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**NOTE**

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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 France on the application of the Schengen acquis in the field of the common visa policy

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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 the common visa policy<sup>1</sup>.

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<sup>1</sup> Available in all official languages of the European Union on the Council public register, doc. 13967/17

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 the common visa policy**

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<sup>2</sup>, 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 France remedial actions to address deficiencies identified during the Schengen evaluation in the field of the common visa policy 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) 83.
- (2) In light of the importance of the correct implementation of the provisions linked to the Visa Information System (VIS), data protection and the monitoring of external service providers (ESP) as well as the importance of the decision-making process, the secure handling of visa stickers, the use of IT systems and harmonised implementation, priority should be given to implementing recommendations 1, 2, 4, 5, 6, 14, 15, 17, 18, 19, 21, 22, 30, 36, 37, 38, 40 and 41.

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<sup>2</sup> OJ L 295, 6.11.2013, p. 27.

- (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 France should:

1. ensure that hotel reservations or other proof of accommodation are required by consulates where harmonised lists of supporting documents require such a document from applicants;
- ensure either that the distribution of visa stickers to local staff in charge of printing is registered in the relevant IT system(s) or that those staff members responsible for printing sign a protocol when receiving the daily amount of visa stickers assigned to them, including the visa sticker numbers;
- instruct all consulates to correctly implement the Visa Code provisions on annulment and revocation of a visa and on invalidation of a misprinted visa sticker and to use the correct stamps (for revocation and annulment) and means of invalidation;
- give clear instructions to the ESP on the compulsory deletion of applicants' data immediately after transmission to the consulate and on strictly preventing access to the data of persons that have not lodged a visa application; closely monitor implementation of these instructions; correct the legal instrument in line with Annex X, part A, point (d) of the Visa Code;
- ensure that travel documents with refusals are returned to the ESP in a way that does not reveal the visa section's decision on the visa application to ESP staff;

consult the French data protection authority on the compatibility of the local warning lists with Directive 95/46/EC on data protection, as implemented by French data protection law, and follow its recommendations;

ensure that, for positive "recommendations" in the local warning lists, a full examination of the applicant's personal circumstances is conducted before the visa is issued;

ensure that the table of recognised travel documents is complete and up-to-date, both in the national visa IT system and in the Intranet, and that staff is aware of it;

correct the different versions of the application form so that they indicate the correct authorities for processing VIS data and the national supervisory authority;

modify the sponsorship form ("attestation d'accueil") to include information that the sponsor's personal data will be recorded in VIS;

ensure that the territorial validity of extended visas – at least as a standard rule – remains the same as that of the initial visa;

remove the reference to travel medical insurance as an entry condition in the information leaflet handed out to the applicant with the visa / travel document;

correct the abbreviations for Schengen Member States in the explanation on how to read a visa sticker which is provided on the central authorities' website;

#### *IT systems*

modify the national visa IT system to ensure that the applications of persons travelling in a group (and not only families) are always linked in the VIS;

modify the IT system to ensure that all fields required by Article 9 of the VIS Regulation, including the field on the applicant's employer, are transferred to the VIS;

verify and ensure that data on the occupation of the applicant is correctly transferred by the ESP from the online application form to the national visa IT systems and eventually the VIS;

modify the IT system to ensure that the SIS check can be performed only in connection with a visa application; reconsider the access rights of local staff to VIS and SIS, since only a limited number of duly authorised staff access should have access to consultation of the VIS and the SIS;

make proper use of the different levels of access for local and consular staff provided in the national visa system to make sure that each member of the staff dealing with visas can perform only operations which are within the person's responsibility;

ensure that the decisions on the application (refusal, issuing) are entered in the system – and the length of validity confirmed – by expatriate visa officers only, and that visa officers consult the results of SIS checks and VIS searches in the IT system themselves;

make more systematic use of the IT system to record findings of the examination, verifications, interviews, etc. and the reasons leading to the decision;

modify the IT system with a view to making a clear distinction between revocation and annulment of a visa and ensuring that invalidation of a misprinted visa sticker is not a sub-category of annulment; ensure that decisions on annulment, revocation and invalidation are correctly reflected in the VIS;

modify the IT system(s) in such a way that it allows all decisions on extension of a visa to be properly recorded in the VIS; allow for the compilation of statistics on the extension of visas and the main reasons for such extensions;

ensure that the information indicating that a visa sticker has been issued manually is always correctly entered in the VIS;

use VIS Mail for messages related to consular cooperation, in particular when exchanging information on individual applicants with other Member States' consulates;

ensure that appropriate monitoring and reporting tools are available to consulates directly in the IT system;

abolish the "VIS" and "VIS 0" marking on the visa sticker;

*Embassy/visa section in Hanoi*

restructure the Embassy's website to make it more user-friendly and complete, update and correct the information, including in English; instruct the ESP to improve its website to make it more user-friendly and to complete and correct the information available; instruct the ESP to correct the information at the premises and ensure that information is also available in Vietnamese, in particular for the ESP checklist that applicants are required to sign;

instruct the ESP to improve the call-back system and ensure that it is possible to contact the ESP by email; ensure that staff in the ESP is sufficiently trained in all aspects of their work, including relevant IT software;

ensure that applicants who would like to make an appointment directly at the visa section are able to do so without the need to register all personal data on the ESP website; one contact with the ESP should be sufficient to make the appointment, in particular for family members of EU citizens covered by Directive 2004/38/EC; ensure that appointments at the visa section are given at the earliest convenience according to the actual availability;

either align the visa section's checklists with the harmonised list of supporting documents or work with Local Schengen Cooperation to formally revise the existing harmonised list;

avoid differentiating between Schengen visas issued by France and other Member States, so that equal "value" is always given to previous visas – irrespective of which Member State issued them – when assessing whether visa applicants are "bona fide" and deciding on the validity of the visa to be issued;

affix the visa section's stamp on the right side of the visa sticker in the comments sections;

consider upgrading the security measures in the visa section, for example by providing at least a hand metal detector to the local security staff to check visitors and bags at the entrance, by reinforcing the window counter in the waiting room and replacing the glass wall between the back office and the waiting room by a solid wall, by providing a separate entrance for visitors of the visa section, and/or by upgrading the video surveillance system;

*Consulate General/visa section in Shanghai*

restructure the Consulate General's website to make it more user-friendly, complete and update the information, and ensure that it contains all relevant information for applicants (including in English), including the aspects required under Article 47 of the Visa Code;

instruct the ESP to correct and complete its website so that it contains all relevant information and that information is in line with EU legal requirements; ensure that the document lists used by the ESP correspond to the EU harmonised list of supporting documents; instruct the ESP to clearly indicate the two categories of applicants who benefit from the reduced visa fee of EUR 35 in the information provided at the ESP premises;

instruct the ESP not to require applicants who have stated that their fingerprints have already been collected in the previous 59 months to give fingerprints again; the ESP should rely on the statement in the application form (field 27) for that purpose and should not require the applicants to sign an additional document if the applicant cannot present proof that fingerprints have already been collected in the 59 months preceding the new application; it is sufficient to remind applicants of the consequences of false information in that respect;

instruct the ESP to provide sufficient and appropriate space inside the building for waiting applicants; ensure that applicants have to pay no additional fee (e.g. for photocopies) when picking up the envelope with their travel document at the ESP;

ensure that the ESP gives appropriate security instructions to the courier company transporting the files between the satellite centres and the main centre to avoid loss of applications and travel documents and to prevent access to applicants' personal data by unauthorised persons during the transport;

provide the possibility to applicants to obtain an appointment at the visa section within a reasonable timeframe, taking into consideration the general rule of two weeks and the principle of direct access;

abolish the complementary questionnaire or discuss within Local Schengen Cooperation whether the harmonised list of supporting documents should be formally revised to include such a questionnaire or a similar document; abolish the declaration to be signed by applicants for long-validity MEVs;

ensure that the examination of and the decision on the applications lodged under the "visa partnership agreements" with accredited companies take into account the personal situation of each applicant and that appropriate documents are submitted to prove the applicant's bona fide status; ensure that facilitations are only granted to "specific employees" of the company (which should be clearly defined), that no facilitations are granted to persons outside of the company and that the visas issued under the scheme correspond to the travel needs; for instance, long-validity MEVs should not be granted systematically to first-time travellers;

reconsider the use of the return control procedure which should not be regarded as a safeguard to mitigate migratory risk (in case of doubt about the bona fides of the applicant, the application should be refused);



ensure that sufficient storage facilities are provided in order to be able to keep all paper files for a minimum of two years;

consider upgrading the security measures in the visa section, for example by providing at least a hand metal detector to the local security staff to check visitors and bags at the entrance and relocating the surveillance monitor to ensure that it is continuously supervised.

Done at Brussels,

*For the Council*

*The President*