Council of the European Union

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PARLNAT 178

NOTE

From:	General Secretariat of the Council
To:	National Parliaments
Subject:	COUNCIL IMPLEMENTING DECISION setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Sweden on the application of the Schengen acquis in the field of data protection

In accordance with Article 15(3) of Council Regulation 1053/2013 of 7 October 2013, establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, the Council hereby transmits to national Parliaments the Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Sweden on the application of the Schengen acquis in the field of data protection[1].

[1] Available in all official languages of the European Union on the Council public register, doc. 11174/18

ANNEX

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2017 evaluation of Sweden on the application of the Schengen acquis in the field of data protection

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen[2], and in particular Article 15 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The purpose of this decision setting out a recommendation is to recommend to Sweden remedial actions to address deficiencies identified during the Schengen evaluation in the field of data protection carried out in 2017. Following the evaluation, a report covering the findings and assessments, listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision [C(2018)90].

[2] OJ L 295, 6.11.2013, p. 27.

(2) As good practice are seen amongst others that the Swedish Data Protection Authority (hereafter DPA) has carried out a considerable number of Visa Information System (hereafter VIS) supervisory activities besides the first audit of the new VIS system, that the Data Protection Officer of the Swedish Migration Agency is actively involved in various activities of the Swedish Migration Agency and their cross-cutting personal data protection aspects, the regular cooperation of the Data Protection Officer of the SMA with the Swedish DPA and that the information provided by the DPA in regard to the Schengen Information System (hereafter SIS II) is very detailed and readily accessible.

(3) In light of the importance to comply with the Schengen acquis, in particular to ensure the complete independence of the DPA and to clarify the responsibilities of the joint controllers of the national VIS, priority should be given to implementing recommendations 1 and 8.

(4) This decision setting out a recommendation should be transmitted to the European Parliament and to the parliaments of the Member States. Within six months of its adoption, the evaluated Member State shall, pursuant to Article 16, paragraph 8 of Regulation (EU) No 1053/2013, provide the Commission with an assessment of the (possible) improvements and with a description of the required actions,

HEREBY RECOMMENDS:

that Sweden should

Data Protection Supervisory Authority

1. in order to better ensure the complete independence of the DPA abolish the possibility of the Government to reposition the Director General of the DPA to another post in the public administration if this is motivated by organisational reasons or otherwise necessary with regards to the best interest of the authority;

2. in order to better ensure the complete independence of the DPA reassess the right of the Parliament and Government to give the DPA annual directions and instructions and in particular the possibility of the government to assign mandatory additional and special tasks to the DPA;

3. reassess the subordinate position of the DPA towards the Government and abolish any element of this subordinate position which could result in a risk of direct or indirect influence by the Government on the DPA and thus could endanger the DPA's independence;

4. ensure that the supervisory activities of the DPA in relation to the Schengen Information System II (hereafter SIS II) include regular controls on the basis of logs;

5. ensure that the supervisory activities of the DPA in relation to the Visa Information System (hereafter VIS) include regular controls on the basis of logs;

Rights of Data Subjects

6. provide model letters for the exercise of SIS II data subjects' rights on the websites of the DPA and the National Police Authority;

7. provide model letters for the exercise of VIS data subjects' rights on the websites of the DPA, the Swedish Migration Agency, the consular posts and the External Service Providers;

Visa Information System

8. clarify the relationship and the determination of respective responsibilities of the joint controllers of VIS (the Ministry of Foreign Affairs and the Swedish Migration Agency);

9. set up a N-VIS recovery site in a distant location, together with a communication infrastructure for the connection with N-VIS data centre in the Swedish Migration Agency and install a control room for the server room and a CCTV at the entrance of the server room; the back-up storage should be placed in a distant location;

10. consider to put a password policy in place that requires the use of different types of characters (number, letters, signs) when formulating a password and that requires the renewal of the password after a certain period of time;

11. ensure that the Swedish Migration Agency checks the VIS logs proactively and that the Swedish Migration Agency uses a software solution for checks of logs based on alerts;

12. ensure that the Swedish Migration Agency develops more training and training material for Swedish Migration Agency employees and staff of consular posts that is dedicated specifically to personal data protection issues;

Schengen Information System II

13. ensure that the Data Protection Officer appointed within the National Police Authority is progressively more involved in the SIS data protection issues within the International Affairs Division;

14. taking into consideration the provisions of Article 7 (2) of the SIS II Decision and Article 7 (2) of the SIS II Regulation set up a real data quality monitoring system for the data entered into SIS II;

15. ensure that the National Police Authority sets up a data recovery centre for the N-SIS II;

16. in order to have a more efficient control of the legality of data processing activities in the N.SIS, the SIS II logs should require the user to also provide the reason or purpose for individual consultation of the N-VIS;

17. ensure that the National Police Authority in its automatic tools for log controls sets other criteria in the process of automatic monitoring of SIS II logs apart from the consultation of one's own data;

18. consider to put a password policy in place that requires the use of different types of characters (number, letters, signs) when formulating a password and that requires the renewal of the password after a certain period of time;

19. provide regular and continuous training for all operational staff (police officers and civilian staff) specifically on data protection and data security in order to contribute to the lawful processing of SIS II data;

Public Awareness

20. create links on the websites of the National Police Authority and the Swedish Migration Agency to the websites of the DPA (which provide information on VIS and SIS II);

21. ensure that the website of the National Police Authority will provide more specific and readily accessible information on the SIS II;

22. ensure that the website of the Swedish Migration Agency with regard to the processing of personal data in VIS will be easier to find and will provide information in a clear and plain manner;

23. consider to make available printed information material on the SIS II and the VIS and on data subjects' rights addressed to the public in DPA, National Police Authority and Swedish Migration Agency offices.

Done at Brussels,

For the Council
The President