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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 2015 evaluation on the application of the Schengen acquis in the field of the common visa policy by the Netherlands

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 the common visa policy by the Netherlands.

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 the common visa policy by the Netherlands

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 the Netherlands remedial actions to address deficiencies identified during the Schengen evaluation in the field of the common visa policy 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) 9600.
- (2) In light of the importance of complying with the Schengen acquis, in particular with regard to the correct implementation of the provisions linked to the Visa Information System (VIS), priority should be given to implementing recommendations (2), (6) and (13) below.

¹ OJ L 295, 6.11.2013, p. 27.

- (3) This decision setting out a recommendation should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, the evaluated Member State shall, pursuant to Article 16, paragraph 3 of Regulation (EU) No 1053/2013, establish an action plan to remedy the deficiencies identified in the evaluation report and provide this to the Commission and the Council,

HEREBY RECOMMENDS

that the Netherlands should:

1. take measures to ensure that the purge mechanism in N-VIS² is implemented properly so that application files are automatically deleted from N-VIS at the expiry of the data retention period defined in national legislation;
2. ensure correct use and implementation of the VIS, *inter alia* by:
 - (a) taking measures immediately to ensure the proper use of annulment/revocation and enter correct information into the N-VIS and, consequently, into the (EU)VIS;
 - (b) modifying the current practice for recording the status of visa applications in the various databases so that that the status of earlier visa applications is directly visible in (EU)VIS for consular staff when processing subsequent applications from the same person;
 - (c) taking measures to ensure that when the decision has been taken to annul or revoke a visa, the authority that has taken the decision adds the status information indicating that the visa has been annulled or revoked and other relevant information in accordance with Article 13 of the VIS Regulation.
3. take measures to start implementing VISMail, as provided for by Article 16 of the VIS Regulation, and train staff in how to use it;

² Dutch national IT system.

With regard to the Embassy/consular section in Ankara

4. improve the information to the public, *inter alia* by:
 - (a) ensuring that the call centre provides correct and updated information;
 - (b) ensuring that correct and matching information is given everywhere (i.e. the websites of the external service provider (ESP), the consular section's website and notice boards outside the Embassy building);
 - (c) updating both the website of the ESP and the consular section with missing information, in particular regarding the facilities to be offered to family members of EU citizens covered by Directive 2004/38/EC³;
5. take measures to ensure that the premises of the ESP are improved and ensure that preferential treatment of certain applicants is avoided, *inter alia* by:
 - (a) urging, possibly in cooperation with other Member States, the ESP to upgrade the premises of the visa application centre in the near future so as to improve the overall comfort and privacy of applicants (and possibly improving the staff's physical working conditions, thus minimising the risk of application files being mislaid or mixed up);
 - (b) requiring the physical security of the premises to be enhanced so as to prevent unauthorised persons from gaining access to application files and, in particular, the travel documents;

³ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (c) informing the ESP that, while complementary services and more comfortable facilities may be offered as an optional service, preferential treatment of applicants with regard to visa procedures, such as arranging an earlier appointment time, is not acceptable; amend the legal instrument establishing the terms of cooperation with the ESP to clarify that ESPs are not allowed to offer such preferential treatment;
6. ensure that all the mandatory fields provided for by the VIS Regulation are systematically filled out in the VIS;
 7. reallocate staff so that the sorting of the applications is done by a member of the consular staff rather than by the staff of a security company, as the latter should not have access to the personal data of applicants via access to the applications;
 8. establish internal guidelines regarding the specific controls to be performed, in order to provide guidance to local and expatriate staff to scrutinise certain applicants more thoroughly and provide a more systematic and case-by-case assessment of the migratory risk in the light of local circumstances and in accordance with Article 21 of the Visa Code; remind staff that the internal 'protocol' for decision-making is a guideline rather than an instruction for decision-making;
 9. revise the current 'protocol' so that the validity of the visas issued is more consistent with a case-by-case assessment of the needs of the applicants (in line with Article 24(2) of the Visa Code⁴), and due account is taken of previous visas issued by other Member States;
 10. consult the Dutch Data Protection Authority on the compatibility of the local "attention list" of applications with Directive 95/46/EC of the European Parliament and of the Council⁵ and the Dutch law implementing it, and ask that Authority to report on its findings;

⁴ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

11. ensure that the additional 'interview form' is abolished and that staff, the public and the ESP are made aware that only the application form as set out in Annex I to the Visa Code, is to be filled in when applying for a visa;

With regard to the regional support office (RSO) in Pretoria

12. revise the website in order to provide information to the public on how to hand in the application directly at the embassy, in accordance with Article 17(5) of the Visa Code in conjunction with Article 47(1) a) and c); make sure that information is given on how to obtain an appointment;
13. immediately ensure the correct implementation of the provisions of Article 13(1) of the Visa Code so that visa applicants' fingerprints are collected only every 59 months, if they do not belong to one of the categories for which this requirement is waived;
14. make sure that RSO staff are aware of legally binding harmonised lists applicable to the countries in which the front offices are located;
15. instruct all staff that the machine readability of the travel document submitted is not part of the admissibility criteria (Article 19 of the Visa Code) and, therefore immediately abolish the practice of taking account of it in the assessment of admissibility;
16. take measures to ensure that the premises of the ESP are upgraded and ensure full compliance with the provisions of the Visa Code regarding the tasks that may be carried out by ESPs, *inter alia* by:
 - (a) ensuring that the premises of the ESP are fitted with secure storage facilities for visa applications so as to ensure at all times a high level of protection of applicants' personal data against loss, destruction or unauthorised access (Annex X, point A(e) of the Visa Code);
 - (b) instructing the ESP to immediately cease entering comments on the applications into the system; also consider whether to remove the 'comments' field from the data entry interface available to the ESP;

- (c) ensure that the ESP collects the fees according to the terms laid down in the legal instrument or change the relevant part of the legal instrument to ensure that the legal instruments reflect reality;
17. take measures to ensure that not only a formal examination of the supporting documents is performed, but that an in-depth and more comprehensive assessment of the applicants' personal situation is carried out and that staff with thorough local knowledge of the respective countries under RSO jurisdiction and the relevant language skills contribute to this assessment;
18. revise the current 'protocol' to ensure that the validity of the visas issued is more consistent with a case-by-case assessment of the needs of the applicants (in line with Article 24(2) of the Visa Code), with due account being taken of previous visas issued by other Member States;
19. ensure that the provisions of Article 34(5) of the Visa Code and the guidelines set out in the Visa Code Handbook, Part I, Chapter 11.3, are applied so that:
- (a) the security feature "latent image effect" as well as the term "visa" are rendered unusable by using a sharp instrument, and
 - (b) that a stamp stating that the visa has been annulled and revoked is placed on visa stickers already affixed in the passport.

Done at Brussels,

For the Council

The President
