

Official Journal

of the European Union

L 295



English edition

Legislation

Volume 56

6 November 2013

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Price: EUR 3

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I

(Legislative acts)

REGULATIONS

**REGULATION (EU) No 1051/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 October 2013**

**amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary
reintroduction of border control at internal borders in exceptional circumstances**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European
Union, and in particular Article 77(1) and (2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

(1) The creation of an area in which the free movement of persons across internal borders is ensured is one of the main achievements of the Union. In an area without internal border control, it is necessary to have a common response to situations seriously affecting the public policy or internal security of that area, of parts thereof, or of one or more Member States, by allowing for the temporary reintroduction of internal border control in exceptional circumstances, but without jeopardising the principle of the free movement of persons. Given the impact that such measures of last resort may have on all persons having the right to move within the area without internal border control, the conditions and procedures for reintroducing such measures should be laid down, in order to ensure that they are exceptional and that the principle of proportionality is respected. The scope and duration of any temporary reintroduction of

such measures should be restricted to the bare minimum needed to respond to a serious threat to public policy or internal security.

(2) Free movement of persons within the area without internal border control is a key Union achievement. As free movement of persons is affected by the temporary reintroduction of internal border control, any decision to reintroduce such control should be taken in accordance with commonly agreed criteria and should be duly notified to the Commission or be recommended by a Union institution. In any case, the reintroduction of internal border control should remain an exception and should only be effected as a measure of last resort, for a strictly limited scope and period of time, based on specific objective criteria and on an assessment of its necessity which should be monitored at Union level. Where a serious threat to public policy or internal security requires immediate action, a Member State should be able to reintroduce border control at its internal borders for a period not exceeding ten days. Any prolongation of that period needs to be monitored at Union level.

(3) The necessity and proportionality of reintroducing internal border control should be balanced against the threat to public policy or internal security triggering the need for such reintroduction, as should alternative measures which could be taken at national or Union level, or both, and the impact of such control on the free movement of persons within the area without internal border control.

(4) The reintroduction of internal border control might exceptionally be necessary in the case of a serious threat to public policy or to internal security at the level of the area without internal border control or at national level, in particular following terrorist incidents or threats, or because of threats posed by organised crime.

⁽¹⁾ Position of the European Parliament of 12 June 2013 (not yet published in the Official Journal) and Decision of the Council of 7 October 2013.

- (5) Migration and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security.
- (6) In accordance with the case-law of the Court of Justice of the European Union, a derogation from the fundamental principle of free movement of persons must be interpreted strictly and the concept of public policy presupposes the existence of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
- (7) Based on the experience gathered with respect to the functioning of the area without internal border control and in order to help ensure the consistent implementation of the Schengen *acquis*, the Commission may draw up guidelines on the reintroduction of internal border control in cases which require such a measure on a temporary basis and in cases where immediate action is needed. Those guidelines should provide clear indicators to facilitate the assessment of the circumstances that could constitute serious threats to public policy or internal security.
- (8) Where serious deficiencies in the carrying out of external border control are identified in an evaluation report drawn up pursuant to Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* ⁽¹⁾ and with a view to ensuring compliance with the recommendations adopted pursuant to that Regulation, implementing powers should be conferred on the Commission to recommend that the evaluated Member State take specific measures, such as deploying European border guard teams, submitting strategic plans or, as a last resort and taking into account the seriousness of the situation, closing a specific border crossing-point. 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 ⁽²⁾. In view of the terms of Article 2(2)(b)(iii) of that Regulation, the examination procedure is applicable.
- (9) The temporary reintroduction of border control at certain internal borders under a specific Union-level procedure could also be justified in the case of exceptional circumstances and as a measure of last resort where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control identified in the context of a rigorous evaluation process in accordance with Articles 14 and 15 of Regulation (EU) No 1053/2013, where those circumstances would constitute a serious threat to public policy or internal security in that area or in parts thereof. Such a specific procedure for the temporary reintroduction of border control at certain internal borders could also be triggered, under the same conditions, as a result of the serious negligence by the evaluated Member State of its obligations. In view of the politically sensitive nature of such measures which touch on national executive and enforcement powers regarding internal border control, implementing powers to adopt recommendations under that specific Union-level procedure should be conferred on the Council, acting on a proposal from the Commission.
- (10) Before any recommendation on the temporary reintroduction of border control at certain internal borders is adopted, the possibility of resorting to measures aiming to address the underlying situation, including assistance by Union bodies, offices or agencies, such as the European Agency for the Management of Operational Cooperation at the External Borders ('Frontex'), established by Council Regulation (EC) No 2007/2004 ⁽³⁾, or the European Police Office ('Europol'), established by Council Decision 2009/371/JHA ⁽⁴⁾, and technical or financial support measures at national level, Union level, or both, should be fully explored in a timely manner. Where a serious deficiency is detected, the Commission may provide financial support measures to help the Member State concerned. Moreover, any Commission and Council recommendation should be based on substantiated information.
- (11) The Commission should have the possibility to adopt immediately applicable implementing acts where, in duly justified cases relating to the need to prolong border control at internal borders, imperative grounds of urgency so require.
- (12) The evaluation reports and the recommendations referred to in Articles 14 and 15 of Regulation (EU) No 1053/2013 should form the basis for the triggering of the specific measures in the case of serious deficiencies relating to external border control and of the specific procedure in case of exceptional circumstances putting the overall functioning of the area without internal border control at risk provided for in this Regulation. The Member States and the Commission jointly conduct regular, objective and impartial evaluations in order to verify the correct application of this Regulation and the Commission coordinates the evaluations in close cooperation with the Member States. The evaluation mechanism consists of the following elements: multi-annual and annual evaluation programmes, announced

⁽¹⁾ See page 27 of this Official Journal.

⁽²⁾ OJ L 55, 28.2.2011, p. 13.

⁽³⁾ 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).

⁽⁴⁾ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

and unannounced on-site visits carried out by a small team of Commission representatives and of experts designated by Member States, reports on the outcome of the evaluations adopted by the Commission and recommendations for remedial action adopted by the Council on a proposal from the Commission, appropriate follow-up, monitoring and reporting.

- (13) Since the objective of this Regulation, namely to provide for common rules on the temporary reintroduction of internal border control in exceptional circumstances, can only be achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (14) 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 therefore 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.
- (15) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which the United Kingdom does not take part, in accordance with 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*⁽¹⁾. The United Kingdom is therefore not taking part in adoption of this Regulation and is not bound by it or subject to its application.
- (16) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which Ireland does not take part, in accordance with 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*⁽²⁾. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (17) 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*⁽³⁾ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC⁽⁴⁾ on certain arrangements for the application of that Agreement.
- (18) 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*⁽⁵⁾ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁽⁶⁾.
- (19) 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*⁽⁷⁾ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁽⁸⁾.
- (20) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession.
- (21) As regards Bulgaria and Romania, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession.
- (22) As regards Croatia, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(2) of the 2011 Act of Accession.

⁽¹⁾ OJ L 131, 1.6.2000, p. 43.

⁽²⁾ OJ L 64, 7.3.2002, p. 20.

⁽³⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁵⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁶⁾ OJ L 53, 27.2.2008, p. 1.

⁽⁷⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁸⁾ OJ L 160, 18.6.2011, p. 19.

- (23) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the freedom of movement of persons and of residence. This Regulation must be implemented according to those rights and principles.
- (24) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁽¹⁾ should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 562/2006 is amended as follows:

- (1) in Title II, the following Chapter is added:

‘CHAPTER IVa

Specific measures in the case of serious deficiencies relating to external border control

Article 19a

Measures at external borders and support by the Agency

1. Where serious deficiencies in the carrying out of external border control are identified in an evaluation report drawn up pursuant to Article 14 of 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 with a view to ensuring compliance with the recommendations referred to in Article 15 of that Regulation, the Commission may recommend, by means of an implementing act, that the evaluated Member State take certain specific measures, which may include one or both of the following:

- (a) initiating the deployment of European border guard teams in accordance with Regulation (EC) No 2007/2004;
- (b) submitting its strategic plans, based on a risk assessment, including information on the deployment of personnel and equipment, to the Agency for its opinion thereon.

⁽¹⁾ OJ L 105, 13.4.2006, p. 1.

That implementing act shall be adopted in accordance with the examination procedure referred to in Article 33a(2).

2. The Commission shall inform the committee established pursuant to Article 33a(1) on a regular basis of the progress in the implementation of the measures referred to in paragraph 1 of this Article and on its impact on the deficiencies identified.

It shall also inform the European Parliament and the Council.

3. Where an evaluation report as referred to in paragraph 1 has concluded that the evaluated Member State is seriously neglecting its obligations and must therefore report on the implementation of the relevant action plan within three months in accordance with Article 16(4) of Regulation (EU) No 1053/2013, and where, following that three-month period, the Commission finds that the situation persists, it may trigger the application of the procedure provided for in Article 26 of this Regulation where all the conditions for doing so are fulfilled.

(*) OJ L 295, 6.11.2013, p. 27’;

- (2) Articles 23 to 27 are replaced by the following:

‘Article 23

General framework for the temporary reintroduction of border control at internal borders

1. Where, in the area without internal border control, there is a serious threat to public policy or internal security in a Member State, that Member State may exceptionally reintroduce border control at all or specific parts of its internal borders for a limited period of up to 30 days or for the foreseeable duration of the serious threat if its duration exceeds 30 days. The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat.

2. Border control at internal borders shall only be reintroduced as a last resort, and in accordance with Articles 24, 25 and 26. The criteria referred to, respectively, in Articles 23a and 26a shall be taken into account in each case where a decision on the reintroduction of border control at internal borders is considered pursuant, respectively, to Article 24, 25 or 26.

3. If the serious threat to public policy or internal security in the Member State concerned persists beyond

the period provided for in paragraph 1 of this Article, that Member State may prolong border control at its internal borders, taking account of the criteria referred to in Article 23a and in accordance with Article 24, on the same grounds as those referred to in paragraph 1 of this Article and, taking into account any new elements, for renewable periods of up to 30 days.

4. The total period during which border control is reintroduced at internal borders, including any prolongation provided for under paragraph 3 of this Article, shall not exceed six months. Where there are exceptional circumstances as referred to in Article 26, that total period may be extended to a maximum length of two years, in accordance with paragraph 1 of that Article.

Article 23a

Criteria for the temporary reintroduction of border control at internal borders

Where a Member State decides, as a last resort, on the temporary reintroduction of border control at one or more of its internal borders or at parts thereof, or decides to prolong such reintroduction, in accordance with Article 23 or Article 25(1), it shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security, and shall assess the proportionality of the measure in relation to that threat. In making such an assessment, the Member State shall, in particular, take the following into account:

- (a) the likely impact of any threats to its public policy or internal security, including following terrorist incidents or threats and including those posed by organised crime;
- (b) the likely impact of such a measure on free movement of persons within the area without internal border control.

Article 24

Procedure for the temporary reintroduction of border control at internal borders under Article 23(1)

1. Where a Member State plans to reintroduce border control at internal borders under Article 23(1), it shall notify the other Member States and the Commission at the latest four weeks before the planned reintroduction, or within a shorter period where the circumstances giving rise to the need to reintroduce border control at internal borders become known less than four weeks before the planned reintroduction. To that end, the Member State shall supply the following information:

- (a) the reasons for the proposed reintroduction, including all relevant data detailing the events that constitute a serious threat to its public policy or internal security;

- (b) the scope of the proposed reintroduction, specifying at which part or parts of the internal borders border control is to be reintroduced;

- (c) the names of the authorised crossing-points;

- (d) the date and duration of the planned reintroduction;

- (e) where appropriate, the measures to be taken by the other Member States.

A notification under the first subparagraph may also be submitted jointly by two or more Member States.

If necessary, the Commission may request additional information from the Member State(s) concerned.

2. The information referred to in paragraph 1 shall be submitted to the European Parliament and to the Council at the same time as it is notified to the other Member States and to the Commission pursuant to that paragraph.

3. Member States making a notification under paragraph 1 may, where necessary and in accordance with national law, decide to classify parts of the information.

Such classification shall not preclude information from being made available by the Commission to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament under this Article shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.

4. Following notification by a Member State under paragraph 1 of this Article and with a view to consultation provided for in paragraph 5 of this Article, the Commission or any other Member State may, without prejudice to Article 72 of the Treaty on the Functioning of the European Union, issue an opinion.

If, based on the information contained in the notification or on any additional information it has received, the Commission has concerns as regards the necessity or proportionality of the planned reintroduction of border control at internal borders, or if it considers that a consultation on some aspect of the notification would be appropriate, it shall issue an opinion to that effect.

5. The information referred to in paragraph 1 and any Commission or Member State opinion under paragraph 4 shall be the subject of consultation, including, where appropriate, joint meetings between the Member State planning to reintroduce border control at internal borders, the other Member States, especially those directly affected by such measures, and the Commission, with a view to organising, where appropriate, mutual cooperation between the Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border control and the threat to public policy or internal security.

6. The consultation referred to in paragraph 5 shall take place at least ten days before the date planned for the reintroduction of border control.

Article 25

Specific procedure for cases requiring immediate action

1. Where a serious threat to public policy or internal security in a Member State requires immediate action to be taken, the Member State concerned may, on an exceptional basis, immediately reintroduce border control at internal borders, for a limited period of up to ten days.

2. Where a Member State reintroduces border control at internal borders, it shall at the same time notify the other Member States and the Commission accordingly, and shall supply the information referred to in Article 24(1), including the reasons that justify the use of the procedure set out in this Article. The Commission may consult the other Member States immediately upon receipt of the notification.

3. If the serious threat to public policy or internal security persists beyond the period provided for in paragraph 1, the Member State may decide to prolong the border control at internal borders for renewable periods of up to 20 days. In doing so, the Member State concerned shall take into account the criteria referred to in Article 23a, including an updated assessment of the necessity and the proportionality of the measure, and shall take into account any new elements.

In the event of such a prolongation, the provisions of Article 24(4) and (5) shall apply *mutatis mutandis*, and the consultation shall take place without delay after the decision to prolong has been notified to the Commission and to the Member States.

4. Without prejudice to Article 23(4), the total period during which border control is reintroduced at internal

borders, on the basis of the initial period under paragraph 1 and any prolongations under paragraph 3, shall not exceed two months.

5. The Commission shall inform the European Parliament without delay of notifications made under this Article.

Article 26

Specific procedure where exceptional circumstances put the overall functioning of the area without internal border control at risk

1. In exceptional circumstances where the overall functioning of the area without internal border control is put at risk as a result of persistent serious deficiencies relating to external border control as referred to in Article 19a, and insofar as those circumstances constitute a serious threat to public policy or internal security within the area without internal border control or within parts thereof, border control at internal borders may be reintroduced in accordance with paragraph 2 of this Article for a period of up to six months. That period may be prolonged, no more than three times, for a further period of up to six months if the exceptional circumstances persist.

2. The Council may, as a last resort and as a measure to protect the common interests within the area without internal border control, where all other measures, in particular those referred to in Article 19a(1), are ineffective in mitigating the serious threat identified, recommend that one or more Member States decide to reintroduce border control at all or at specific parts of their internal borders. The Council's recommendation shall be based on a proposal from the Commission. The Member States may request the Commission to submit such a proposal to the Council for a recommendation.

In its recommendation, the Council shall at least indicate the information referred to in points (a) to (e) of Article 24(1).

The Council may recommend a prolongation in accordance with the conditions and procedure set out in this Article.

Before a Member State reintroduces border control at all or at specific parts of its internal borders under this paragraph, it shall notify the other Member States, the European Parliament and the Commission accordingly.

3. In the event that the recommendation referred to in paragraph 2 is not implemented by a Member State, that Member State shall without delay inform the Commission in writing of its reasons.

In such a case, the Commission shall present a report to the European Parliament and to the Council assessing the reasons provided by the Member State concerned and the consequences for protecting the common interests of the area without internal border control.

4. On duly justified grounds of urgency relating to situations where the circumstances giving rise to the need to prolong border control at internal borders in accordance with paragraph 2 become known less than 10 days before the end of the preceding reintroduction period, the Commission may adopt any necessary recommendations by means of immediately applicable implementing acts in accordance with the procedure referred to in Article 33a(3). Within 14 days of the adoption of such recommendations, the Commission shall submit to the Council a proposal for a recommendation in accordance with paragraph 2.

5. This Article shall be without prejudice to measures that may be adopted by the Member States in the event of a serious threat to public policy or internal security under Articles 23, 24 and 25.

Article 26a

Criteria for the temporary reintroduction of border control at internal borders where exceptional circumstances put the overall functioning of the area without internal border control at risk

1. Where, as a last resort, the Council recommends in accordance with Article 26(2) the temporary reintroduction of border control at one or more internal borders or at parts thereof, it shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security within the area without internal border control, and shall assess the proportionality of the measure in relation to that threat. That assessment shall be based on the detailed information submitted by the Member State(s) concerned and by the Commission and any other relevant information, including any information obtained pursuant to paragraph 2 of this Article. In making such an assessment, the following considerations shall in particular be taken into account:

(a) the availability of technical or financial support measures which could be or have been resorted to at national or Union level, or both, including assistance by Union bodies, offices or agencies, such as the Agency, the European Asylum Support Office, established by

Regulation (EU) No 439/2010 of the European Parliament and of the Council (*) or the European Police Office ("Europol"), established by Council Decision 2009/371/JHA (**), and the extent to which such measures are likely to adequately remedy the threat to public policy or internal security within the area without internal border control;

(b) the current and likely future impact of any serious deficiencies relating to external border control identified in the context of the evaluations carried out pursuant to Regulation (EU) No 1053/2013 and the extent to which such serious deficiencies constitute a serious threat to public policy or internal security within the area without internal border control;

(c) the likely impact of the reintroduction of border control on the free movement of persons within the area without internal border control.

2. Before adopting a proposal for a Council recommendation, in accordance with Article 26(2), the Commission may:

(a) request Member States, the Agency, Europol or other Union bodies, offices or agencies to provide it with further information;

(b) carry out on-site visits, with the support of experts from Member States and of the Agency, Europol or any other relevant Union body, office or agency, in order to obtain or verify information relevant for that recommendation.

Article 27

Informing the European Parliament and the Council

The Commission and the Member State(s) concerned shall inform the European Parliament and the Council as soon as possible of any reasons which might trigger the application of Articles 19a and 23 to 26a.

(*) OJ L 132, 29.5.2010, p. 11.

(**) OJ L 121, 15.5.2009, p. 37.;

(3) Articles 29 and 30 are replaced by the following:

'Article 29

Report on the reintroduction of border control at internal borders

Within four weeks of the lifting of border control at internal borders, the Member State which has carried out border control at internal borders shall present a report to the European Parliament, the Council and the Commission on the reintroduction of border control at internal borders, outlining, in particular, the initial assessment and the respect of the criteria referred to in Articles 23a, 25 and 26a, the operation of the checks, the practical cooperation with neighbouring Member States, the resulting impact on the free movement of persons, the effectiveness of the reintroduction of border control at internal borders, including an ex-post assessment of the proportionality of the reintroduction of border control.

The Commission may issue an opinion on that ex-post assessment of the temporary reintroduction of border control at one or more internal borders or at parts thereof.

The Commission shall present to the European Parliament and to the Council, at least annually, a report on the functioning of the area without internal border control. The report shall include a list of all decisions to reintroduce border control at internal borders taken during the relevant year.

Article 30

Informing the public

The Commission and the Member State concerned shall inform the public in a coordinated manner on a decision to reintroduce border control at internal borders and indicate in particular the start and end date of such a measure, unless there are overriding security reasons for not doing so.;

(4) the following article is inserted:

'Article 33a

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 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 (*).

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.

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

(*) OJ L 55, 28.2.2011, p. 13.;

(5) the following article is inserted:

'Article 37a

Evaluation mechanism

1. In accordance with the Treaty on the Functioning of the European Union and the Treaty on European Union and without prejudice to their provisions on infringement procedures, the implementation by each Member State of this Regulation shall be evaluated through an evaluation mechanism.

2. The rules on the evaluation mechanism are specified in Regulation (EU) No 1053/2013. In accordance with that evaluation mechanism, the Member States and the Commission are, jointly, to conduct regular, objective and impartial evaluations in order to verify the correct application of this Regulation and the Commission is to coordinate the evaluations in close cooperation with the Member States. Under that mechanism, every Member State is evaluated at least every five years by a small team consisting of Commission representatives and of experts designated by the Member States.

Evaluations may consist of announced or unannounced on-site visits at external or internal borders.

In accordance with that evaluation mechanism, the Commission is responsible for adopting the multiannual and annual evaluation programmes and the evaluation reports.

3. In the case of possible deficiencies recommendations for remedial action may be addressed to the Member States concerned.

Where serious deficiencies in the carrying out of external border control are identified in an evaluation report adopted by the Commission in accordance with Article 14 of Regulation (EU) No 1053/2013, Articles 19a and 26 of this Regulation shall apply.

4. The European Parliament and the Council shall be informed at all stages of the evaluation and be transmitted all the relevant documents, in accordance with the rules on classified documents.

5. The European Parliament shall be immediately and fully informed of any proposal to amend or to replace the rules laid down in Regulation (EU) No 1053/2013.;

Article 2

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 Strasbourg, 22 October 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
V. LEŠKEVIČIUS

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.

REGULATION (EU) No 1052/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 October 2013
establishing the European Border Surveillance System (Eurosur)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(d) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

(1) The establishment of a European Border Surveillance System ('EUROSUR') is necessary in order to strengthen the exchange of information and the operational cooperation between national authorities of Member States as well as with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Council Regulation (EC) No 2007/2004 ⁽²⁾ ('the Agency'). EUROSUR will provide those authorities and the Agency with the infrastructure and tools needed to improve their situational awareness and reaction capability at the external borders of the Member States of the Union ('external borders') for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.

(2) The practice of travelling in small and unseaworthy vessels has dramatically increased the number of migrants drowning at the southern maritime external borders. EUROSUR should considerably improve the operational and technical ability of the Agency and the Member States to detect such small vessels and to

improve the reaction capability of the Member States, thereby contributing to reducing the loss of lives of migrants.

(3) It is recognised in this Regulation that migratory routes are also taken by persons in need of international protection.

(4) Member States should establish national coordination centres to improve the exchange of information and the cooperation for border surveillance between them and with the Agency. It is essential for the proper functioning of EUROSUR that all national authorities with a responsibility for external border surveillance under national law cooperate via national coordination centres.

(5) This Regulation should not hinder Member States from making their national coordination centres also responsible for coordinating the exchange of information and for cooperation with regard to the surveillance of air borders and for checks at border crossing points.

(6) The Agency should improve the exchange of information and the cooperation with other Union bodies, offices and agencies, such as the European Maritime Safety Agency and the European Union Satellite Centre, in order to make best use of information, capabilities and systems which are already available at European level, such as the European Earth monitoring programme.

(7) This Regulation forms part of the European model of integrated border management of the external borders and of the Internal Security Strategy of the European Union. EUROSUR will also contribute to the development of the Common Information Sharing Environment (CISE) for the surveillance of the maritime domain of the Union providing a wider framework for maritime situational awareness through information exchange amongst public authorities across sectors in the Union.

(8) In order to ensure that the information contained in EUROSUR is as complete and updated as possible, in particular with regard to the situation in third countries, the Agency should cooperate with the European External Action Service. For those purposes, Union delegations and offices should provide all information which may be relevant for EUROSUR.

⁽¹⁾ Position of the European Parliament of 10 October 2013 (not yet published in the Official Journal) and decision of the Council of 22 October 2013.

⁽²⁾ 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).

- (9) The Agency should provide the necessary assistance for the development and operation of EUROSUR and, as appropriate, for the development of CISE, including the interoperability of systems, in particular by establishing, maintaining and coordinating the EUROSUR framework.
- (10) The Agency should be provided with the appropriate financial and human resources in order to adequately fulfil the additional tasks assigned to it under this Regulation.
- (11) This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 of the Treaty on European Union (TEU) and by the Charter of Fundamental Rights of the European Union, in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and to protection against removal and expulsion, non-refoulement, non-discrimination and the rights of the child. This Regulation should be applied by Member States and the Agency in accordance with those rights and principles.
- (12) In accordance with Regulation (EC) No 2007/2004, the Fundamental Rights Officer and the Consultative Forum established by that Regulation should have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency within the framework of EUROSUR.
- (13) Any exchange of personal data in the European situational picture and the common pre-frontier intelligence picture should constitute an exception. It should be conducted on the basis of existing national and Union law and should respect their specific data protection requirements. Directive 95/46/EC of the European Parliament and of the Council⁽¹⁾, Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽²⁾ and Council Framework Decision 2008/977/JHA⁽³⁾ are applicable in cases in which more specific instruments, such as Regulation (EC) No 2007/2004, do not provide a full data protection regime.
- (14) In order to implement a gradual geographical roll-out of EUROSUR, the obligation to designate and operate national coordination centres should apply in two successive stages: first to the Member States located at the southern and eastern external borders and, at a second stage, to the remaining Member States.
- (15) This Regulation includes provisions on cooperation with neighbouring third countries, because well-structured and permanent exchange of information and cooperation with those countries, in particular in the Mediterranean region, are key factors for achieving the objectives of EUROSUR. It is essential that any exchange of information and any cooperation between Member States and neighbouring third countries be carried out in full compliance with fundamental rights and in particular with the principle of non-refoulement.
- (16) This Regulation includes provisions on the possibility of close cooperation with Ireland and the United Kingdom which may assist in better achieving the objectives of EUROSUR.
- (17) The Agency and the Member States, when implementing this Regulation, should make the best possible use of existing capabilities in terms of human resources as well as technical equipment, both at Union and national level.
- (18) The Commission should regularly assess the results of the implementation of this Regulation to determine the extent to which the objectives of EUROSUR have been achieved.
- (19) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, 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.
- (20) This Regulation constitutes a development of the provisions of the *Schengen acquis* in which the United Kingdom does not take part, in accordance with

⁽¹⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

⁽²⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽³⁾ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

Council Decision 2000/365/EC ⁽¹⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(21) This Regulation constitutes a development of the provisions of the *Schengen acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽²⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(22) 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* ⁽³⁾ which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC ⁽⁴⁾. Norway should establish a national coordination centre in accordance with this Regulation as from 2 December 2013.

(23) As regards Switzerland, this Regulation constitutes a development of the provisions of the *Schengen acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the *Schengen acquis* ⁽⁵⁾ which fall within the area referred to in point A of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁶⁾.

(24) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the *Schengen acquis*

within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the *Schengen acquis* ⁽⁷⁾ which fall within the area referred to in point A of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽⁸⁾.

(25) The implementation of this Regulation does not affect the division of competence between the Union and the Member States or the obligations of Member States under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention Relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms and other relevant international instruments.

(26) The implementation of this Regulation does not affect Regulation (EC) No 562/2006 of the European Parliament and of the Council ⁽⁹⁾ or the rules for the surveillance of sea external borders in the context of operational cooperation coordinated by the Agency.

(27) Since the objective of this Regulation, namely to establish EUROSUR, cannot be sufficiently achieved by Member States alone but can rather, by virtue of its scale and effect, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

⁽¹⁾ 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* (OJ L 131, 1.6.2000, p. 43).

⁽²⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the *Schengen acquis* (OJ L 64, 7.3.2002, p. 20).

⁽³⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁴⁾ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the *Schengen acquis* (OJ L 176, 10.7.1999, p. 31).

⁽⁵⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁶⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the *Schengen acquis* (OJ L 53, 27.2.2008, p. 1).

⁽⁷⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁸⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the *Schengen acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

⁽⁹⁾ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a common framework for the exchange of information and for the cooperation between Member States and the Agency in order to improve situational awareness and to increase reaction capability at the external borders of the Member States of the Union ('external borders') for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants ('EUROSUR').

Article 2

Scope

1. This Regulation shall apply to the surveillance of external land and sea borders, including the monitoring, detection, identification, tracking, prevention and interception of unauthorised border crossings for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.

2. This Regulation may also apply to the surveillance of air borders as well as to checks at border crossing points if Member States voluntarily provide such information to EUROSUR.

3. This Regulation shall not apply to any legal or administrative measure taken once the responsible authorities of a Member State have intercepted cross-border criminal activities or unauthorised crossings by persons of the external borders.

4. Member States and the Agency shall comply with fundamental rights, in particular the principles of non-refoulement and respect for human dignity and data protection requirements, when applying this Regulation. They shall give priority to the special needs of children, unaccompanied minors, victims of human trafficking, persons in need of urgent medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) 'Agency' means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Regulation (EC) No 2007/2004;
- (b) 'situational awareness' means the ability to monitor, detect, identify, track and understand illegal cross-border activities in order to find reasoned grounds for reaction measures on the basis of combining new information with existing knowledge, and to be better able to reduce loss of lives of migrants at, along or in the proximity of, the external borders;
- (c) 'reaction capability' means the ability to perform actions aimed at countering illegal cross-border activities at, along or in the proximity of, the external borders, including the means and timelines to react adequately;
- (d) 'situational picture' means a graphical interface to present near-real-time data and information received from different authorities, sensors, platforms and other sources, which is shared across communication and information channels with other authorities in order to achieve situational awareness and support the reaction capability along the external borders and the pre-frontier area;
- (e) 'cross-border crime' means any serious crime with a cross-border dimension committed at, along or in the proximity of, the external borders;
- (f) 'external border section' means the whole or a part of the external land or sea border of a Member State, as defined by national law or as determined by the national coordination centre or any other responsible national authority;
- (g) 'pre-frontier area' means the geographical area beyond the external borders;
- (h) 'crisis situation' means any natural or man-made disaster, accident, humanitarian or political crisis or any other serious situation occurring at, along or in the proximity of, the external borders, which may have a significant impact on the control of the external borders;
- (i) 'incident' means a situation relating to illegal immigration, cross-border crime or a risk to the lives of migrants at, along or in the proximity of, the external borders.

TITLE II
FRAMEWORK

CHAPTER I

Components

Article 4

EUROSUR framework

1. For the exchange of information and for the cooperation in the field of border surveillance, and taking into account existing information exchange and cooperation mechanisms, Member States and the Agency shall use the EUROSUR framework, consisting of the following components:

- (a) national coordination centres;
- (b) national situational pictures;
- (c) a communication network;
- (d) a European situational picture;
- (e) a common pre-frontier intelligence picture;
- (f) a common application of surveillance tools.

2. The national coordination centres shall provide the Agency, via the communication network, with information from their national situational pictures which is required for the establishment and maintenance of the European situational picture and of the common pre-frontier intelligence picture.

3. The Agency shall give the national coordination centres, via the communication network, unlimited access to the European situational picture and to the common pre-frontier intelligence picture.

4. The components listed in paragraph 1 shall be established and maintained in line with the principles outlined in the Annex.

Article 5

National coordination centre

1. Each Member State shall designate, operate and maintain a national coordination centre which shall coordinate, and exchange information among, all authorities with a responsibility for external border surveillance at national level, as well as with the other national coordination centres and the Agency.

Each Member State shall notify the establishment of its national coordination centre to the Commission, which shall forthwith inform the other Member States and the Agency thereof.

2. Without prejudice to Article 17 and within the framework of EUROSUR, the national coordination centre shall be the single point of contact for the exchange of information and for the cooperation with other national coordination centres and with the Agency.

3. The national coordination centre shall:

- (a) ensure the timely exchange of information and timely cooperation between all national authorities with a responsibility for external border surveillance, as well as with other national coordination centres and the Agency;
- (b) ensure the timely exchange of information with search and rescue, law enforcement, asylum and immigration authorities at national level;
- (c) contribute to an effective and efficient management of resources and personnel;
- (d) establish and maintain the national situational picture in accordance with Article 9;
- (e) support the planning and implementation of national border surveillance activities;
- (f) coordinate the national border surveillance system, in accordance with national law;
- (g) contribute to regularly measuring the effects of national border surveillance activities for the purposes of this Regulation;
- (h) coordinate operational measures with other Member States, without prejudice to the competences of the Agency and of Member States.

4. The national coordination centre shall operate twenty-four hours a day and seven days a week.

Article 6

The Agency

1. The Agency shall:

- (a) establish and maintain the communication network for EUROSUR in accordance with Article 7;

- (b) establish and maintain the European situational picture in accordance with Article 10;
- (c) establish and maintain the common pre-frontier intelligence picture in accordance with Article 11;
- (d) coordinate the common application of surveillance tools in accordance with Article 12.

2. For the purposes of paragraph 1, the Agency shall operate twenty four hours a day and seven days a week.

Article 7

Communication network

1. The Agency shall establish and maintain a communication network in order to provide communication and analytical tools and allow for the exchange of non-classified sensitive and classified information in a secure manner and in near-real-time with, and among, the national coordination centres. The network shall be operational twenty four hours a day and seven days a week and shall allow for:

- (a) bilateral and multilateral information exchange in near-real-time;
- (b) audio and video conferencing;
- (c) secure handling, storing, transmission and processing of non-classified sensitive information;
- (d) secure handling, storing, transmission and processing of EU classified information up to the level of RESTREINT UE/EU RESTRICTED or equivalent national classification levels, ensuring that classified information is handled, stored, transmitted and processed in a separate and duly accredited part of the communication network.

2. The Agency shall provide technical support and ensure that the communication network is interoperable with any other relevant communication and information system managed by the Agency.

3. The Agency shall exchange, process and store non-classified sensitive and classified information in the communication network in accordance with Article 11d of Regulation (EC) No 2007/2004.

4. The national coordination centres shall exchange, process and store non-classified sensitive and classified information in the communication network in compliance with rules and

standards which are equivalent to those set out in the Rules of Procedure of the Commission ⁽¹⁾.

5. Member States' authorities, agencies and other bodies using the communication network shall ensure that equivalent security rules and standards as those applied by the Agency are complied with for the handling of classified information.

CHAPTER II

Situational awareness

Article 8

Situational pictures

1. The national situational pictures, the European situational picture and the common pre-frontier intelligence picture shall be produced through the collection, evaluation, collation, analysis, interpretation, generation, visualisation and dissemination of information.

2. The pictures referred to in paragraph 1 shall consist of the following layers:

- (a) an events layer;
- (b) an operational layer;
- (c) an analysis layer.

Article 9

National situational picture

1. The national coordination centre shall establish and maintain a national situational picture, in order to provide all authorities with responsibilities for the control and, in particular, surveillance of external borders at national level, with effective, accurate and timely information.

2. The national situational picture shall be composed of information collected from the following sources:

- (a) the national border surveillance system in accordance with national law;
- (b) stationary and mobile sensors operated by national authorities with a responsibility for external border surveillance;
- (c) patrols on border surveillance and other monitoring missions;
- (d) local, regional and other coordination centres;

⁽¹⁾ OJ L 308, 8.12.2000, p. 26.

(e) other relevant national authorities and systems, including liaison officers, operational centres and contact points;

(f) the Agency;

(g) national coordination centres in other Member States;

(h) authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 20;

(i) ship reporting systems in accordance with their respective legal bases;

(j) other relevant European and international organisations;

(k) other sources.

3. The events layer of the national situational picture shall consist of the following sub-layers:

(a) a sub-layer on unauthorised border crossings, including information available to the national coordination centre on incidents relating to a risk to the lives of migrants;

(b) a sub-layer on cross-border crime;

(c) a sub-layer on crisis situations;

(d) a sub-layer on other events, which contains information on unidentified and suspect vehicles, vessels and other craft and persons present at, along or in the proximity of, the external borders of the Member State concerned, as well as any other event which may have a significant impact on the control of the external borders.

4. The national coordination centre shall attribute a single indicative impact level, ranging from 'low' and 'medium' to 'high', to each incident in the events layer of the national situational picture. All incidents shall be shared with the Agency.

5. The operational layer of the national situational picture shall consist of the following sub-layers:

(a) a sub-layer on own assets, including military assets assisting a law enforcement mission, and operational areas, which contains information on the position, status and type of own assets and on the authorities involved. With regard to military assets assisting a law enforcement mission, the national coordination centre may decide, at the request of

the national authority responsible for such assets, to restrict access to such information on a need-to-know basis;

(b) a sub-layer on environmental information, which contains or gives access to information on terrain and weather conditions at the external borders of the Member State concerned.

6. The information on own assets in the operational layer shall be classified as RESTREINT UE/EU RESTRICTED.

7. The analysis layer of the national situational picture shall consist of the following sub-layers:

(a) an information sub-layer, which contains key developments and indicators which are relevant for the purposes of this Regulation;

(b) an analytical sub-layer, which includes analytical reports, risk rating trends, regional monitors and briefing notes which are relevant for the purposes of this Regulation;

(c) an intelligence sub-layer, which contains analysed information which is relevant for the purposes of this Regulation and, in particular, for the attribution of the impact levels to the external border sections;

(d) an imagery and geo-data sub-layer, which includes reference imagery, background maps, validation of analysed information and change analysis (Earth observation imagery), as well as change detection, geo-referenced data and external border permeability maps.

8. The information contained in the analysis layer and on environmental information in the operational layer of the national situational picture may be based on the information provided in the European situational picture and in the common pre-frontier intelligence picture.

9. The national coordination centres of neighbouring Member States shall share with each other, directly and in near-real-time, the situational picture of neighbouring external border sections relating to:

(a) incidents and other significant events contained in the events layer;

(b) tactical risk analysis reports as contained in the analysis layer.

10. The national coordination centres of neighbouring Member States may share with each other, directly and in near-real-time, the situational picture of neighbouring external border sections relating to the positions, status and type of own assets operating in the neighbouring external border sections as contained in the operational layer.

Article 10

European situational picture

1. The Agency shall establish and maintain a European situational picture in order to provide the national coordination centres with effective, accurate and timely information and analysis.

2. The European situational picture shall be composed of information collected from the following sources:

- (a) national situational pictures, to the extent required by this Article;
- (b) the Agency;
- (c) the Commission, providing strategic information on border control, including shortcomings in the carrying-out of external border control;
- (d) Union delegations and offices;
- (e) other relevant Union bodies, offices and agencies and international organisations as referred to in Article 18;
- (f) other sources.

3. The events layer of the European situational picture shall include information relating to:

- (a) incidents and other events contained in the events layer of the national situational picture;
- (b) incidents and other events contained in the common pre-frontier intelligence picture;
- (c) incidents in the operational area of a joint operation, pilot project or rapid intervention coordinated by the Agency.

4. In the European situational picture, the Agency shall take into account the impact level that was assigned to a specific incident in the national situational picture by the national coordination centre.

5. The operational layer of the European situational picture shall consist of the following sub-layers:

- (a) a sub-layer on own assets, which contains information on the position, time, status and type of assets participating in the Agency joint operations, pilot projects and rapid interventions or at the disposal of the Agency, and the deployment plan, including the area of operation, patrol schedules and communication codes;
- (b) a sub-layer on operations, which contains information on the joint operations, pilot projects and rapid interventions coordinated by the Agency, including the mission statement, location, status, duration, information on the Member States and other actors involved, daily and weekly situational reports, statistical data and information packages for the media;
- (c) a sub-layer on environmental information, which includes information on terrain and weather conditions at the external borders.

6. The information on own assets in the operational layer of the European situational picture shall be classified as RESTREINT UE/EU RESTRICTED.

7. The analysis layer of the European situational picture shall be structured in the same manner as that of the national situational picture set out in Article 9(7).

Article 11

Common pre-frontier intelligence picture

1. The Agency shall establish and maintain a common pre-frontier intelligence picture in order to provide the national coordination centres with effective, accurate and timely information and analysis on the pre-frontier area.

2. The common pre-frontier intelligence picture shall be composed of information collected from the following sources:

- (a) national coordination centres, including information and reports received from Member States' liaison officers via the competent national authorities;
- (b) Union delegations and offices;
- (c) the Agency, including information and reports provided by its liaison officers;
- (d) other relevant Union bodies, offices and agencies and international organisations as referred to in Article 18;

(e) authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 20, via the national coordination centres;

(f) other sources.

3. The common pre-frontier intelligence picture may contain information which is relevant for air border surveillance and checks at external border crossing points.

4. The events, operational and analysis layers of the common pre-frontier intelligence picture shall be structured in the same manner as those of the European situational picture set out in Article 10.

5. The Agency shall assign a single indicative impact level to each incident in the events layer of the common pre-frontier intelligence picture. The Agency shall inform the national coordination centres of any incident in the pre-frontier area.

Article 12

Common application of surveillance tools

1. The Agency shall coordinate the common application of surveillance tools in order to supply the national coordination centres and itself with surveillance information on the external borders and on the pre-frontier area on a regular, reliable and cost-efficient basis.

2. The Agency shall provide a national coordination centre, at its request, with information on the external borders of the requesting Member State and on the pre-frontier area which may be derived from:

(a) selective monitoring of designated third-country ports and coasts which have been identified through risk analysis and information as being embarkation or transit points for vessels or other craft used for illegal immigration or cross-border crime;

(b) tracking of vessels or other craft over high seas which are suspected of, or have been identified as, being used for illegal immigration or cross-border crime;

(c) monitoring of designated areas in the maritime domain in order to detect, identify and track vessels and other craft being used for, or suspected of being used for, illegal immigration or cross-border crime;

(d) environmental assessment of designated areas in the maritime domain and at the external land border in order to optimise monitoring and patrolling activities;

(e) selective monitoring of designated pre-frontier areas at the external borders which have been identified through risk analysis and information as being potential departure or transit areas for illegal immigration or cross-border crime.

3. The Agency shall provide the information referred to in paragraph 1 by combining and analysing data which may be collected from the following systems, sensors and platforms:

(a) ship reporting systems in accordance with their respective legal bases;

(b) satellite imagery;

(c) sensors mounted on any vehicle, vessel or other craft.

4. The Agency may refuse a request from a national coordination centre for technical, financial or operational reasons. The Agency shall notify the national coordination centre in due time of the reasons for such a refusal.

5. The Agency may use on its own initiative the surveillance tools referred to in paragraph 2 for collecting information which is relevant for the common pre-frontier intelligence picture.

Article 13

Processing of personal data

1. Where the national situational picture is used for the processing of personal data, those data shall be processed in accordance with Directive 95/46/EC, Framework Decision 2008/977/JHA and the relevant national provisions on data protection.

2. The European situational picture and the common pre-frontier intelligence picture may be used only for the processing of personal data concerning ship identification numbers.

Those data shall be processed in accordance with Article 11ca of Regulation (EC) No 2007/2004. They shall be processed only for the purposes of detecting, identifying and tracking vessels, as well as for the purposes referred to in Article 11c(3) of that Regulation. They shall automatically be deleted within seven days of receipt by the Agency or, where additional time is needed in order to track a vessel, within two months of receipt by the Agency.

CHAPTER III

Reaction capability

Article 14

Determination of external border sections

For the purposes of this Regulation, each Member State shall divide its external land and sea borders into border sections, and shall notify them to the Agency.

Article 15

Attribution of impact levels to external border sections

1. Based on the Agency's risk analysis and in agreement with the Member State concerned, the Agency shall attribute the following impact levels to each of the external land and sea border sections of Member States or change such levels:

- (a) low impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have an insignificant impact on border security;
- (b) medium impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have a moderate impact on border security;
- (c) high impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have a significant impact on border security.

2. The national coordination centre shall regularly assess whether there is a need to change the impact level of any of the border sections by taking into account the information contained in the national situational picture.

3. The Agency shall visualise the impact levels attributed to the external borders in the European situational picture.

Article 16

Reaction corresponding to impact levels

1. The Member States shall ensure that the surveillance activities carried out at the external border sections correspond to the attributed impact levels in the following manner:

- (a) where a low impact level is attributed to an external border section, the national authorities with a responsibility for external border surveillance shall organise regular surveillance on the basis of risk analysis and ensure that

sufficient personnel and resources are being kept in the border area in readiness for tracking, identification and interception;

- (b) where a medium impact level is attributed to an external border section, the national authorities with a responsibility for external border surveillance shall, in addition to the measures taken under point (a), ensure that appropriate surveillance measures are being taken at that border section. When such surveillance measures are taken, the national coordination centre shall be notified accordingly. The national coordination centre shall coordinate any support given in accordance with Article 5(3);

- (c) where a high impact level is attributed to an external border section, the Member State concerned shall, in addition to the measures taken under point (b), ensure, through the national coordination centre, that the national authorities operating at that border section are given the necessary support and that reinforced surveillance measures are taken. That Member State may request support from the Agency subject to the conditions for initiating joint operations or rapid interventions, as laid down in Regulation (EC) No 2007/2004.

2. The national coordination centre shall regularly inform the Agency of the measures taken at national level pursuant to point (c) of paragraph 1.

3. Where a medium or high impact level is attributed to an external border section which is adjacent to the border section of another Member State or of a country with which agreements or regional networks, as referred to in Articles 19 and 20, are in place, the national coordination centre shall contact the national coordination centre of the neighbouring Member State or the competent authority of the neighbouring country and shall endeavour to coordinate the necessary cross-border measures.

4. Where a Member State submits a request in accordance with point (c) of paragraph 1, the Agency, when responding to that request, may support that Member State in particular by:

- (a) giving priority treatment to the common application of surveillance tools;
- (b) coordinating the deployment of European Border Guard Teams in accordance with Regulation (EC) No 2007/2004;
- (c) ensuring the deployment of technical equipment at the disposal of the Agency in accordance with Regulation (EC) No 2007/2004;

(d) coordinating any additional support offered by other Member States.

5. The Agency shall, together with the Member State concerned, evaluate the attribution of impact levels and the corresponding measures taken at national and Union level in its risk analysis reports.

TITLE III

SPECIFIC AND FINAL PROVISIONS

Article 17

Allocation of tasks to other authorities in the Member States

1. Member States may charge regional, local, functional or other authorities which are in a position to take operational decisions, with ensuring situational awareness and reaction capability in their respective areas of competence, including the tasks and competences referred to in points (c), (e) and (f) of Article 5(3).

2. The decision of Member States to allocate tasks in accordance with paragraph 1 shall not affect the national coordination centre in its ability to cooperate and exchange information with other national coordination centres and the Agency.

3. In pre-defined cases, as determined at national level, the national coordination centre may authorise an authority referred to in paragraph 1 to communicate and exchange information with the regional authorities or the national coordination centre of another Member State or the competent authorities of a third country on condition that such authority regularly informs its own national coordination centre of such communication and information exchange.

Article 18

Cooperation of the Agency with third parties

1. The Agency shall make use of existing information, capabilities and systems available in other Union institutions, bodies, offices and agencies, and international organisations, within their respective legal frameworks.

2. In accordance with paragraph 1, the Agency shall cooperate in particular with the following Union institutions, bodies, offices and agencies, and international organisations:

(a) European Police Office (Europol) in order to exchange information on cross-border crime to be included in the European situational picture;

(b) the European Union Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency when providing the common application of surveillance tools;

(c) the Commission, the European External Action Service and Union bodies, offices and agencies including the European Asylum Support Office, which may provide the Agency with information that is relevant for maintaining the European situational picture and the common pre-frontier intelligence picture;

(d) international organisations which may provide the Agency with information relevant for maintaining the European situational picture and the common pre-frontier intelligence picture.

3. In accordance with paragraph 1, the Agency may cooperate with the Maritime Analysis and Operations Centre - Narcotics (MAOC-N) and the Centre de Coordination pour la lutte antidrogue en Méditerranée (CeCLAD-M) in order to exchange information on cross-border crime to be included in the European situational picture.

4. Information between the Agency and the Union bodies, offices and agencies, and international organisations, referred to in paragraphs 2 and 3, shall be exchanged via the communication network referred to in Article 7 or other communication networks which fulfil the criteria of availability, confidentiality and integrity.

5. The cooperation between the Agency and the Union bodies, offices and agencies, and international organisations, referred to in paragraphs 2 and 3, shall be regulated as part of working arrangements in accordance with Regulation (EC) No 2007/2004 and the respective legal basis of the Union body, office or agency, or international organisation, concerned. As regards the handling of classified information, those arrangements shall provide that the Union body, office or agency or international organisation concerned comply with security rules and standards equivalent to those applied by the Agency.

6. The Union bodies, offices and agencies, and international organisations, referred to in paragraphs 2 and 3, shall use information received in the context of EUROSUR only within the limits of their legal framework and in compliance with fundamental rights, including data protection requirements.

*Article 19***Cooperation with Ireland and the United Kingdom**

1. For the purposes of this Regulation, the exchange of information and the cooperation with Ireland and the United Kingdom may take place on the basis of bilateral or multilateral agreements between Ireland or the United Kingdom respectively and one or several neighbouring Member States or through regional networks based on those agreements. The national coordination centres of the Member States shall be the contact points for the exchange of information with the corresponding authorities of Ireland and the United Kingdom within EUROSUR. Once those agreements are concluded, they shall be notified to the Commission.

2. The agreements referred to in paragraph 1 shall be limited to the following exchange of information between the national coordination centre of a Member State and the corresponding authority of Ireland or the United Kingdom:

- (a) information contained in the national situational picture of a Member State to the extent transmitted to the Agency for the purposes of the European situational picture and the common pre-frontier intelligence picture;
- (b) information collected by Ireland and the United Kingdom which is relevant for the purposes of the European situational picture and the common pre-frontier intelligence picture;
- (c) information as referred to in Article 9(9).

3. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 1 shall not be shared with Ireland or the United Kingdom without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with Ireland or the United Kingdom.

4. Onward transmission or other communication of information exchanged under this Article to third countries or to third parties shall be prohibited.

5. The agreements referred to in paragraph 1 shall include provisions on the financial costs arising from the participation of Ireland and the United Kingdom in the implementation of those agreements.

*Article 20***Cooperation with neighbouring third countries**

1. For the purposes of this Regulation, Member States may exchange information and cooperate with one or several neighbouring third countries. Such exchange of information and such cooperation shall take place on the basis of bilateral or multilateral agreements or through regional networks established on

the basis of those agreements. The national coordination centres of the Member States shall be the contact points for the exchange of information with neighbouring third countries.

2. Before any agreement referred to in paragraph 1 is concluded, the Member States concerned shall notify the agreement to the Commission, which shall verify that its provisions which are relevant for EUROSUR comply with this Regulation. Once the agreement is concluded, the Member State concerned shall notify it to the Commission which shall inform the European Parliament, the Council and the Agency thereof.

3. The agreements referred to in paragraph 1 shall comply with the relevant Union and international law on fundamental rights and on international protection, including the Charter of Fundamental Rights of the European Union and the Convention Relating to the Status of Refugees, in particular the principle of non-refoulement.

4. Any exchange of personal data with third countries in the framework of EUROSUR shall be strictly limited to what is absolutely necessary for the purposes of this Regulation. It shall be carried out in accordance with Directive 95/46/EC, Framework Decision 2008/977/JHA and the relevant national provisions on data protection.

5. Any exchange of information under paragraph 1, which provides a third country with information that could be used to identify persons or groups of persons whose request for access to international protection is under examination or who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights, shall be prohibited.

6. Any exchange of information under paragraph 1 shall comply with the conditions of the bilateral and multilateral agreements concluded with neighbouring third countries.

7. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 1 shall not be shared with a third country under that agreement without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with the third country concerned.

8. Onward transmission or other communication of information exchanged under this Article to other third countries or to third parties shall be prohibited.

9. Any exchange of information with third countries acquired via the common application of surveillance tools shall be subject to the laws and rules governing those tools as well as to the relevant provisions of Directive 95/46/EC, Regulation (EC) No 45/2001 and Framework Decision 2008/977/JHA.

Article 21

Handbook

1. The Commission shall, in close cooperation with the Member States, the Agency and any other relevant Union body, office or agency, make available a practical handbook for the implementation and management of EUROSUR ('Handbook'). The Handbook shall provide technical and operational guidelines, recommendations and best practices, including on cooperation with third countries. The Commission shall adopt the Handbook in the form of a recommendation.

2. The Commission may decide, after consultation with Member States and the Agency, to classify parts of the Handbook as RESTREINT UE/EU RESTRICTED in compliance with the rules laid down in the Rules of Procedure of the Commission.

Article 22

Monitoring and evaluation

1. For the purposes of this Regulation, the Agency and the Member States shall ensure that procedures are in place to monitor the technical and operational functioning of EUROSUR against the objectives of achieving an adequate situational awareness and reaction capability at the external borders and respect for fundamental rights, including the principle of non-refoulement.

2. The Agency shall submit a report to the European Parliament and to the Council on the functioning of EUROSUR by 1 December 2015 and every two years thereafter.

3. The Commission shall provide an overall evaluation of EUROSUR to the European Parliament and the Council by 1 December 2016 and every four years thereafter. That evaluation shall include an assessment of the results achieved against the objectives set, of the continuing validity of the underlying rationale, of the application of this Regulation in the Member States and by the Agency and of the compliance with and impact on fundamental rights. It shall also include a cost benefit evaluation. That evaluation shall be accompanied, where necessary, by appropriate proposals to amend this Regulation.

4. Member States shall provide the Agency with the information necessary to draft the report referred to in paragraph 2.

The Agency shall provide the Commission with the information necessary to produce the evaluation referred to in paragraph 3.

Article 23

Amendments to Regulation (EC) No 2007/2004

Regulation (EC) No 2007/2004 is hereby amended as follows:

(1) in Article 2(1), point (i) is replaced by the following:

- (i) provide the necessary assistance for the development and operation of a European border surveillance system and, as appropriate, to the development of a common information-sharing environment, including interoperability of systems, in particular by establishing, maintaining and coordinating the EUROSUR framework in accordance with Regulation (EU) No 1052/2013 of the European Parliament and of the Council (*).

(*) Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (EUROSUR) (OJ L 295, 6.11.2013, p. 11).;

(2) the following Article is inserted:

*Article 11ca***Processing of personal data in the framework of EUROSUR**

The Agency may process personal data as set out in Article 13(2) of Regulation (EU) No 1052/2013, which shall be applied in accordance with the measures referred to in Article 11a of this Regulation. In particular, the processing of such data shall respect the principles of necessity and proportionality and the onward transmission or other communication of such personal data processed by the Agency to third countries shall be prohibited.'

Article 24

Entry into force and applicability

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

2. This Regulation shall apply from 2 December 2013.

3. Bulgaria, Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovenia, Slovakia and Finland shall establish a national coordination centre in accordance with Article 5 as from 2 December 2013.

The remaining Member States shall establish a national coordination centre in accordance with Article 5 as from 1 December 2014.

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

Done at Strasbourg, 22 October 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
V. LEŠKEVIČIUS

ANNEX

The following principles shall be taken into account when setting, operating and maintaining the different components of the EUROSUR framework:

- (a) Principle of communities of interest: the national coordination centres and the Agency shall form particular communities of interest for sharing information and for cooperation in the framework of EUROSUR. Communities of interest shall be used to organise different national coordination centres and the Agency to exchange information in pursuit of shared objectives, requirements and interests.
 - (b) Principles of consistent management and of using existing structures: the Agency shall ensure consistency between the different components of the EUROSUR framework, including by providing guidance and support to the national coordination centres and promoting the interoperability of information and technology. To the extent possible, the EUROSUR framework shall make use of existing systems and capabilities, in order to optimise the use of the general budget of the Union and to avoid duplication. In this context, EUROSUR shall be established in full compatibility with CISE, thereby contributing to and benefitting from a coordinated and cost-efficient approach to cross-sectoral information exchange in the Union.
 - (c) Principles of information sharing and of information assurance: information made available in the EUROSUR framework shall be available to all national coordination centres and the Agency, unless specific restrictions have been laid down or agreed. The national coordination centres shall ensure the availability, confidentiality and integrity of the information to be exchanged at national, European and international level. The Agency shall ensure the availability, confidentiality and integrity of the information to be exchanged at European and international level.
 - (d) Principles of service-orientation and of standardisation: the different EUROSUR capabilities shall be implemented using a service-oriented approach. The Agency shall ensure that, to the extent possible, the EUROSUR framework is based on internationally agreed standards.
 - (e) Principle of flexibility: organisation, information and technology shall be designed to enable the EUROSUR stakeholders to react to changing situations in a flexible and structured manner.
-

Statement by the Council

EUROSUR will contribute to improving the protection and the saving of lives of migrants. The Council recalls that search and rescue at sea is a competence of the Member States which they exercise in the framework of international conventions.

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.

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2985 Luxembourg
LUXEMBOURG

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