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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 17 February 2017
To: Delegations

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Subject: Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2016 evaluation of Croatia in view of fulfilling the conditions necessary for 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 Croatia in view of fulfilling the conditions necessary for the application of the Schengen *acquis* in the field of the common visa policy, adopted by the Council at its 3518th meeting held on 17 February 2017.

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 Croatia in view of fulfilling the conditions necessary for the application of the Schengen *acquis* in the field of the common visa policy

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 Schengen ¹ and in particular Article 1(1)(b) and 15(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The purpose of this implementing decision 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 the common visa policy, 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.²

¹ OJ L 295, 6.11.2013, p. 27.

² Commission Implementing Decision C(2016) 6725 establishing the report of the 2016 evaluation of Croatia on fulfilling the conditions necessary for the application of the Schengen *acquis* in the field of the common visa policy.

- (2) In light of the importance to prepare for the full application of the Schengen *acquis* and the future entry-exit system, in particular with regard to the correct implementation of the provisions linked to the decision on the application and the issuance of short-stay visas, the IT system, the handling of blank visa stickers, data protection and the monitoring of external service providers (ESP), priority should be given to implement recommendations (6) to (8), (16), (22) to (24), (29) to (32), (34), (41) to (45), (47) to (49) and (51) to (54).
- (3) This implementing decision should be transmitted to the European Parliament and to the national parliaments. Within three months of its adoption, Croatia should, 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 submit it to the Commission and the Council,

HEREBY RECOMMENDS:

that Croatia should

1. update the information contained on the standard refusal form and indicate the fees currently required for appealing a decision;
2. ensure that staff systematically select all the reasons that lead to a refusal, revocation or annulment on the refusal screen in the IT system, so that the information in the database always matches the information contained on the standard refusal form; consider integrating the generation of the standard refusal form into the IT system;
3. reconsider the need for the central authority's prior approval for issuing multiple-entry visas with a validity of more than one year;
4. implement a training programme for all staff working in visa sections, concerning the Visa Code, Visa Handbook and IT training in VIS, SIS and other relevant elements of the Schengen *acquis* in the field of the common visa policy;

5. discontinue the use of the admissibility stamp as the legal basis became obsolete on 29 February 2016;
6. ensure that applicants planning to stay in Croatia for more than 90 days in any 180-day period are issued a permit allowing them to stay beyond 90 days;
7. ensure that the invalidation of a visa sticker is clearly distinguished from the annulment of a visa and that the same stamp is not used for both;

IT system

8. register the allocation of visa stickers to individual staff members in the IT system so that the status and precise location of each sticker can be determined at any time;
9. implement an automatic timeout for the IT system's user session to prevent unauthorised access;
10. ensure the protection of all personal data entered into the online application portal, in particular by strictly preventing access to the data of persons that have not lodged a visa application;
11. modify the IT system so that an extended search for previous applications by the same applicant is possible;
12. clarify the purpose of entering information into the residence permit fields in the IT system;
13. reconsider the purpose of the 'positive/negative' field in the IT system and clarify the rules for using it to staff;
14. modify the IT system so that photos and supporting documents can be scanned directly into the system;
15. modify the IT system's interface so that a full log is available, at least to the administrators;

16. establish different user profiles for the IT system with clearly defined rights for administrative staff and visa officers in all visa sections;

Embassy/visa section in Pristina

17. ensure that the external service provider (ESP) provides information to the public as stipulated in the legal instrument;
18. ensure that the ESP's call centre answers phone calls in its proper name in order to avoid misleading applicants;
19. ensure that the ESP protects the file containing the appointments list with at least a password;
20. ensure that the ESP in fact deletes applicants' personal data; request the ESP to provide a written confirmation to that effect;
21. ensure that callers to the ESP's call centre first hear a pre-recorded message specifying the premium rate surcharge, with a subsequent hang-up grace period;
22. ensure that the embassy has direct remote access to the appointment system managed by the ESP in order to prevent misuse of the available appointments slots;
23. review the contract provisions with the ESP related to the data protection act, data encryption, data retention and the confidentiality rules for the employees of the call centre;
24. ensure that applicants are not obliged to call a premium rate number to make an appointment at the embassy;
25. consider setting up and documenting a system of regular checks on groups travelling with commercial intermediaries, once the trip has been completed;
26. consider installing a noise-absorbing partition, both in the waiting room and the visa staff's workspace, to guarantee the applicants' privacy;

27. consider installing a camera at the back of the embassy next to the neighbouring block of flats in order to monitor the space between the two buildings;
28. provide complete information to the public on the supporting documents to be submitted upon application and possible alternative documentary evidence;
29. ensure that compliance with all entry conditions is always verified on the basis of solid documentary evidence and an examination of the actual content of the submitted documents, particularly regarding the will to return to Kosovo³ within the validity period of the visa;
30. restructure the workflow, so that the visa section resources can be better utilised and the process becomes more efficient and customer-friendly. In particular:
 - an electronic file should immediately be created in the IT system at the counter after the admissibility is assessed, to ensure the application is properly recorded and to gain immediate access to the applicant's visa history, if any. This will also be necessary for fingerprints to be collected, once the Schengen *acquis* is fully applied by Croatia;
 - the conversation with the applicant during the submission of the application should focus on obtaining information that is relevant to the specific case, which should be recorded in the IT system;
 - repetition of the same verifications should be eliminated;
 - the decision on applications should be taken as soon as all the necessary information is available;
31. issue multiple-entry visas with long validity whenever the applicant's status, visa history and the reasons for travel would allow for it in compliance with Article 24(2) of the Visa Code;

³ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

32. ensure that at each stage of the process, clear records of the decision on an application are created in IT system; consider modifying the IT system so that all information concerning any actions or decisions taken on an application can be recorded in it;
33. set guidelines for expatriate staff in order to prevent family members working together in the same department to guarantee the integrity of the work processes;
34. take measures so that the bank's service fee is charged to the Croatian authorities rather than the applicant, change bank, or have the visa fee paid directly by credit card or in cash at the consulate, to avoid that the applicant has to pay additional fees beyond the visa fee;
35. ensure that when an application is declared inadmissible, the visa fee is returned to the applicant without the latter having to apply for it;
36. ensure that multiple-entry visas valid for more than 6 months are always issued for a duration of stay of 90 days in any 180-day period;

Embassy/visa section in Moscow

37. ensure that the visa section website contains all the necessary information, that all information is correct and all links are functional;
38. ensure that all information given on the ESP website is correct, that all links are functional, and that family members of EU/EEA citizens covered by Directive 2004/38/EC are correctly informed of all the applicable procedural facilitations, especially regarding supporting documents;
39. ensure that the ESP uses the checklists of required supporting documents to immediately inform applicants about missing documents;
40. instruct the ESP to provide better quality envelopes which cannot be opened easily, so that applicants' personal data is protected at all times;
41. ensure that the ESP respects the rules on data protection, notably by preventing ESP staff from taking notice of the decision on the application;

42. set up clear guidelines for managing all major and minor incidents directly at local level with the ESP; the ESP management should be informed about all errors in writing, a register of the errors should be kept and other Member States should be informed of major incidents;
43. carry out systematic monitoring of the ESP, *inter alia* by making regular unannounced visits to the visa application centres both in Moscow and elsewhere in Russia, Belarus and Kazakhstan (the latter possibly in cooperation/alternation with other Member States using the same centres); written reports on monitoring activities with specific findings should be drawn up;
44. ensure that the ESP does not oblige applicants to pay additional fees besides the service fee, such as fees for sending the application files between the embassy and the ESP;
45. instruct the ESP to charge the urgency fee based on the date when the application is lodged at the ESP in accordance with the EU-Russia Visa Facilitation Agreement;
46. consider installing a security door at the main entrance to the building and replacing the back door (connecting the lobby of the visa section with the staircase of the premises of the Russian Ministry of Foreign Affairs) with a steel door, to increase the security of the consulate;
47. ensure that only the person responsible for the allocation of stickers to the staff has access to the safe; the use of the second key to the safe should only be possible under strict conditions (for instance, the key should be kept in a sealed envelope and only opened by an authorised group of staff members);
48. ensure that the right-hand side of the paper application form is only marked with the visa characteristics and the remark 'Visa decision: Issued' after the final decision has been taken so as to be able to reconstruct the decision-making; consider using the IT system for this purpose;

49. ensure that refusals are exclusively based on one or more of the grounds listed in Article 32(1) of the Visa Code and that the correct refusal ground(s) is/are indicated on the standard refusal form;
50. take the necessary measures to eliminate the incompatibilities between Croatia's bilateral agreement with the Russian Federation and the EU-Russia Visa Facilitation Agreement;
51. immediately discontinue the use of visa stickers that do not comply with Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas;
52. enter without delay the data of applications declared admissible in the national IT system, search for and link the file to previous applications by the same applicant, and link the applications of persons travelling together;
53. abolish the use of hand-written notes that can easily be lost for recording and transmitting information concerning an application;
54. ensure that the information on the applicant's visa history contained in the IT system is taken into account before deciding on the type and period of validity of the visa to be issued.

Done at Brussels,

For the Council

The President
