



Council of the
European Union

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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 Malta 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 Malta 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 the Republic of Malta 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 setting out a recommendation is to recommend to Malta 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(2018)1180].

² OJ L 295, 6.11.2013, p. 27.

- (2) As a good practice are seen, amongst others, that the Information and Data Protection Commissioner ("IDPC") has set up, on his own initiative, the Working Group on SIS II and VIS issues that regularly gathers representatives of the all relevant stakeholders and a particularly active role of the IDPC in the work of several international cooperation and supervision coordinating groups it attends. In light of the importance to comply with the Schengen acquis, in particular to ensure the security and lawfulness of the processing of the personal data in national SIS and in VIS priority should be given to implement recommendations 14, 15 and 16.
- (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 Malta should

Data Protection Supervisory Authority

1. ensure that the Information and Data Protection Commissioner ("IDPC") carry out inspections on the basis of analysis of the SIS II log-files on a more regular basis;
2. ensure that the audit of data processing operations in N.SIS as required by Article 44(2) of the SIS II Regulation and Article 60(2) of the SIS II Council Decision is carried out in timely manner;
3. ensure that the IDPC develops an audit plan in respect of SIS II and VIS;

4. ensure that future audits of SIS II and VIS are fully comprehensive and are conducted in line with international audit standards as required by SIS II and VIS acquis, and ensure that the necessary IT expertise is deployed for these audits;
5. ensure that the IDPC monitors the processing of the VIS personal data including the checks of the log-files on a more regular basis;

Data Subject Rights SIS II

6. ensure that requests concerning exercise of SIS II related data subjects rights are answered in all cases;
7. ensure that in the response to the data subject's request for his/her SIS II related data subjects rights, he/she is informed on possibility of appeal and a right to lodge the complaint with the IDPC;
8. ensure that the Police informs data subjects about the potential risks of submitting copies of ID cards and sensitive information via open internet. Malta is invited to consider offering to the data subject a secured electronic transmission channel for submitting such documents;
9. ensure that information regarding the rights of data subjects concerning SIS II is available on the Police website;
10. improve accessibility of the information on SIS II on the website of the IDPC so that such information is easy to find for website's user, in particular by ensuring that the website directs the user to section on SIS II after searching it with SIS II related key-words;
11. ensure that the Police provides the IDPC with the statistics concerning the exercise of rights with reference to SIS II on an annual basis;

Data Subject Rights VIS

12. ensure that the Ministry of Foreign Affairs (“MFA”) informs data subjects about the potential risks of submitting copies of ID cards and sensitive information via open internet. Malta is invited to consider offering to the data subject a secured electronic transmission channel for submitting such documents;
13. improves accessibility of the information on VIS on the website of the IDPC and MFA so that it is easy to find such information for website’s user, in particular by ensuring that the websites directs the user to section on VIS after searching them with VIS related key-words;

Visa Information System

14. take the necessary steps to strengthen self-auditing of the effectiveness of the security measures and monitoring the lawfulness of the processing of personal data in VIS in line with VIS acquis, in particular by ensuring the checks of the log-files with a view to checking the lawfulness of data processing and/or detecting potential misuse of data on a regular basis;

Schengen Information System II

15. ensure implementation of the Malta’s commitments made following the recommendation of 2012 evaluation of Malta in the field of data protection to strengthened authentication at least for the SIRENE Bureau users and provide a strong authentication based on smartcard and secure certificates;
16. take the necessary steps to strengthen self-auditing of the effectiveness of the security measures and monitoring the lawfulness of the processing of personal data in N. SIS II in line with VIS acquis, in particular by actively involving the Data Protection Officer of the Police in such tasks and by ensuring that that the log files are used by data controller on a regular basis to check the lawfulness of data processing within SIS II;

Public Awareness

17. strengthen public awareness in relation to SIS II and VIS for example by providing easily accessible information regarding SIS II and VIS on websites of, respectively, Police and MFA.

Done at Brussels,

For the Council

The President
