Council of the European Union

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of **Greece** on the application of the Schengen *acquis* in the field of **data protection**

In accordance with Article 15(3) of Council Regulation 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, the Council hereby transmits to national Parliaments the Council Implementing Decision setting out recommendations on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen *acquis* in the field of data protection[1].

[1] Available in all official languages of the European Union on the Council public register, doc. 6955/24.

Council Implementing Decision setting out

RECOMMENDATION

on addressing the deficiencies identified in the 2021 evaluation of Greece 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[2], 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 Greece in October 2021. Following the evaluation, a report containing the findings and assessments, listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2023)8501.

(2) As good practices are seen in particular: the very active involvement of the Hellenic Data Protection Authority (HDPA) in international cooperation, in particular the active role in the Supervision Coordination Groups and the very regular participation in Schengen Evaluations; the high standard security measures implemented on the premises of the Hellenic Police (hosting the national Schengen Information System, N.SIS); the high standard security measures implemented on the premises of the Ministry of Foreign Affairs (MFA) (hosting the national visa information system, N.VIS) which provide a secure environment for storing data; the Guidance of the MFA to the embassies and consulates on how to monitor the external services providers; the fact that the HDPA has established a dedicated department which is responsible for communication and awareness raising to the public.

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

(3) Recommendations should be made on remedial actions to be taken by Greece in order to address deficiencies identified during the evaluation. In light of the importance of complying with the Schengen *acquis* on personal data protection and specifically on the supervision by the HDPA and on the Schengen Information System (SIS) and Visa Information System (VIS) priority should be given to implementing recommendations 1,5, 8 and 11set 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[3] 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, Greece should, pursuant to Article 21(1) of Regulation (EU) No 2022/922, establish an action plan to implement all recommendations and to remedy the deficiencies identified in the evaluation report. Greece should provide that action plan to the Commission and the Council.

RECOMMENDS:

that Greece should:

Legislation

1. reform the Data Protection Act in a way that it fully transposes the Directive (EU) 2016/680[4] (LED) by extending its applicability also to felonies and misdemeanours referred to in Article 3(2) of Law 2472/1997.

Data Protection Authority

2. ensure that the HDPA has adequate resources and number of staff to fulfil the tasks entrusted to it under the SIS and VIS acquis;

3 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.

4 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119/89 of 4.5.2016.

3. ensure that to guarantee its complete independence the HDPA has more influence (on the proposal for its budget before the general budget proposal is sent to the Parliament to be voted on); the HDPA should have the opportunity to discuss its budget proposal with the State General Accounting Office and if changes are made the Parliament should be informed;

4. ensure that the HDPA chooses their own staff in accordance with Article 52(5) General Data Protection Regulation (EU) 2016/679[5] (GDPR) and Article 42(5) LED and accelerate the recruitment procedures in order to give the DPA the opportunity to fill open posts quickly;

5. ensure that the HDPA has the power to bring infringements (other than sending a file to the public prosecutor) to the attention of judicial authorities in accordance with Article 58(5) GDPR and Article 47(5) LED;

6. ensure that when carrying out N.SIS II audits, regular checks of SIS alerts also on the basis of log file analysis are included;

7. ensure that also end users of the N.SIS are inspected, such as operational police authorities and VIS authorities;

8. ensure that the audits of the SIS system are carried out within the prescribed term of four-year cycle (Article 44 (2) of the SIS Regulation and Article 60 (2) of the SIS Council Decision);

9. ensure that, when carrying out VIS audits, regular checks on VIS files also on the basis of log files as well as audit of the Consular Posts and external service providers are included;

10. ensure that also end users of the VIS system are inspected, such as the police;

11. ensure that the audits of the national visa system are carried out within the prescribed term of four-year cycle (Article 41 (2) VIS Regulation and Article 8 (6) VIS Council Decision) and that the audits cover also the person data processing carried out by the Hellenic Police in the framework of issuing visas at the external borders;

[5] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) – OJ L 119/1 of 4.5.2016.

Schengen Information System

12. relocate the backup site on greater distance from the main site so as to secure its functioning regardless of possible disaster of any cause on the main site;

13. ensure the efficient control of the legality of personal data processing activities in the N.SIS by providing the reason or purpose for individual consultation of the N.SIS and recording it in the SIS logs;

14. ensure that N.SIS logs are proactively, that is, not only in connection to an incident, checked on a regular basis, including by using automatic log control.

Visa Information System

15. ensure that the controller/joint controller/processor relationship between the MFA and the Hellenic Police on the issuing of visas is clear and documented;

16. improve self-monitoring by checking logs proactively, that is, (not only in connection to an incident), on a regular basis, including by using automatic log control;

Public awareness and rights of data subjects

17. ensure that the website of the Ministry of Citizen Protection provides adequate information on SIS;

18. ensure that the website of the Hellenic Police provides adequate and easily accessible information on the rights of correction and deletion of SIS personal data ;

19. ensure that printed SIS/VIS information, including on data subjects' rights, is provided at border crossing points, such as/including/in particular at airports;

20. ensure that the website of the Hellenic Police provides adequate VIS information and that such information is also provided at border crossing points, such as/including/in particular at airports;

21. ensure that all websites of consulates and embassies provide adequate and updated information on personal data protection with regards to the VIS;

Done at Brussels,

For the Council
The President