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## PROPOSAL

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 23 November 2022

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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No. Cion doc.: COM(2022) 660 final

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Subject: Proposal for a COUNCIL IMPLEMENTING DECISION setting out a recommendation on addressing the (serious) deficiencies identified in the 2022 evaluation of **the Netherlands** on the application of the Schengen *acquis* in the field of **the common visa policy**

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Delegations will find attached document COM(2022) 660 final.

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Encl.: COM(2022) 660 final



Brussels, 23.11.2022  
COM(2022) 660 final

2022/0385 (NLE)  
**SENSITIVE\***

Proposal for a

## **COUNCIL IMPLEMENTING DECISION**

**setting out a recommendation on addressing the (serious) deficiencies identified in the 2022 evaluation of the Netherlands on the application of the Schengen *acquis* in the field of the common visa policy**

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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 1053/2013<sup>1</sup>, 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 2020-2024<sup>2</sup> and an annual evaluation programme for 2022<sup>3</sup> 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*; in particular management of the external borders, visa policy, the Schengen Information System, 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 State and Commission experts carried out an evaluation of the Netherlands' application of the common visa policy between 23 and 28 June 2022. Their evaluation report<sup>4</sup> 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 actions aimed at addressing the deficiencies. This proposal reflects those recommendations.

Against this background, the current proposal for a Council Implementing Decision setting out a recommendation seeks to ensure that the Netherlands applies all Schengen rules in the field of the common visa policy 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 have links with other key Union policies evaluated under the Schengen Evaluation Mechanism.

### 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Council Regulation (EU) No 2022/922 of 9 June 2022<sup>5</sup> which entered into application on 1 October 2022 repealed Regulation (EU) No 1053/2013 and it has established new rules for the operation of the Schengen evaluation and monitoring mechanism. However, according to

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<sup>1</sup> OJ L 295, 6.11.2013, p. 27.

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

<sup>3</sup> Commission implementing Decision C(2021) 7727 of 4.11.2021 establishing the first section of the annual evaluation programme for 2022 in accordance with Article 6 of the Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

<sup>4</sup> C(2022) 6600.

<sup>5</sup> 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; OJ L 160, 15.6.2022, p. 1–27.

Article 31(3) of the new Regulation, for evaluations carried out before 1 February 2023, the *adoption* of evaluation reports and recommendations shall still be carried out in accordance with Regulation (EU) No 1053/2013.

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

Article 15(2) of Council Regulation (EU) No 1053/2013 specifically requests the Commission to submit a proposal to the Council to adopt recommendations for remedial action aimed at addressing any deficiencies identified in the course of the evaluation. Action at Union level is required to strengthen mutual trust between the Member States and to ensure better coordination at Union level in order to guarantee that all Schengen rules are applied effectively by the Member States.

- **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**

Member States gave their positive opinion on the evaluation report in the Schengen Committee established by Article 21 of Council Regulation (EU) No 1053/2013 and taken over by Article 30 of Council Regulation (EU) 2022/922 of 4 October 2022.

- **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.

Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**setting out a recommendation on addressing the (serious) deficiencies identified in the 2022 evaluation of the Netherlands 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) 2022/922 of 9 June 2022<sup>6</sup> 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 and in particular Article 31(3) thereof, according to which, 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<sup>7</sup> (and in particular Article 15 thereof),

Having regard to the proposal from the European Commission,

Whereas:

- (1) A Schengen evaluation in the field of the common visa policy was carried out in respect of the Netherlands between 23 and 28 June 2022. Following the evaluation, a report containing the findings and assessments as well as best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2022) 6600.
- (2) Recommendations should be made on remedial actions to be taken to address shortcomings identified during the evaluation. In the light of the importance of the correct implementation of the provisions relating, among other things, to the lodging of visa applications within two weeks from the date when the appointment was requested; to the secure storage and destroying of paper application files; to prevent unauthorised access to sensitive information; and to the compliance with the provisions related to the processing time of applications, priority should be given to implementing recommendations 4, 6, 7, 9, 12, 13, 15 and 18 in this Decision.
- (3) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. To the follow-up and monitoring activities of this evaluation, starting with the submission of the action plans, the provisions of Council Regulation (EU) 2022/922 of 9 June 2022 shall apply. Accordingly, given that a serious deficiency was identified by the evaluation report, within one month of the adoption of the recommendations, the Netherlands should, pursuant to Article 22(6) of that Regulation, submit to the Commission and the Council its action plan to remedy the deficiencies identified in the evaluation report.

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<sup>6</sup> OJ L 160, 15.6.2022, p. 1–27.

<sup>7</sup> OJ L 295, 6.11.2013, p. 27.

- (4) To verify the progress made in the implementation of the recommendations related to the serious deficiency, the Commission should, pursuant to Article 22(7) of Council Regulation (EU) 2022/922, organise a revisit that is to take place no later than one year from the date of the evaluation activity.

RECOMMENDS:

The Netherlands should

**General**

- (1) issue long-stay visas for applicants who intend to stay longer than consecutive 90 days in the Netherlands (with the exception of beneficiaries of Directive 2004/38/EC who are eligible for 'entry visas' in form of a short-stay visa);
- (2) ensure that the print out version of the online application form corresponds to the latest version of the uniform application form set out in Annex 9 of Visa Code Handbook;
- (3) ensure that at least the translation of the online application form is available in several language versions (including in Arabic for applications lodged in Saudi Arabia);
- (4) ensure that visa applicants can lodge their application within two weeks from the date when the appointment was requested, for instance by stepping up the efforts to reinforce the staff of the Consular Service Organisation and also by engaging with the external service provider(s) on how to best reduce the waiting time for appointments where the delays are (primarily) due to staff shortages at external service providers;
- (5) ensure that applicants can submit supporting documents in the official language of the country where they lodge the application;
- (6) ensure without delay that paper application files are not destroyed shortly after the reception of visa applications by the external service provider, and in any case, that they are only destroyed under the supervision of the consulates and according to appropriate protocols;
- (7) ensure the use of the most recent version of the standard refusal form;
- (8) ensure that the staff at the Consular Services Organisation and consulates applies correctly the provisions on annulment and revocation of visas as well as on invalidation of visa stickers; ensure the availability of appropriate stamps at the consulates;
- (9) ensure that the visa processing IT system allows the amendment of data in the Visa Information System also after a decision was taken on an application;
- (10) step up efforts in providing training on visa procedures for staff involved in Schengen visa processing at consulates and ensure adequate supervision of the locally employed staff by the expatriate operational managers;
- (11) step up efforts in training operational managers so that they can supervise locally employed staff and monitor the external service providers in a more efficient manner;

- (12) ensure that locally employed staff is prevented from accessing sensitive information, such as results of consultations in the visa processing IT system; limit their access rights to the functionalities that are strictly necessary to perform their duties;

### **Consular Service Organisation**

- (13) adapt the workflow at the Consular Service Organisation, possibly by tasking the registration officers to check the admissibility and the territorial competence before the files are created in the Visa Information System;
- (14) ensure that the staff of the Consular Service Organisation has sufficient language skills to process applications without being overly dependent on automated translation;
- (15) step up efforts to hire decision-makers having previous consular experience; consider the deployment of new recruits for short-term to external service providers and/or consulates to obtain field experience;
- (16) continue to ensure that decision-makers consider the result of querying the 'Assessment application database' on its merits and that the underlying algorithms of this database are regularly reviewed;
- (17) ensure that checks in the Schengen Information System are not carried out to verify whether airport transit visa applicants are subject to an entry ban;
- (18) ensure that the processing time of visa applications never goes beyond 45 calendar days and it is only extended beyond 15 calendar days in individual cases, notably when further scrutiny of the application is needed, and review the work instructions for interviews as regard processing time by listing the exceptional cases when extending the processing time could be justified;
- (19) ensure that decision-makers make optimal use of the possibility to issue multiple-entry visas with longer period of validity to frequent bona fide travellers, including on the basis of Article 24(2c) of Regulation (EC) No 810/2009 (the Visa Code)<sup>8</sup>;

### **Riyadh**

- (20) ensure adequate privacy for applicants in the waiting area of the Visa Application Centre, for instance by engaging with the external service provider to extend, especially in peak periods, the opening hours to receive visa applications;
- (21) request the Visa Application Centre to provide more appropriate space for back office tasks;
- (22) ensure that the external service provider informs the public in a clearer and more comprehensive manner about the optional services and the corresponding fees and that the home delivery of passports becomes an optional service;
- (23) ensure that the procedures at the Visa Application Centre comply with Annex X of the Visa Code;
- (24) ensure that, where fingerprints collected from applicants as part of an earlier application and entered in the Visa Information System for the first time less than 59 months before the date of the new application, they are copied to the subsequent applications and all relevant staff members of the Visa Application Centre is aware of this requirement;

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<sup>8</sup> OJ L 243, 15.9.2009, p. 1–58.

- (25) provide further support and appropriate instructions and background information to the operational manager in Riyadh (and also in other consulates) so that they are able to participate in a more efficient manner in local Schengen cooperation meetings.

Done at Brussels,

*For the Council  
The President*

