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COMIX 351

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council

On: 8 July 2019

To: Delegations

No. prev. doc.: 10381/19

Subject: Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of **Switzerland** 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 deficiencies identified in the 2018 evaluation of Switzerland 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 July 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 2018 evaluation of Switzerland 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 Switzerland remedial actions to address the 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 best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2019) 2200.
- (2) In the light of the importance of the correct implementation of the provisions linked to the decision-making process, the Visa Information System (VIS), the monitoring of external service providers (ESP) and data protection, priority should be given to implementing recommendations 4, 7, 12 to 15, 18 to 21, 29, 34 to 39 and 45 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, Switzerland 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 send that action plan to the Commission and the Council,

RECOMMENDS:

that Switzerland should

General

1. update its consulates' websites to ensure that the information they provide is complete, correct and up to date, and includes relevant information for family members of EU/EEA citizens;
2. ensure that family members of EU/EEA citizens (covered by Article 1 (1) of Annex I to the Agreement of 21 June 1999 between the Swiss Confederation and the European Community and its Member States on the free movement of persons) can apply directly at its consulates and that, where an appointment system is in place at the consulate, appointments are allocated without delay;
3. ensure that applicants are only required to submit one photograph;
4. ensure that knowledge of risk groups, risk areas and fraudulent practices is documented and updated appropriately, so that new or replacement staff can quickly familiarise themselves with the main challenges for issuing visas in the host country;
5. ensure that visa officers use the IT system systematically to document verifications conducted (e.g. interviews, phone calls, online checks) and the reasons leading to the decisions;
6. ensure that a stamp of the issuing authorities is affixed on the printed visa sticker in the travel document;

VIS/IT system

7. ensure that application files registered in the Swiss IT system (ORBIS) and recorded in the VIS are complete and contain all data required by Article 9 of the VIS Regulation, including the applicant's full address and the host organisation's name;
8. consider revising the IT system so that refusal forms can be generated automatically;

Embassy in Abu Dhabi

9. instruct the external service provider (ESP) to update its website and notice boards in the waiting area to ensure that the information provided is complete, correct and up to date, and includes relevant information for family members of EU/EEA citizens;
10. instruct the ESP, when moving to new premises, to provide easy access to its waiting area and clear indications as to its presence in the building;
11. instruct the ESP to ensure better privacy for applicants at the counters;
12. ensure that the ESP keeps video surveillance recordings at its premises no longer than a period determined by the Swiss authorities and ensure compliance when monitoring the ESP;
13. instruct the ESP not to collect fingerprints from applicants 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 it is visible from previous visas in their passport). Inform applicants that fingerprints have to be given only once every 59 months;
14. instruct the ESP to abolish the practice of sending application data from Bahrain by unsecured email in advance or ensure that such data is transmitted in a secure way;
15. ensure that the ESP deletes application data from its IT systems immediately after sending it to the consulate, in accordance with the ESP contract;

16. ensure that the consulate's regular monitoring of the ESP includes checks on its IT systems to verify that application data is regularly deleted in line with applicable rules (as also required by the Swiss central authorities' ESP monitoring checklist);
17. correct and clarify the checklists of required documents to bring them into line with the harmonised list of supporting documents applicable to the United Arab Emirates (or alternatively consider with the other Member States' consulates in the UAE whether a revision of the harmonised list is necessary);
18. ensure that in cases where the consulate is not competent for an application, it is returned to the applicant and the visa fee is reimbursed;
19. abolish the practice of 'withdrawing' applications by decision of the consulate, where such withdrawal has not been requested by the applicant;
20. ensure that visa officers fully understand the essential content of supporting documents in Arabic when taking decisions, or request translations;
21. ensure that the 'four eyes' principle (if required by internal guidelines) is applied consistently in the examination of applications, to improve efficiency and avoid possible oversights. Take into consideration that certain nationalities might be a migratory risk for other Schengen countries, even if not for Switzerland;
22. ensure that particular attention is given to the parental consent and inviting persons when examining applications for minors travelling without their parents;
23. consider contacting other Member States' consulates more frequently in the event of previous refusals to understand better the detailed reasons leading to the refusal;
24. ensure that, in cases of prior consultation, the consultation period is used to examine the application, with a view to avoiding unnecessary delays;

25. ensure that a more consistent approach is taken to determining the validity of visas (in particular in cases of repeat applications) and consider updating the current internal guideline and using it more systematically. Avoid differentiating between Schengen visas issued by Switzerland and other Member States, so that equal 'value' is always given to previous visas – irrespective of which Member State issued them – when determining the validity of the visa to be issued;
26. ensure that, where the intended travel dates overlap with the validity of an existing visa, the new visa is valid from the date following the expiry of the previous one;
27. ensure that the 15-day period of grace is systematically included in the period of validity of the visa;
28. ensure that consulate staff are aware of the distinctions between the annulment, revocation and invalidation of visa stickers, and the correct procedures in each case. Ensure that the stamp required for revocation is available at the consulate;
29. ensure that the standard form is issued and delivered to the applicant in cases of annulment or revocation, the 'annulled' or 'revoked' stamp is affixed to the sticker, and the term 'visa' and the optically variable feature are rendered unusable, where possible in practice;
30. ensure that all decisions on revocations and annulment are entered in the VIS;
31. ensure that only small stocks of visa stickers for daily printing are distributed to individual staff members in charge of printing and that this is duly documented, either on paper against signature or with a clear trace in the IT system;

Embassy in Beirut

32. instruct the ESP to update its website and notice boards in the waiting area to ensure that the information provided is complete, correct and up to date, and includes the consulate's checklists of required documents for different travel purposes and relevant information for family members of EU/EEA citizens;

33. instruct the ESP to ensure that the its presence in the building is clearly indicated by signs in the entrance area;
34. ensure that the ESP is fully informed of all applicable visa fee exemptions and reductions, and applies them systematically;
35. instruct the ESP and the consulate not to collect fingerprints from applicants 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 it is visible from previous visas in their passport). Inform applicants that fingerprints have to be given only once every 59 months;
36. instruct the ESP to transport applications and documents to and from the consulate with a level of security commensurate with the sensitivity of the data. Ensure that the ESP staff are appropriately supervised by consulate staff when they are delivering and picking up documents;
37. ensure that the consulate is able to track applications and travel documents received from and returned to the ESP;
38. ensure that the consulate's regular monitoring of the ESP includes checks of its IT systems to verify that application data is regularly deleted in line with applicable rules (as also required by the Swiss central authorities' ESP monitoring checklist);
39. instruct the ESP to perform more thorough checks of the quality of the data in applications before sending them to the consulate and monitor the ESP's performance in this respect;
40. ensure that the consulate systematically checks the accuracy and completeness of application data after importing the data received from the ESP in the IT system;
41. ensure that the consulate can access the ESP's appointment management system remotely for monitoring purposes;

42. ensure that applicants can secure an appointment for lodging an application 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;
43. consider conducting more interviews by phone or in person in justified cases, in order further to assess applicants' personal circumstances, real purpose of travel and migratory risk;
44. give applicants a deadline for submitting additional documents requested by the consulate. Take decisions on applications in cases where documents are not provided within that deadline. Refuse the application if it is clear that not all entry conditions are met (e.g. sufficient means of subsistence, purpose of travel);
45. abolish the practice of asking applicants to submit refusal forms issued by other Member States;
46. use VIS Mail to request information from other Member States' consulates on visa applicants. Inform or train visa officers on the use of VIS Mail when communicating with other Member States;
47. ensure that consulate staff systematically log off the IT system or lock their PC before leaving their workstation;
48. ensure that consulate staff are aware of the distinctions between the annulment, revocation and invalidation of visa stickers, and the correct procedures in each case. Ensure that the stamp required for revocation is available at the consulate.

Done at Brussels,

For the Council

The President
