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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 18 September 2018
To: Delegations

No. prev. doc.: 11837/18

Subject: Council implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2017 evaluation of **Iceland** on the application of the Schengen *acquis* in the field of **data protection**

Delegations will find in the annex the Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2017 evaluation of Iceland on the application of the Schengen *acquis* in the field of data protection, adopted by the Council at its meeting held on 18 September 2018.

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

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2017 evaluation of Iceland 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 Schengen¹, 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 Iceland remedial actions to address the deficiencies identified during the Schengen evaluation in the field of data protection carried out in 2017. 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) 3400.
- (2) As a good practice the on-site team welcomed that the SIRENE bureau replies, where possible, to data subject's requests in the language used by the data subject.

¹ OJ L 295, 6.11.2013, p. 27.

- (3) In light of the importance to comply with the Schengen acquis, in particular the obligation to ensure and carry out effective supervision and to ensure necessary security measures, priority should be given to implement recommendation(s) 1, 2, 5, 7-10, 21 and 23 below.
- (4) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Iceland 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 Iceland should

Data Protection Supervisory Authority

1. allocate sufficient financial and human resources to Data Protection Authority (hereinafter "DPA") in order for it to be able to fulfil all tasks entrusted to it under the Schengen Information System II (hereafter "SIS II") and Visa Information System (hereafter "VIS") acquis, also in light of increased responsibilities in future;
2. in order to guarantee the complete independence of the DPA ensure that formalised rules protecting the members of the Board of the DPA and alternative members from arbitrary dismissal are in place. It should be explicitly stipulated that members of the Board of the DPA and alternative members may be dismissed only in exceptional situations, in particular for serious misconduct;
3. in order to guarantee the complete independence of the DPA review and limit the involvement of the Minister in the nomination and appointment of the members of the Board of the DPA;

4. in order to better ensure the complete independence of the DPA, further clarify the division of tasks between the Commissioner and the Board;
5. ensure that the DPA employs a fully qualified IT expert who possesses a comprehensive understanding of Schengen information System II (“SIS II”) and Visa Information System (“VIS”) and who is readily available to carry out checks regarding the lawfulness of the processing of SIS II and VIS personal data;
6. ensure that the DPA is involved in the proposal for its budget and is in a position to defend its proposal for budget before Parliament or before such proposal it is sent to the Parliament for discussion and adoption;
7. in order to ensure effective supervision of N.SIS, clarify that the DPA has a power to issue binding decision against National Commissioner of the Icelandic Police (“NCIP”) with respect of processing of personal data in N.SIS;
8. ensure that the DPA monitors the lawfulness of the processing of SIS II and VIS personal data, including by checking of log-files on a regular basis;
9. ensure that, at least every four years, audits of data processing operations in the national system of VIS will be carried out. As the deadline for the first audit (October 2015) has not been met, action should be undertaken to fulfil this obligation by finalising the on-going audit as soon as possible;
10. ensure that the DPA establishes an annual plan for supervisory activities in relation to SIS II and VIS;

Rights of Data Subjects

11. ensure that the time limits for the replies of NCIP to data subjects' requests respects the deadlines required by Article 41 of SIS II Regulation and 58 of the SIS II Council Decision;
12. ensure that of NCIP website provides information on data subjects rights concerning SIS II;
13. provide the data subjects with secure but alternative means for submitting the requests for access, rectification or deletion of their personal data in SIS.II and receiving the replies. Such means shall not be limited to requesting data subject's presence in person for submitting request or receiving the answer;
14. ensure that the website of the DPA provides information on data subjects' rights concerning VIS;
15. improve availability of the information on data subjects' rights concerning VIS on the website of the Directorate of Immigration (hereinafter "DoI");
16. designate a unit within the DoI to deal with data subjects' access, correction or deletion requests;

Visa Information System

17. ensure that all operations relating to VIS data, including the automated queries, are properly logged in line with the requirements of 34 (1) VIS Regulation and Articles 12 of SIS II Regulation;
18. ensure that the log files on operations relating to VIS are stored for no longer then allowed under Article 34 (2) of VIS Regulation;
19. clarify the situation concerning the controllership of the processing of personal data in N.VIS, in particular by clarifying the role of the DoI, Ministry of Foreign Affairs (hereafter "MFA") and NCIP by clarifying the allocation of responsibilities related to processing of personal data between above mentioned authorities;

20. ensure that responsible authorities (DoI, MFA, NCIP) perform the self-monitoring of the processing of personal data in N.VIS system on a regular basis, including monitoring processing of personal data by External Service Providers on regular basis and analyse on a regular basis N.VIS log files in order to ensure the data protection monitoring;
21. improve technical and organizational security measures (e.g. two factor authentication, PC session time-out) for working stations with access to VIS data and for access to VIS-related application Erlendur (e.g. session log – off);
22. ensure that the staff having access to VIS data receive a regular training on data protection;

Schengen Information System II

23. ensure implementation of adequate technical and organizational security measures (e.g. two factor authentication, cameras in relevant premises, PC session time-out) for working stations with direct access to SIS II within the Directorate of Immigration;
24. finalize in a timely manner the implementation of the two factor authentication system for access to the working stations in the SIRENE bureau;
25. encourage NCIP to finalize in a timely manner the implementation of the application for searching and automated analysis of the SIS II logs;
26. ensure that the staff having access to SIS II data receive a regular training on data protection;

Public Awareness

27. ensures that the website of the DPA provides information on VIS;
28. ensure that the website of the DPA provides updated information as regards the way of exercising the rights of data subjects in SIS;

29. provide information on SIS II and VIS and on the related data subject rights on the websites of Icelandic authorities competent for SIS II and VIS;
30. ensure that the websites of DoI and NCIP provide for the appropriate links to the DPA website.

Done at Brussels,

*For the Council
The President*
