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NOTE

From:	General Secretariat of the Council
To:	National Parliaments
Subject:	Council Implementing Decision setting out recommendations addressing the deficiencies identified in the evaluation of Croatia in view of fulfilling the conditions necessary for the application of the Schengen acquis in the field of data protection

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 recommendations addressing the deficiencies identified in the evaluation of Croatia in view of fulfilling the conditions necessary for the application of the Schengen acquis in the field of data protection¹.

¹ Available in all official languages of the European Union on the Council public register, doc. 5725/17

Council Implementing Decision setting out

RECOMMENDATIONS

addressing the deficiencies identified in the evaluation of Croatia in view of fulfilling the conditions necessary for the application of the Schengen *acquis* in the field of data protection

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 Schengen², and in particular Article 15(3) 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 Croatia remedial actions to address the deficiencies identified during the Schengen evaluation of the conditions necessary for the application of the Schengen *acquis* in the field of data protection, carried out in 2016. 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)6870].

² OJ L 295, 6.11.2013, p. 27.

- (2) The on-site team very much welcomes the Data Protection Authority's decision to employ a person solely dedicated to PR activities and considers this a best practice. The possibility to submit multiple access requests free of charge and to obtain copies of the personal data undergoing processing at no cost is a practice that is noteworthy.
- (3) In light of the importance of complying with the Schengen *acquis*, priority should be given to implementing recommendations 1, 2, 5, 12, 13-18 and 20.
- (4) This decision should be transmitted to the European Parliament and to the national parliaments. Within six months of its adoption, the evaluated Member State shall, pursuant to Article 16, paragraph 8 of Regulation (EU) No 1053/2013, provide the Commission its assessment on the possible implementation of the recommendations containing indications for possible further improvements,

HEREBY RECOMMENDS:

that Croatia should:

Data Protection Supervisory Authority (hereinafter: DPA)

1. amend the Data Protection Act to include grounds for dismissal of the Director of the Data Protection Agency and of the Deputy;
2. provide evidence of the steps undertaken to ensure that the DPA possesses sufficient human and budgetary resources for the future monitoring and supervision of the processing of personal data in the framework of the Schengen *acquis*;
3. provide a copy of the signed protocol on the cooperation between the DPA and the Ministry of the Interior (hereinafter: MoI) for the purpose of effective implementation of the Schengen *acquis* on the protection of personal data in the future Croatian SIS II;

4. provide a copy of the signed protocol on the cooperation between the DPA and Ministry of Foreign and European Affairs (hereinafter: MFA) on data protection related matters;
5. provide a copy of the Strategic Plan for 2017 and the Annual Supervision Activities Plan 2017 listing inspections of the future Croatian SIS II and VIS;
6. provide the statistics for inspections carried out in 2015;
7. take the necessary measures to strengthen the position of the Data Protection Officer (hereinafter: DPO) of the MoI within the structure of the Ministry;

Rights of Data Subjects

8. ensure that information in English is available to the data subjects about the exercise of the rights related to SIS II and that the DPO section of the MoI website is available in English;
9. put the necessary measures in place to ensure that individuals can submit requests regarding their personal data in English to the DPO of the MoI and that an English courtesy translation of the reply is provided;
10. ensure that the MFA and the DPA facilitate the exercise of data subjects' rights by accepting simple copies of documents proving the identity of the data subject and requiring a certified copy only where there are reasons for suspicion about the identity of the data subject;
11. provide evidence that the MFA has updated the letter of guarantee so that a person inviting a visa applicant has the same information on the data processing activity as is provided to visa applicants on the visa application form (including on the controller, the purpose for the processing, the data retention period, recipients, the right of access and the mandatory nature of the processing for the examination of the application);

Visa Information System

12. ask the MFA to align the procedures related to the collection and retention of the logs with the requirements of the VIS Regulation, and in particular to assess the need to amend the current system, which requires the involvement of a third party in order to access the log records;

Schengen Information System

13. submit a specific security plan in line with the legal requirements and with the guidance provided by the DPA;

14. notify, as a rule, the DPA about personal data breaches affecting the Croatian SIS II infrastructure;

15. assess, taking into account the opinion of the DPA, the convenience of extending the retention period of the audit logs records, which is currently fixed at one year;

16. adopt a policy under which periodical reviews of the audit log records are carried out by both MoI as the Croatian SIS II manager (controller) and the DPA as a competent supervisory authority, and submit evidence of that policy;

17. review the purpose of keeping separate databases with records on hits for the border police and the respective retention periods, in view of the legislation and rules applicable to the data from SIS II and VIS;

Awareness-raising

18. provide evidence for the update of the websites of the DPA and the MoI with information on Schengen matters in Croatian and in English;

19. provide information on the advance planning of awareness-raising events strictly geared towards the general public and the accession to Schengen;

International Cooperation

20. confirm that the DPA will participate regularly in the activities of the SIS II Supervision Coordination Group and VIS Supervision Coordination Group set up in implementation of the Schengen *acquis* as of autumn 2016.

Done at Brussels,

For the Council

The President