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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 930 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Liechtenstein on the application of the Schengen <i>acquis</i> in the field of data protection

Delegations will find attached document COM(2021) 930 final.

Encl.: COM(2021) 930 final



EUROPEAN
COMMISSION

Brussels, 19.11.2021
COM(2021) 930 final

2021/0371 (NLE)
SENSITIVE*

Proposal for a

COUNCIL IMPLEMENTING DECISION

**setting out a recommendation on addressing the deficiencies identified in the 2021
evaluation of Liechtenstein on the application of the Schengen *acquis* in the field of data
protection**

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 7 October 2013, the Council adopted Regulation (EU) No 1053/2013¹, establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*. In line with the Regulation, the Commission has established a multiannual evaluation programme 2020-2024² and an annual evaluation programme for 2020³ with detailed plans for on-site visits to the Member States to be evaluated, areas to be evaluated and sites to be visited.

The areas to be evaluated cover all aspects of the Schengen *acquis*; management of the external borders, visa policy, the Schengen Information System, personal data protection, police cooperation, judicial cooperation in criminal matters, as well as the absence of border control at internal borders. In addition, fundamental rights issues and the functioning of authorities that apply the relevant parts of the Schengen *acquis* are taken into account in all evaluations.

Based on the multiannual and annual programmes, a team of Member States and Commission experts carried out an evaluation of Liechtenstein's application of the Schengen *acquis* in the field of personal data protection between 8 and 11 March 2021. Their evaluation report⁴ sets out their findings and assessments, including best practices and any deficiencies identified during the evaluation.

Alongside the report the team made recommendations for remedial action aimed at addressing the deficiencies. This proposal reflects only those recommendations.

Against this background, the current proposal for a Council Implementing Decision setting out a recommendation seeks to ensure that Liechtenstein applies all Schengen rules related to data protection correctly and effectively.

- **Consistency with existing policy provisions in the policy area**

These recommendations serve to implement the existing provisions in the policy area.

- **Consistency with other Union policies**

These recommendations do not have links with other key Union policies.

¹ OJ L 295, 6.11.2013, p. 27.

² Commission Implementing Decision C(2020) 8045 of 14 December 2020 amending Implementing Decision C(2019) 3692 establishing the multiannual evaluation programme for 2020-2024.

³ Commission Implementing Decision C(2019) 7969 of 31 October 2019 establishing the first section of the annual evaluation programme for 2020 in accordance with Article 6 of Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, as amended by Commission Implementing Decision C(2020) 8047 of 14 December 2020.

⁴ C(2021)9300

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

- **Subsidiarity (for non-exclusive competence)**

The Council Regulation (EU) No 1053/2013 requests to carry out a Schengen evaluation before a decision on the full implementation of the Schengen *acquis* can be taken in accordance with the Act of Accession.

- **Proportionality**

Article 15(2) of Council Regulation (EU) No 1053/2013 mirrors the specific powers of the Council in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

In line with Article 14(5) and Article 21(2) of Council Regulation (EU) No 1053/2013 Member States gave their positive opinion on the evaluation report in written procedure on 15 October 2021.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The protection of fundamental rights when applying the Schengen *acquis* was taken into account during the evaluation process.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

n.a.

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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 Schengen⁵, and in particular Article 15 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) A Schengen evaluation in the field of personal data protection was carried out in respect of Liechtenstein in March 2021. 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(2021)9300.
- (2) In view of the outcomes of the evaluation, it is appropriate to recommend to Liechtenstein certain remedial actions to address the deficiencies identified.
- (3) In light of the importance of complying with the Schengen *acquis*, in particular as regards the effective supervision by the data protection authority of Liechtenstein and the procedures regarding checks of person on entry, priority should be given to implementing recommendations 1 and 12 as set out in this Decision.
- (4) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within three months of its adoption, Liechtenstein 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 provide that action plan to the Commission and the Council. Liechtenstein should, pursuant to Article 16(8) of Regulation (EU) No 1053/2013, provide the Commission with its assessment on a possible implementation of the recommendations for improvements with a description of required actions.

⁵ OJ L 295, 6.11.2013, p. 27.

RECOMMENDS:

That Liechtenstein should:

Legislation

1. provide its supervisory authority with effective corrective powers in accordance with Article 47(2) of Directive (EU) 2016/680⁶, in addition to the power to notify the controller of the violation or shortcoming regarding processing of personal data;

Data Protection Authority

2. further specify the possible reasons for dismissal of the Head and Deputy Head of its data protection authority (DPA), so as to avoid the risk of a premature termination of the members' term of office other than in a case of serious misconduct or if they no longer fulfil the conditions required for the performance of their duties;
3. ensure a narrow application of the derogation in Article 10 of its Datenschutzgesetz so that only the processing of personal data in the context of deliberations of the government as a collegial body are covered;
4. establish a supervision plan for the processing of personal data by Liechtenstein's competent authorities in connection to the Schengen Information System (SIS) and the Visa Information System (VIS);
5. ensure that future audits by the DPA of processing operations in connection to the SIS and VIS have a comprehensive scope, including regarding the authorities using these systems;

Rights of data subjects

6. reply to data subjects' requests for the exercise of their rights under the legal acts establishing SIS and VIS directly in a form that can be challenged before the Administrative Court, without requiring the data subjects to request the reply to take the form of a challengeable decision;
7. provide information to data subjects on the National Police's website (in German and preferably also in English), including model letters for data subjects' requests under the legal acts establishing SIS;
8. ensure that the Migration and Passport Office replies to data subjects' requests under the legal acts establishing SIS and VIS concerning their personal data stored in VIS and SIS in the same format as they were received, including electronically;
9. ensure that the Migration and Passport Office (MPO) provides model letters for data subjects' requests under the legal acts establishing SIS and VIS on its website, preferably also in English;

⁶ OJ L 119 4.5.2016, p. 89

10. ensure that the Migration and Passport Office also provides information to data subjects on its website preferably also in English;
11. not charge fees for the handling of data subjects' requests except where Union law allows doing so;

Visa Information System

12. finish the improvement project as soon as possible to ensure that all relevant actions of privileged users in the VIS are logged appropriately and also to improve the content of the logs to ensure that other users' action are logged appropriately;
13. finish the project to develop a graphical user interface for log analysis and increase the frequency of checks of the logs regarding the VIS carried out by MPO;
14. if continuing to rely on an external service provider, conclude a processor contract with that service provider that complies with the requirements of Article 28 of Regulation (EU) 2016/679;
15. comply with its obligation under Article 9(2)(k) of Council Decision 2008/633/JHA to put in place the necessary internal monitoring of use of the VIS by the National Police, including log analysis;

Schengen Information System

16. Review the approach regarding the forwarding of hotel guest registration forms into a central repository and cross-checking them to ensure compliance with Directive (EU) 2016/680, which had to be transposed since the last evaluation.

Done at Brussels,

For the Council
The President