Council of the European Union

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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 2020 evaluation of Germany on the application of the Schengen acquis in the field of the common visa policy

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 2020 evaluation of Germany on the application of the Schengen acquis in the field of the common visa policy[1].

[1] Available in all official languages of the European Union on the Council public register, doc. 12178/20

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2020 evaluation of Germany on the application of the Schengen acquis in the field of the common visa policy

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[1], and in particular Article 15 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The purpose of this Decision is to recommend to Germany remedial actions to address the deficiencies identified during the Schengen evaluation in the field of the common visa policy carried out in 2020. Following the evaluation, a report covering the findings and assessments, and listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2020) 4300.

(2) In the light of the importance of the correct implementation of the provisions related, among other things, to the visa application form, documentary requirements, staffing of the consulates, training of the staff and supervision of local staff, the Visa Information System and the national IT system, the examination of the applications and decision making, priority should be given to implementing recommendations 1, 3, 4, 9a, 9b, 10a, 10b, 19, 20, 21a, 25 and 26a in this Decision.

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

(3) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Germany should, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy any deficiencies identified in the evaluation report and send that action plan to the Commission and the Council,

RECOMMENDS:

that Germany should:

General

1. ensure without delay that the revised visa application form is used in all German consulates and that the content of the electronic version complies with the application form set out in Annex I of the Visa Code;

2. ensure that the staff of German consulates and external service providers working for Germany are aware of the requirement not to take fingerprints from applicants if they have given fingerprints during the 59 months preceding the application (and if they state so in field 28 of the application form);

3. require only one photo from the applicants; ensure that the supporting documents required are in line with the harmonised lists for South Africa and Nigeria and stop requesting additional forms and signatures (if considered necessary, hand out an information leaflet to the applicant, e.g. on the General Data Protection Regulation upon receiving the application and on travel medical insurance when returning the travel document with an issued multiple-entry visa);

4. deploy expatriate staff in sufficient numbers in German consulates to examine Schengen visa applications so as to ensure a sufficient and harmonised quality of service to visa applicants and ensure that the staff, including local staff, receives regular trainings;

5. improve the accuracy of the information provided on the External Service Provider's and consulate's websites and make them easier to navigate; ensure that the Visa Application Centre, at its premises, provide correct and full information about the fees and waivers and its staff has a solid knowledge about the procedure;

6. ensure that the name of the issuing authority is present on the visa stickers and, in light of the data stored in the Visa Information System, consider retaining only those national comments on the visa stickers which are relevant and clear also for the visa holders, especially in case of multiple-entry visas with long validity;

7. ensure that the grounds for visa refusals correspond to the findings of the examination of the application and they are correctly indicated in the IT system, on the standard refusal form and entered to the Visa Information System;

8. in the letter issued as an outcome of the consulate's review of the refusal, provide the contact details of the court which is competent to deal with the appeal against the consulate's review and consider harmonising the structure of the letters and, in countries where German is not widely spoken, provide a courtesy translation of them;

Visa Information System/IT systems

9. as regards the Visa Information System, ensure that

   a) the application forms are completely filled in and thus application files contain the data listed in Article 9 of the Visa Information System Regulation and are created without delay in the Visa Information System as soon as the application is declared admissible and that the data in that system on decisions taken are always updated and reflect the real situation of the application file;

b) decision makers have full and user-friendly access to all previous applications by the same person recorded in the Visa Information System and they systematically consult those files as part of the examination of new visa applications;

c) all decision makers have access to VIS Mail and they are aware of its functionality and when to use it; consider integrating VIS Mail to the national IT system;

10. as regards the national IT system, ensure that

a) the system does not pose any constraints for decision makers to determine the type of visa, territorial scope, duration of stay, validity and the number of entries irrespective of which data have been entered before launching the consultations;

b) its data fields contain all data that should be entered in the Visa Information System in a transparent and logical manner (e.g. separate data fields for the intended date of arrival and departure, as indicated on the application form, and for the dates of validity of an issued visa, which is to be defined by the decision makers);

c) the document advisors' rights in the system correspond to their authorised role in the process and that application files are deleted from the national database in accordance with the applicable national law;

11. ensure that the Schengen Information System can only be consulted in connection with a visa application;

Visa Section in Pretoria

12. as regards the cooperation with the external service provider, ensure that

    a) it is the consulate that verifies which Member State is competent to decide on the application and that the staff of Visa Application Centres receive adequate training regarding all aspects of the visa procedure which are necessary to carry out their responsibilities and to inform visa applicants correctly;

    b) family members of EU/EEA citizens are exempt from the visa fee irrespective of the fact that they lodge their application at a Visa Application Centre;

    c) the external service provider stores no more than the name, contact details and passport number of the applicant and even this data is deleted from their system within five days after the return of the travel document, and

    d) reconsider the way of returning travel documents to the external service provider in order to prevent that its staff is aware of the decision on the application (e.g. enclose information sheet(s) in case a visa is issued; consider using stronger paper envelopes);

13. consider ways of improving the oversight of the waiting area of the visa section (e.g. install security cameras);

14. reconsider the risk assessment of first time travellers possessing newly issued South African passports;

15. consider the possibility to allow lodging visa applications directly at the consulate for applicants from Eswatini and Lesotho so that the travel document can be returned to the applicant on the same day, after having been checked by the consulate;

16. refrain from asking applicants to provide copies of previously issued visas;

17. ensure that the staff of the consulate is able to use all functionalities of the IT system which are needed to perform their respective tasks and can interpret all fields and responses;

18. ensure that the admissibility criteria are known to local staff and that travel documents are properly verified by the consulate before they are returned to the applicants; ensure that the Table of Recognised Travel Documents is also known by the staff and it is consulted whenever they are faced with travel documents they are not familiar with;

19. review the division of tasks between local staff, expatriate decision-maker(s) and the document advisors, with the aim of increasing the participation of the decision-maker(s) in the examination of the applications; as part of the review, consider delegating the printing of the visa stickers to local staff;

20. ensure that local staff do not change the intended travel dates contained in the application form and that those are registered in the Visa Information System as per the indication in the visa application form and that the consulate systematically links application files of persons travelling together;

21. as regards the examination of the applications and decision making, ensure that

    a) the visa validity period and duration of authorised stay are based on an examination of the application and determined in the light of the applicant's travel plans, visa history and bona fide status;

    b) the length of previous stays is verified by examining the entry and exit stamps in the travel document, especially in case of frequent travellers and previous stays approaching the 90-day limit;

    c) the revised rules of the Visa Code for issuing multiple-entry visas are strictly adhered to by all German consulates;

22. ensure that correct procedures are applied for the annulment and revocation of visas and the invalidation of visa stickers, duly follow-up on these decisions in the Visa Information System, establish a clear and secure protocol for destroying old application files, and ensure that a staff member of the consulate oversees the process;

Consulate General in Lagos

23. ensure that vulnerable applicants (e.g. elderly people) or applicants accompanied by small children are directed to the counters in the main building for lodging their applications and consider installing additional ceiling fans directly at the outside counters;

24. in order to treat applicants equally, ensure that they are provided the possibility to present missing supporting documents irrespective of which staff member is handling the application and that local staff conducts the interviews in a uniform way and that they all engage with the applicants in a courteous and respectful manner;

25. ensure adequate supervision of local staff processing visa applications;

26. as regards the examination of the applications and decision making, ensure that

    a) the consulate develops a more consistent approach to assessing applications and clear criteria for taking decisions shared among all expatriate staff; record those criteria in a written document and continue to organise regular team meetings to share experience and knowledge; discuss particular cases in which local staff is also involved to the extent necessary to carry out their tasks in a more harmonised and efficient manner;

    b) the supporting documents required for airport transit visa applications and the examination of these applications take into account that such visas do not allow their holders to enter and stay in the Schengen area;

c) the “period of grace” of 15 days is included systematically in the period of validity of single-entry visas;

d) all procedural facilitations laid down by Directive No 2004/38/EC, especially those relating to an accelerated procedure and minimal documentary requirements, are granted to visa-required family members of EU/EEA citizens and that the their refusals are made exclusively on the grounds described in detail in the Visa Code Handbook I;

27. ensure that all revoked (and annulled) visas are systematically entered in the Visa Information System;

28. ensure that if the visa sticker is invalidated after it has been affixed to the travel document, the security features are rendered unusable;

29. ensure that the refusal form is issued not only in German but also in another official language of the institutions of the Union;

30. ensure that applicants are not forced to use a courier against a fee for getting back their travel documents; consider allowing pick-ups at the consulate for those who prefer to do so and/or establish limited cooperation with an external service provider for the sole purpose of collecting travel documents from the consulate and returning them to the applicants (for which a service fee could be charged);

31. ensure that travel documents waiting for collection are protected against unauthorised access.

Done at Brussels,

For the Council
The President