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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Council implementing decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of France 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 France 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.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2016 evaluation of France on 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 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The purpose of this Decision is to recommend to France 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(2017)7761].

² OJ L 295, 6.11.2013, p. 27.

- (2) The on-site team would like to remark positively the considerable resources the Commission Nationale de l'Informatique et des Libertés (CNIL) was and is providing for the consulting and supervisory work of the Schengen systems and its active role in international cooperation. The availability of IT staff in charge of the technical aspects of the Schengen related supervision tasks, including IT security, is considered a best practice. The role of the Department of Civil Liberties and Legal Affairs in providing support and guidance on data protection issues within the Ministry of Interior is also positively recognised.
- (3) In light of the importance of complying with the Schengen acquis, in particular the obligation to ensure data quality, priority should be given to implement recommendations 2, 4, 7 and 8.
- (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, France should, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy any deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council,

HEREBY RECOMMENDS:

that France should

Legislation

1. ensure the adoption of the national provisions on the designation of the N.SIS II Office according to Article 7 of Regulation (EC) No 1987/2006 of European Parliament and of the Council³ and Article 60 (2) of Council Decision 2007/533/JHA⁴ as soon as possible.

³ 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).

⁴ 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).

Data Protection Commission

2. reassess the position of the government commissioner (appointed in accordance with Article 18 of the French Data Protection Law) regarding the full independence of the CNIL, in accordance with the recent case law of the Court of Justice of the European Union (Commission v. Germany (C-518/07) and Commission v. Austria (C-614/10)).

VIS

3. review and correct the information provided to visa applicants in the visa application forms used by the French authorities, in particular on the data controller and the contact details of the data protection authority, to ensure that all the applicants received sufficient and updated information allowing them exercising their rights.
4. eliminate the consistency problems affecting the data quality in technical copies of the N.SIS II used by missions for the visa application process and adapt the architecture to meet the data quality requirements of Article 31(3) of Regulation (EC) No 1987/2006 and Article 29 of Regulation (EC) 767/2008 of the European Parliament and of the Council⁵.

SIS II

5. apply mandatorily two-factor authentication systems to national applications that allow access to N.SIS II data.
6. complete the N.SIS II security plan in accordance with Article 10 (1) of Regulation (EC) No 1987/2006 and Article 10(1) of Decision 2007/533/JHA.

⁵ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p.60).

7. provide for the technical and organisational prerequisites with regards to log file content and implement a regular self-monitoring of lawfulness of processing of N.SIS II data and of security measures according to Articles 10 and 12 SIS II-Regulation (EC) No 1987/2006 and Articles 10 and 12 of Decision 2007/533/JHA.
8. eliminate the consistency problems affecting the data quality in technical copies of the N.SIS II used by the Ministry of Interior and adapt the architecture to meet the requirements of Article 31(2) of Regulation (EC) No 1987/2006 and Article 46 of the Decision 2007/533/JHA.

Awareness Raising

9. provide at least basic information on data processing in the visa application, border check or police control processes, that means on data categories, purposes of processing, data controllers, data subject rights and complaint and redress possibilities including the necessary contact information, also in additional languages.

Done at Brussels,

For the Council

The President
