



Brussels, 21 February 2017
(OR. en)

6501/17

Interinstitutional File:
2016/0353 (NLE)

SCH-EVAL 70
COMIX 142

NOTE

From: General Secretariat of the Council
On: 21 February 2017
To: Delegations

No. prev. doc.: 6129/17

Subject: Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2015 evaluation of Austria on the application of the Schengen *acquis* in the field of data protection

Delegations will find in the annex the Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2015 evaluation of Austria on the application of the Schengen *acquis* in the field of data protection, adopted by the Council at its 3520th meeting held on 21 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 2015 evaluation of Austria on the application of the Schengen acquis in the field of data protection

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 Austria remedial actions to address deficiencies identified during the Schengen evaluation in the field of data protection 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)7201].
- (2) In light of the importance to comply with the Schengen acquis priority should be given to implement recommendations 1, 2, 10, 6, 7, 9 and 12.

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 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:

that Austria should

Data Protection Supervisory Authority

1. provide evidence that it employs a fully qualified IT expert who possesses a comprehensive understanding of SIS II, including the structure and semantics of SIS II specific log files, and who is readily available to carry out checks regarding the lawfulness of the processing of SIS II personal data.
2. implement the recommendations of 2010, starting with an action plan to be put forward by the DPA at its earliest convenience, which should comprise the following commitment: to carry out regular inspections, ex-officio, regarding the lawfulness of the processing of SIS II personal data by national authorities having access to SIS II including the check of log files by a qualified IT expert as well as inspections of consulates on visa by the end of 2015.

Rights of Data Subject

3. improve transparency on the available legal remedies for data subjects when exercising their right of access; this could consist of providing the link to a standard appeal template on the website of DPA; consider adding information on the possibilities for appeal provided for in national law, in the replies of the SIRENE Bureau.
4. update the DPA's standard template on access rights with information on the VIS.

5. incite the MoI to provide an unofficial translation in a second language (i.e. English or French) when replying to access requests, to allow the data subject to understand the content of the response.
6. ensure that the DPA proactively asks for and receives regular feedback from the MoI on the number of access requests and their outcome, including the **SIRENE** bureau, and improve the cooperation between the MoI and the DPA to that end.

Schengen Information System

7. allow for due access of the MoI as data controller of N.SIS II to the log records resulting from the consulates' activities affecting SIS II.
8. align the storage period of the data held in the N.SIS II copy by the MoFA with the storage period enshrined in the SIS II legal framework.
9. improve the cooperation between the different authorities governing or accessing the N.SIS II, specifically including the MoFA and other national authorities and set up a method helping to achieve effective exchange of information and best practices.
10. incite the DPA to embrace a practice of carrying out regular checks of data processing activities by the end-users of the N.SIS II as a regular supervisory practice and to report about future plans implementing this practice.
11. supplement standard contractual clauses on data protection and confidentiality in contracts, by which the provision of services is outsourced to private companies allowing their staff access to personal data processing by the N.SIS II, with regular checks and audits by competent authorities.
12. put in place a fully documented incident reporting system with particular attention to incidents affecting personal data; depending on the severity of the incident, the system may include notifying the national supervisory authority on data protection.

13. encourage the competent authorities to report to the DPA the profiles of persons authorised to access, enter, update, delete and search N.SIS II data, upon request and encourage the DPA to follow up on this issue in line with its legal obligation and competence.

Awareness Raising

14. update the website of the DPA, providing information on general data protection matters, SIS II and VIS matters in an easy to understand and user friendly manner.
15. update the website of the MoI and correct the link to the website of the DPA.

Done at Brussels,

For the Council
The President
