Council of the European Union

Brussels, 23 February 2024
(OR. en)

6957/24

Interinstitutional File: 2023/0434(NLE)

SCH-EVAL 49
DATAPROTECT 103
COMIX 106

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	20 February 2024
To:	Delegations
No. prev. doc.:	5749/24
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of **Norway** on the application of the Schengen *acquis* in the field of **data protection**

Delegations will find enclosed the draft Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2022 evaluation of Norway on the application of the Schengen acquis in the field of data protection, adopted by the Council at its meeting held on 20 February 2024.

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.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2022 evaluation of Norway on the application of the Schengen *acquis* in the field of data protection

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(3) 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 Norway in June and July 2022. Following the evaluation, a report containing the findings and assessments, listing best practices, areas of necessary improvement and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2023)7200.

(2) As good practices are seen in particular: the recent increase of the number of posts within the Norwegian Data Protection Authority (NDPA) as well as the constant increases of the annual budget since 2017; the high level of implemented security measures at the primary Schengen Information System (SIS) data centre; that the National Criminal Investigation Service (NCIS) has established comprehensive information security and data breach notification policies, including procedures, tools and instructions to staff, as well as business continuity documents (best practice); that the answers to data subjects' requests are given within 30 days and that in some cases regarding Visa Information System (VIS) the processing time is even only 2 to 5 days; that a visa applicant is informed about the use of her or his data and the data processing in VIS before it is entered by her or him into the electronic system;

1 OJ L 295, 6.11.2013, p. 27.

(3) Recommendations should be made on remedial actions to be taken by Norway in order to address deficiencies identified as part of evaluation. In light of the importance of complying with the Schengen acquis, priority should be given to implementing recommendations 1, 2, 3, 4 set out in this Decision.

(4) In accordance with Article 15(3) of Regulation (EU) No 1053/2013, the Council should transmit this Decision to the European Parliament and to the national Parliaments of the Member States.

(5) Council Regulation (EU) 2022/922[2] applies as of 1 October 2022. In accordance with Article 31(3) of that Regulation, the follow-up and monitoring activities of evaluation reports and recommendations, starting with the submission of the action plans, should be carried out in accordance with Regulation (EU) 2022/922.

(6) Within two months of the adoption of this Decision, Norway should, pursuant to Article 21(1) of Council Regulation (EU) 2022/922, establish an action plan to implement all recommendations and to remedy the deficiencies identified in the evaluation report. Norway should provide that action plan to the Commission and the Council.

RECOMMENDS:

that Norway should:

Data Protection Authorities

1. ensure that the NDPA is informed of potential changes made by the Ministry of Local Government and Regional Development on the proposal for its budget before the general budget proposal is sent to the Parliament to be decided on, to guarantee the complete independence of the NDPA;

2. abolish the requirement for the NDPA to obtain approval by the Ministry before adopting its activity report;

3. ensure that the NDPA can issue orders regarding the data subject's right of access in section 60 of the Police Databases Act as required by Article 47(2) LED;

4. ensure that the audits of the national visa system are carried out within the prescribed term of four-year cycle as indicated in Article 42 (2) of the VIS Regulation and Article 8 (6) of the VIS Council Decision;

2 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) N° 1053/2013, OJ L160 of 15.6.2022, p. 1.

Schengen Information System

5. consider a higher security standard in relation to the access to the SIS information system using a two-factor authentication system;

Visa Information System

6. ensure that police officers working on the VIS receive additional training on data protection aspects of the VIS, going beyond the initial data protection training that all police officers receive;

7. ensure that the Norwegian Directorate of Immigration (UDI) provides additional data protection training related to the use of VIS/NORVIS specifically to its staff members;

8. ensure sufficient data protection training for the staff at the Governor of Svalbard;

Public awareness and rights of data subjects

9. ensure that the websites of the NDPA, the NCIS and the UDI provide more specific and readily accessible information on the redress in the SIS and VIS, especially on the right to an effective remedy, and clearly define the scope of applicable procedures;

10. ensure that the template reply letter of the NDPA and the NCIS includes information on judicial redress possibilities;

11. ensure that when individuals request information from SIS and an alert is stored in SIS, the data subjects receive not only general information from NCIS, such as their name and birthday, but also at least the period of the alert, when/if possible, also the reason for the alert and an indication that alerts can be extended in accordance with the relevant legal basis;

12. ensure that if no alert is stored about the applicant in the SIS, a procedure is developed to provide this information to the applicant at least in the majority of cases and the national legislation is adapted accordingly.

Done at Brussels,

For the Council
The President