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Contents

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2022/922

of 9 June 2022

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

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 the Schengen *acquis*. That *acquis* comprises measures in the area of external borders, compensatory measures for the absence of controls at internal borders and a strong monitoring framework, which together strengthen free movement and ensure a high level of security, justice and protection of fundamental rights, including the protection of personal data.

(2) Peer-to-peer evaluation and monitoring of the application of the Schengen *acquis* have been core elements of the Schengen area since 1998 and contribute to maintaining a high level of accountability and ownership of results and to strengthening mutual trust among Member States.

(3) A specific Schengen evaluation and monitoring mechanism was established by Council Regulation (EU) No 1053/2013 ([2]) and became operational in 2015.

(4) In order to increase its effectiveness and efficiency, the Schengen evaluation and monitoring mechanism should be enhanced. The revised evaluation and monitoring mechanism should aim to maintain a high level of mutual trust among Member States by ensuring that Member States apply the Schengen *acquis* effectively in accordance with the agreed common standards, fundamental principles and norms, thereby contributing to a well-functioning Schengen area.

([1]) Opinion of 7 April 2022 (not yet published in the Official Journal).

([2]) Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).

(5) The evaluation and monitoring mechanism should achieve its goals through objective and impartial evaluations that are able to quickly identify deficiencies in the application of the Schengen *acquis* that could disrupt the correct functioning of the Schengen area, ensure that those deficiencies are swiftly addressed, and provide the basis for a dialogue on the functioning of the Schengen area as a whole. 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 is to be conducted by Member States in collaboration with the Commission. This requires close cooperation between the Member States and the Commission, a balanced distribution of shared responsibilities and the maintenance of the peer-review nature of the system. It also requires an enhanced role for the Council and the close involvement of the European Parliament. Given the extent of the changes to the evaluation and monitoring mechanism established by Regulation (EU) No 1053/2013, that Regulation should be repealed and replaced by a new Regulation.

(6) The evaluation and monitoring mechanism should be able to cover all areas of the Schengen *acquis* – present and future, in particular the management of the external borders, the absence of controls at internal borders, visa policy, return, large-scale information systems supporting the application of the Schengen *acquis*, police cooperation, judicial cooperation in criminal matters, and data protection – except those where a specific evaluation mechanism already exists under Union law. The evaluation and monitoring mechanism should encompass all relevant legislation and operational activities which are part of the Schengen *acquis* and which contribute to the functioning of Schengen area.

(7) The correct functioning of the authorities that apply the Schengen *acquis* should be taken into account in all the evaluations in line with the European Council conclusions of 1 and 2 March 2012. The evaluation should also cover the practices of private entities, such as airlines or external service providers, insofar as they are involved in or affected by the implementation of the Schengen *acquis* while cooperating with the Member States.

(8) Given the increasing role of Union bodies, offices and agencies in the implementation of the Schengen *acquis*, the evaluation and monitoring mechanism should support the verification of the activities of those Union bodies, offices and agencies insofar as they perform functions on behalf of the Member States to assist in the operational application of provisions of the Schengen *acquis*. Verification of those activities in this regard should be embedded into the evaluation of the Member States, reflected in the report and carried out without prejudice to and in a manner that fully respects the responsibilities of the Commission and the relevant governing bodies of the agencies, offices and bodies concerned under their establishing regulations and their own evaluation and monitoring procedures therein. Where evaluations identify deficiencies in relation to functions fulfilled or supported by Union bodies, offices and agencies, the Commission should inform their relevant governing bodies, as well as the Council and the European Parliament.

(9) Evaluation and monitoring activities should be targeted, taking into account the results of previous evaluations, risk analyses, new legislation, information obtained by the Commission in accordance with this Regulation and, if relevant, the results of national quality-control mechanisms. They should be supported through reinforced cooperation with Union bodies, offices and agencies participating in the implementation of the Schengen *acquis* in order to provide relevant information and expertise for the planning or conducting of evaluation or monitoring activities, through the systematic involvement of such bodies, offices and agencies in Schengen evaluations, including by nominating observers to participate in the evaluations, and through improved risk analyses and information sharing, including on corruption and organised crime insofar as these may undermine the application of the Schengen *acquis* by the Member States.

Such cooperation and involvement concern in particular the European Border and Coast Guard Agency (Frontex), governed by Regulation (EU) 2019/1896 of the European Parliament and of the Council ([3]), the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), established by Regulation (EU) 2018/1726 of the European Parliament and of the Council ([4]), the European Union Agency for Law Enforcement Cooperation (Europol), established by Regulation (EU) 2016/794 of

([3]) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

([4]) Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

the European Parliament and of the Council ([5]), the European Union Agency for Fundamental Rights (FRA), established by Council Regulation (EC) No 168/2007 ([6]), and the European Data Protection Supervisor, established by Regulation (EU) 2018/1725 of the European Parliament and of the Council ([7]).

The cooperation should also become more reciprocal, and the agencies should not only be contributors but also benefit from being involved in the evaluation and monitoring mechanism, thereby ensuring their enhanced operational response. In order to avoid any conflict of interest where the activities of a Union body, office or agency involved in the implementation of the Schengen *acquis*, insofar as they perform functions on behalf of the Member States to assist in the operational application of provisions of the Schengen *acquis*, are verified as part of the evaluation of a Member State, observers from a Union body, office or agency should not participate in the discussions on the findings related to the activity of that Union body, office or agency.

(10) The vulnerability assessment carried out by Frontex is a complementary mechanism to the evaluation and monitoring mechanism established by this Regulation for ensuring quality control at Union level and ensuring constant preparedness at both Union and national level to respond to any challenges at the external border. That vulnerability assessment should be taken into account in preparing the evaluation and monitoring activities, thus ensuring up-to-date situational awareness. Both mechanisms constitute a component of European integrated border management. Synergies between the vulnerability assessment and the evaluation and monitoring mechanism should be maximised with a view to establishing an improved situational picture of the functioning of the Schengen area, avoiding, to the extent possible, duplication of efforts and conflicting recommendations. For that purpose, regular exchange of information between Frontex and the Commission on the results of both mechanisms should take place. In order to increase the strategic focus and achieve a more targeted evaluation design, it is also necessary to further increase synergies with the relevant mechanisms and platforms operated by Union agencies and national administrations, such as the European Multidisciplinary Platform Against Criminal Threats (EMPACT), and with the oversight conducted by the Commission with the support of eu-LISA as regards the preparation of the Member States for the implementation of relevant IT systems as well as with the findings of the national quality-control mechanisms, if relevant.

(11) During the evaluation, particular attention should be paid to verifying respect for fundamental rights in the application of the Schengen *acquis*, in addition to the evaluation of the correct implementation and application of the data protection requirements of the Schengen *acquis* carried out by separate evaluations. To increase the capacity of the evaluation and monitoring mechanism to identify violations of fundamental rights in relevant policy areas, additional measures should be implemented. Schengen evaluators should be properly trained in this regard, relevant information from the FRA should be better utilised and its experts better involved in the design and implementation of evaluations. Furthermore, it should be possible for evidence which is made public or provided through independent monitoring mechanisms or by relevant third parties, such as ombudspersons, authorities monitoring respect for fundamental rights, and non-governmental and international organisations, at their own initiative, to be taken into account in the programming and design of evaluations. In the implementation of the evaluations, such as conducts of visits, the entities and third parties supporting the Member States should be understood as those which are legally or contractually linked to the latter, and allowed to perform certain tasks on their behalf in the application of the Schengen *acquis*. In preparing the evaluation reports, only information verified during the evaluation activity should be taken into account.

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

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

([6]) Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, 22.2.2007, p. 1).

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

(13) The forms of evaluations and methods should be made more flexible to increase the efficiency of the evaluation and monitoring mechanism and its capacity to adapt to new circumstances and legislative developments and to streamline the use of the resources of the Member States, Commission and the Union bodies, offices and agencies. Periodic evaluations through visits should be the primary means of evaluation. Unannounced evaluations and thematic evaluations should be used in a balanced way, on the basis of risk analyses, following the adoption of new legislation or on the basis of information obtained by the Commission in accordance with this Regulation. The forms of evaluation should be clearly defined. Depending on the policy area and the nature of the evaluation and monitoring activity, the evaluation and monitoring mechanism should allow for the evaluation of several Member States at the same time and, in exceptional cases, should make it possible to conduct entirely or partly remote evaluations and combine the evaluation of policy areas. Under the evaluation and monitoring mechanism, it should be possible to produce comprehensive Member State evaluation reports assessing the Member State's overall performance in the application of the Schengen *acquis*.

(14) Thematic evaluations should be used to provide an analysis of Member State practices in the implementation of the Schengen *acquis*. They should take place to assess the implementation of major legislative changes as they start to apply and of new initiatives, as well as to assess issues across policy areas or practices of Member States facing similar challenges.

(15) Unannounced visits should, depending on their purpose, take place with only short prior notification or without prior notification to the Member State concerned and be based on risk analyses or other relevant grounds, as appropriate. It should be possible to organise unannounced visits to evaluate the application of the Schengen *acquis* at internal borders, as well as the emerging or systemic problems that could potentially have a significant impact on the functioning of the Schengen area, or where there are grounds to consider that a Member State is seriously neglecting obligations under the Schengen *acquis*. Unannounced visits should normally take place with a prior notification of at least 24 hours. Unannounced visits without prior notification should take place to verify compliance with obligations under the Schengen *acquis*, in particular at internal borders and in response to substantiated indications as regards serious violations of fundamental rights in the application of the Schengen *acquis*. In such cases, prior notification would defeat the objective of the visit. It should be possible for unannounced visits concerning the evaluation of the application of the Schengen *acquis* applicable at internal borders to verify, in particular, the absence of border control at internal borders, including that the exercise of police powers or any other public powers exercised in the internal border area does not have an effect equivalent to border checks.

(16) Programming the activities carried out under this Regulation via multiannual and annual evaluation programmes has already proven its added value in ensuring predictability and certainty. Therefore, the Commission, in cooperation with the Member States, should adopt multiannual and annual evaluation programmes. Those programmes should also provide the necessary flexibility to be able to adapt to the dynamic nature of the Schengen *acquis* over time. In the event of *force majeure*, adjustments to those programmes should be made in agreement with the Member States concerned without the need for a formal amendment of the programmes. The multiannual evaluation programme, adopted for 7 years, should be able to identify, where relevant, specific priority areas, within the policy areas, to be covered by the periodic evaluations. This approach should allow for more flexibility, better prioritisation and a more balanced and strategic use of all tools available. The extension of the multiannual evaluation programme from 5 to 7 years should also lead to an increased, closer and more targeted monitoring of the Member States without reducing the level of scrutiny.

(17) Evaluation and monitoring activities should be carried out by teams consisting of Commission representatives and experts designated by Member States. Those representatives and experts should have appropriate qualifications, including solid theoretical knowledge and experience, and should have undertaken the relevant existing training. The Commission should ensure training courses for Schengen evaluators in all relevant policy areas, including fundamental rights components and the correct functioning of the authorities. The training received by an expert to become a Schengen evaluator should be able to allow for acknowledgment at national level of his or her skills, knowledge and abilities acquired during such training. If no training courses are available for a policy area, resulting in a lack of trained experts, an expert aspiring to become a Schengen evaluator should be able to accompany an evaluation mission as a trainee expert.

(18) In order to ensure the participation of a sufficient number of experienced experts in a faster and less burdensome way, a pool of experts should be established and maintained by the Commission in close cooperation with the Member States. The pool should be the primary source of experts for evaluation and monitoring activities. Each Member State should designate at least one expert per policy area in which it is evaluated, unless the designation would substantially affect the discharge of national tasks.

(19) More flexibility should be provided as regards the size of the evaluation and monitoring teams in order to increase the efficiency and to reduce administrative burden. Therefore, the Commission should define and adapt the size of the teams depending on the needs and challenges related to each evaluation and monitoring activity while maintaining the balance between the number of Commission representatives and Member State experts, in order to reflect the peer-to-peer and shared responsibility principles. A balance should be found between the principles of shared responsibility and predictability and the need for flexibility during the selection process of experts. When setting up the teams, therefore, the Commission should, to the extent possible, ensure geographical balance, a variety of profiles and rotation. Particular attention should be paid to the capacity of national administrations in order to ensure that the designation of experts in evaluation and monitoring activities does not constitute an excessive burden on the Member States or for the individual situation of experts. The experts invited for specific evaluations and their national authorities should respond positively to invitations; it should be possible to turn down an invitation only if duly justified on serious professional or personal grounds.

(20) The operational costs related to the evaluation and monitoring activities, such as travel, accommodation and food, should be covered by the Union budget. It should be possible for any additional daily allowances of national experts participating in evaluation and monitoring missions and the staff costs of those replacing those experts during their absence to be covered by the national programmes of the Member States under the relevant Union funds, in accordance with the objectives and applicable rules of those funds.

(21) Evaluation reports should be concise and succinct. They should focus on deficiencies with significant impact and highlight areas where significant improvements could be made. Minor findings should not form part of the reports. The team should nevertheless communicate those findings to the evaluated Member State at the end of the evaluation activity, including to the authorities responsible for the relevant national quality-control mechanism. The team should actively seek to identify best practices, which should be added to the reports. In particular, new and innovative measures that significantly improve the implementation of the common rules and that could be put into practice by other Member States should be highlighted as best practices for the purposes of the report.

(22) Evaluation reports should, as a rule, contain recommendations on how to remedy deficiencies identified, including fundamental rights violations, and be adopted in a single act by the Commission by means of an implementing act through the examination procedure in accordance with Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council ([8]) without delay. The consolidation of the report and recommendations within a single document and subject to a single adoption procedure reinforces the intrinsic connection between the evaluation findings and recommendations. In addition, the simultaneous publication of the report and recommendations should enable Member States to address the deficiencies faster and more efficiently. At the same time, the use of the examination procedure should ensure Member States' engagement in the decision-making process leading to the adoption of the recommendations.

(23) Nevertheless, in order to strengthen mutual trust among Member States, to ensure their better coordination at Union level and to reinforce peer pressure among them, the implementing power to adopt the recommendations for remedial actions in certain cases, as well as to close the action plans in certain cases, should be conferred on the Council given its political role in exerting such peer pressure. Such an implementing power is justified by the fact that specific powers were conferred on the Council, under Article 70 TFEU, in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice. It adequately reflects the purpose of an evaluation mechanism based on this *lex specialis*, which is, within this particular area, to fulfil a complementary function of monitoring the effectiveness of the practical implementation of Union policies through peer review.

([8]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.).

Therefore, the Council should adopt recommendations in cases of political importance and general interest for the functioning of the Schengen area. Such cases should be considered to arise where the evaluated Member State substantially contests the content of the draft evaluation report or the nature of a finding, thereby demonstrating that potential problems may have arisen during the evaluation. The same should apply where an evaluation concludes that there exists a serious deficiency, in cases of thematic evaluations, or in cases of first-time evaluations. Equally, as a part of its role in the monitoring phase of the evaluation and monitoring mechanism, the Council should adopt implementing decisions approving the closure of action plans in cases of serious deficiencies and first-time evaluations.

(24) In addition, where evaluations identify a serious deficiency, specific provisions should apply to ensure the prompt adoption of remedial measures. Given the risk posed by such deficiencies, as soon as the evaluated Member State has been informed about a serious deficiency, it should start immediately implementing actions to remedy the deficiency, including, where necessary, mobilising all appropriate operational and financial means. Remedial action should be subject to tighter time limits and closer political scrutiny and monitoring throughout the process. In this regard, the Commission should immediately inform the Council when an evaluation identifies a serious deficiency, including where a serious deficiency is deemed to constitute a risk to public policy or public security within the Schengen area. The Commission should send the report to the Council and the European Parliament and organise a revisit no later than 1 year after the date of the evaluation to verify whether the Member State has remedied the shortcomings concerned. The Commission should present a revisit report to the Council following the revisit.

(25) The identification of a serious deficiency requires a thorough case-by-case assessment on the basis of clear criteria regarding the nature, scale and potential impact of the problems, which may be different for each policy area. Different key elements for the effective implementation of the Schengen *acquis* and a different combination of factors could lead to the classification of a finding as a serious deficiency. However, if it is considered that a shortcoming identified could constitute a violation of fundamental rights or has, or could over time have, a significant negative impact on one or more Member States or on the functioning of the area without internal border control, such a shortcoming is to be regarded as a serious deficiency. Where a serious deficiency in the carrying out of external border control is identified in an evaluation report, Articles 21 and 29 of Regulation (EU) 2016/399 of the European Parliament and of the Council ([9]) may apply.

(26) The evaluation and monitoring mechanism should comprise a robust follow-up and monitoring component. That component should be ensured by the Commission, in close cooperation with the Council, and the European Parliament where relevant, without creating a disproportionate burden for the actors involved. Evaluations should be followed up with action plans. While drawing up the action plans, the evaluated Member States should fully take into consideration the funding possibilities provided by the Union and make the best use of those resources. To speed up the process, the Commission should provide reviews of the adequacy of the action plans, for example in the form of a letter. In order to ensure a timely follow-up, if the Commission services do not consider the action plan adequate, the Member State concerned should submit a revised action plan within 1 month of receipt of the review. The frequency of the follow-up reporting by the Member State to the Commission and the Council on the implementation of the action plans should, as a rule, be every 6 months. However, the Commission should be able to indicate a different reporting frequency, including reduced reporting frequency, for example in cases where the evaluation identified only 'improvement necessary' findings.

(27) As part of its monitoring activities, it should be possible for the Commission to organise revisits and verification visits. Revisits should be organised to monitor the progress of the implementation of an action plan following an evaluation that identified a serious deficiency or following a first-time evaluation that concluded that the evaluated Member State did not fulfil the necessary conditions to apply the Schengen *acquis* in the respective evaluated policy area. The revisit report should present the progress made to implement the recommendations and conclude whether the serious deficiency has been addressed. It should be possible for the report to be accompanied by recommendations, if necessary. As a means of exerting peer pressure, the Council should be able to express its position on the report and invite the Commission to propose recommendations.

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

(28) It should be possible to carry out verification visits to monitor the progress of the implementation of an action plan following an evaluation that did not identify a serious deficiency, where deemed necessary. Verification visits should always be organised before the closure of an action plan following an evaluation that identified a serious deficiency and a first-time evaluation. In terms of the organisational and reporting requirements, verification visits should be lighter than evaluation visits. In particular, they should comprise smaller teams and should not lead to new findings or require the adoption of a report. The Council should be more actively involved in the monitoring phase, should be informed by the Commission in writing, for example in the form of a letter, of the outcome of the verification visits and should approve the closure of action plans in cases of serious deficiencies and first-time evaluations, on the basis of a Commission proposal.

(29) It is essential that the European Parliament and the Council regularly hold discussions in order to raise awareness of the importance of the effective implementation of the Schengen *acquis* and encourage Member States to remedy the deficiencies identified, as appropriate. In particular, the Council should exercise its political role in relation to the governance of the Schengen area by discussing the reports submitted by the Commission and by holding political discussions concerning the effective implementation of the Schengen *acquis* and proper functioning of the area without internal border control. The Commission should provide adequate input to facilitate those discussions, including through the adoption of a comprehensive annual report covering the evaluations carried out during the previous year and the state of implementation of recommendations. On the basis of that report and those results, the Council should hold horizontal discussions in order to contribute to the more efficient and swifter implementation of the recommendations and their correlated remedial actions.

(30) The evaluation and monitoring mechanism established by this Regulation should fulfil a complementary function of monitoring the effectiveness of the practical implementation of Union policies through peer review. The general power of the Commission to oversee the application of Union law under the control of the Court of Justice of the European Union through infringement procedures should not be affected.

(31) The classification status of the evaluation and revisit reports should be 'sensitive non-classified' in accordance with the applicable security rules set out in Commission Decision (EU, Euratom) 2015/443 ([10]). They should be classified as 'RESTREINT UE/EU RESTRICTED' within the meaning of Commission Decision (EU, Euratom) 2015/444 ([11]), where such a classification is required pursuant to Article 5(3) of that Decision or following a justified request by the evaluated Member State.

(32) 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 Article 12, point (c), of the Treaty on European Union (TEU) as regards the national parliaments, the Council and the Commission should inform the European Parliament and the national parliaments of the content and results of the evaluations. In addition, if the Commission submits a proposal to amend this Regulation, the Council would, in accordance with Article 19(7), point (h), of its Rules of Procedure ([12]), consult the European Parliament in order to take into consideration its opinion, to the fullest extent possible, before adopting a final text.

(33) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 27 July 2021 ([13]).

(34) Regulation (EU) 2016/679 of the European Parliament and of the Council ([14]) applies to the processing of personal data by the Member States when carrying out their responsibilities under this Regulation. Regulation (EU) 2018/1725 applies to the processing of personal data by the institutions, bodies, offices and agencies of the Union when carrying out their responsibilities under this Regulation.

([10]) Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).
([11]) Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).
([12]) Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).
([13]) OJ C 337, 23.8.2021, p. 2.
([14]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(35) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to establish the multiannual and annual evaluation programmes, to establish and update a standard questionnaire and to adopt evaluation and revisit reports. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

(36) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to a serious deficiency, imperative grounds of urgency so require.

(37) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the TEU and 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 6 months after the Council has decided on this Regulation whether it will implement it in its national law.

(38) 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 the TFEU, and Article 6(2) of Council Decision 2002/192/EC ([15]).

(39) 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* ([16]) which fall within the areas referred to in Article 1 of Council Decision 1999/437/EC ([17]).

(40) 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* ([18]) which fall within the areas referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ([19]).

(41) 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* ([20]) which fall within the areas referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ([21]).

([15]) 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).

([16]) OJ L 176, 10.7.1999, p. 36.

([17]) 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).

([18]) OJ L 53, 27.2.2008, p. 52.

([19]) 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).

([20]) OJ L 160, 18.6.2011, p. 21.

([21]) 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).

(42) As regards Cyprus, Bulgaria and Romania, and Croatia, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.

(43) Given that the verification in accordance with the applicable Schengen evaluation procedures concerning Bulgaria, Romania and Croatia has already been completed pursuant to their respective Acts of Accession, the verification under Article 1(2), point (b), of this Regulation should not be relaunched in respect of those Member States,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation establishes an evaluation and monitoring mechanism for the purpose of ensuring that Member States apply the Schengen *acquis* effectively, efficiently and correctly, thereby contributing to maintaining mutual trust among Member States and a well-functioning area without internal border control.

2. The evaluation and monitoring mechanism established shall provide for objective and impartial evaluation and monitoring activities aimed at:

(a) verifying the application of the Schengen *acquis* in the Member States to which it applies in full as well as in Member States to which, in accordance with the relevant Protocols annexed to the TEU and to the TFEU, the Schengen *acquis* applies in part;

(b) verifying that the necessary conditions for the application of all relevant parts of the Schengen *acquis* have been met in those Member States in respect of which a Council decision stating that the provisions of the Schengen *acquis* are to apply in full or in part has not been taken, with the exception of those Member States whose evaluation will already have been completed at the time of entry into force of this Regulation.

3. Evaluations may cover all aspects of the Schengen *acquis* and take into account the functioning of the authorities that apply the Schengen *acquis*. Evaluations may cover in particular the following policy areas: management of the external borders, absence of controls at internal borders, visa policy, return, large-scale information systems supporting the application of the Schengen *acquis*, police cooperation, judicial cooperation in criminal matters and data protection.

Article 2

Definitions

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

(1) 'Schengen *acquis*' means the provisions integrated into the framework of the Union in accordance with Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the TEU and the TFEU, together with the acts building upon them or otherwise related to them;

(2) 'first-time evaluation' means an evaluation to verify whether a Member State bound by the Schengen *acquis* and for which internal border controls have not been lifted fulfils the conditions to apply the Schengen *acquis* in full or, in the case of a Member State not participating in the Schengen *acquis* and which has been authorised by the Council to apply parts of the Schengen *acquis*, to verify whether the Member State fulfils the conditions to apply the Schengen *acquis* in part;

(3) 'periodic evaluation' means an evaluation included in the multiannual evaluation programme and annual evaluation programmes to verify the application of the Schengen *acquis* by a Member State with a view to assessing the Member State's overall performance in the application of the Schengen *acquis;*

(4) 'unannounced evaluation' means an evaluation, not included in the multiannual and annual evaluation programmes, to verify the application of the Schengen *acquis* by one or more Member States in one or more policy areas;

(5) 'thematic evaluation' means an evaluation, included in the annual evaluation programme, aimed at providing an analysis of Member States' legislation or practices in the application of the Schengen *acquis*, or the application of its specific parts across several Member States;

(6) 'visit' means a visit to a Member State or to its consulates for the purpose of carrying out an evaluation or monitoring activity;

(7) 'revisit' means a supplementary visit following an evaluation that identified a serious deficiency or following a first-time evaluation that concluded that the evaluated Member State did not fulfil the necessary conditions to apply the Schengen *acquis;*

(8) 'verification visit' means a supplementary visit, other than a revisit, carried out to monitor the progress of the implementation of an action plan;

(9) 'non-compliant finding' means an assessment of a finding according to which national laws, regulations and administrative measures, or their implementation, do not comply with the legally binding provisions of the Schengen *acquis*;

(10) 'serious deficiency' means a general assessment of the situation attributed to one or more non-compliant findings which concern the effective application of the Schengen *acquis* and which, individually or in combination, risk to constitute a violation of fundamental rights or which have, or risk to have over time, a significant negative impact on one or more Member States or on the functioning of the area without internal border control;

(11) 'team' means a group comprising experts designated by Member States and Commission representatives who carry out evaluation and monitoring activities;

(12) 'observer' means an expert designated by a Union body, office or agency referred to in Article 7 participating in an evaluation or monitoring activity;

(13) 'trainee expert' means an expert designated by a Member State or a Commission representative to be trained to become a Schengen evaluator.

Article 3

Responsibilities and duty of cooperation

1. Member States and the Commission shall be jointly responsible for the implementation of the evaluation and monitoring mechanism, with the contribution of the relevant Union bodies, offices and agencies referred to in Article 7 in accordance with their respective mandates.

2. The Commission shall have an overall coordination role in relation to the establishment of the annual and multiannual evaluation programmes, the drafting of questionnaires, the setting of schedules of visits, the conducting of visits and the drafting of evaluation reports and recommendations. It shall also ensure that the follow-up and monitoring activities are carried out.

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

The Council shall carry out its political role in relation to the governance of the Schengen area by discussing the reports submitted by the Commission in accordance with Article 25, including on the state of play with regard to the implementation of action plans, and by holding political discussions concerning the effective implementation of the Schengen *acquis* and proper functioning of the area without internal border control. To this end, the Commission and the Council shall cooperate fully throughout all stages of the evaluation and monitoring mechanism carried out under this Regulation. In particular, the Commission shall provide the Council with relevant and timely information in relation to the programming and implementation of the evaluation and monitoring activities.

4. Member States and the Commission shall cooperate fully at all stages of evaluations in order to ensure the effective implementation of this Regulation.

5. Member States shall take all measures, general or particular, to support and assist the Commission and the teams in the implementation of evaluation and monitoring activities.

Member States shall ensure that the Commission and the teams carrying out evaluation and monitoring activities are able to perform their tasks effectively, in particular by allowing the Commission and the teams to address enquiries to relevant persons directly and by providing full and unimpeded access to all areas, premises and documents required for the evaluation or monitoring activity, including national and internal guidelines and instructions. Access to relevant classified information shall be granted to team members and observers having appropriate security clearance issued by a competent authority.

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

The Commission shall bear the travel and accommodation costs for experts participating in the visits and the trainee expert referred to in Article 16(2).

The visited Member State shall be responsible for providing the necessary transport on location, except for unannounced visits.

Article 4

Forms of evaluation

1. Evaluations may take any of the following forms:

(a) first-time evaluations;

(b) periodic evaluations;

(c) unannounced evaluations;

(d) thematic evaluations.

2. The Commission shall organise first-time evaluations following a Member State's declaration of readiness to be evaluated.

3. The Commission may organise unannounced evaluations, in particular:

(a) to evaluate the application of the Schengen *acquis* applicable at internal borders;

(b) when it becomes aware of emerging or systemic problems that could potentially have a significant negative impact on the functioning of the area without internal border control, including circumstances that would constitute a threat to public policy or internal security within that area;

(c) when it has grounds to consider that a Member State is seriously neglecting its obligations under the Schengen *acquis*, including when it has grounds to consider that there are serious violations of fundamental rights.

4. The Commission may organise thematic evaluations, in particular to assess the implementation of significant legislative changes as they start to apply and of new initiatives, or to assess issues across policy areas or practices of Member States facing similar challenges.

Article 5

Forms of monitoring activities

Monitoring activities may include any of the following:

(a) the review of action plans and follow-up reports submitted by the evaluated Member States;

(b) revisits;

(c) verification visits.

Article 6

Evaluation and monitoring methods

Evaluation and monitoring activities referred to in Articles 4 and 5 may be carried out by means of visits and questionnaires or, exceptionally, other remote methods.

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

Article 7

Cooperation with Union bodies, offices and agencies

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

The Commission may enter into arrangements with those Union bodies, offices and agencies to facilitate cooperation concerning the implementation of this Regulation.

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

The evaluated Member State may comment on the information provided under the first subparagraph.

Article 8

Cooperation with Frontex

1. By 31 August each year, Frontex shall submit to the Council, the Commission and the Member States a risk analysis for the purpose of establishing the annual evaluation programme referred to in Article 13.

The risk analysis referred to in the first subparagraph shall cover all relevant aspects related to European integrated border management and shall contain recommendations on specific sections of the external borders, specific border crossing points and specific sites relevant for evaluating compliance with Directive 2008/115/EC of the European Parliament and of the Council ([22]) in the Member States to be evaluated in the following year in accordance with the multiannual evaluation programme established pursuant to Article 12.

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

2. By 31 August each year, Frontex shall submit to the Commission a separate risk analysis containing recommendations for unannounced evaluations in the following year, irrespective of the order of Member States to be evaluated each year, in accordance with the multiannual evaluation programme established pursuant to Article 12.

The recommendations referred to in the first subparagraph may concern any region or specific area and shall contain a list of at least 10 specific sections of the external borders, at least 10 specific border crossing points and at least 10 specific sites relevant for evaluating compliance with Directive 2008/115/EC, as well as other relevant information.

Article 9

Cooperation with Europol

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

Article 10

Synergies with other evaluation and monitoring activities

1. The Commission shall use the results of relevant mechanisms and instruments, including evaluation and monitoring activities of Union bodies, offices and agencies which are participating in the implementation of the Schengen *acquis*, in particular the vulnerability assessment, and of the FRA, as well as of independent national monitoring mechanisms and bodies, in preparing the evaluation and monitoring activities, to improve awareness on the functioning of the area without internal border control and to avoid the duplication of efforts and conflicting measures. When available, the Commission may, in agreement with the evaluated Member State, use the results of national quality-control mechanisms.

2. Recommendations under this Regulation shall be complementary to recommendations made pursuant to Article 32(7) of Regulation (EU) 2019/1896 under the vulnerability assessment.

3. The Commission may share with relevant national and Union bodies, offices and agencies referred to in paragraph 1 in a secure and timely manner details of evaluation reports, action plans and updates on the implementation of the action plans.

The information sharing referred to in the first subparagraph shall take place in accordance with the mandates of the Union bodies, offices and agencies concerned.

Article 11

Information from third parties

Without prejudice to Article 20(1), in the programming and implementation of the evaluation and monitoring activities, the Commission may take into account information related to the implementation of the Schengen *acquis*, provided by third parties, including independent authorities, non-governmental organisations and international organisations.

The Commission shall inform the Member States of the information provided by third parties which it identifies as being relevant to the programming of evaluation and monitoring activities. Member States shall then have the opportunity to comment on the substance of that information.

CHAPTER II

PROGRAMMING

Article 12

Multiannual evaluation programme

1. The Commission, where appropriate after consulting the relevant Union bodies, offices and agencies referred to in Article 7, shall establish a multiannual evaluation programme covering a period of 7 years at least 8 months before the beginning of the following 7-year period.

In each multiannual evaluation cycle, each Member State shall undergo one periodic evaluation, and may undergo, where appropriate, one or more thematic or unannounced evaluations, on the basis of risk analyses, new legislation or information obtained by the Commission in accordance with Articles 7 to 11.

2. The Commission shall establish the multiannual evaluation programme by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 30(2).

The Commission shall transmit the multiannual evaluation programme to the European Parliament and to the Council.

3. The multiannual evaluation programme may identify, where relevant, specific priority areas within the policy areas referred to in Article 1(3) to be covered by the periodic evaluations and shall include a provisional time schedule of those evaluations.

The multiannual evaluation programme shall set out a provisional list of Member States to be subject to periodic evaluations, without prejudice to adjustments made under paragraph 4 of this Article, in a given year. The provisional order in which the Member States are to be subject to a periodic evaluation shall take into account the time which has elapsed since the previous periodic evaluation. It shall also take into account the outcome of previous evaluations, the pace of implementation of the action plans and other relevant information at the Commission's disposal, collected in accordance with Articles 7 to 11, as regards the practices of the Member States in the application of the Schengen *acquis*.

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

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

Article 13

Annual evaluation programme

1. The Commission shall establish, by means of an implementing act, an annual evaluation programme by 15 November of the year preceding that to which the programme relates. That annual evaluation programme shall be based on, in particular, the risk analyses and other information obtained by the Commission in accordance with Articles 7 to 11. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 30(2).

2. The annual evaluation programme shall include a provisional time schedule of the following evaluations:

(a) periodic evaluations of Member States as specified in the multiannual evaluation programme;

(b) first-time evaluations of a Member State;

(c) where appropriate, thematic evaluations, including their theme, the Member States to be evaluated and the intended methods.

3. The Commission shall transmit the annual evaluation programme to the European Parliament and to the Council without delay.

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

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

Article 14

Standard questionnaire

1. The Commission shall, by means of an implementing act, establish and update a standard questionnaire. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 30(2).

In drawing up the questionnaire, the Commission may consult the relevant Union bodies, offices and agencies referred to in Article 7.

2. The standard questionnaire shall cover the implementation of the relevant legislation as well as the organisational and technical means available for the implementation of the Schengen *acquis*, including those referred to in handbooks, the Schengen catalogues and relevant statistical data.

3. By 1 July each year, the Commission shall send the standard questionnaire to those Member States which are to undergo periodic evaluations in the following year in accordance with the annual evaluation programme.

Member States referred to in the first subparagraph shall provide the Commission with their replies by 31 October of the same year.

The Commission shall make the replies referred to in the second subparagraph available to the other Member States.

4. On the request of the Commission, the evaluated Member States shall update their replies to the standard questionnaire and answer, if requested, complementary questions before specific evaluations. Member States may also provide the findings of national quality-control mechanisms and internal audits, where relevant.

CHAPTER III

COMMON PROVISIONS FOR CONDUCTING EVALUATION AND MONITORING ACTIVITIES

Article 15

Team members and observers

1. The team members and observers participating in evaluation and monitoring activities shall have appropriate qualifications, including a solid theoretical knowledge and experience in the areas covered by the evaluation and monitoring mechanism, along with sound knowledge of evaluation principles, procedures and techniques, and shall be able to communicate effectively in a common language.

2. Experts from the Member States which, in accordance with the relevant Act of Accession, are bound by but do not yet fully apply the Schengen *acquis* shall participate in evaluation and monitoring activities of all parts of the Schengen *acquis*.

Article 16

Training of experts, observers and trainee experts

1. The Member States and the Commission, in cooperation with the relevant Union bodies, offices or agencies referred to in Article 7, shall ensure that Member State experts and Commission representatives receive adequate training to become Schengen evaluators.

The Commission shall ensure that training courses for Schengen evaluators are organised for all relevant policy areas and include the correct functioning of the authorities as well as fundamental rights components developed with the participation of the FRA.

The Commission, in close cooperation with the Member States and the relevant Union bodies, offices or agencies referred to in Article 7, shall keep up to date the initial training curricula and where needed provide follow-up and refresher training.

2. In duly justified cases, each team carrying out periodic evaluations may include one trainee expert either from a Member State or the Commission.

3. Observers shall have adequate training.

Article 17

Pool of Member State experts

1. The Commission, in cooperation with the Member States, shall establish every year a pool of experts whose professional backgrounds cover policy areas, or, where relevant, the specific priority areas set out in the multiannual evaluation programme.

2. In parallel to the establishment of the annual evaluation programme in accordance with Article 13(1), on the invitation of the Commission, Member States shall designate one or more qualified experts per policy area for the following year's pool of experts. Each Member State shall ensure that at least one designated expert per policy area is available during a calendar year. Member State may indicate the 6-month period in which a designated expert is available and preferences for a particular evaluation. The Commission shall take into account those preferences to the extent possible.

Member States shall not be required to designate experts in the areas in which, for objective reasons, they are not evaluated or, in exceptional situations, if the designation would substantially affect the discharge of national tasks. If a Member State invokes the latter, it shall provide in writing the reasons and information on the exceptional situation to the Commission.

Member States shall inform the Commission about the national contact point designated for the communication on the deployment of experts.

3. Depending on the evaluations included in the annual evaluation programme, the Commission shall further specify in the invitation the professional requirements for the experts to be designated.

4. Member States shall designate experts within 6 weeks of receiving the invitation referred to in paragraph 2.

5. Member States shall ensure that the experts designated fulfil the conditions referred to in Article 15 and the specific requirements set out in the invitation for establishing the pool of experts.

6. Experts who have received appropriate training as referred to in Article 16 shall be designated, where possible, for the pool of experts established for the year following that in which they received the relevant training course.

7. The Commission may invite the relevant Union bodies, offices and agencies referred to in Article 7 to designate observers for the pool of experts.

8. The Commission shall assess the experts designated and confirm the selection of the experts for the pool within 1 week of their designation. Within 1 month of the establishment of the pool of experts, the Commission shall inform the Member States about the selection of experts for the evaluations planned in the upcoming year, taking into account availability and preferences expressed for a particular evaluation.

9. Where none of the experts for the policy areas fulfils the requirements referred to in paragraph 3, the Commission shall invite the Member State concerned to designate a new expert for the policy area concerned.

10. Member States shall ensure that the designated experts are available for evaluations unless they are faced with an exceptional situation such as a situation that substantially affects the discharge of national tasks or a personal situation. If a Member State invokes such an exceptional situation, it shall provide, in writing, reasons and information on the situation to the Commission.

If an expert is no longer available for the pool, the Member State concerned shall designate a replacement within a reasonable amount of time.

11. The Commission shall keep the list of experts of the pool up to date and inform Member States about the number of experts and their profiles designated per Member State.

Article 18

Establishment of the teams

1. The Commission shall define the number of Member State experts and Commission representatives participating in a team on the basis of the particularities and needs of the evaluation or monitoring activity. The maximum number of Commission representatives participating in a team shall be two. The minimum number of Member State experts in a team participating in an announced visit or an unannounced visit shall be three. The Commission shall select experts from the pool of experts to become members of a team.

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

2. In selecting experts, the Commission shall have regard to the profiles needed for a particular evaluation or monitoring activity, taking account of the need to ensure geographical balance and balance as regards professional experience, as well as the capacity of national administrations.

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

3. The Commission shall invite the selected experts immediately after the date of the evaluation or monitoring activity is set and no later than 10 weeks before the evaluation or monitoring activity is scheduled to commence. Invited experts shall respond within 1 week of receiving the invitation, in agreement with their designating authorities.

Invitations referred to in the first subparagraph shall be sent via the designated national contact points.

4. In the case of unannounced visits, the Commission shall send the invitations via the designated national contact points no later than 2 weeks before the visit is scheduled to commence. Invited experts shall respond within 72 hours of receiving the invitation, in agreement with their designating authorities.

5. The Commission may invite the relevant Union bodies, offices and agencies referred to in Article 7 to designate a representative with relevant professional and field experience to take part as an observer in an evaluation or monitoring activity in an area covered by their mandate. The time limits set out in paragraphs 3 and 4 of this Article shall apply for the invitation and the response.

6. If a Member State wishes to designate a trainee expert referred to in Article 16(2), it shall communicate that to the Commission at least 6 weeks before the evaluation is scheduled to commence.

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

The trainee experts referred to in paragraph 6 shall not actively participate in the evaluation activity.

8. If the Commission fails to obtain confirmation of the participation of the required number of experts from the pool at least 6 weeks before the evaluation or monitoring activity is scheduled to commence, or at least 1 week before in the case of an unannounced visit, the Commission shall without delay invite all Member States to designate qualified experts from outside the pool for the missing places. Member States shall respond within 72 hours of receipt of that invitation.

9. The Commission shall designate a Commission lead expert and propose the Member State lead expert. The Member State lead expert shall be appointed by the members of the team as soon as possible after the team has been set up.

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

Article 19

Conduct of visits

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

2. The detailed programme for the visits in a Member State or in its consulates shall be established by the Commission in close cooperation with the lead experts and the Member State concerned.

The detailed programme referred to in the first subparagraph may include visits to and meetings with national authorities and bodies, as well as non-governmental and international organisations, other entities, agencies and bodies supporting the Member States in the implementation of the Schengen *acquis*.

3. For announced visits, the Commission shall consult and notify the Member State concerned of the timetable and detailed programme at least 6 weeks before the visit is due to take place. It shall provide in advance the names of the members of the team and the observers. The Member State concerned shall designate a contact point for making the practical arrangements for the visit.

4. Unannounced visits shall take place with prior notification of at least 24 hours to the Member State concerned. Unannounced visits to the internal borders shall take place without prior notification to the Member State concerned. Unannounced visits may take place without prior notification to the Member State concerned in cases where the Commission has substantiated grounds to consider that there are serious violations of fundamental rights in the application of the Schengen *acquis*. Verification visits may also take place without prior notification to the Member State concerned.

The Commission shall establish the detailed programme for unannounced visits. Where a Member State has been notified of an unannounced visit, the Commission may consult with the Member State concerned on the timetable and detailed programme.

Article 20

Evaluation reports and recommendations

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

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

The team shall take overall responsibility for drafting the evaluation report and ensuring its integrity and quality. In the event of a disagreement, the team shall endeavour to reach a compromise.

The Commission shall transmit the draft evaluation report containing the draft recommendations to the evaluated Member State within 4 weeks of the end of the evaluation activity. The evaluated Member State shall provide its comments on the draft evaluation report within 2 weeks of its receipt. A drafting meeting shall be held at the request of the evaluated Member State, no later than 5 working days from the receipt of the comments from the evaluated Member State. The comments of the evaluated Member State shall be reflected in the draft evaluation report where relevant.

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

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

(a) best practice;

(b) improvement necessary;

(c) non-compliant.

4. The Commission shall adopt the evaluation report by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 30(2). The evaluation report shall be adopted no later than 4 months after the end of the evaluation activity.

The evaluation report shall contain recommendations for remedial actions aimed at addressing the deficiencies and areas for improvement identified during the evaluation and give an indication of the priorities for implementing them. The evaluation report may set reasonable time limits established in cooperation with the Member State concerned for the implementation of recommendations. Where the evaluation identifies a serious deficiency, the specific provisions set out in Article 22 shall apply.

The Commission shall transmit the evaluation report to the European Parliament and the Council no later than 14 days after the report is adopted.

5. Where the evaluated Member State, within 10 working days from the drafting meeting, substantially contests the content of the draft evaluation report or the nature of a finding, the report to be adopted by the Commission shall be limited to findings and shall not contain recommendations. In such cases, and without prejudice to Article 22, the Commission shall submit, no later than 4 months after the end of the evaluation activity, a separate proposal to the Council for the adoption of recommendations by means of an implementing decision. The proposal may set reasonable time limits established in cooperation with the Member State for the implementation of recommendations and shall give an indication of priorities for implementing them.

The Council shall adopt the recommendations and shall transmit them to European Parliament and the national parliaments.

Article 21

Follow-up and monitoring

1. Within 2 months of the adoption by the Commission of the evaluation report including recommendations, pursuant to Article 20(4), or the adoption of the Council recommendations, pursuant to Article 20(5), the evaluated Member State shall submit to the Commission and the Council an action plan to implement all the recommendations. The other Member States shall be invited to comment on the action plan.

2. After consulting the team which has carried out the evaluation activity, the Commission shall provide the evaluated Member State with a review of the adequacy of the action plan within 1 month of its submission.

If the Commission does not consider that the action plan is adequate, the evaluated Member State shall submit a revised action plan within 1 month of the receipt of the review. The Commission shall also present the review of the action plan to the Council.

3. The evaluated Member State shall report to the Commission and the Council on the implementation of its action plan every 6 months from the date of notice of receipt of the review of the action plan until the Commission considers the action plan fully implemented. Depending on the nature of the deficiencies and the state of implementation of the recommendations, the Commission, in consultation with the evaluated Member State, may require of the evaluated Member State a different reporting frequency.

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

The Commission may carry out verification visits to monitor the progress of the implementation of the action plan.

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

CHAPTER IV

SERIOUS DEFICIENCY AND SPECIFIC FORMS OF EVALUATION

Article 22

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

1. At the end of the evaluation activity, the Commission and the Member State lead experts, on behalf of the team, shall inform in written form the evaluated Member State that a serious deficiency was identified. The Council shall also be informed without delay.

The evaluated Member State shall take immediate remedial actions including, where necessary, mobilising all appropriate operational and financial means. The evaluated Member State shall inform without delay the Commission and the other Member States about the immediate remedial actions taken or planned. In parallel, the Commission shall inform the relevant Union bodies, offices and agencies referred to in Article 7 of the serious deficiency with a view to their possibly providing support to the evaluated Member State.

2. The evaluation report drafted in accordance with Article 20(1), (2) and (3) shall include as a priority the findings that led to the determination of a serious deficiency. The title and the conclusion of the evaluation report shall clearly indicate that there is a serious deficiency or that there are serious deficiencies. It shall be accompanied by draft recommendations, including on immediate remedial actions. The Commission shall transmit the draft evaluation report to the evaluated Member State within 2 weeks of the end of the evaluation activity.

The evaluated Member State shall provide its comments on the draft evaluation report within 10 working days of its receipt. A drafting meeting shall be held at the request of the evaluated Member State, no later than 5 working days from the receipt of the comments from the evaluated Member State.

3. On duly justified imperative grounds of urgency relating to the serious deficiency, the Commission shall adopt the evaluation report no later than 6 weeks after the end of the evaluation activity by means of an immediately applicable implementing act in accordance with the procedure referred to in Article 30(3). The Commission shall transmit the evaluation report to the European Parliament.

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

Within 6 weeks of the adoption of the evaluation report, the Commission shall present to the Council the evaluation report together with a proposal for recommendations for remedial actions aimed at addressing the serious deficiency identified during the evaluation and an indication of the priorities for implementing them.

The Council shall adopt recommendations within 1 month of receipt of the proposal.

The Council shall transmit the recommendations to the European Parliament and to the national parliaments.

The Council shall set proportionate time limits for the implementation of the recommendations related to a serious deficiency and specify the frequency of the reporting by the evaluated Member State to the Commission and the Council on the implementation of its action plan.

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

The Council shall urgently discuss the matter, and shall strive to adopt, on the basis of a proposal from the Commission, by means of an implementing act, recommendations setting out appropriate measures to remedy or limit the impact of the serious deficiency on public policy or internal security within the area without internal border control, or the systematic fundamental rights violation within 2 weeks of receipt of the proposal. The Council decision setting out the recommendations shall be without prejudice to Article 29 of Regulation (EU) 2016/399 and Article 42(1) of Regulation (EU) 2019/1896.

The Council shall transmit the recommendations to the European Parliament.

6. The evaluated Member State shall submit to the Commission and the Council its action plan within 1 month of the adoption of the recommendations. The other Member States shall be invited to comment on the action plan. The Commission shall transmit the action plan to the European Parliament.

After consulting the team which has carried out the evaluation activity, the Commission shall provide the evaluated Member State with a review of the adequacy of the action plan within 2 weeks from its submission. If the Commission does not consider that the action plan is adequate, the evaluated Member State shall submit a revised action plan within 2 weeks of the receipt of the review.

The Commission shall present the review of the action plan to the Council and transmit it to the European Parliament.

The evaluated Member State shall report to the Commission and the Council on the implementation of its action plan until the Commission considers the action plan fully implemented.

7. To verify the progress made in the implementation of the recommendations related to the serious deficiency, the Commission shall organise a revisit that is to take place no later than 1 year from the date of the evaluation activity.

The team shall draft a revisit report in accordance with Article 20(1) assessing the progress made in the implementation of the Council recommendations and concluding whether the serious deficiency has been addressed.

The Commission shall adopt, by means of an implementing act, a revisit report. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 30(2). The Commission shall submit the revisit report to the Council.

8. The Council may express its position on the revisit report and may, where appropriate, invite the Commission to submit a proposal for recommendations for remedial actions aimed at addressing the persisting serious deficiency identified in the revisit report. In such cases, paragraphs 6 and 7 shall apply.

9. Where the Commission considers that the action plan can be closed, it shall organise a verification visit and inform the Council on the outcome of the verification visit. The Commission shall also inform the European Parliament that the action plan can be closed.

The Council shall, on the basis of the Commission proposal, while taking into account the outcome of the verification visit, adopt an implementing decision approving the closure of the action plan.

Article 23

Specific provisions for first-time evaluations

1. In light of the findings, the evaluation report following a first-time evaluation drafted in accordance with Article 20(1) to (4) shall be accompanied by draft recommendations for remedial actions.

The Commission shall submit a proposal to the Council to adopt the recommendations concerned no later than 4 months after the end of the evaluation activity.

2. The Council shall adopt recommendations. It may set time limits for the implementation of specific recommendations.

The Council shall transmit the recommendations to the European Parliament and to the national parliaments.

3. The evaluated Member State shall submit to the Commission and the Council an action plan to implement all the recommendations.

After consulting the team which has carried out the evaluation activity, the Commission shall provide the evaluated Member State with a review of the adequacy of the action plan within 1 month of its submission.

If the Commission does not consider that the action plan is adequate, the evaluated Member State shall submit a revised action plan.

The evaluated Member State shall report to the Commission and the Council on the implementation of the action plan every 6 months from the date of notice of receipt of the review.

4. Where the evaluation report concludes that the evaluated Member State does not fulfil the conditions necessary to apply the Schengen *acquis*, the Commission shall organise one or more revisits.

The team shall draft a revisit report in accordance with Article 20(1) to (4) assessing the progress made in the implementation of the Council recommendations.

The Commission shall adopt, by means of an implementing act, the revisit report. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 30(2). The Commission shall submit the revisit report and a proposal for Council recommendations, if appropriate, to the Council for adoption by means of an implementing decision.

5. When considering that the action plan can be closed, the Commission shall organise a verification visit before the closure of the action plan.

The Commission shall inform the European Parliament and the Council of the outcome of the verification visit. The Commission shall inform the European Parliament and the Council that the action plan can be closed.

The Council shall, on the basis of the Commission proposal and taking into account the outcome of the verification visit, adopt an implementing decision approving the closure of the action plan.

6. Member States for which a Council decision stating that the provisions of the Schengen *acquis* are to apply in full has been adopted shall be evaluated in accordance with Article 1(2), point (a), no later than 1 year from the date of the full application of the Schengen *acquis* in that Member State. The annual evaluation programme shall be updated to this end.

Article 24

Specific provision for thematic evaluations

Article 23(1), (2) and (3) shall apply to thematic evaluations.

If the thematic evaluation identifies a serious deficiency, Article 22 shall apply.

CHAPTER V

SCHENGEN GOVERNANCE AND FINAL PROVISIONS

Article 25

Reporting to the European Parliament and to the Council

The Commission shall submit annually to the European Parliament and to the Council a comprehensive report on the evaluations carried out pursuant to this Regulation during the previous year. That report shall be made public.

The report referred to in the first paragraph shall include information on the evaluations carried out during the previous year, on the functioning of the pool of experts, including the availability of Member State experts, on the conclusions drawn from those evaluations and on the state of play with regard to remedial actions taken by the Member States. That report shall, on the basis of the results of the evaluation and monitoring activities carried out pursuant to this Regulation, identify common issues, best practices and innovative solutions in order to improve the implementation of the Schengen *acquis*. The report shall take into account synergies with other monitoring tools and mechanisms in order to increase awareness about the functioning of the area without internal border control.

The Commission shall transmit the report referred to in the first paragraph to the national parliaments without delay. The Council shall discuss the report, considering the contribution of the evaluations to the functioning of the area without internal border control.

The Commission shall inform the European Parliament and the Council at least twice a year about the state of play with regard to the implementation of action plans drawn up by the Member States. In particular, the Commission shall provide information on its reviews of the adequacy of action plans and on the outcome of revisits and verification visits, as well as its observations where it considers that there has been a considerable lack of progress in the implementation of an action plan.

Article 26

Schengen Evaluation Guide

The Commission, in close cooperation with the Member States, shall establish and, if necessary, update guidelines on, in particular:

(a) training responsibilities of experts, the Commission representatives and observers;

(b) preparatory activities for evaluations;

(c) conducting visits, including unannounced visits;

(d) conducting evaluation and monitoring activities, including by questionnaire or, exceptionally, by other remote methods;

(e) drafting process and the inclusion of documentary and digital material in evaluation reports;

(f) follow-up procedure, in particular regarding revisits and verification visits;

(g) synergies with other evaluation and monitoring activities;

(h) logistics and financial issues relating to the organisation of evaluation and monitoring activities;

(i) the verification of the activities of the Union bodies, offices and agencies insofar as they perform functions on behalf of the Member States to assist in the operational application of provisions of the Schengen *acquis*.

Article 27

Review

The Commission shall undertake a review of the application 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 adopted in accordance with this Regulation. That review shall cover all the elements of this Regulation, including the functioning of the procedures for adopting acts under the evaluation mechanism. The Commission shall submit the report to the European Parliament without delay.

Article 28

Sensitive information

1. The team members, observers and trainee experts shall regard as confidential any information they acquire in the course of performing their duties.

2. The classification status of the reports shall be 'sensitive non-classified' in accordance with Decision (EU, Euratom) 2015/443. They shall be classified as 'RESTREINT UE/EU RESTRICTED' within the meaning of Decision (EU, Euratom) 2015/444, where such a classification is required pursuant to Article 5(3) of that Decision or following a justified request by the evaluated Member State.

The Commission, after consulting the Member State concerned, shall decide which part of the evaluation report can be made public.

3. The transmission and handling of classified information and documents for the purposes of this Regulation shall take place in compliance with the applicable security rules. Such rules shall not preclude information being made available to the European Parliament and to the relevant Union bodies, offices and agencies referred to in Article 7.

Article 29

Conditions for the participation of Ireland

1. Experts of Ireland shall only participate in the evaluation of the part of the Schengen *acquis* in which Ireland has been authorised to participate.

2. The evaluations shall only cover the effective and efficient application by Ireland of the part of the Schengen *acquis* in which it has been authorised to participate.

3. Ireland shall only take part in the adoption of the recommendations by the Council as regards the part of the Schengen *acquis* in which it has been authorised to participate.

Article 30

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 Article 5(4), third subparagraph, 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.

Article 31

Transitional provisions

1. The first multiannual evaluation programme and the first annual evaluation programme under this Regulation shall be established by 1 December 2022 and shall start on 1 February 2023.

The first multiannual evaluation programme under this Regulation shall take into account the evaluations already carried out under the second multiannual programme adopted under Regulation (EU) No 1053/2013 and shall be drawn up as a continuation of that programme.

2. The standard questionnaire adopted under Regulation (EU) No 1053/2013 shall be used until the standard questionnaire provided for under Article 14 of this Regulation has been established.

3. For evaluations carried out before 1 February 2023, the adoption of evaluation reports and recommendations shall be carried out in accordance with Regulation (EU) No 1053/2013. The follow-up and monitoring activities of such evaluations, starting with the submission of the action plans, shall be carried out in accordance with this Regulation.

Article 32

Repeal

Regulation (EU) No 1053/2013 is repealed with effect from 1 October 2022, with the exception of the provisions concerning the adoption of the evaluation reports and recommendations, which shall apply until the evaluation reports and recommendations referred to in Article 31(3) of this Regulation are adopted.

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

Article 33

Entry into force and application

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

It shall apply from 1 October 2022.

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

Done at Luxembourg, 9 June 2022.

For the Council
The President
É. DUPOND-MORETTI

ANNEX

Correlation table

Regulation (EU) No 1053/2013	This Regulation
Article 1(1) and (2)	Article 1(1) and (2)
Article 1(3)	Article 15(2)
Article 2	Article 2
Article 3	Article 3
-	Article 4
-	Article 5
Article 4(1)	Article 1(3)
Article 4(2) and (3)	Article 6
Article 8	Article 7
Article 7	Article 8
-	Article 9
-	Article 10
-	Article 11
Article 5	Article 12
Article 6	Article 13
Article 9	Article 14
Article 12	Article 15(1)
Article 12	Article 16
-	Article 17
Articles 10 and 11	Article 18
Article 13	Article 19
Articles 14 and 15	Article 20
Article 16	Article 21
-	Article 22
-	Article 23
-	Article 24
Article 20	Article 25
-	Article 26
Article 22	Article 27
Article 19	-
Article 17	Article 28
Article 18	Article 29
Article 21	Article 30
Article 23	Article 31
Article 23	Article 32
Article 24	Article 33

COMMISSION DELEGATED REGULATION (EU) 2022/923

of 11 March 2022

correcting the Swedish language version of Delegated Regulation (EU) 2021/1189 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the production and marketing of plant reproductive material of organic heterogeneous material of particular genera or species

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 ([1]), and in particular Article 13(3) thereof,

Whereas:

(1) The Swedish language version of Commission Delegated Regulation (EU) 2021/1189 ([2]) contains an error in Article 6(3), point (b), as regards the applicable provisions for the production and marketing of plant reproductive material of organic heterogeneous material of cereal species.

(2) The Swedish language version of Delegated Regulation (EU) 2021/1189 should therefore be corrected accordingly. The other language versions are not affected,

HAS ADOPTED THIS REGULATION:

Article 1

(Does not concern the English language.)

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 all Member States.

Done at Brussels, 11 March 2022.

For the Commission
The President
Ursula VON DER LEYEN

([1]) OJ L 150, 14.6.2018, p. 1.

([2]) Commission Delegated Regulation (EU) 2021/1189 of 7 May 2021 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the production and marketing of plant reproductive material of organic heterogeneous material of particular genera or species (OJ L 258, 20.7.2021, p. 18).

COMMISSION IMPLEMENTING REGULATION (EU) 2022/924

of 8 June 2022

entering a name in the register of protected designations of origin and protected geographical indications ('Spreewälder Gurkensülze' (PGI))

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Germany's application to register the name 'Spreewälder Gurkensülze' was published in the *Official Journal of the European Union* ([2]).

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Spreewälder Gurkensülze' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Spreewälder Gurkensülze' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.2. Meat products (cooked, salted, smoked, etc.) as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ([3]).

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 all Member States.

Done at Brussels, 8 June 2022.

For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) OJ C 93, 28.2.2022, p. 11.
([3]) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2022/925

of 14 June 2022

amending the Annex to Implementing Regulation (EU) 2018/1882 concerning listed diseases of aquatic animals and the list of species and groups of species posing a considerable risk for the spread of those listed diseases

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ([1]), and in particular Article 8(2), Article 8(3), point (a) and Article 8(4), point (b) thereof,

Whereas:

(1) Regulation (EU) 2016/429 lays down rules for the prevention and control of diseases, which are transmissible to animals or humans, including rules for the prioritisation and categorisation of listed diseases that are of concern at Union level. Those rules for the prevention and control of listed diseases apply to species and groups of species, which can transmit the listed diseases, by virtue of either being susceptible to them or by acting as vectors. Those species and groups of species are listed in the table in the Annex to Commission Implementing Regulation (EU) 2018/1882 ([2]), in accordance with the criteria laid down in Article 8(2) of Regulation (EU) 2016/429. They are also categorised as category A, B, C, D or E diseases by Implementing Regulation (EU) 2018/1882.

(2) The World Organisation for Animal Health (OIE) has recently reviewed the aquatic species, which are susceptible to a number of the diseases, listed in the OIE Aquatic Animal Health Code ([3]). A number of these diseases are also listed in the table in the Annex to Implementing Regulation (EU) 2018/1882. In accordance with Article 8(3), point (a) and Article 8(4), point (b) of Regulation (EU) 2016/429, which concern adding species or groups of species to that list and removing them from it, and in the interest of seeking an appropriate level of convergence with OIE standards, it is timely for the Commission to review the list of species and groups of species, which are susceptible to the diseases of aquatic animals, which is set out in the table in the Annex to Implementing Regulation (EU) 2018/1882, to ensure it reflects the latest scientific knowledge.

(3) The Commission has therefore, completed a review of species, which are susceptible to the aquatic diseases, listed in the table in the Annex to Implementing Regulation (EU) 2018/1882. This review was completed in accordance with the scientific knowledge provided by the European Union Reference Laboratory for Fish and Crustacean Diseases and the European Union Reference Laboratory for Mollusc diseases (EURLs), which have carried out a systematic assessment of susceptible species for the Category A, Category C and Category E diseases of aquatic animals (the assessment). The assessment takes into account the methodology set out in Chapter 1.5. of the OIE Aquatic Code.

(4) Following the completion of the assessment, the EURLs reported on species which are susceptible to the Category A diseases Epizootic haematopoietic necrosis, Infection with *Mikrocytos mackini*, Infection with *Perkinsus marinus*, Infection with Taura syndrome virus, Infection with yellow head virus, the Category C diseases Viral haemorrhagic septicaemia, Infectious haematopoietic necrosis, Infection with HPR-deleted infectious salmon anaemia virus, Infection with *Bonamia exitiosa*, Infection with *Bonamia ostreae*, Infection with *Marteilia refringens*, and Infection with white spot syndrome virus, and the Category E disease, Koi herpes virus disease.

([1]) OJ L 84, 31.3.2016, p. 1.

([2]) Commission Implementing Regulation (EU) 2018/1882 of 3 December 2018 on the application of certain disease prevention and control rules to categories of listed diseases and establishing a list of species and groups of species posing a considerable risk for the spread of those listed diseases (OJ L 308, 4.12.2018, p. 21).

([3]) OIE Aquatic Animal Health Code (2021)

(5) According to the reports prepared by the EURLs, there is convergence between the susceptible species which are proposed for listing by the EURLs and the susceptible species which are proposed for listing by the OIE concerning the diseases Epizootic haematopoietic necrosis, Infection with Taura syndrome virus, Infection with yellow head virus, Viral haemorrhagic septicaemia, Infectious haematopoietic necrosis, Infection with HPR-deleted infectious salmon anaemia virus, Koi herpes virus, Infection with *Bonamia exitiosa*, Infection with *Bonamia ostreae*, and Infection with white spot syndrome virus.

(6) In addition, using the same criteria for listing susceptible species, the EU Reference Laboratory for mollusc diseases drew up a list of species, which are susceptible to Infection with *Mikrocytos mackini*, a disease which is not listed by the OIE.

(7) It is not appropriate to amend the species, which are currently listed in the table in the Annex to Regulation (EU) 2018/1882 as being susceptible to Infection with *Perkinsus marinus* and Infection with *Marteilia refringens* until the OIE has also completed their assessment of these diseases, in view of achieving an appropriate level of convergence with OIE standards.

(8) In addition, it is not appropriate to amend the list of vector species of aquatic animals, which are currently listed in the table in the Annex to Implementing Regulation (EU) 2018/1882 until a scientific assessment of these species has been completed, other than the amendments, which are necessary concerning the naming of individual species as referred to in recital 9 of this Regulation.

(9) Experience has shown that the common name for a particular species may vary from one Member State to another. This variation may result in the potential risk of disease spread, if animals are not correctly identified. As the scientific name for a particular species will remain constant, the lists of aquatic species, which are set out in the table in the Annex to Implementing Regulation (EU) 2018/1882 should be amended, to include only the scientific name of each species, which is relevant for the listed aquatic diseases.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Implementing Regulation (EU) 2018/1882 is amended in accordance with the Annex to this Regulation.

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 all Member States.

Done at Brussels, 14 June 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In the table of the Annex to Implementing Regulation (EU) 2018/1882, rows 51 to 63 covering the listed diseases and their categories and listed species of aquatic animals are replaced by the following:

Name of listed disease	Category of listed disease	Listed species	
		Species and group of species	Vector species
'Epizootic haematopoietic necrosis	A+D+E	*Ameiurus melas, Bidyanus bidyanus, Esox lucius, Galaxias olidus, Gambusia affinis, Gambusia holbrooki, Macquaria australasica, Melanotaenia fluviatilis, Oncorhynchus mykiss, Perca fluviatilis, Sander lucioperca*	*Aristichthys nobilis, Carassius auratus, Carassius carassius, Cyprinus carpio, Hypophthalmichthys molitrix, Leuciscus* spp., *Rutilus rutilus, Scardinius erythrophthalmus, Tinca tinca*
Viral haemorrhagic septicaemia	C+D+E	*Alosa immaculata, Ameiurus nebulosus, Ambloplites rupestris, Ammodytes hexapterus, Aplodinotus grunniens, Centrolabrus exoletus, Clupea harengus, Clupea pallasii pallasii, Coregonus artedii, Coregonus clupeaformis, Coregonus lavaretus, Ctenolabrus rupestris, Cyclopterus lumpus, Cymatogaster aggregata, Dorosoma cepedianum, Danio rerio, Engraulis encrasicolus, Esox lucius, Esox masquinongy, Fundulus heteroclitus, Gadus macrocephalus, Gadus morhua, Gaidropsarus vulgaris,Gasterosteus aculeatus, Labrus bergylta, Labrus mixtus, Lampetra fluviatilis, Lepomis gibbosus, Lepomis macrochirus, Limanda limanda, Merlangius merlangus, Micropterus dolomieu, Micropterus salmoides, Micromesistius poutassou, Morone americana, Morone chrysops, Morone saxatilis, Mullus barbatus, Neogobius melanostomus, Notropis atherinoides, Notropis hudsonius, Oncorhynchus kisutch, Oncorhynchus mykiss, Oncorhynchus mykiss X Oncorhynchus kisutch hybrids, Oncorhynchus tshawytscha, Paralichthys olivaceus, Perca flavescens, Pimephales notatus, Pimephales promelas, Platichthys flesus, Pleuronectes platessa, Pomatoschistus minutus, Pomoxis nigromaculatus, Raja clavata, Salmo marmoratus, Salmo salar, Salmo trutta, Salvelinus namaycush, Sander vitreus, Sardina pilchardus, Sardinops sagax, Scomber japonicus, Scophthalmus maximus, Solea senegalensis, Sprattus sprattus, Symphodus melops, Thaleichthys pacificus, Trachurus mediterraneus, Trisopterus esmarkii, Thymallus thymallus, Uranoscopus scaber*	*Acipenser baerii, Acipenser gueldenstaedtii, Acipenser ruthenus, Acipenser stellatus, Acipenser sturio, Ameiurus melas, Argyrosomus regius, Aristichthys nobilis, Carassius auratus, Carassius carassius, Clarias gariepinus, Cyprinus carpio, Dentex dentex, Dicentrarchus labrax, Diplodus puntazzo, Diplodus sargus, Diplodus vulgaris, Epinephelus aeneus, Epinephelus marginatus, Huso huso, Hypophthalmichthys molitrix, Ictalurus punctatus, Ictalurus* spp., *Leuciscus* spp., *Morone chrysops* x, *Morone saxatilis, Mugil cephalus, Oreochromis, Pagellus bogaraveo, Pagellus erythrinus, Pagrus major, Pagrus pagrus, Pangasius pangasius, Rutilus rutilus, Salvelinus alpinus, Salvelinus fontinalis, Sander lucioperca, Scardinius erythrophthalmus, Sciaenops ocellatus, Silurus glanis, Soleasenegalensis, Solea solea, Sparus aurata, Thunnus* spp., *Thunnus thynnus, Tinca tinca, Umbrina cirrosa*

Infectious haematopoietic necrosis	C+D+E	*Esox lucius, Onchorynchus clarkii, Oncorhynchus keta, Oncorhynchus kisutch, Oncorhynchus masou, Oncorhynchus mykiss, Oncorhynchus nerka, Oncorhynchus tshawytscha, Salmo marmoratus, Salvelinus namaycush, Salmo salar, Salmo trutta, Salvelinus alpinus, Salvelinus fontinalis*	*Acipenser Baerii, Acipenser gueldenstaedtii, Acipenser ruthenus, Acipenser stellatus, Acipenser sturio, Ameiurus melas, Aristichthys nobilis, Astacus astacus, Carassius auratus, Carassius carassius, Clarias gariepinus, Cyprinus carpio, Gadus morhua, Hippoglossus hippoglossus, Hypophthalmichthys molitrix, Huso huso, Ictalurus punctatus, Ictalurus* spp., *Leuciscus* spp., *Melanogrammus aeglefinus, Platichthys flesus, Pacifastacus leniusculus, Procambarus clarkii, Pangasius pangasius, Rutilus rutilus, Sander lucioperca, Scardinius erythrophthalmus, Silurus glanis, Tinca tinca*
Infection with HPR-deleted infectious salmon anaemia virus	C+D+E	*Oncorynchus mykiss, Salmo salar, Salmo trutta*	
Koi herpes virus disease	E	All varieties and subspecies of *Cyprinus carpio*, and *Cyprinus carpio* hybrids e.g. *Cyprinus carpio* × *Carassius auratus, Cyprinus carpio* × *Carassius carassius*	*Carassius auratus, Ctenopharyngodon idella*
Infection with Mikrocytos mackini	A+D+E	*Crassostrea gigas, Crassostrea sikamea, Ostrea edulis*	
Infection with Perkinsus marinus	A+D+E	*Crassostrea gigas, Crassostrea virginica*	*Brachyura* spp., *Cherax destructor, Homarus gammarus, Macrobrachium rosenbergii, Palinurus* spp., *Penaeus indicus, Penaeus japonicus, Penaeus kerathurus, Penaeus stylirostris, Penaeus vannamei, Portunus puber, Scylla serrata*
Infection with Bonamia exitiosa	C+D+E	*Crassostrea ariakensis, Crassostrea virginica, Ostrea puelchana, Ostrea angasi, Ostrea chilensis, Ostrea equestris, Ostrea edulis, Ostrea lurida*	*Crassostrea angulata, Crassostrea gigas, Crassostrea virginica*
Infection with Bonamia ostreae	C+D+E	*Crassostrea ariakensis, Ostrea chilensis, Ostrea edulis*	*Cerastoderma edule, Donax trunculus, Mya arenaria, Mercenaria mercenaria, Meretrix lusoria, Pecten maximus, Ruditapes decussatus, Ruditapes philippinarum, Venerupis aurea, Venerupis pullastra, Venus verrucosa*

Infection with Marteilia refringens	C+D+E	*Ostrea angasi, Ostrea chilensis, Ostrea edulis, Ostrea puelchana*	*Cerastoderma edule, Donax trunculus, Mya arenaria, Mercenaria mercenaria, Meretrix lusoria, Ruditapes decussatus, Ruditapes philippinarum, Venerupis aurea, Venerupis pullastra, Venus verrucosa*
Infection with Taura syndrome virus	A+D+E	*Metapenaeus ensis, Penaeus aztecus, Penaeus monodon, Penaeus setiferus, Penaeus stylirostris, Penaeus vannamei*	*Atrina* spp., *Buccinum undatum, Brachyura* spp., *Cherax destructor, Crassostrea angulata, Cerastoderma edule, Crassostrea gigas, Crassostrea virginica, Donax trunculus, Haliotis discus hannai, Haliotis tuberculata, Homarus gammarus, Littorina littorea, Macrobrachium rosenbergii, Mercenaria mercenaria, Meretrix lusoria, Mya arenaria, Mytilus edulis, Mytilus galloprovincialis, Octopus vulgaris, Ostrea edulis, Palinurus* spp, *Portunus puber, Pecten maximus, Penaeus indicus, Penaeus japonicus, Penaeus kerathurus Ruditapes decussatus, Ruditapes philippinarum, Scylla serrata, Sepia officinalis, Strombus* spp., *Venerupis aurea, Venerupis pullastra, Venus verrucosa*
Infection with yellow head virus	A+D+E	*Metapenaeus affinis, Penaeus monodon, Palaemonetes pugio, Penaeus stylirostris, Penaeus vannamei*	*Atrina* spp., *Buccinum undatum, Crassostrea angulata, Cerastoderma edule, Crassostrea gigas, Crassostrea virginica, Donax trunculus, Haliotis discus hannai, Haliotis tuberculata, Littorina littorea, Mercenaria mercenaria, Meretrix lusoria, Mya arenaria, Mytilus edulis, Mytilus galloprovincialis, Octopus vulgaris, Ostrea edulis, Pecten maximus, Ruditapes decussatus, Ruditapes philippinarum, Sepia officinalis, Strombus* spp., *Venerupis aurea, Venerupis pullastra, Venus verrucosa*
Infection with white spot syndrome virus	C+D+E	All decapod crustaceans (order Decapoda)	*Atrina* spp., *Buccinum undatum, Crassostrea angulata, Cerastoderma edule, Crassostrea gigas, Crassostrea virginica, Donax trunculus, Haliotis discus hannai, Haliotis tuberculata, Littorina littorea, Mercenaria mercenaria, Meretrix lusoria, Mya arenaria, Mytilus edulis, Mytilus galloprovincialis, Octopus vulgaris, Ostrea edulis, Pecten maximus, Ruditapes decussatus, Ruditapes philippinarum, Sepia officinalis, Strombus* spp., *Venerupis aurea, Venerupis pullastra, Venus verrucosa*'

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