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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of Italy on the application of the Schengen <i>acquis</i> in the field of the common visa policy

Delegations will find attached document COM(2023) 27 final.

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EUROPEAN
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Brussels, 2.5.2023
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2023/0122 (NLE)
SENSITIVE*

Proposal for a

COUNCIL IMPLEMENTING DECISION

**setting out a recommendation on addressing the deficiencies identified in the 2022
evaluation of Italy 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 1053/2013¹, establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*. In line with Regulation No 1053/2013, the Commission has established a multiannual evaluation programme 2020-2024² and an annual evaluation programme for 2022³ 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, and in accordance with Article 14 of Regulation (EU) No 1053/2013, a team of Member State and Commission experts, supported by an observer from eu-LISA, carried out an evaluation of Italy's application of the Schengen *acquis* in the field of the common visa policy on 26-27 October 2022. The team's evaluation report⁴ sets out its findings and assessments, including best practices and any deficiencies identified during the evaluation.

Alongside the report, the team made recommendations for remedial action aimed at addressing the deficiencies.

A new Council Regulation (EU) 2022/922⁵ was adopted on 9 June 2022. Article 31(3) of this Regulation contains transitional provisions according to which, for evaluations carried out before 1 February 2023, the adoption of evaluation reports and recommendations should be carried out in accordance with Regulation (EU) No 1053/2013. The follow-up and monitoring activities of such evaluations, starting with the submission of the actions plans, should be carried out in accordance with Regulation (EU) 2022/922.

Consequently, the recommendations set out in this Council Implementing Decision should be adopted in accordance with Regulation No 1053/2013, whereas the follow-up and monitoring activities of such evaluations, starting with the submission of the actions plans, should be carried out in accordance with Regulation (EU) 2022/922.

¹ OJ L 295, 6.11.2013, p. 27.

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

³ Commission implementing Decision C(2021) 7727 of 4 November 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 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

⁴ C(2023) 270.

⁵ 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.

This proposal contains recommendations that aim to ensure that Italy applies all Schengen rules related to Schengen visa processing 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 do not have links with other key Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 15 of Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

- **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 correctly and 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. This proposal for a Council Implementing Decision is therefore proportionate to the objective pursued.

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.

- **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.

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COUNCIL IMPLEMENTING DECISION

setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of Italy 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) 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 Schengen⁶, 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 the common visa policy was carried out in respect of Italy in October 2022. 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) 270.
- (2) Recommendations should be made on remedial actions to be taken by Italy in order to address deficiencies identified as part of the evaluation. In light of the importance of the correct implementation of the provisions related, among other things, to the proper type of visa to be processed, the use of the uniform visa application form and that visa applicants should be able to lodge their application within two weeks from the date when the appointment was requested, priority should be given to implementing recommendations 1, 3, 4, 9 and 10 in this Decision.
- (3) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States.
- (4) Council Regulation (EU) 2022/922⁷ 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 OJ L 295, 6.11.2013, p. 27.

⁷ 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.

- (5) Within two months of its adoption, Italy 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. Italy should provide that action plan to the Commission and the Council.

RECOMMENDS:

Italy should

General

- (1) instruct all Italian consulates without delay to refrain from issuing short-stay visas for applicants⁸ who intend to stay longer than 90 consecutive days in Italy and amend the national law to ensure clarity and legal security in this regard;
- (2) ensure that the Central Visa Authority takes a leading role in the preparation of public procurements to select external service providers in order to ensure a smooth transition between contracts and that the staff at the consulates can focus on their primary tasks, i.e. processing Schengen visa application;
- (3) ensure that the short-stay visa application form is not used for the purpose of processing long-stay visa applications and *vice-versa*;
- (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 involved in Schengen visa processing and also by engaging with the external service provider(s) on how to reduce the waiting time for appointments where the delays are (primarily) due to the staff shortages at external service providers;
- (5) ensure that the processing time of visa applications never goes beyond 45 calendar days and is only extended beyond 15 calendar days in individual cases, notably when further scrutiny of the application is needed, e.g. by reinforcing at least temporarily the staff at consulates under the heaviest pressure (Morocco, in particular);
- (6) ensure that application files are entered in the Visa Information System without delay when the application is considered admissible;

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- (7) ensure that all relevant information is provided to the public by the consulate and the external service provider in accordance with Article 47 of Regulation (EC) No 810/2009⁹ (hereinafter: the Visa Code);
- (8) in relation to the external service provider,
 - (a) instruct the external service provider to review and clean the scroll down list of visa types in its booking system;

⁸ With the exception of beneficiaries of Directive 2004/38/EC who are eligible for ‘entry visas’ in form of a short-stay visa.

⁹ OJ L 243, 15.9.2009

- (b) instruct the external service provider to refrain from refusing to register applications that they consider inadmissible if applicants insist to submit them, in spite of the staff of the external service provider having duly informed them about the applicable rules and their assessment that Italy may not be the competent Member State;
 - (c) ensure that the external service provider systematically checks the completeness of the files on the basis of an updated checklist which complies with the harmonised list set out in Commission Implementing Decision C(2019)3271, informs applicants if certain documents are missing, and sends incomplete files to the consulate only in cases where the applicant insists on their submission;
 - (d) ensure that visa applicants always have the choice to lodge their application through the external service provider without being obligated to take optional services for an extra service fee;
 - (e) refrain from drawing up separate lists of issued/refused visas in the process of returning travel documents to the external service provider and ensure that they do not become aware of the decisions on individual applications;
 - (f) instruct the external service provider to do its utmost to collect the direct contact information of the visa applicant in order to facilitate the return of the travel documents;
 - (g) reinforce and formalise the monitoring of the external service provider by regularly carrying out announced and unannounced visits, draft reports of the visits and ensure the follow-up of the problems identified;
 - (h) in the process of setting up the cooperation with the new external service provider, ensure that adequate privacy at the counters will be provided, the ticketing system will work, and visa applicants will be called to the counters in accordance with their ticket number;
 - (i) ensure that activities will be divided by counters to decrease the waiting time and increase efficiency;
 - (j) ensure that the external service provider's appointment booking system allows applicants to indicate how many applications will be submitted during the appointment (for the same family) in order to allow a better overview of the daily expected workload by the external service provider;
- (9) ensure the use of the latest version of the uniform application form set out in Annex 9 of Visa Code Handbook I and ensure that the content of the Italian online version of the application form fully corresponds to the latest version of the uniform application form;
 - (10) ensure that applicants present fully filled in and signed application forms when lodging visa applications;
 - (11) ensure that only one photograph is required from each applicant;

- (12) align the different versions of the checklist and ensure that its content complies with the harmonised list of supporting documents for Senegal set out in Commission Implementing Decision C(2019)3271;
- (13) ensure that the staff is aware of relevant visa facilitation agreements, especially the one concluded between the EU and Cabo Verde and that the provisions of the agreements (e.g. regarding the visa fee) are complied with;
- (14) ensure that requests of additional documents are systematically and swiftly followed-up by the consulate after the expiry of the deadline given to applicants to provide documents;
- (15) ensure that the visa processing of Gambian nationals complies with Council Implementing Decision (EU)2021/1781¹⁰;
- (16) increase the number of expatriate decision-makers at the consulate in Dakar.

Done at Brussels,

*For the Council
The President*

¹⁰ OJ L 360, 11.10.2021, p. 124–127.