Council of the European Union

Brussels, 8 December 2017
(OR. en)

15556/1/17
REV 1

Interinstitutional File:
2017/0214 (NLE)

SCH-EVAL 286
VISA 450
COMIX 821

OUTCOME OF PROCEEDINGS

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 2017 evaluation of Denmark on the application of the Schengen acquis in the field of the common visa policy, adopted by the Council at its meeting held on 7 December 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 2017 evaluation of Denmark 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 setting out a recommendation is to recommend to Denmark remedial actions to address deficiencies identified during the Schengen evaluation in the field of the common visa policy 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(2017) 5133.

(2) Some of the practices observed during the evaluation can be considered as best practice, notably as regards the visa processing workflow and decision-making process in the consulates, the risk assessments conducted by the consulates and the national IT system and the use made of it by the consulates.

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

(3) In light of the importance of the correct implementation of the provisions linked to the decision-making process, the Visa Information System (VIS), the monitoring of external service providers (ESP) and data protection, priority should be given to implementing recommendations 1, 2, 5, 6, 7 to 10, 20, 21, 25 b) to 25 g), 26, 27 and 29.

(4) 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, paragraph 1 of Regulation (EU) No 1053/2013, establish an action plan to remedy the deficiencies identified in the evaluation report and provide this to the Commission and the Council,

HEREBY RECOMMENDS:

that Denmark should:

1. Ensure that the examination of visa applications is conducted under the control of expatriate staff (i.e. officials of the ministry with a secure employment status, appropriate level of training and subject to regular rotation) and that the final decisions remain within the responsibility of expatriate staff (or at least staff with EU nationality); that the heads of the visa sections or other expatriate staff are in charge of or supervise the distribution of visa stickers to individual staff members in charge of printing; that the head of the visa section in Bangkok continues to be an expatriate staff member to avoid any risk to the independence of the decision-making process;

2. Amend the Ministry of Immigration and Integration's executive order and guidelines on visa-issuing to clarify that the classification of countries into "main groups" does not preclude a solid individual assessment of each application and that all bona fide applicants – irrespective of their nationality and the purpose of travel – who fulfil the entry conditions (Article 21 of the Visa Code) can obtain a visa;

3. Provide the possibility to applicants to obtain an appointment directly at the consulates within a reasonable timeframe, taking into consideration the availability of slots and the general rule of two weeks (Article 9(2) Visa Code). Family members of EU/EEA/Swiss citizens covered by Directive 2004/38/EC should be given an appointment at very short notice; one contact with the consulate should be sufficient to make the appointment;

4. Consider granting a period of authorised stay with a few days more than the intended stay in order to allow for slightly prolonging the stay in the Schengen area by a few days in case of need (e.g. flight cancellations), where this is possible without additional burden on the applicant;

5. Ensure that the alphanumerical application data (including scans) are fully encrypted and protected when they are transferred from the ESP to the consulates;

6. Review the framework contract(s) with ESP to ensure that ESP are not allowed to store applicants' personal data beyond the time limits allowed for by point A(d) of Annex X of the Visa Code;

IT system

7. Ensure that adequate business continuity and disaster recovery procedures for the national visa IT system are in place, tested and properly implemented at national system level;

8. Modify the national IT system in order to prevent the possibility of issuing uniform visas in case of negative replies in prior consultation (or explain why this possibility should be maintained);

9. Ensure that the Danish visa IT system provides for the functionality to delete erroneous information from VIS and that staff are properly trained to use this functionality;

10. Ensure that VIS Mail 1 and the list of authorities (LoA) are fully integrated in the national IT system and that replies to VIS Mail messages are sent systematically. Instruct all consulates to use VIS Mail for consular cooperation, data amendment and supporting document requests;

11. Ensure that consulates make a precise use of the available options in the drop-down list in the IT system for the applicant's current occupation and choose “other” or “no occupation” only where no better option is available;

12. Ensure that, where application data is not available for an obligatory field in VIS, consulates enter "not applicable" or "N/A" into the system (except for numerical fields where "+00" should be entered). Modify the IT system accordingly (if/where necessary);

Consulate in New Delhi

13. Update the consulate's website to ensure that that the information is complete, correct, up-to-date and can be easily found in the relevant section;

14. Instruct the ESP to improve its website to make it more user-friendly, to better structure the information and to complete and correct the information where necessary;

15. Inform applicants wishing to obtain a long-validity visa to indicate this wish in fields 24 or 25 of the application form or in another manner (e.g. on a separate document);

16. Bring the consulate's checklists for supporting documents in line with the harmonised list of supporting documents for India (or consider revising the harmonised list within Local Schengen Cooperation);

17. Abolish any additional forms to be signed by applicants unless they are required by law;

18. Update the visa fee in local currency at regular intervals to reflect fluctuations in the exchange rate and to ensure that it does not exceed the visa fee set in the Visa Code or that it does not differ significantly from what other Member States charge in local currency;

19. Ensure that applicants lodging at the ESP's visa application centre in Bhutan are not obliged to pay mandatory fees in addition to the service fee, such as courier fees for the transport of the application and travel document between Bhutan and India, if the total fee would exceed the ceiling for the service fee established by the Visa Code;

20. Instruct the ESP to inform applicants correctly that giving fingerprints within 59 months after having provided fingerprints for a previous application is not required and that refusing to give fingerprints again will not have any negative effect for the visa application;

21. Apply the provisions for revocation and annulment correctly, notably by using the standard form and notifying it to the applicant, stamping the visa sticker with the correct stamp and entering the decision systematically and correctly in the VIS;

22. Ensure that misprinted visa stickers are correctly invalidated and – unless they are already affixed to the travel document – subsequently destroyed;

23. Consider introducing additional security measures for the consulate's archives (secured doors or metal frame, fire protection system);

Consulate in Bangkok

24. Update the consulate's website to ensure that that the information is complete, correct, up-to-date and can be easily found in the relevant section;

25. Instruct the ESP to

    a) improve its website to make it more user-friendly, to better structure the information and to complete and correct the information where necessary;

    b) take adequate measures to reduce the waiting times for lodging the application, for example by introducing an appointment system;

c) ensure that applicants are received for lodging the applications in a more orderly manner: new applicants should not be called to the counter before the processing of the previous application has been finalised and the documents are properly stored; applicants should be invited to the counter one by one (with the exception of minors). Ensure that all workstations at the ESP are immediately locked when abandoned;

d) verify that all application forms are duly signed by the applicant;

e) perform a thorough data quality check for each application at its back office to improve the quality of application data registered in the system. Consider keeping an error log to report errors regularly to the ESP (as done by the consulate in New Delhi);

f) inform applicants correctly that giving fingerprints within 59 months after having provided fingerprints for a previous application is not required and that refusing to give fingerprints again will not have any negative effect for the visa application. Where new fingerprints are provided (on a voluntary basis) they should be imported and used in VIS, so that the 59-month deadline starts running anew;

g) delete application data from its servers immediately after transfer to the consulate (with the exception of data needed to contact the applicant) and regularly monitor the implementation of that rule by checking the ESP's hard drives and systems;

26. Consider the use of an automated tracking system to register the handover of application files and passports between the ESP and the consulate;

27. Ensure that applications received from the ESP are imported into the IT system and VIS application files are created without delay;

28. Remove the Embassy stamp from the ESP office;

29. Improve the implementation of the "red carpet" programme for accredited companies in Bangkok, by regularly monitoring the agreements with companies, updating the list of persons authorised to sign the employer letters and systematically checking signatures. Avoid issuing long-validity visas to first-time applicants, who cannot prove their integrity and reliability;

30. Implement the Danish data protection authority's recommendation to abolish the use of the local warning list for applicants and consult it on whether the warning list for hosts also falls within the scope of this recommendation;

31. Ensure that the consulate systematically checks the table of travel documents recognised by Member States and issues visas with a limited territorial validity (LTV) where the applicant's travel document is not recognised by all Member States;

32. Consider taking measures to ensure that visa archives are well secured (secured doors or metal frame) and accessible only to a limited number of authorised persons.

Done at Brussels,

For the Council
The President