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From:	General Secretariat of the Council
On:	7 December 2017
To:	Delegations
No. prev. doc.:	14228/17
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of **Denmark** on the application of the Schengen acquis in the field of the **common visa policy**

Delegations will find in the annex the Council Implementing Decision setting out a recommendation addressing the deficiencies identified in the 2016 evaluation of Malta on the application of the Schengen acquis in the field of the common visa policy, adopted by the Council at its 3556th meeting held on 17-18 July 2017.

In line with Article 15(3) of Council Regulation (EU) No 1053/2013 of 7 October 2013, this Recommendation will be forwarded to the European Parliament and national Parliaments.

ANNEX

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2016 evaluation of Malta on the application of the Schengen acquis in the field of the common visa policy

THE COUNCIL 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 Malta remedial actions to address deficiencies identified during the Schengen evaluation in the field of the common visa policy carried out in 2016. Following the evaluation, a report was adopted by Commission Implementing Decision C(2017) 1078 that covers the findings and assessments of the evaluation. It lists best practices and deficiencies identified during the evaluation.

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

(2) Given the importance of correctly implementing the provisions linked to the decision on the application and issuance of visas with limited territorial validity, the Visa Information System (VIS), data protection and the monitoring of external service providers (ESPs), priority should be given to implementing recommendations (3), (5) to (8), (10), (14) to (19), (21), (27) to (31), (35), (39), (44), (46) and (47) listed below.

(3) This decision setting out a recommendation should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, the evaluated Member State shall, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, draw up an action plan to remedy the deficiencies identified in the evaluation report and provide this to the Commission and the Council,

HEREBY RECOMMENDS:

that Malta should:

General

1. improve and reorganise the information provided to the public on its consulates' websites to make it more user-friendly;

2. consider providing the public with all information relating to Algiers and Tunis in English, French and Arabic, and instruct the ESPs to do the same;

3. ensure that the outcome of inspections and visits of the ESPs is properly recorded, including any complaints received about them as well as the follow-up actions taken;

4. put in place a procedure on how to handle cases in which Malta is not the competent Member State when the application was received through the ESP;

5. ensure that the ESPs do not store multiple copies of the same personal data on their local computers and servers;

6. ensure that fingerprints are only collected once every 59 months and inform applicants thereof;

7. ensure that staff are aware of the circumstances in which visas valid for the territory of several, but not all, Member States should or can be issued;

IT systems

8. avoid sending all the data from the visa application to the police, as only the data from the application that is deemed necessary and sufficient to carry out the SIS checks should be sent;

9. automate the searches in the SIS and other databases to avoid possible errors caused by manual searches;

10. take immediate action to modify the national system interface, which allows all consulates to retrieve any visa application file worldwide, so that visa applications are not processed by mistake and applicants' personal data are protected;

11. use VIS Mail to transmit messages related to consular cooperation, in particular when exchanging information on individual applicants with other Member States' consulates;

12. adapt the IT system so that visa stickers are printed directly from within the system;

13. ensure that the IT system always stores correct and complete information about the printing status of each visa sticker;

14. improve the system of purging visa data to ensure that the data retention period is fully respected and that it does not exceed the five-year limit for any given application;

15. ensure that the ESPs no longer have access to any of the application data stored in the IT system once the applications have been transmitted to the consulate in question;

16. ensure that the application file is created without delay in the VIS as soon as the application is declared admissible;

17. ensure that all applications are systematically linked to previous applications made by the same applicant;

18. ensure that all applications of persons travelling together are systematically linked as soon as the applications are created in the VIS;

19. ensure that visas valid for the territory of several, but not all, Member States can be issued in the IT system;

20. consider integrating the table of travel documents into the IT system;

Consulate/visa section in Algiers

21. immediately ensure that the ESP can be contacted by the public as provided for in the legal instrument;

22. ensure that the public is informed of the possibility for all applicants to obtain direct access to the consulate;

23. instruct the ESP to update all information provided to the public and ensure that the French and English versions of the website contain the same information and work properly;

24. dispense with the 'transit' travel checklist;

25. ensure that the references to lodging applications at the ESP in Oran are deleted from the legal instrument and the ESP's information to the public;

26. ask the ESP, possibly together with the other Member States that share the same ESP premises, to install sound-absorbing partitions between the counters to ensure adequate privacy;

27. instruct the ESP to avoid creating multiple files that all contain a photo of the applicant;

28. urge the ESP to improve its workflow and quality control, reducing the instances where ESP staff have to manually enter the same information (application number, alphanumeric data of the applicant);

29. ensure that all required fields in the IT system are systematically filled in;

30. ensure that applications are assessed on a case-by-case basis, with particular attention paid to the applicant's will to return as evidenced by their individual socio-economic situation in the country of residence;

31. fully apply the provisions on issuing multiple-entry visas, including visas with long validity as provided for in Article 24(2) of the Visa Code, to bona fide applicants who have proven their reliability and integrity, while continuing to carry out more in-depth investigations of first-time applicants;

32. ensure that consulates promptly report cases to the central authority in which errors were found in the data and a correction is needed, so that applicants do not have to appear twice in person to provide their biometrics whenever a data entry error occurs at the ESP or consulate;

33. copy the page of the travel document with the affixed visa sticker instead of printing the visa sticker information on a sheet of paper if maintaining the practice of adding a copy of the visa sticker to the application file;

34. consider establishing a formal back-up system for the consul in case of planned short-term or unplanned absences;

35. ensure that the ESP deletes personal data as soon as they have been transmitted to the consulate;

36. ensure that the consulate and the ESP only use the legally binding harmonised list of supporting documents, both in their information to the public and internally;

37. request only one photo from the applicant;

Embassy/visa section in Tunis

38. instruct the ESP to always accept application forms in A4 format;

39. instruct the ESP to accept incomplete applications and applications that are lodged less than 15 days before the planned travel date as there is no minimum deadline for lodging an application. The ESP can inform applicants that missing documents or lack of processing time can affect the outcome of the decision, but it is not qualified to advise applicants explicitly against lodging the application;

40. ensure that the ESP systematically informs the consulate of complaints received from applicants;

41. review the checklists of required supporting documents:

    - dispense with the 'transit visa' checklist;

    - re-evaluate the requirement for formal sponsorship ('declaration of proof') from a host in Malta for all business travellers, making it clear that regardless of the purpose of travel, formal sponsorship is an alternative way of demonstrating sufficient means of subsistence if the applicant's own means are insufficient;

    - ensure consistency in the minimum reference amount per day between the amount notified under Article 39(1)(c) of the Schengen Borders Code and what is applied in practice;

42. consider rearranging the layout of its embassy offices and the visa section:

    - avoid the need for applications and travel documents to be carried through public sections of the building;

    - relocate the network equipment to a room that is not used as a regular office;

43. take measures to hide or remove the cables at the counter on the applicant's side to prevent accidental or deliberate disruption of work and electronic connections;

44. review the workflow for the processing of visa applications:

    - discontinue the use of hand-written notes for recording and transmitting information about an application, since these that can easily be lost;

    - re-evaluate the practice of separating the travel document from the application file before a decision is made;

    - ensure that the right-hand column of the paper application form accurately reflects whether a visa has been issued or refused (if maintaining the practice of filling in this column);

    - re-evaluate the practice of storing the copy of the refusal form separately from the application file;

45. ensure that the physical hand-over of stickers is confirmed by the manual or electronic signature of local staff;

46. ensure that visas valid only for the territory of the Member States that recognise the travel document are issued in cases in which the travel document is not recognised by all Member States;

47. apply the Visa Code and the other relevant legal provisions in full whenever the applicant intends to stay for a maximum of 90 days in any 180-day period on the territory of the Member States, and never issue national long-stay visas in such cases.

Done at Brussels,

For the Council
The President