

The state of play of Schengen governance¹

ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, assesses the operation and impact of the Schengen evaluation and monitoring mechanism in its first multiannual programme (2014 -19), with the aim of identifying what has worked well and developing recommendations to strengthen it. The past decade has presented multiple controversies involving the governments of Schengen states as well as EU institutions, leading to a persistent state of apparent crisis. The ongoing "Schengen crisis" is rooted in political changes and in structural shortcomings of the Schengen regime. Despite these obstacles, the resilience of the Schengen system should not be underestimated.

One of the biggest achievements of EU integration – and one that is highly valued by EU citizens – is free movement within the Schengen area. The lifting of internal borders, however, requires that Member States rigorously implement accompanying measures in the areas of external borders, internal borders, return, visas, the Schengen Information System, police cooperation, data protection, the use of firearms and cooperation in the area of justice – thematic policy areas referred to jointly as the "Schengen *acquis*".

Differently from other policy areas the Schengen *acquis* is evaluated via a joint effort of the Commission and Member States, with important roles also taken by the Council, EU agencies, EP and national parliaments. This less-common approach is due to the origin of the Schengen system, which was born in an intergovernmental setting. This pre-existing intergovernmental approach is maintained in the current Schengen evaluation mechanism, the Schengen monitoring and evaluation mechanism (SEMM), which was established in October 2013 by Regulation 1053/2013/EU.

The first 5-year multiannual programme ran from 2014-19. In accordance with the Schengen Evaluation Mechanism Regulation, the Commission is to present its evaluation of the first multiannual cycle. The fact that public access to SEMM documents is very limited has implications on the depth of analysis of some aspects of the mechanism; however, this study is strongly informed by interviews with key stakeholders involved in the SEMM in different capacities.

Strengths and weaknesses of the current approach

Overall, the current SEMM constitutes a significant improvement in the evaluation of the Schengen *acquis* from the previous evaluation system. Despite this progress, the SEMM was shown to be more advanced in some areas (e.g. external borders and return) than in others (e.g. police cooperation, visas and data protection). These

¹ [Full study](#) in English



inconsistencies reflect differences in the availability of Member State experts and the provision of training for evaluators, particularly on visas and data protection. Additionally, while risk analysis is an important tool for annual planning, it is less developed in thematic areas such as visa policies.

The fact that there is little transparency in key stages of the development of the evaluation report and development of recommendations contributes to the assessment that the SEMM overall has taken a “tolerant” rather than “naming and shaming” approach to supporting compliance with the Schengen *acquis*.

The SEMM’s first multiannual programme

In the first 5-year evaluation cycle, all Member States were evaluated, largely in line with the multi-year plan. The study identified a total of 199 evaluations during the 2014-19 cycle.

The number of evaluations per country was found to reflect the status of the particular country regarding membership to and the scope of applying the Schengen *acquis*. There were six cases of serious deficiencies identified by Schengen evaluations during the first multiannual programme. However, there is no clear and public definition of what constitutes a serious deficiency. Moreover, serious deficiencies do not necessarily result in a faster adoption of recommendations; times varied between 3 months (Greece, 2015, external borders) and 27 months (UK, 2017, SIS).

Schengen and its “crisis”

Looking more broadly at the functioning of the Schengen area, the past decade has presented multiple controversies involving the governments of Schengen states as well as EU institutions, leading to a persistent state of apparent crisis. The ongoing “Schengen crisis” is not a mere result of the 2015 “migration crisis” - it is rather rooted in political changes and in structural shortcomings of the Schengen regime. Despite these obstacles, the resilience of the Schengen system should not be underestimated.

Over the past decade, leaders have used the (pre-Covid-19) reintroduction of internal border controls to gain political capital among the electorate of the populist radical right.

The current maintenance of internal border controls within the Schengen area is perceived by those Member States upholding them as a measure to prevent future migration (this study does not look at the impact of COVID-19 on Schengen).

Recommendations

With a new 5-year cycle now upon us, recommendations for the European Parliament include:

Adopting targeted legislative changes to improve the effectiveness of the SEMM. This includes considering the possibility of introducing a definition of “serious deficiencies” in Article 2 of the SEMM Regulation, retaining enough flexibility to cover the range of possible scenarios. Article 10 of the SEMM Regulation could be amended to provide the Commission with the possibility of building a pool of evaluation experts that could be used if Member States do not designate appropriate or a sufficient number of experts for a mission. Additionally, specifying the meaning, scope and purpose of thematic evaluations can help ensure that this tool is used appropriately and to its full potential.

Making procedural changes to increase the effectiveness of the mechanism. A key recommendation in this regard is building more flexibility into the annual programme to allow the Commission to adapt it to respond to developments as they arise. Along with this ability, increasing the number of unannounced visits and thematic evaluations can help to ensure that the SEMM effectively evaluates and monitors the implementation of the Schengen *acquis*. Introducing deadlines for the Commission-led phase of SEMM evaluations can shorten the overall process and speed up the implementation of actions to address identified deficiencies, thus having the added benefit of increasing trust in the mechanism. Developing a prioritised procedure that would apply

when evaluation missions detect serious deficiencies can push Member States address them as soon as possible.

Strengthening consistency across thematic areas to improve the internal coherence of the SEMM. EP could suggest that the European Commission set up a visa service that evaluates the risks of Member State visa practices, following the model in other Schengen policy areas. Offering more frequent training will ensure that new and existing experts are well prepared to conduct evaluations, including by staying up-to-date with developments in a continuously evolving field.

Allowing for the drawing of broader conclusions from SEMM evaluations that can benefit the Schengen area more broadly. This can be done by introducing instruments in the SEMM that allow it to 1) provide a national Schengen fitness check covering all Schengen policy fields within a Member State and 2) facilitate the analysis of individual evaluations to generate structural and horizontal strengths and weaknesses of Schengen across Member States.

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