Council of the European Union

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NOTE

From:	General Secretariat of the Council
To:	National Parliaments
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2019 evaluation of **Hungary** on the application of the Schengen acquis in the field of the **common visa policy**

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 a Recommendation on addressing the deficiencies identified in the 2019 evaluation of Hungary on the application of the Schengen acquis in the field of the common visa policy[1].

[1] Available in all official languages of the European Union on the Council public register, doc. 9766/20

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2019 evaluation of Hungary 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 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 Hungary remedial actions to address the deficiencies identified during the Schengen evaluation in the field of the common visa policy carried out in 2019. 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(2020)85.

(2) In the light of the importance of the correct implementation of the provisions linked to the external service providers (ESP), the Visa Information System (VIS) and data protection, priority should be given to implementing recommendations n° 1, 2, 7, 8, 9, 10, 12, 16, 17, 29 to 35, 42 and 51 to 57 in this Decision.

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

(3) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Hungary should, pursuant to Article 16 (1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy any deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council,

RECOMMENDS:

that Hungary should

General

1. align the legal instruments for the ESPs in India and Kazakhstan (as well as for other countries if necessary) with Article 43 and Annex X of the Visa Code, in particular as regards data retention periods, data protection and the responsibility of the consulate;

2. instruct the ESPs in India and Kazakhstan (as well as in other countries if necessary) to respect the data retention rules of Annex X to the Visa Code, notably by deleting the data immediately after the file has been successfully transmitted. Regularly monitor the ESPs' practices in that regard;

3. ensure that the visa fee charged in local currency is regularly reviewed (and adapted where necessary) in view of current exchange rates;

4. clarify the procedure to be followed by the consulates in case of SIS alerts, including the involvement of the SIRENE bureau. Instruct consulates and train consuls accordingly, including on the correct choice of the refusal grounds in such cases;

5. abolish the use of the stamp "cancelled without prejudice" for invalidating misprinted visa stickers and follow the correct procedure for invalidation;

6. modify the sponsorship form ("meghívólevél"/"letter of invitation") to include information on the processing of the sponsor's personal data in VIS in line with Article 37(3) of the VIS Regulation;

VIS/IT system/general issues

7. modify the workflow in the national IT system so as to create the application in VIS as soon as the admissibility of the application has been verified and confirmed;

8. modify the national IT system to allow correction of visa application data once registered in the VIS;

9. modify the national IT system so that a visa with limited territorial validity (LTV) can only be issued in cases provided by Article 25 of the Visa Code (to avoid that an LTV visa is the automatic outcome if, for instance, a consul forgot to link the application to a previous one);

10. modify the national IT system in order to ensure that the presence of fingerprints is always correctly indicated (i.e., if fingerprints are attached, the FINGERPRINT_NOT_AVAILABLE and FINGERPRINT_NOT_REQUIRED flags should always be set to '0');

11. modify the checklist of admissibility criteria in the national IT system by removing the travel medical insurance from the list;

12. modify the ESP module of the national IT system to ensure that the application data are deleted once they have been successfully transmitted to the consulate;

13. consider modifying the national IT system to make it more user-friendly to “group” applications of applicants travelling together, especially for large groups;

14. consider upgrading the national IT system so that it can also generate the refusal form in English, Russian and other relevant languages;

15. consider modifying the user interface of the national IT system by correctly labelling the fields for the intended dates of arrival and departure;

16. ensure that all the data required by Article 9 of the VIS Regulation are properly registered in the VIS;

17. train consular staff to refrain from closing applications in the national IT system and in the VIS for technical reasons (in case of errors in application data) and ensure that consulates correct erroneous visa application data (once the system has been modified – *see recommendation n° 8*);

18. train consular staff on the use of VIS Mail. Instruct consular staff to use VIS Mail to request information from other Member States' consulates on visa applicants;

19. ensure that all expatriate staff are sufficiently trained to use all functionalities of the national IT system and of the VIS;

Consulate General in Mumbai

20. ensure that the consulate's website provides relevant information regarding the visa application procedure in the consulate, including how to obtain an appointment;

21. instruct the ESP to ensure that its website is updated, more user-friendly and includes all information relevant to visa applicants (such as checklists for all travel purposes) as well as correct information for family member of EU/EEA citizens, in line with Directive 2004/38/EC;

22. instruct the ESP to ensure that information provided on the notice boards in the waiting area is complete, correct and up-to-date and includes the checklists of required documents for different travel purposes as well as relevant information for family members of EU/EEA citizens;

23. ensure that the ESP checklists are compliant with the harmonised list for India as regards the requirements for minors;

24. ensure that the ESP only requires the applicant to present one photograph;

25. instruct the ESP to enhance privacy at the counters by installing more appropriate partitions.

26. instruct the ESP to ensure that its presence in the building is clearly indicated by signs in the entrance area;

27. instruct the ESP to adapt the ticketing system in a way to give priority to applicants having booked an appointment;

28. instruct the ESP staff to perform tasks at the counter in a more efficient manner or to assign some of the tasks to the back office, with a view to reducing the waiting time for applicants;

29. instruct the ESP to respect the legal instrument's provisions regarding the service fee and to abolish any other mandatory fees, such as the so-called "convenience fee";

30. instruct the ESP not to require family members of EU/EEA citizens (covered by Directive 2004/38/EC) to pay the visa fee;

31. in case the ESP wrongly charges the visa fee, require proof from the ESP that the visa fee is indeed refunded to the applicant;

32. instruct the ESP to provide the applicants with written information on the missing documents;

33. instruct the ESP to ensure a proper data quality check after recording the data in the back office;

34. instruct the ESP to abolish the practice of sending in advance application data by unsecured email;

35. ensure regular monitoring of the ESP's satellite visa application centres in other cities in cooperation with other Member States' consulates (on a rotation basis and using the monitoring checklist developed in Local Schengen Cooperation);

36. ensure that applicants can lodge their application directly at the consulate;

37. consider entrusting the local staff (or expatriate administrative staff) with more tasks – such as checking the admissibility of applications, creating the application files in the VIS, linking and grouping applications and verifying information provided in supporting documents – with a view to better using their spare capacities and knowledge of local circumstances;

38. ensure that the existence of fingerprints in the VIS is verified during the admissibility check, possibly by giving the expatriate administrative staff access to the results of the VIS search;

39. ensure that during the examination more importance is attached to the socio-economic background of the applicant and other local circumstances, possibly with the help of the local staff. Consider applying a less rigid approach to certain supporting documents for bona fide applicants (e.g. hotel reservations missing for part of the trip), if the overall travel purpose and sufficient financial means are well established;

40. establish clear criteria for the cases in which consuls should conduct interviews or apply the return control procedure. Consider holding regular team meetings to discuss particular cases, risk factors and examination methods;

41. ensure that consuls issue bona fide applicants with multiple-entry visas with a validity of up to five years if the conditions are met. Establish clear criteria for issuing such visas;

42. ensure that the consulate staff systematically links applications of persons travelling in a group or with a family in the VIS;

43. train the staff at the consulate to correctly perform the unlinking of wrongly linked applications in the VIS;

44. use the standard form for annulment and revocation to notify the visa holder and keep a record in the archived application file;

45. remove the reference to travel medical insurance as an entry condition in the information leaflet handed out when the passport is returned to applicants;

46. provide applicants with a full English translation of the refusal form which includes detailed information on the appeal procedure;

Consulate General in Almaty

47. ensure that information provided on the consulate's website is complete, correct and up-to-date and includes clear information on which Member State is competent for examining and deciding on the visa application, on third-country nationals subject to prior consultation and about the fact that family members of EU/EEA citizens only have to provide a limited number of supporting documents. Ensure that all links on the consulate's website are active;

48. instruct the ESP to ensure that the visa and service fees indicated on its website correspond to the actual fees charged and to provide correct information on its website about the collection of fingerprints, including the right to not submit fingerprints again during 59 months following the first submission;

49. instruct the ESP to ensure that information provided on the notice boards in the waiting area is complete, correct and up-to-date and includes the checklists of required documents for different travel purposes as well as relevant information for family members of EU/EEA citizens;

50. instruct the ESP to provide adequate training of its staff on the special status of family members of EU/EEA citizens (covered by Directive 2004/38/EC) in order to provide correct information to applicants;

51. instruct the ESP to provide the possibility for "walk-in" applicants to submit their visa application, as long as slots are available, without paying an additional fee;

52. instruct the ESP not to require applicants to give their fingerprints again, if they have given fingerprints in the 59 months preceding the application (and if they declare this in field 27 of the application form or if it is visible from previous visas in their passport);

53. instruct the ESP to provide the applicants with written information on the missing documents;

54. instruct the ESP to ensure transportation of the application files, travel documents and the USB drive in a more secure manner;

55. instruct the ESP to abolish the practice of requiring the applicant – upon return of the travel document – to open the envelope in front of ESP staff;

56. ensure that consulate does not require applicants to give their fingerprints again, if they were captured by another Member State within the last 59 months (and if applicants declare this in field 27 of the application form or if it is visible from previous visas in their passport);

57. ensure that the consulate gives applicants a receipt for the payment of the visa fee when they submit the application;

58. ensure that the arrival and departure dates for the applicant's first/next intended stay in the Schengen area are correctly indicated in fields 29 and 30 of the application form and that this information is correctly stored in the VIS. Instruct consular staff and the ESP and inform applicants that these fields should not be used to indicate the desired length of validity of the visa;

59. consider taking a less conservative approach to issuing bona fide applicants with multiple-entry visas with a validity of up to five years if the conditions are met and not only on request by the applicant;

60. avoid differentiating between Schengen visas issued by Hungary and other Member States (when assessing whether to issue multiple-entry visas with a long validity), so that equal "value" is always given to previous visas – irrespective of which Member State issued them;

61. consider an alternative method of reporting back to the consulate, such as sending a copy of the exit stamp in the passport. Abolish the use of the stamp “Report back” in passports. Apply the ‘period of grace’ irrespective of whether ‘reporting back’ is required;

62. take measures to improve the security as regards the access to the consulate’s waiting room and make it accessible for people with restricted mobility. Ensure more privacy for the interview room and the counters and consider establishing an efficient ticketing system.

Done at Brussels,

For the Council
The President