



Brussels, 15 April 2019
(OR. en)

8623/19

Interinstitutional File:
2019/0042(NLE)

SCH-EVAL 72
VISA 95
COMIX 223

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council

On: 15 April 2019

To: Delegations

No. prev. doc.: 8217/19

Subject: Council Implementing Decision setting out a Recommendation on addressing the serious deficiencies identified in the 2018 evaluation of **Finland** on the application of the Schengen *acquis* 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 serious deficiencies identified in the 2018 evaluation of Finland on the application of the Schengen *acquis* in the field of the common visa policy, adopted by the Council at its meeting held on 15 April 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 serious deficiencies identified in the 2018 evaluation of Finland 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 Finland remedial actions to address the serious deficiencies identified during the Schengen evaluation in the field of the common visa policy carried out in 2018. Following the evaluation, a report covering the findings and assessments and listing deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2019) 410.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) The on-site visit to the Finnish Consulate General in St Petersburg, Russia (hereinafter "the consulate"), and to the Service Centre for Entry Permits in Kouvola, Finland (hereinafter "the service centre"), revealed serious deficiencies on the one hand with regard to the tasks conferred upon the external service provider and the protection of applicants' personal data, and on the other hand with regard to the examination of applications of Russian citizens. Finland is thus seriously neglecting its obligations as regards essential aspects of the common visa policy.
- (3) Therefore it is important to remedy each of the deficiencies identified with the least possible delay. In light of the importance of complying with the Schengen acquis, in particular the provisions related to the competent Member State, data protection, the supporting documents, the examination of applications, the recruitment and training of staff, and the Visa Information System (VIS), priority should be given to implementing recommendations 1, 10, 17 to 24, 27, 29 to 33, 34 to 37 and 40 to 45 in this Decision.
- (4) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within one month of its adoption Finland 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 Finland should

Information to the public, external service provider, lodging of applications and security

1. ensure that the external service provider (ESP) and the consulate strictly apply the rules of competence of Member States and avoid practices leading to visa shopping. Ensure that the information concerning the destination of the travel presented in the application is confirmed by supporting documents presented (in accordance with the harmonised list). Ensure that applicants are questioned about their travel plans and that ESP staff is well trained to determine the competent Member State correctly;

2. update the consulate's website to ensure that relevant information is complete, correct and up-to-date;
3. instruct the ESP to update its website to ensure that relevant information is complete, correct and up-to-date;
4. ensure that applicants indicate the correct arrival and departure dates of the first/next intended stay in the Schengen area in fields 29 and 30 of the application form;
5. verify whether the duration of the agreement with the ESP is in line with relevant national and EU procurement law and take corrective measures if needed;
6. carry out regularly announced and unannounced visits to all visa application centres operated by the ESP in the jurisdiction of the consulate and draft reports of the visits;
7. ensure that ESP staff correctly instruct applicants how to place fingers on the scanner to obtain high-quality fingerprints and discontinue unnecessary steps, such as raising hands into the camera;
8. ensure that ESP staff are aware of and applies all applicable exemptions from the visa fee;
9. ensure that the consulate ascertains the precise number of applications/travel documents received from the ESP and returned to the ESP every day and keeps evidence of 'scanned-in' and 'scanned-out' applications (signed by both the ESP and the consulate) in their files;
10. ensure that the consulate maintains the capability, the personnel and the equipment to receive applications without the help of the ESP;
11. provide the possibility to applicants to obtain an appointment at the consulate within a reasonable timeframe, taking into consideration the general rule of two weeks and the principle of direct access to the consulate specified in Articles 9(2) and 17(5) of the Visa Code;
12. ensure that the visa fee is paid when lodging the application at the consulate;

13. establish a clear and transparent procedure for the accreditation of commercial intermediaries / travel agencies and ensure monitoring of accredited companies on a regular basis;
14. strengthen measures for the secure handling and distribution of visa stickers to be able to track all visa stickers at all times and to prevent unnoticed disappearance of visa stickers;
15. reconsider the security measures at the applicants' entrance to the consulate and in the area accessible to applicants, put in place adequate security checks for the applicants and introduce a ticketing system in the waiting room;
16. revise procedures for destruction of archived paper files by introducing protocols for the transport and destruction of files and avoiding the storage of files outside of archive premises before the destruction;

Examination and decision-making

17. ensure that the legal structure governing the decision making on visa applications by Finland fully complies with the Visa Code and in particular the rule that visa applications be examined and decided on by consulates;
18. ensure that applicants systematically submit the supporting documents in accordance with the harmonised list for Russia (or consider revising the list in Local Schengen Cooperation);
19. ensure that visa officers examine the socio-economic and financial situation of the applicant, his/her ties with the country of residence, the intention to return and the purpose of travel, based on the full set of supporting documents and that additional investigations are carried out where necessary – in particular as regards first-time applicants;

20. ensure that the additional checks (e.g. interviews) conducted for non-Russian applicants are proportionate and determined case-by-case, based on their specific situation, and avoid interviews where the examination of relevant supporting documents (which should be provided by all applicants in accordance with the harmonised list) is sufficient to take a decision. Ensure that the validity of the visa issued corresponds to the personal situation of the applicant, in particular as regards his previous travel history, irrespective of his/her nationality;
21. ensure that checks of correct use of previous multiple-entry visas with long validity with regard to the Member State of main/first destination are limited to the first effective trip after obtaining the visa. Ensure that all staff are aware of the distinction between Member State of first entry and Member State of main destination;
22. ensure that the assessment of the applicant's previous visa history includes visas issued by other Member States at the same level as visas issued by Finland;
23. ensure that supporting documents submitted in Chinese are systematically verified by Chinese speaking staff and that visa officers deciding on Chinese applications have easy access to staff speaking and reading Chinese to verify documents;
24. consider providing partial access to the supporting documents in the relevant IT system for the local support teams in Beijing and Shanghai as well as a more efficient way of addressing instruction to those teams, to avoid the cumbersome process of sending such instructions and documents by email;
25. consider issuing MEV with long validity to bona fide travellers that have a solid Schengen visa history, including Chinese applicants, even if they are applying for a single-entry visa for a particular trip;

26. ensure that for applications in representation of Austria the electronic invitation is attached to the application file in the relevant IT system and made available for future reference. Use VISMail when requesting documents containing personal data on applicants, such as electronic invitation;
27. ensure that all applications of persons travelling as part of the same group are examined by the same visa officer in order to provide for a consistent assessment;
28. ensure that visa officers at the consulate systematically examine the travel medical insurance's coverage;

Staff and training

29. ensure that persons authorised to take decisions on visa applications receive more extensive training on relevant EU and national law, on all aspects of the visa procedure, local circumstances as well as risk assessment in concrete cases before taking up their duties. Ensure that information from Local Schengen Cooperation meetings and anti-fraud meetings in a particular country is shared with all visa officers examining applications from that country;
30. improve on-the-job training, mentoring and supervision especially for newly hired staff, and ensure that decisions taken by newly hired staff are regularly monitored;
31. consider avoiding recruitment of temporary staff for decision-making or at least ensure better job security with a view to enhancing their loyalty to their employer;
32. ensure either that decisions on visa applications at the consulate are taken by posted staff enjoying consular/diplomatic immunity or that the type of contracts offered to local employees increase their job security and possible career opportunities, with a view to enhancing their loyalty to their employer;
33. entrust that posted staff with consular/diplomatic immunity at the consulate is in charge of the handling of visa stickers and its distribution to visa sticker printing staff;

IT systems and VIS

34. ensure that the tasks of the ESP and its subcontractors do not go beyond what is permitted by the Visa Code as regards the management of IT systems; that all IT systems necessary for the examination of visa applications are fully managed and controlled by the Finnish authorities; that the cooperation with the ESP fully respects data protection requirements; that all data are deleted by the ESP after their transmission to the Finnish authorities (except the contact details and travel document number);
35. ensure that the electronic archive of application files is managed and kept by national authorities and not the ESP;
36. ensure that the relevant Finnish authorities have access to full logs of all systems and to the user repository of the application database (ELVIS) and can effectively control access to the data. Increase its authorities' control and ownership of the Finnish visa IT system (SUVI);
37. ensure that the transfer of application data from the ESP in China to the Finnish authorities is sufficiently secured and encrypted, in line with the sensitive nature of the data;
38. ensure that the personal data entered into the ESP's online application form is only accessible once an application has been lodged;
39. ensure that the SIS check (and possibly searches in national databases) can be performed by visa officers only in connection with a visa application;
40. ensure that the ESP transfers all data as soon possible (at the end of the day of their collection in case of electronic data) and that all admissible applications are created in the VIS without delay;
41. modify the IT system (SUVI) to ensure that the data in VIS on decisions taken are always updated as soon as possible;

42. modify the IT system (SUVI) to ensure that information on the issuing authority of the travel document is entered into the VIS for each application;
43. modify the IT systems (ELVIS and SUVI) to ensure that all applications from the same group can be examined together in the IT system;
44. modify the IT system (SUVI) in order to prevent the possibility of issuing uniform visas in case of negative replies in prior consultation (or explain why this possibility should be maintained);
45. ensure that the table of Member States requiring ex-post information is always correct and updated in the IT system (SUVI);
46. ensure that all scanned pages of the travel document are displayed correctly in the application database (ELVIS);
47. shorten the time period for automatic log-out from the visa IT systems;
48. ensure that full documentation of the application database (ELVIS) is available for users and that staff members are aware of it;

Other procedural matters

49. abolish the practice of revoking valid visas and instead issue visas with a validity starting after expiry of the previous visa. Also abolish the practice of revoking visas if the applicant changes travel purpose;
50. instruct the Finnish border guards not to refuse entry if a holder of a multiple entry visa with long validity intends to enter at later trips for a different travel purpose than originally applied for;

51. abolish the practice of issuing short-stay visas (with limited territorial validity) to people with the intention to reside in Finland and issue long-stay visas or residence permits instead (with the exception of the issuance of short-stay visas to family members of EEA nationals, who have the right to obtain such a short-stay visa on the basis of the accelerated procedure provided under Directive 2004/38/EC);
52. ensure that the period of validity of the visa issued systematically includes an additional "period of grace" of 15 days, including for visas issued to Ukrainian applicants;
53. improve awareness among staff about the distinction between revocation, annulment and invalidation. Correct the request form for revocation;
54. ensure the use of the standard form for revocation and annulment in all relevant cases;
55. abandon the use of the "revoked" stamp when invalidating misprinted visa stickers in travel documents;
56. abolish the practice of "invalidating" expired visa stickers (by drawing a red cross and destroying the kinegram);
57. consider improvements in the IT system or the printers to avoid waste of visa stickers through "blank printing" (for example by allowing the blank "misprinted" visa sticker to be re-inserted into the printer, with appropriate safeguards).

Done at Brussels,

For the Council

The President