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From: General Secretariat of the Council
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To: Delegations

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Subject: Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Italy 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 2016 evaluation of Italy on the application of the Schengen acquis in the field of the common visa policy, adopted by the Council at its 3496th meeting held on 11 November 2016.

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 2016 evaluation of Italy 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 Italy remedial actions 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 best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision ².

¹ OJ L 295, 6.11.2013, p. 27.

² Commission Implementing Decision C(2016) 6003 establishing the report of the 2016 evaluation of Italy on the application of the Schengen acquis in the field of the common visa policy.

- (2) In view of the importance of complying with the Schengen acquis, in particular with regard to correct implementation of the provisions linked to the decision on the application, the Visa Information System (VIS), the handling of blank visa stickers, data protection and the monitoring of external service providers (ESPs), priority should be given to implementing recommendations (3), (4), (8) to (14), (17) to (20), (22), (23), (26), (27), (32), (33), (35), (40), (41) and (46) below.
- (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 must, 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:

Italy should:

1. establish a clearer distinction between Schengen short-stay visas and national long-stay visas as regards information to the public, checklists and statistics; in the case of family members of Italian nationals (who are not covered by Directive 2004/38/EC) applying for family reunion, issue national long-stay visas (D);
2. consider introducing a distinction between the travel purposes of 'visits to family/friends' and 'tourism' (i.e. establishing visits as a separate travel purpose); adapt the checklists for supporting documents accordingly, in order to avoid confusion about the documents required, and change the relevant comments on the visa sticker;
3. ensure that the grace period of 15 days is systematically added to the period of validity of the visa issued;
4. at central level, ensure timely renewal of contracts with ESPs in all consulates;

5. ensure that the standard application form used by all consulates worldwide (on their websites and in paper form) includes a reference to the Italian data protection authority in the disclaimer;
6. remove the reference to travel medical insurance as an entry condition in the information leaflet handed out to the applicant with the visa / travel document;
7. ensure that it is possible to compile statistics on the extension of visas and the main reasons for such extensions;

VIS / IT system

8. make more systematic use of the IT system (L-VIS) to record the findings of the examination, verifications, interviews and other reasons leading to the decision;
9. instruct ESPs in all locations not to scan the biopage of the passports, and either consider deactivating the function in the national IT system or consult the Italian data protection authority on compliance with Directive 95/46/EC on data protection³, as implemented by Italian data protection law, and follow its recommendations;
10. ensure that new applications are systematically linked with the applicant's previous applications in the VIS; consider implementing a technical solution that prevents applications of the same applicant being recorded in the VIS without their being linked together;
11. close applications which have been pending in the L-VIS for months or years by taking a decision to refuse and thus mark them as 'refused' in the central VIS; ensure that all decisions to refuse a visa are duly entered into the VIS;
12. consult the Italian data protection authority on whether data retention in L-VIS and N-VIS is compliant with Directive 95/46/EC on data protection, as implemented by Italian data protection law, and follow its recommendations; implement a mechanism in the IT system which will automatically delete application files after a certain period of time;

³ 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).

13. ensure that the data in the VIS Outsourcing System used by the ESP is deleted immediately after applications are retrieved by the visa section; if a certain retention period is needed, consult the Italian data protection authority on compliance with Directive 95/46/EC on data protection, as implemented by Italian data protection law, and follow its recommendations;
14. consult the Italian data protection authority on the compatibility of 'blacklists' with Directive 95/46/EC on data protection, as implemented by Italian data protection law, and follow its recommendations; ensure that information on UN/EU travel bans is managed centrally and hits are created when applications are checked against central databases;
15. use VIS Mail in cases related to consular cooperation, in particular to transmit requests to the competent visa authority, to forward copies of travel documents and other documents supporting the application and to transmit electronic copies of those documents;

Embassy/visa section in Manila

16. update the visa section's website in order to provide complete and correct information to the public, and update this information on a regular basis; instruct the ESP to clarify on its website the procedures for lodging applications and return of documents and to provide the possibility of booking an appointment free of charge (e.g. by phone or online), so as to ensure that the overall service fee does not exceed EUR 30;
17. improve the monitoring of the ESP, in line with the internal instructions of the central authorities, including by carrying out unannounced visits to the visa centres, and keep records of the monitoring activities;
18. ensure that the new contract with the ESP is signed and implemented as soon as possible;
19. ensure that the service fee collected by the ESP does not exceed the maximum amount of EUR 30;

20. instruct the ESP not to use the admissibility stamp ⁴;
21. ensure that the ESP, when reorganising the premises of its visa application centre, provides for sufficient space in the waiting area, sufficient counters and sufficient working space for staff to meet the needs of the daily numbers of applicants, including in peak season, and to ensure that the applicants have privacy at the counters;
22. streamline the workflow for processing visa applications by reducing the number of different steps carried out by different staff; ensure that the visa section has sufficient expatriate staff members and that such staff are properly trained and proficient in using the IT system; instruct expatriate staff to properly supervise the processing of applications and to enter or verify the decisions in the IT system before the visa sticker is printed or the visa is refused;
23. reconsider the use of the 'reporting-back' procedure, which should not be regarded as a safeguard to mitigate migratory risk (in case of doubt about the bona fides of the applicant, the application should be refused); abolish the practice of affixing 'reporting-back' stamps in the visa holder's passport, as it may have negative repercussions on the visa holder's future applications; remove incorrect information from the request to report back;
24. define the profile of applicants who should lodge directly at the Embassy, since an interview will systematically be conducted for this category (e.g. all first-time travellers), or re-evaluate the use of outsourcing, given that a very large proportion of applicants lodging their applications at the ESP are called for an interview;
25. rephrase the sentence in the invitation letter for interviews to avoid giving the impression that a 'no-show' will constitute a reason for refusal, as the latter can only be based on a formal ground for refusal;
26. ensure that all blank visa stickers are kept in a safe;

⁴ In general the admissibility stamp should not be used any more, following full roll-out of the VIS.

27. consider using an electronic tracking system for visa stickers, possibly integrated into the national IT system; ensure that local staff sign a protocol when receiving the daily quantity of visa stickers assigned to them (including the visa sticker numbers) and that unused visa stickers are returned to the safe at the end of the day;
28. ensure that, in the protocol of destruction of archived visa applications, the visa application numbers concerned (or their reference dates) and the presence of the staff member are noted;
29. ensure that people with reduced mobility have appropriate access to the visa section;
30. establish one set of checklists, to be used by both the visa section and the ESP, and align them fully with the EU harmonised list of supporting documents for the Philippines (C(2014) 6146 final, Annex 3);
31. make it possible for applicants to obtain an appointment at the visa section within a reasonable timeframe, taking into consideration the general rule of two weeks (Article 9(2) of the Visa Code);
32. limit the number of cases where a visa with limited territorial validity (LTV) is issued strictly to those listed in Article 25 of the Visa Code;
33. ensure correct printing, affixing and signing of the visa sticker;
34. provide correct information on the refusal form regarding the Member State having issued the SIS alert;
35. follow the correct procedures for invalidation, annulment and revocation of visa stickers, depending on each case; in particular in the case of misprinting (error on the visa sticker), invalidate the incorrect visa sticker (Article 28 Visa Code), replace it with a new one and, if necessary, amend the incorrect data in the VIS and record the new visa sticker number (Article 24 VIS Regulation); in the event of a change in the applicant's travel plans, invite the visa holder to request revocation of the visa (Article 34(3) Visa Code) and lodge a new visa application;

36. when revoking a visa, avoid creating more than one application file in the VIS when in reality there is only one application;

Embassy/visa section in Beijing

37. improve the confidentiality of conversations at the counters of the visa section;
38. limit information on appointments at the visa section handed out to the police officer to the absolute minimum required by the Chinese authorities (e.g. name and time of appointment), with a view to ensuring data protection;
39. consider upgrading security measures in the visa section, for instance by installing a fire alarm system and by using at least one metal detector at the entrance;
40. instruct the ESP to discontinue the practice of recording the applicants' faces and recordings of the dates of birth and names, or consult the Italian data protection authority on compliance with Directive 95/46/EC on data protection, as implemented by Italian data protection law, before deciding on maintaining it;
41. reconsider the use of the 'reporting-back' procedure, which should not be regarded as a safeguard to mitigate migratory risk (in case of doubt about the bona fides of the applicant, the application should be refused); abolish the practice of affixing 'reporting-back' stamps in the visa holder's passport, as it may have negative repercussions on the visa holder's future applications;
42. consider a more generous approach to long-validity visas, taking into consideration applicants' previous travel history, in line with Article 24(2) of the Visa Code; give applicants the opportunity to provide additional supporting documents where necessary;
43. consider asking those categories of applicants who are systematically invited for an interview to lodge their applications at the Embassy, to avoid applicants being required to appear in person at more than one location;

44. ensure that visa applicants are required to submit only one photograph;
45. abolish the requirement for family members of EU/EEA citizens to present travel medical insurance;
46. affix visa stickers flat, with no creases and wrinkles, and aligned with the edge of the page of the travel document;
47. in cases of representation by the German Embassy in Mongolia, issue refusal forms for refused applications, so that the refusal can be formally communicated by the German Embassy to the applicants.

Done at Brussels,

For the Council

The President
