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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 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy

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 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy

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 Schengen ¹, 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 Luxembourg remedial action to address deficiencies identified during the Schengen evaluation in the field of the common visa policy carried out in 2016. Following the evaluation, a report covering the findings and assessments and listing the best practices and deficiencies identified during the evaluation was adopted by a Commission Implementing Decision ².

¹ OJ L 295, 6.11.2013, p. 27.

² Commission Implementing Decision C(2016) 3259 establishing the report of the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy.

- (2) Even though Luxembourg issues short-stay visas in only nine countries outside the Schengen area, it ensures very good worldwide coverage through representation agreements with other Member States, making it possible to apply for a short-stay visa to Luxembourg in more than 130 third countries.
- (3) 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), the handling of blank visa stickers and data protection, priority should be given to the implementation of recommendations (5), (7), (8), (9), (18), (19), (35), (36), (38) and (39) below.
- (4) 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(1) 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:

Luxembourg should

1. establish standardised criteria for providing guidance to consulates (including Belgian consulates) on cases to be referred to the central authority for decision and encourage consulates to decide on all obvious cases under their own responsibility;
2. consider allowing consulates to launch prior consultations and consult the national immigration, police and intelligence authorities directly, without first referring the application to the central authority;
3. ensure that consulates always indicate reasons for referral and document their assessment of an application and the supporting documents (including possible doubts or suspicious aspects) in the IT system by using the comment field provided for that purpose;

4. ensure that applicants whose applications have been refused are informed on the refusal form that an administrative appeal procedure ('recours gracieux') is available, in addition or prior to the judicial procedure before the administrative court, with clear indications of what circumstances can be considered as grounds for reconsideration; establish well-defined procedures for the conduct of the administrative appeal to guide both staff and the public;
5. ensure that the grace period of 15 days is systematically added to the validity of the issued visa;
6. not print the visa fee on the visa sticker, unless Luxembourg decides to include this information in the 'comments' section of the visa sticker and notifies the Commission thereof in accordance with Article 53(1)(f) of the Visa Code;
7. change the workflow in consulates to ensure that there is a systematic check of previous visa applications by the same person; ensure that new applications are always linked to previous applications by the same person in the VIS;
8. adapt the IT system in such a way that the VIS check can easily be performed when creating a new application and that new applications can easily be linked to previous applications by the same person;
9. ensure that the applications of persons travelling in a group of two persons or more are always linked in the VIS; instruct staff that linking such application files is mandatory;

Central visa authority in Luxembourg

10. consider establishing a clear policy on the deletion of emails of scanned application documents sent to the central authority by consulates;
11. consider establishing written representation agreements with Belgium and Germany to clarify the respective roles of the representing and the represented Member States, and – in the case of Belgium – the criteria on the basis of which applications should be referred to the Luxembourg central authority;

12. consider incorporating the table of prior consultation requirements into the IT system, so that the list of Member States to be consulted is determined automatically according to the nationality and category of the applicant;
13. ensure that applications are assessed on a case-by-case basis, and that other supporting documents provided by the applicant relating to his or her socio-economic situation in the country of residence are given at least equal value to those relating to the hosts in Luxembourg when deciding on an application;
14. consider waiving the strict requirement for a formal two-year sponsorship ('prise en charge') for applicants staying with private hosts, if the applicant presents proof of sufficient personal means of subsistence and a letter of invitation from the host;
15. pay particular attention to the socio-economic situation of the applicant on the basis of the other supporting documents in the case of implausible or particularly long tourist visits to Luxembourg;
16. ensure that the reasons behind decisions on visa applications and extensions are well-documented in the IT system, so that consulates and the central authority can easily access this information about all applications;
17. not consider lost passports as an extension of visas under Article 33 of the Visa Code, but instead treat them as a replacement by issuing new visa stickers;
18. ensure that all stickers are recorded properly in the IT system immediately upon receipt from the producer;
19. ensure that all procedural facilitations as laid down by Directive 2004/38/EC, especially those relating to an accelerated procedure and minimal documentary requirements, are granted when family members of EU/EEA citizens apply for an entry visa to travel with or join the EU/EEA citizen in Luxembourg;

20. complete and update the information on the Embassy's website;
21. ensure that the checklists for supporting documents used by the external service provider (ESP) are corrected and approved by the embassy, so that they correspond to the harmonised list of supporting documents that is applicable in Turkey; ask the ESP to correct or complete the information provided on its website;
22. press the ESP, together with the other Member States cooperating with the same ESP, to move to more spacious and secure offices, given the number of Member States covered (and thus the high number of applicants) and given the current security situation in Turkey;
23. revise the contract with the ESP and adapt it to the specific circumstances;
24. improve the monitoring of the ESP's activities and practices by the Embassy, which should organise regular meetings with or training of ESP staff and, together with other Member States, develop procedures to regularly inspect the offices of the ESP, in both Ankara and Istanbul;
25. put in place a procedure on how to handle cases where Luxembourg is not the competent Member State, especially when the application is received through the ESP;
26. ensure that the application and the supporting documents are examined more thoroughly by the expatriate decision-maker, independently of any discussion with local staff; modify the workflow so that the local staff member, after a proper admissibility check and registration of the application in the system, first summarises his or her factual findings, ideally by recording them in an appropriate 'comments' field in the IT system, and then transmits the comments to the expatriate decision-maker together with the application file for assessment and decision-making; ensure that the expatriate decision-maker records the decision on the visa issued (number of entries, period of validity, length of stay) and ideally the reasons for this decision in the IT system;

27. establish a uniform approach to the length of validity of MEVs, taking into account all previously issued short-stay visas in the same manner, independently of the issuing Member State;
28. ensure that the stamp of the issuing authority does not interfere with the machine-readable zone of the visa sticker, which could prevent it from being read properly;
29. consult the Luxembourg Data Protection Authority on the compatibility of local blacklists with Directive 95/46/EC of the European Parliament and of the Council and the Luxembourg law implementing it and request that Authority to report on its findings;
30. ensure that regular training in the field of visas and detection of fraudulent documents is provided for the expatriate decision-maker and local staff dealing with visas; encourage the Embassy to make use of the locally established knowledge on false documents available through the Local Schengen Cooperation and other networks of Member States, such as Immigration Liaison Officers or anti-fraud meetings;
31. ensure that the entrance, garage and surroundings of the building are monitored by camera; instruct the security guard to check all the visitors without exception, and not only the visitors of the Embassy;
32. ensure that a more sophisticated access code, which should be changed regularly, is used for the IT room;
33. consider requiring staff to confirm the physical hand-over of stickers by signature on a tracking sheet;
34. ensure that misprinted stickers are destroyed in the presence of at least two staff members;
35. make proper use of the different levels of access for local and expatriate consular staff foreseen in the national visa system to make sure that each member of staff dealing with visas can only perform operations which are within his or her responsibility;

36. verify the admissibility of an application upon its receipt, separately from the examination of the application and the supporting documents; ensure that the data of all admissible applications are entered into the VIS without delay, in accordance with Article 19 of the Visa Code and Article 8(1) of the VIS Regulation;
37. ensure that all applicants that pay a visa fee receive a receipt when lodging their application;
38. ensure that in case of the revocation or annulment of a visa, the visa holder is informed by means of the standard form, so that he or she has the opportunity to appeal against that decision; enter the decision on the revocation/annulment into the VIS correctly and in a timely manner;
39. ensure that no biometric data of applicants are stored on the ESP's local computers and that application data transferred from the ESP to the consulates are fully encrypted.

Done at Brussels,

For the Council

The President
