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**SCH-EVAL 199**  
**VISA 265**  
**COMIX 549**

### OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council

On: 11 October 2018

To: Delegations

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Subject: Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2017 evaluation of **Spain** on the application of the Schengen *acquis* in the field of the **common visa policy**

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Delegations will find in the annex the Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2017 evaluation of Spain on the application of the Schengen *acquis* in the field of the common visa policy, adopted by the Council at its meeting held on 11 October 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 Spain on the application of the Schengen *acquis* in the field of the common visa policy**

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 Schengen<sup>1</sup>, 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 Spain remedial actions to address the deficiencies identified during the Schengen evaluation in the field of the common visa policy carried out in 2017. Following the evaluation, a report covering the findings and assessments, and listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2018) 800.

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<sup>1</sup> OJ L 295, 6.11.2013, p. 27.

- (2) A search feature in Spain's IT system immediately identifies whether previous applications by the same person exist in the Visa Information System (VIS), allowing the copying of data and automatically linking the new application with the previous application(s) in the VIS. This is a good practice as regards the application of the VIS Regulation.
- (3) In light of the importance of the correct implementation of the provisions linked to the lodging of applications, the decision-making process, the use of the Visa Information System (VIS), the monitoring of external service providers (ESPs) and data protection, priority should be given to implementing recommendations 5, 8, 9, 11 to 16, 18 to 21, 27, 32, 34, 38, 42 to 48, 50, 57, 62, 63, 65 to 68 and 70 to 75.
- (4) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Spain should, pursuant to Article 16 (1) of Regulation (EU) No 1053/2013, produce an action plan covering all recommendations to remedy deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council,

#### RECOMMENDS:

that Spain should:

1. instruct the ESPs to improve their websites to ensure that the information is complete, correct, up-to date and can easily be found in the relevant section;
2. update the consulates' websites to ensure that the information is complete and correct and can easily be found in the relevant section;
3. instruct the ESPs to advise members of the public about the video surveillance in place in the visa application centres;
4. ensure that the ESPs do not unnecessarily duplicate the storage of application data;

5. thoroughly review the ESP's 'work instruction manuals' at each location worldwide, as the content of these should always be agreed between the Spanish consulates and the ESP as part of monitoring the implementation of the legal instrument;
6. consider providing the consulates with readers for the machine-readable zone of travel documents, in order to reduce the risk of data entry errors;
7. ensure that the application forms are completely filled out by the applicants and that all applications that meet the admissibility criteria are accepted;
8. fully apply the provisions of the Visa Code on issuing multiple-entry visas (MEVs) with long validity for applicants travelling regularly who have proven their integrity and reliability;
9. reconsider the need for prior approval by the central authorities for MEVs with a validity beyond two years;
10. reconsider its use of the return control procedure, which should not be regarded as a safeguard to mitigate migratory risk;
11. ensure that the reasons for decisions on applications are well documented in the application file and consider using the comments field in the national IT system for this purpose;
12. improve data protection by the ESPs by:
  - instructing the ESPs to strictly limit the data retention periods in all systems in line with legal requirements;
  - instructing the ESPs to delete all application data immediately after this has been sent to the consulate and to not retain data longer than provided for in the legal instrument;
  - closely monitoring the implementation of these instructions;

13. instruct the ESPs to refrain from collecting fingerprints from applicants whose fingerprints had already been collected in the previous 59 months;
14. stop using the duration of the travel medical insurance presented by the applicant to determine the validity period of a multiple-entry visa;
15. ensure that visas for family members of EU citizens covered by Directive 2004/38/EC are issued free of charge, including for visas with a validity period of more than 180 days;

*IT system*

16. modify the IT system so that it is possible to change the visa ‘type’ at any time before the final decision on the application is taken, so that — inter alia — it becomes possible to issue a visa with limited territorial validity if there is a negative reply to prior consultation without having to create a new application;
17. ensure that the electronic retention of data is subject to a defined time limit, as data retention must have an end point;
18. modify the IT system so that any application data is no longer accessible to the ESP once it has been sent to the consulate;
19. modify the IT system to cater for all the exemptions from the requirement to give fingerprints identified in the Visa Code;
20. embed quality control measures in the IT system in order to prevent clearly incorrect entries;
21. ensure that all data required under Article 9 of the VIS Regulation is duly entered into the IT system;

*Consulate in Malabo*

22. ensure that the checklists provided on the website, the information board and at the ESP are the same, clearly distinguishing between Schengen and national visas and between different travel purposes;
23. ensure that the information concerning the amount of the visa fee in local currency is identical everywhere;
24. instruct the ESP to clearly inform members of the public of all the categories of applicants, including but not limited to children, who can benefit from the reduced visa fee of EUR 35 and visa fee waivers;
25. consider solutions that would allow the ESP to receive mobility-impaired applicants at its premises;
26. urge the ESP to improve privacy for applicants by expanding the counter space and installing partitions between the counters;
27. ensure that the ESP is properly equipped and that staff are appropriately trained to take photographs that meet high quality standards;
28. instruct the ESP to accept incomplete applications; the ESP should inform applicants which documents are missing, based on a checklist provided by Spain, but it is not qualified to advise applicants explicitly against lodging the application;
29. instruct the ESP to return the properly sealed envelopes containing the travel documents to the applicants and refrain from asking applicants to open them;
30. instruct the ESP to refrain from reusing the return envelopes;

31. consider separating the queues between visa applicants and other national services at the Embassy, utilising both waiting areas for the different services;
32. rearrange the layout of its Embassy offices and visa section by:
  - segregating the visa section from the rest of the Embassy;
  - locating all visa related processes within the segregated area;
  - introducing secure access controlled doors to the segregated visa area;
  - ensuring that there is no access from the waiting area of the visa section to the segregated visa area;
  - avoiding transporting visa applications and travel documents outside of the segregated area;
33. consider waiving the requirement to appear in person for individual applicants known for their integrity and reliability;
34. ensure that the consulate is properly equipped to take photographs that meet high quality standards;
35. ensure that the correct currency code is indicated on the visa fee receipts given to applicants;
36. ensure that the visa sticker is affixed to the travel document as laid down in Annex VIII of the Visa Code and that the photo on the printed visa sticker is always of sufficient quality;
37. consider implementing rotation schemes for staff dealing directly with applicants, which could help to prevent any decline in the level of vigilance, protect staff from being exposed to pressure at local level and encourage courteous conduct at all times;

38. ensure that the consulate physically destroys all invalidated visa stickers, for example by marking or cutting them;
39. use VISMail to transmit messages related to consular cooperation, in particular when exchanging information on individual applicants with other Member States;
40. correctly inform the public about the applicable time limits for examining applications;
41. correct the visa fee for children aged 6-12 listed in the checklist on the consulate's website;
42. ensure that the certificates for the secure encryption of data are properly updated, as and when needed;
43. provide the possibility to applicants to obtain an appointment at the consulate within a reasonable timeframe, taking into consideration the general rule of two weeks;
44. ensure that the rules set out in the Visa Facilitation Agreements, especially regarding visa fees, are applied;
45. ensure that all fee waivers specified in Article 16(4) of the Visa Code are applied in practice and inform the public of these provisions;
46. respect, as a general rule, the deadline of 15 calendar days to take decisions on visa applications, unless further scrutiny is necessary or additional documentation is needed;
47. systematically add the 15-day grace period to the validity of issued visas;
48. ensure that the consulate systematically checks the table of travel documents recognised by Member States and issues visas with territorial validity limited to the Member States that recognise the travel document (in cases where the travel document is not recognised by all Member States);



49. ensure that staff are properly trained in the distinction between annulment and revocation of an issued visa and the invalidation of a visa sticker. In cases involving annulment and revocation, the uniform notification form for refusal, annulment and revocation should be used (Annex VI of the Visa Code) and the data should be entered into the VIS;
50. ensure that all the applications of persons travelling together are correctly linked in the IT system;

#### *Consulate in Tangiers*

51. ensure that the consulate and the ESP clearly inform members of the public of the categories of applicants who can benefit from the reduced visa fee and visa fee waivers;
52. ensure that the ESP and the consulate correctly inform family members of EU/EEA citizens covered by Directive 2004/38/EC about the procedural facilitations available, including their privileged treatment and fee exemption;
53. ensure that the consulate and the ESP only use the harmonised checklist of required supporting documents applicable in Morocco;
54. correct the typographical errors in the information provided to members of the public;
55. instruct the ESP to ensure suitable waiting conditions throughout the year for applicants who wait outside the ESP, including by providing seating and protection from the elements;
56. instruct the ESP to abolish the practice of indicating missing supporting documents on hand-written notes, which can easily be misplaced. The applicants should be given a printed list of missing documents, with clear information on when the application will be forwarded to the consulate if the applicant does not return in time with the missing documents (normally the same or next day);

57. instruct the ESP to only enter correct data into the relevant fields in the IT system, as incorrect data entry could lead to incorrect information being transmitted to the VIS;
58. ensure that the ESP returns travel documents to applicants in a way that does not reveal the consulate's decision on the visa application to ESP staff;
59. consider how to adapt the access facilities to the consulate for people with mobility impairments;
60. ensure that the cameras and biometric readers at the consulate are properly secured to avoid tampering and damage;
61. ensure that staff are aware of the possibility to examine and decide on applications lodged by a third-country national legally present but not residing in the consulate's jurisdiction, if the applicant has provided justification for lodging the application at that consulate;
62. rearrange the layout of the consulate's offices to avoid the need for applications and travel documents to be carried through sections of the building that are publicly accessible for consular affairs;
63. restructure the workflow in the consulate to ensure that files are assessed and decisions taken in an efficient manner;
64. ensure that the visa sticker is affixed to the travel document as laid down in Annex VIII of the Visa Code;
65. clarify the legal basis and rules applying to visas with territorial validity limited to Ceuta and Melilla, and fully inform the public, the Commission and the Member States of the procedures and conditions for issuing these visas;
66. ensure that all visa applications and decisions, including for visas with territorial validity limited to Ceuta and Melilla, are correctly reflected in the VIS;

67. instruct the ESP to ensure that applicants never have to wait longer than two weeks for obtaining an appointment at the ESP;
68. provide the possibility to applicants to obtain an appointment at the consulate within a reasonable timeframe, taking into consideration the general rule of two weeks;
69. abolish the practice of requiring the personal appearance of family members when the applicant has previously travelled as part of a family group;
70. ensure that the consulate verifies the length of previous and intended stays in order to verify that the applicant has not stayed for more than 90 days in any 180-day period, including any stays in Ceuta and Melilla;
71. respect, as a general rule, the deadline of 15 calendar days to take decisions on visa applications, unless further scrutiny is necessary or additional documentation is needed;
72. ensure that applications received from the ESP are imported into the IT system and VIS application files are created without delay;
73. ensure that all data fields from the visa application are properly filled in and entered into the IT system;
74. instruct staff that the information entered into the system must always correspond to the respective field;
75. ensure that staff are aware of the specific derogations from the general rules of the Visa Code granted to family members of EU/EEA citizens who are exercising their right to free movement;

Done at Brussels,

*For the Council*

*The President*