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European Union

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NOTE

From: General Secretariat of the Council
To: National Parliaments

Subject: Recommendation on addressing the deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of data protection by Belgium

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 2015 evaluation on the application of the Schengen acquis in the field of data protection by Belgium.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of data protection by Belgium

THE COUNCIL 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 setting out a recommendation is to recommend to Belgium remedial actions to address deficiencies identified during the Schengen evaluation in the field of data protection carried out in 2015. 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(2016)1668.
- (2) The efforts of the Ministry of Foreign Affairs to establish clearer and more uniform rules for subcontractors (contract, security of data transfer to consular posts, possibilities for auditing, access for receiving states' law enforcement agencies etc.) are seen as good practice.
- (3) It is important to remedy each of the deficiencies identified with the least possible delay.

¹ OJ L 295, 6.11.2013, p. 27.

- (4) This decision setting out a recommendation should be transmitted to the European Parliament and to the parliaments of the Member States. Within six months of its adoption, the evaluated Member State shall, pursuant to Article 16(8) of Regulation (EU) No 1053/2013, provide to the Commission its assessment on the possible implementation of the indications for further improvements,

HEREBY RECOMMENDS:

Belgium should

1. give an account of the changes made to legislation which have an effect on Schengen-related data protection issues. Report on other changes to the legal environment governing in particular the tasks of the Commission for the Protection of the Privacy (hereafter DPA) and the new supervisory body for police information management in relation to SIS II data protection issues including the relation and cooperation between the two bodies. This encompasses a possible shift of the responsibility to deal with data subject access requests pursuant to Article 13 of the Privacy Act from the DPA to the supervisory body;
2. improve the DPA's methodology of supervising the processing of SIS II and VIS data; the use of a more technically developed methodology during the supervision of the processing of SIS II and VIS data, including regular checks of audit trails/logs, would be welcomed;
3. consider clarifying by law the general principle that full information on SIS II-related alerts is to be provided to data subjects who submit access requests and that any restrictions thereof should be designed as an exception;
4. consider not limiting the frequency of data subject requests regarding SIS II alerts to only one per year when they refer to the same data and service;

5. clearly define and document the distribution of tasks and responsibilities between the Federal Immigration Office (hereafter FIO) and the Ministry of Foreign Affairs (hereafter MFA) concerning the processing of personal data in the VIS. The documentation should lay out in detail how the FIO is fulfilling its responsibilities as controller of the VIS data processing. The FIO may want to consider how – in its role as controller – it can verify that the actors (FIO, MFA, consular posts and subcontractors) are fulfilling their respective responsibilities towards VIS data processing;
6. define a clear procedure as well as a secure channel for the transfer of Schengen visa-related personal and biometric data (especially when it involves the processing of personal data by a private company operating outside of the EU), including an appropriate key transmission procedure;
7. develop and implement a 'bring your own device' security policy regarding VIS-related data processing systems;
8. develop periodic review procedures in the N.SIS for automatically entered data in order to have the highest level of data quality;
9. implement a mechanism that could ensure the integrity of N.SIS-related logs;
10. develop practical and user-friendly guidelines at the SIRENE Bureau for operational colleagues in order to facilitate the cross-checking of incoming messages with the databases;
11. keep the Schengen information published on the website of the DPA up to date in order to ensure that full and correct information is provided to the data subjects;
12. include links to the DPA's website on the websites of the Police, the Federal Immigration Office, the Ministry of Foreign Affairs and the consular posts.

Done at Brussels,

*For the Council
The President*
