweden, Spain, Hungary, Poland and Greece, 3 in the field of absence of controls at internal borders – France/Germany, Latvia/Lithuania, Switzerland/Italy).

Also, according to the rules applicable in the framework of the old mechanism, **2 evaluation visits in the field of SIS** were carried out: re-evaluation of Poland and evaluation of UK.

Until now, in **2016** the announced visits of Luxemburg, Italy and Croatia and **an unannounced visit** were carried out.

III. ROMANIA'S STATUS IN THE FRAMEWORK OF THE NEW SCHENGEN EVALUATION MECHANISM

1. General aspects

The evaluation process of Romania was carried out according to the provisions of the *SCH Executive Committee Decision/Com-ex (98) 26 regarding the establishment of the Permanent Committee for the evaluation and implementation of the Schengen Agreement* (abrogated) and article 4 (2) of the Romania's EU Accession Treaty.

² In 2014 no evaluation was carried out due to the fact that the Regulation no. 1053/2013 entered into force in November 2014.

The new legal framework (Regulation no.1053/2013) includes a special provision regarding the situation of Romania (and Bulgaria) - recital 28 and article 1, para 1(b), which stipulates that the states that have concluded the evaluations, but in respect to which a Council decision stating that the provisions of the Schengen *acquis* are to apply in full or in part, has not yet been taken, are excepted from implementing the provisions of this regulation.

Furthermore, the multiannual programme includes a special mention in this case, respectively the fact that Romania and Bulgaria will be included in the new Schengen evaluation cycle after the adoption of the Decision regarding the full implementation of the Schengen *acquis* in the two states.

2. Participating in the evaluation process

Romania's national contact point for all types of the Schengen evaluation is the Ministry of Home Affairs / Schengen Directorate.

Romania is one of the most active Member State to designate experts for the evaluation visits. So far, the rate of selection in the evaluation teams for the Romanian experts is 73%:

No.	Evaluation field	2015	Trim. I 2016	Total
1.	<i>Borders– air, sea, land</i>	7 / 6	6 / 5	85%
2.	<i>Return</i>	4 / 2	2 / 1	50%
3.	<i>Police cooperation</i>	5 / 4	2 / 2	86%
4.	<i>SIS</i>	6 / 4	2 / 1	63%
5.	<i>Data protection</i>	5 / 5	4 / 4	100%
6.	<i>Visa policy</i>	3 / 1	3 / 1	33%
7.	<i>Unannounced visits (external / internal borders)</i>	8 / 6	2 / 1	70%
TOTAL		38 / 28 74%	21 / 15 72%	73%

3. Schengen evaluators training

The national contact point for Schengen evaluators training is the Ministry of Home Affairs / Schengen Directorate.

Under the new mechanism, a special attention is paid to the training of the Schengen evaluators (including on respect for fundamental rights), in close cooperation with the relevant European agencies. The experts participating in the evaluation must have solid theoretical knowledge and practical experience in the areas covered by the evaluation mechanism, along with a sound knowledge of the evaluation principle, procedure and techniques.

The participation of the Romanian experts at trainings, so far, is:

- **Border management** (FRONTEX): 23 experts;
- **Police cooperation** (CEPOL): 2 experts;
- **SIS/SIRENE** (CEPOL): 3 experts;
- **return** (FRONTEX): 2 experts;
- **visa policy** (Commission, member states): 2 experts.