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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



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THE EUROPEAN UNION**

Brussels, 29 November 2006

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**SCH-EVAL 189
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NOTE

from:	the Slovak delegation
to:	the Schengen Evaluation Working Party
Subject :	Follow-up report to the Schengen evaluation of the SLOVAK REPUBLIC in the field of Data protection
	- Information on progress in the implementation of recommendations of the Report on Data protection

Having examined all conclusions and recommendations drafted by the Evaluation Committee in the Data protection report, presented to and adopted at the Schengen Evaluation WP meetings, the Slovak Republic would like to submit the information on recommendations implementation and state of play as of November 2006 in the field of data protection with regard to the Schengen acquis.

1. DATA PROTECTION

Comments from Slovakia on the general conclusions including recommendations of the Data protection Report (document reference No. 6898/06 SCH-EVAL 32 COMIX 205).

COMMENTS AND RECOMMENDATIONS OF THE EVALUATION COMMITTEE:

No.	COMMENTS AND RECOMMENDATIONS - EVALCOM	STATUS QUO OF RECOMMENDATIONS IMPLEMENTATION/ COMMENTS
1.	The experts are confident that the Data protection rules in Slovakia will comply with the requirements of the Schengen acquis, once a satisfying follow-up has been given to the recommendations mentioned below. The Slovak Republic is invited to confirm this in writing at a later stage, when reporting on the follow up of the current evaluations in the SCH-Eval group.	The Slovak Republic will, in the interest of proper implementation of the Schengen acquis in the field of personal data protection, develop the maximum efforts in order to fulfil the conclusions and recommendations resulting from the report prepared by evaluation group of experts.
2.	It is recommended to clarify soon whether the implementation of SIS II will require specific legislation to supplement the general Data protection rules, harmonizing the overlap and rivalry between the legal bases.	Implementation of SIS II will be performed by an amendment of the Act No. 171/1993 Coll. on the Police Force as last amended, by which it will be laid down that the controller of SIS II shall be the Ministry of Interior of the Slovak Republic. The amendment to the Act No. 171/1993 Coll. on the Police Force is incorporated in the approved 2007 Plan of legislative measures of the Slovak Government. The Ministry of Interior of the SR is preparing the amendment in parallel with internal legal act implementing the detected weaknesses. Both the legal acts the Ministry of Interior plans to submit to legislative procedure till the end of this year.

3.	<p>In any case clarification is needed about the basic competences and duties for the DPA with respect to SIS II and the Slovak SIRENE office; that the office can on its own initiative or following on a complaint, launch a full investigation into the SIS or the SIRENE Bureau, and do all inspection activities (with the full rights of access for people who are cleared, or with the assistance of the system administrator).</p>	<p>The Office for Personal Data Protection of the Slovak Republic (hereinafter referred to as “Office”) has full supervisory powers over all filing systems, including police filing systems. The Office will be the only supervisory authority in relation to SIS II and SIRENE.</p> <p><i>Article 2 of the Act No. 428/2002 Coll. on Personal Data Protection as last amended lays down exceptions from provisions of the Act No. 428/2002 Coll. as last amended in personal data processing necessary for ensuring the public interest. However, these exceptions do not refer to the control power of the Office in police filing systems. Under Article 38 of Act No. 428/2002 Coll. as last amended, the Office shall, continuously observe the state of personal data protection, registration of filing systems and keeping files on filing systems, it controls the personal data processing in filing systems and imposes the sanctions. It is obvious that the filing systems, to which some provisions of the Act No. 428/2002 Coll. as last amended do not apply, are subject to its control. That is why the other provisions of the Act No. 428/2002 Coll. as last amended shall be applied to these systems and the performance of supervision over personal data protection by these controllers of the filing systems is not herewith affected. As already mentioned above, an amendment to provisions of the Act on the Police Force, laying down that the Ministry of Interior shall be the controller of SIS, is incorporated in the approved 2007 Plan of legislative measures of the Slovak Government.</i></p>
4.	<p>The Slovak Republic should guarantee the total independence of the DPA as an independent body as defined in the Constitution and assure its operational independence.</p>	<p>To strengthen the budgetary independence a separate programme „Personal Data Protection“ under the Chapter of the Slovak Republic Government Office within the draft budget of the Public Administration for the years 2007 - 2009 has been created. The 2007 budget for the programme „Personal Data Protection“ has been increased from 24.349 thousands SKK (2006) to 26.285 thousands SKK (2007).</p> <p>Personal independence of the Office was indirectly resolved by the amendment of the Act No. 312/2001 Coll. on civil state</p>

	<p>service as last amended on the basis of which the Civil Service Office was abolished on <u>1 June 2006</u> and the Office will act as a Service Office in this regard. As of 1 January 2007 the personnel of the Office will be increased by five job positions.</p> <p>Constitutional independence is guaranteed by existence of the operational, personal and budgetary independence.</p>	<p>Read in conjunction with the comment of the SR to recommendation No. 2.</p> <p>Pursuant to Article 38 of the Act 428/2002 Coll. on Personal Data Protection, the Office carries out the supervision over personal data protection and pursuant to Article 39 it carries out the control activities. State Administration Authorities, including the Ministry of Interior, carry out the internal controls in line with the Act No. <u>10/1996</u> Coll. on Control in the State Administration as last amended.</p> <p>The current text of Article 15(c) of the Ordinance of the Minister of Interior of the SR No. 82/2005 which reads “The Supervisory Bureau of the Minister of Interior shall control personal data processing in filing systems” shall be amended as follows: “Supervisory Bureau of the Minister of Interior shall control personal data processing in filing systems (including Schengen Information System) in accordance with Article 19 of the Act No. 428/2002 Coll. on Personal Data Protection.</p> <p>The current text of Article 15 (h) shall be accordingly amended as follows: “The Supervisory Bureau shall cooperate with other departments of the Ministry of Interior of the SR in the field of accepting and dealing with complaints concerning the violation of the personal data protection in filing systems (including Schengen Information System) and a new provision shall be</p>
5.	<p>It is recommended as well to clarify the relationship between the internal control (Supervisory Bureau of the Minister of the Interior) and the DPA. It should be made clear that the Supervisory Bureau of the Minister of the Interior cannot be the Supervisory body as meant in art. 114 of the Schengen Convention.</p>	

		added establishing the obligation to forward these complaints to the Office for Personal Data protection.
6.	The Slovak Republic is invited to develop plans for a campaign accompanying the implementation of the Schengen acquis in 2007.	To guarantee the implementation of the Schengen acquis in the Slovak Republic, on a yearly base an update of the Schengen Action Plan approved by the Government in elaborated. The last (fifth) updated wording of the Schengen Action Plan was approved by the Decree of the Government of the Slovak Republic No. 781 of September 28, 2006 . In line with the tasks defined in the last update of the Plan the Ministry of Interior in cooperation with other involved authorities shall prepare a campaign with regard to Slovakia's accession to Schengen area and lifting of internal borders in order to increase the awareness on Schengen issues of public as well as of the police officers. The campaign is envisaged to start prior to Slovakia's connection to SIS.
7.	The Slovak Republic is invited to clarify the competences of the Data protection authority with respect to Police files.	The Office has full supervisory powers over all filing systems, including the police filing systems. Article 2 of the Act No. 428/2002 Coll. on Personal Data Protection as last amended lays down exceptions from provisions of the Act No. 428/2002 Coll. as last amended in personal data processing necessary for ensuring the public interest. However, these exceptions do not refer to the control power of the Office in police filing systems. Under Article 38 of Act No. 428/2002 Coll. as last amended, the Office shall, continuously observe the state of personal data protection, registration of filing systems and keeping files on filing systems, it controls the personal data processing in filing systems and imposes the sanctions. Although there are the filing systems whereteto some provisions of the Act No. 428/2002 Coll. as

	<p>amended do not apply, it is obvious that these systems are not exempted from its power of control. Since all the other provisions of the Act No. 428/2002 Coll. as amended shall apply to the systems concerned, the execution of supervision over protection of the personal data kept by respective controllers is not prejudiced.</p> <p><i>As already mentioned above, an amendment to provisions of the Act on the Police Force, laying down that the Ministry of Interior shall be the controller of SIS, is incorporated in the approved 2007 Plan of legislative measures of the Slovak Government.</i></p>
8.	<p>Budgetary means should be adequate considering the fact that new tasks will befall on the DPA in the light of the Schengen implementation; i.a. a public awareness campaign, new inspections will be necessary, training of other public authorities.</p> <p>A separate budget programme „Personal Data Protection“ has been created under the Chapter of the Slovak Republic Government Office within the draft budget of the Public Administration for the years 2007 - 2009. In connection with the new tasks resulting from the implementation of the Schengen acquis the 2007 budget for the Office has been increased by 1,936 thousands SKK and the number of personnel shall increase by 5 job positions as of January 1, 2007. The budget shall be read by the National Council of the Slovak Republic following the week of December 5, 2006.</p> <p>As a result of the tasks defined in the fifth update of the Schengen Action Plan, in September 2006 the Office in cooperation with the Ministry of Interior has carried out the training of trainers on European and national legislation concerning the personal data processing with regard to SIS. Information on data subjects right in relation to SIS will be provided during the campaign prior to Slovakia's accession to SIS.</p>
9.	<p>The DPA should consider paying a visit to a consulate and promote that no local staff is entitled to access the system, and that no officers be allowed to check the system other than for the purpose of</p> <p>Even though the Slovak Republic does not issue Schengen visa yet, the Office has taken a decision to perform the control of selected consular posts of the SR abroad already in December</p>

	handling a concrete Schengen visa application.	2006 (consulates in Moscow, Kiev and Minsk). The controls will be carried out in cooperation with the Ministry of Foreign Affairs of the SR and a particular attention will be paid to fulfillment of tasks resulting from: a) Internal Regulation of the MFA No. 51/2005 on Security clearance of personnel; b) the Act No. 428/2002 on Personal Data Protection as amended and Internal Regulation of the MFA No. 47/2005 on Personal Data Protection.
10.	In the visa application procedure or together with the notification of refusal of the visa, a foreign citizen should be informed of his right of access, correction or deletion.	Ministry of Foreign Affairs will, by means of informative leaflets or information boards placed in the consular posts abroad and by means of information published on the website of the Ministry (www.foreign.gov.sk) as well as on the websites of the consular posts abroad, inform the person concerned on his or her rights related to the access, correction or deletion of data as laid down in the Act No. 428/2002 Coll. as last amended. The information will be provided by the end of March 2007 at the latest.
11.	The DPA should verify and possibly assist the Ministry of Foreign Affairs and the Ministry of the Interior with the development of their websites, in particular with the rights of citizens in relation to Data protection.	To inform the public on how to apply the provisions on data subjects' rights the Ministry of Interior and the Ministry of Foreign Affairs shall update their websites as defined in the Schengen Action Plan. The Office shall assist the authorities/ act as a consultant in this regard. Furthermore, it shall verify whether the controller of SIS acts in line with declared procedures. Currently, the website of the Ministry of Interior (www.minv.sk) is under reconstruction. In the framework of the redesign of the website the information on the data protection as well as on the data subject rights in connection with SIS shall be incorporated under the section 'Request for information from

	<p>the Ministry”. This shall be provided by a simple click on roll out of the following additional hyperlinks: “Protection of personal data” and “Schengen Information System”. The Ministry of Foreign Affairs is currently in process of preparing information on its websites in co-operation with the Office.</p>
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