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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 Italy on 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 a recommendation on addressing the deficiencies identified in the 2016 evaluation of Italy on 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. 6355/17

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 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 ², 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 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)7202].

² OJ L 295, 6.11.2013, p. 27.

- (2) As good practice are seen amongst others that the Ministry of Foreign Affairs and International Cooperation (hereafter MFAIC) has issued a set of formal instructions (Manual) to all consular posts on the procedures for selecting and managing the relation with External Service Providers and that the Ministry of Interior (hereafter MoI) has strict rules on giving authorisations for access to the Schengen Information System II (hereafter SIS II) by requiring a renewal every 60 days and the regular monitoring of the SIS II-operations of end-users is a condition for the renewal of authorisations.
- (3) In light of the importance to comply with the Schengen acquis, in particular to ensure lawfulness of the processing of personal data in national VIS, priority should be given to implement recommendation number 6.
- (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, 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 Italy should

Data Protection Supervisory Authority

1. in order to better ensure the complete independence of the Italian Data Protection Authority (hereafter DPA) reform the national provisions concerning the budgetary procedure in such a way that the DPA is again involved in the proposal for its budget before the general State budget proposal is sent to the Parliament for discussion and adoption; it should in particular be provided that the DPA can contribute directly to setting out the proposal for the appropriation referred to in the Stability Law which is currently reserved exclusively for the Government;

2. allocate sufficient financial and human resources to the DPA in order for it to be able to fulfil all tasks entrusted to it under the Schengen Information System II (hereafter SIS II) and Visa Information System (hereafter VIS) acquis;
3. ensure that the DPA monitors by inspections the lawfulness of the processing of SIS II personal data including the check of log-files on a more regular basis;
4. ensure that, at least every four years, audits of data processing operations in N.SIS will be carried out, either by the DPA itself or that the DPA will directly order itself the audit from an independent data protection auditor; the auditor must stay under the control and responsibility of the DPA which therefore has to provide a clearly defined purpose, scope and methodology of the audit as well as guidance and supervision concerning the audit and its final results;
5. ensure that the DPA monitors the lawfulness of the processing of VIS personal data including the check of log-files on a more regular basis;
6. ensure that, at least every four years, audits of data processing operations in the national system of VIS will be carried out, either by the DPA itself or that the DPA will directly order itself the audit from an independent data protection auditor; the auditor must stay under the control and responsibility of the DPA which therefore has to provide a clearly defined purpose, scope and methodology of the audit as well as guidance and supervision concerning the audit and its final results; as the deadline for the first audit (October 2015) has not been met, action should be undertaken to fulfil this obligation of the DPA as soon as possible;

Rights of Data Subjects

7. provide information on data subjects rights in relation to SIS II on the website of the Ministry of Interior (hereafter MoI) and the National Police (*Polizia di Stato*) also in other languages in particular in English;
8. provide specific model letters for exercising data subjects rights in relation to SIS II;

9. provide clear information on the DPA's website that complaints concerning data subjects rights in relation to SIS II are free of charge;
10. ensure that answers to data subjects requests can be given also in other languages, in particular in English;
11. ensure that the response letters of the MoI concerning alerts entered by Italian authorities contain information about the possibility to appeal and the right to lodge a complaint with the DPA;
12. provide specific model letters for exercising VIS related data subjects rights;
13. ensure that the standard visa application form used at the external borders identifies the MoI as the data controller of the I-VIS (Internal Affairs VIS application);
14. provide information on data subjects rights in relation to VIS on the website of the MoI and the National Police;
15. consider to make formal complaints to the DPA concerning data subject rights in relation to VIS free of charge in order not to deter applicants from exercising their right of complaint to the DPA; in any case, the information about waiver of fees on the website of the DPA should be made easier accessible;

Visa Information System

16. ensure an adequate level of protection of information by limiting or eliminating the number of workstations for remote access to the servers located at the MFAIC; if they continue to be used they should be provided with the same protection systems as server rooms;
17. ensure that the VIS backup copy is not located in the same room as the operating system, but off-site;
18. put a procedure in place to perform regular and systematic analysis of the log files to detect any possible misuse in the VIS system;

19. ensure that the MFAIC establishes a procedure to ensure a regular revision of the access authorisations provided to users of the N-VIS (Central National VIS application), the L-VIS (Local Visa Applications) and the outsourcing platform including their deactivation if necessary;
20. ensure that the use of the local warning lists (about persons who risk not receiving a visa) kept at consulates is fully in line with EU data protection law as implemented by Italian data protection law; the MFAIC should consult the DPA on this issue;
21. ensure that the MFAIC adopts as soon as possible a security plan which covers also data security in the national VIS system;

Schengen Information System II

22. ensure that the separate disaster recovery site in Bari will be made operational as soon as possible;
23. ensure that the backup copy of N.SIS log files will be kept off-site at another geographical location;
24. implement software modules for the actual analyses of SIS II log files to identify any misuse;

Public Awareness

25. ensure that the information in Italian on the website of the DPA in relation to VIS and SIS II and related data subjects rights will be made easier to find; general information on SIS II should be provided as well as the link to the Italian version of the summary of the Guide of access to SIS II (established by the SIS II Supervision Coordination Group) made more visible on the website of the DPA;
26. ensure that printed information materials on SIS II and VIS and on data subject's rights (e.g. brochures) will be available in the DPA's front office, in police stations and in ports and airports;

27. ensure that SIS II and visa procedure related information on the website of the MoI is provided not only in Italian, but also in other languages in particular English.

Done at Brussels,

For the Council

The President
