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From: General Secretariat of the Council

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To: Delegations

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Subject: Schengen evaluation of Poland - Council Recommendation on addressing the deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of the Schengen Information System

Delegations will find in the annex the Council Recommendation on addressing the deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of the Schengen Information System by Poland, adopted by the Council at its 3433rd meeting held on 3 December 2015.

In line with Article 15(3) of Council Regulation (EU) No 1053/2013 of 7 October 2013, these recommendations will be forwarded to the European and national Parliaments.

COUNCIL RECOMMENDATION

on addressing the deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of the Schengen Information System by Poland

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 Recommendation is to recommend to Poland remedial actions to address deficiencies identified during the Schengen evaluation in the field of the Schengen Information System (SIS) 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(2015) 6233.
- (2) The evaluation of the application of the Schengen *acquis* in Poland took place in period 2012 – 2014 within the scope of the Decision of the Executive Committee of 16 September 1998, part II ².
- (3) Serious technical deficiencies in the area of the Schengen Information System were detected during the on-site visit of Poland in February 2014.

¹ OJ L 295, 6.11.2013, p. 27.

² Decision of the Executive Committee of 18 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/Com-ex (98) 26 def.

- (4) Based on the deficiencies identified and the progress made to address them, the Council concluded on 31 October 2014 to revisit Poland in order to evaluate the application of the Schengen acquis in the area of Schengen Information System directly on the spot.
- (5) Council Regulation (EU) No 1053/2013 sets up a new Schengen evaluation mechanism and in accordance with Article 23 of that Regulation, the Decision of the Executive Committee of 16 September 1998, part II, ceased to apply.
- (6) The Council recommended to the Commission to carry out the on-site revisit of Poland within the scope of this new Schengen evaluation mechanism and to include in its annual evaluation programme for 2015³.
- (7) In accordance with the annual evaluation programme for 2015, the on-site revisit of Poland in the field of the Schengen Information System was carried out from 25-27 March 2015.
- (8) Following the revisit, a report was drawn up by the on-site team with their findings and assessments, listing best practices and any deficiencies identified during the evaluation. The evaluation report was adopted by the Commission on 18 September 2015 by means of an implementing act and the report was classified as EU Restricted/Restreint UE in accordance with Article 17 of Council Regulation (EU) No 1053/2013.
- (9) Based on the assessment of the findings, taking into account the improvements noted in the second visit and deficiencies identified during the evaluation, recommendations for remedial action aimed at addressing those deficiencies, including an indication of priority for implementation of the recommendations should be addressed to Poland.

³ Commission Implementing Decision C(2014) 7881.

- (10) In light of the importance to comply with the Schengen acquis, in particular the requirements on the availability of SIS, to maintain the non-discrepancy of data between N.SIS and CS-SIS, to ensure the technical implementation of Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data ⁴, to ensure that the relevant new functionalities are displayed to the end-users, to ensure the search of SIS on the police mobile devices as a default option, priority should be given to implement recommendations 1, 2, 3, 4 and 5.
- (11) This 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 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:

Poland should:

1. seriously improve the availability of SIS as required by Article 9 (2) of Regulation (EC) No 1987/2006 ⁵ and Council Decision 2007/533/JHA ⁶ read in conjunction with Point 7 of the Annex to Commission Decision 2007/171/EC ⁷;
2. maintain the non-discrepancy between its N.SIS and CS-SIS;

⁴ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24).

⁵ Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

⁶ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

⁷ Commission Decision of 16 March 2007 laying down the network requirements for the Schengen Information System II (3rd pillar) (OJ L 79, 20.3.2007, p. 29).

3. implement a technical solution to transmit advanced passenger information (API) to airports. Furthermore, in order to maintain and increase efficient data processing, it should ensure automatic checking of API against SIS;
4. further develop the SPP (end-user system for the police) interface to ensure that the relevant new SIS functionalities (as described in the report) are displayed to the end-users;
5. further develop the national SPP interface on mobile devices and ensure automatic parallel searching in SIS as a default option, also as regards the second generation of that system, SPP2;
6. fully stabilise its new N.SIS, including full conformity with the national copy and on that basis gradually perform more queries on persons in the N.SIS;
7. improve the switchover time between the N.SIS and the back-up;
8. automatize the deletion of supplementary information in accordance with Article 38 (2) of Regulation (EC) No 1987/2006 and Article 53 (2) of Council Decision 2007/533/JHA so that it deletes, at the latest, one year after the deletion of the related alert;
9. develop an automated tool in the SIRENE workflow for the collection of statistics as foreseen in Annex V of the SIRENE Manual ⁸;
10. to review the list of authorities having access to SIS, especially in the light of their actual use of the system;
11. further develop the linking functionality in the new border guard application to make it easier for end-users to access all necessary information from the respective alerts;
12. accelerate the legislative process allowing the creation of links between alerts created by different authorities;

⁸ Commission Implementing Decision (EU) 2015/219 of 29 January 2015 replacing the Annex to Implementing Decision 2013/115/EU/on the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 44, 18.2.2015, p. 75).

13. ensure that all relevant Polish authorities continue to receive training on misused identity;

14. ensure that the alerts not covered by the new border guard application, which are viewable only via the web-based application, become directly accessible, including links thereto, via this application, eliminating the current confusion for the end-users;

15. ensure that the customs authorities make more direct use of SIS in order to check the various objects crossing the border, and coordinate searches with border guards, including the follow-up of hits.
