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VISA 4
COMIX 4

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	8 January 2019
To:	Delegations
No. prev. doc.:	15571/18
Subject:	Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2017 evaluation of The Netherlands on the application of the Schengen <i>acquis</i> in the field of the common visa policy

Delegations will find in the annex the Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of The Netherlands on the application of the Schengen *acquis* in the field of the common visa policy, adopted by the Council at its meeting held on 8 January 2019.

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 2017 evaluation of The Netherlands 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 Schengen¹, 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 The Netherlands remedial actions to address the 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(2018)2240.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) The rule that visa applications are to be examined and decided on by consulates, as defined by the Visa Code, ensures that decision-making remains closely linked to the applicant's socio-economic situation and local circumstances and it enables Member States to assess migratory risk and to harmonise practices in each location where visa applications are processed. It is thus a core element of Regulation (EC) No 810/2009 of the European Parliament and of the Council (the Visa Code)² which establishes the procedures and conditions for issuing visas. Therefore priority should be given to recommendation (1) on remedying the non-compliance of the centralised processing of and decision making on visa applications.
- (3) In light of the importance of the correct implementation of the provisions linked to the quality of decision-making, the use of the Visa Information System (VIS), the monitoring of external service providers (ESP) and data protection, priority should also be given to implementing recommendations (2), (9) and (10), (11) to (17) and (18) to (20).
- (4) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, The Netherlands 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 The Netherlands should:

1. Ensure that the structure and the organisation of the regionalised decision making fully comply with the Visa Code and in particular the rule that visa applications are examined and decided on by consulates.

² Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visa (OJ L 243, 15.9.2009, p. 1).

2. Consult the Dutch Data Protection Authority to verify whether the profiling of applicants and hosts in the “Assessment application database” (BAO) complies with Directive 95/46/EC on data protection as implemented by Dutch data protection law and whether the data protection information in the sponsorship form should be updated and subsequently follow its recommendations.
3. Implement VIS Mail also for communication between RSOs and front offices with consulates of other Member States to improve data security, retain efficiency and prevent undermining the benefits of VIS Mail.
4. Adapt the “Orange Carpet” Visa Facility for accredited companies, so that
 - the examination of and the decision on the applications lodged under the scheme takes into account the personal situation of each applicant and that appropriate documents are submitted to prove the applicant's bona fide status;
 - facilitations are only granted to “specific employees” of the company (which should be clearly defined), that no facilitations are granted to persons outside of the company and that the visas issued under the scheme correspond to the travel needs; for instance, long-validity MEVs should not be granted systematically to first-time travellers.
5. Monitor and review “Orange Carpet” Visa Facility accreditations regularly.
6. Ensure proper monitoring of external service providers’ (ESP) and consulates’ websites, so that complete information is given to the public in accordance with Article 47 of the Visa Code.

7. Improve information to the public by:
 - instructing the ESPs to improve the structure of their websites.
 - ensuring that questions from the public are directed to the competent authority so that the answers given are complete and correct.
 - performing quality checks of ESPs' replies to the public.
8. Ensure that the checklists used by the ESPs in different locations correspond to the harmonised lists of supporting documents or, where harmonised list do not exist (yet) specifying precisely which documents are to be submitted by applicants in each location.
9. Ensure that the consulates are fully aware of the need to monitor the ESP and regularly carry out monitoring visits.
10. Ensure that the ESP's practices comply with the legal basis, by
 - making the ESP aware of the rules regarding the collection of fingerprints as set out in Article 13(3) of the Visa Code;
 - ensuring that the ESP does not require applicants who have given fingerprints during the 59 months preceding the application (and who state so in field 27 of the application form) – including for applications lodged with other Member States – do not have to give them again;
 - ensuring that the applicants' data stored in the ESP's IT- system are limited to what is necessary for contacting them (i.e. name, reference number, contact details, address for return of travel document);
 - ensuring that the data are completely deleted (and not only masked) from the ESP's IT-system after the return of the travel document.

*Decision-making procedure*³

11. Improve the staffing situation at consulates by ensuring that sufficient numbers of qualified expatriate and local staff are available to perform the tasks related to the processing of visa applications.
12. Establish clear guidelines for the systematic involvement of consulates and define the tasks to be performed by those consulates. Improve the quality of examinations and of decision making, in particular by ensuring that:
 - relevant staff members have sufficient qualification and knowledge of visa procedures and migratory risk assessment;
 - consulates' staff systematically verify that the application contains all relevant documents and translations and make summary translation of content of documentation that have not been translated;
 - online or phone investigations and interviews (especially in high risk countries) are carried out by consulates where necessary..
13. Improve the specialisation of decision-making staff by:
 - assigning only one 'main country' to each decision maker with one or two others as back-up;
 - providing country-specific training to decision makers;
 - requiring decision making staff to regularly meet consulates' staff and consuls from other Member States for in-depth discussion on e.g. risk profiles, socio-economic situation and open sources of information;

³ Recommendations (11) – (17) are without prejudice to recommendation (1).

- improving knowledge of (specimen of) local documents, e.g. civil status documents;
 - integrating country-specific knowledge into country profiles which should be developed into full country risk assessments;
 - ensuring appropriate language skills or access to language resources.
14. Require decision makers (responsible for a specific country) to be actively involved in local Schengen cooperation (LSC) and anti-fraud meetings in that country. Ensure in particular that:
- decision-making staff is aware of meeting dates and agendas of LSC meetings in advance so that they can contribute with input and feedback and raise questions;
 - all staff is aware of the existing harmonised lists of supporting documents.
15. Ensure that consulates and ESPs verify applicants' travel destinations when the application is lodged and that the examination procedure includes proper verification of consular competence and admissibility in accordance with the Visa Code. Ensure that applications for which the Netherlands is not competent and applications that are inadmissible are returned to the applicant rather than formally refused.
16. Ensure more thorough investigation of supporting documents and avoid hasty refusals based on lack of supporting documents or pressure to respect the 15-day decision making deadline.
17. In situations of doubt, give applicants a chance to clarify their situation by sending additional documents or through an interview.

IT system

18. Upgrade the IT system to ensure that applicants' photos are scanned and stored in VIS without a visible background frame.
19. Ensure that staff is aware of and take account of results of biometric matching as provided by the VIS Biometric Matching System (BMS).
20. Revise and correct data transmission to VIS to ensure that information on files which are linked in N-VIS is correctly stored in VIS.

Done at Brussels,

For the Council
The President
