



Brussels, 8 July 2019
(OR. en)

11057/19

Interinstitutional File:
2019/0104(NLE)

SCH-EVAL 117
VISA 149
COMIX 350

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
On: 8 July 2019
To: Delegations

No. prev. doc.: 10379/19

Subject: Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of **Estonia** on the application of the Schengen *acquis* in the field of the **common visa policy**

Delegations will find in the annex the Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2018 evaluation of Estonia on the application of the Schengen *acquis* in the field of the common visa policy, adopted by the Council at its meeting held on 8 July 2019.

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.

RECOMMENDATION

on addressing the deficiencies identified in the 2018 evaluation of Estonia 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 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 Estonia remedial actions to address the deficiencies identified during the Schengen evaluation in the field of the common visa policy carried out in 2018. 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(2019) 750.
- (2) The Estonian staff exchange programme between consulates is a very useful training measure and a noteworthy good practice in ensuring consistent application of the Schengen *acquis* in the area of the common visa policy.

¹ OJ L 295, 6.11.2013, p. 27.

- (3) In light of the importance of complying with the Schengen *acquis*, in particular the provisions linked to the monitoring of external service providers, data protection and security, adequate facilities for applicants, the decision-making process and the Visa Information System, priority should be given to implementing recommendations (8), (11), (13), (17), (19), (25), (27), (30), (33), (34), (36), (42), (44), (45) and (47) below.
- (4) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within 3 months of its adoption, Estonia should, pursuant to Article 16 (1) of Regulation (EU) No 1053/2013, draw up an action plan listing all recommendations to remedy any deficiencies identified in the evaluation report and submit that action plan to the Commission and the Council,

RECOMMENDS:

that Estonia should

General

1. consider deploying the more centralised approach to informing the public, as was planned in 2017, which would ensure that clear, comprehensive and consistent information is given to the general public and with due regard to the provisions applicable to specific categories of visa applicants (e.g. family members of mobile EU/EEA citizens);
2. ensure that the Member State is always indicated on the refusal form in case an application is refused because of a SIS hit; consider updating the national system to display this information routinely to decision-makers;
3. avoid using post-it notes for recording and transmitting important information about an application; consider using the comments function in its IT system for this purpose;

4. ensure that decision-makers take account of the national reference amount when assessing the means of subsistence;
5. consider integrating the allocation of visa stickers to individual staff members in the electronic tracking system;
6. draw the attention of all staff to the regulations and best practices concerning the invalidation of affixed visa stickers;
7. consult its national data protection authority and update the data protection statement in the application form as necessary;
8. ensure that all admissible applications are accepted by the consulate and entered into the visa system without delay, even if supporting documents or copies are missing;

IT systems

9. consider giving Estonian language training to all technical staff that use the national visa system;
10. consider modifying its national visa system to display the description of the refusal reasons first, instead of the legal reference;
11. adjust its national system to prevent an already revoked visa from being revoked a second time in the VIS;
12. adjust its national visa system in order to ensure that all fields need to be completed only once by the counter staff when an application is created from scratch (i.e. not fetched from the online application database);
13. revise the user rights policy of its national application in order to limit the access to sensitive functionalities to a limited number of duly authorised staff; for technical staff, the search in the VIS should be restricted to establishing links with a current application;

14. correct the minor software bugs and unexpected behaviour in its national visa system, in particular to prevent changing decisions via processes that are not intended for this purpose;
15. consider updating its national system to prevent an application from being validated and sent to the VIS if any free text field contains a special character;
16. modify its visa system so that consular authorities can easily filter out the VIS Mail messages they are concerned by;
17. amend the electronic application form so that it corresponds to the uniform application form;
18. ensure that all the mandatory data is complete for each application file; consider changing its national system to prevent an application from being validated and transmitted to the VIS if any legally required field is missing or blank;
19. ensure that the intended dates of arrival and departure are always entered into the corresponding fields; Estonia should instruct the ESP and inform applicants that these fields should not be used to indicate the desired length of validity of the visa;
20. establish a data retention policy for its national system and consult the national data protection agency on this policy; Estonia should regularly purge the data in accordance with this policy;

Embassy/visa section in Astana

21. complete and correct the information to the public contained on the Embassy's website, ensuring that the English and Russian versions contain the same information, for example regarding family members of mobile EU/EEA citizens;
22. review the performance of the fingerprint scanning system in order to limit the waiting time of applicants;

23. consider further training measures for staff;
24. ensure that the Embassy has the stamp necessary for annulling an issued visa;
25. ensure proper access for people with limited mobility to the visa section, for example by receiving such applicants on the ground floor of the Embassy;
26. ensure that the premises leading to the visa section are well maintained and cleaned regularly;
27. ensure adequate ventilation of the waiting room;
28. establish an appropriate flow management system for visa application submission and travel document collection (e.g. make an appointment system) or use a queuing/ticketing system;
29. consider using the second counter or the facilities on the ground floor;
30. store sensitive documents in a more secure manner, especially overnight; unused visa stickers should be stored in the safe during the night;
31. ensure that applicants systematically submit the supporting documents in accordance with the harmonised list for Kazakhstan; the reasons for any waivers of requirements should be clearly documented;
32. ensure that supporting documents are translated by independent and recognised translators;
33. ensure that all applications (except for family members of mobile EU/EEA citizens) are thoroughly assessed by the Embassy regarding the migratory risk and the applicant's socio-economic situation in the country of residence, in particular by a thorough examination of the supporting documents, independently of the national consultations;

34. remind consuls that the advice received from the agencies of the Ministry of Interior through the national consultation system does not relieve them of their final responsibility regarding a thorough assessment of the migratory and security risk before taking a decision on an application; if necessary, applicants should be called for an interview before taking a decision;
35. refrain from revoking multiple-entry visas that are valid for a duration of stay of 90 days whenever an application is lodged for a new visa less than 3 months before the end of the existing visa's validity; instead, the new visa should be issued with its validity starting upon expiry of the existing visa, and the visa holder should be informed that the existing visa can still be used for crossing the border;
36. ensure that visa officers check the entry and exit stamps in the passport to detect possible overstays, in particular for frequent travellers;

Consulate/visa section in St Petersburg

37. instruct the external service provider (ESP) to correct and update the websites and the printed-out information;
38. instruct the ESP to update its checklist to keep it fully in line with the harmonised list of supporting documents and to duly take into account the provisions applicable to specific categories of visa applicants (e.g. family members of mobile EU/EEA citizens);
39. instruct the ESP to inform applicants of the requirements regarding sponsorship documents as defined in the harmonised list
40. instruct the ESP to accept all admissible applications for which Estonia is the competent Member State; the ESP may advise the applicant about missing supporting documents and warn them about the consequences; however, they are not competent to explicitly advise against lodging an application;

41. instruct the ESP to either discourage applicants from using the Estonian online application tool to generate an application form, or implement a process, fully respecting the principles of data protection, that allows the ESP to fetch the data from the Estonian online application database;
42. instruct the ESP to use solid and safely locked containers, crates or suitcases for transporting the files and travel documents between the Consulate and the ESP;
43. ensure that the ESP always keeps the lodged applications and passports inside a safe or strong room overnight;
44. ensure full monitoring of the external service providers, including at regional locations, possibly in cooperation with other Member States using the same providers;
45. instruct its ESP to delete all application data including biometrics immediately after having successfully transmitted the data to the consulate, in accordance with the provisions of the Visa Code;
46. ensure that its agreement with the ESP is aligned with the legal basis regarding the deletion of application data;
47. ensure that any online application portal operated by the ESP does not allow ESP staff access to any visa application data unless the applicant is lodging an application, for example by using a unique identifier for access that is only known to the applicant;
48. instruct the ESP to verify only that the application form is signed in the two signature fields, refraining from requesting additional signatures;
49. instruct the ESP to request only one photograph from the applicant;
50. ensure that the ESP refunds the visa fee to the applicant in case an application is deemed inadmissible or when Estonia is not the competent Member State;

51. correct and update the information on the Russian version of the Consulate's website and the printed-out information in Russian available at the consulate;
52. ensure appropriate signage to direct applicants from the main street to the visa section of the Consulate;
53. ensure that applicants systematically submit the supporting documents in accordance with the harmonised list for Russia; the reasons for any waivers of requirements should be clearly documented;
54. consider a consistent approach for archiving refused applications, either keeping a copy of the refusal form for all refused applications, or for none;
55. provide the possibility to applicants to obtain an appointment at the consulate within a reasonable timeframe, taking into consideration the general rule of 2 weeks and the principle of direct access to the consulate; ensure that, for family members of mobile EU/EEA citizens, such appointments are allocated without delay;
56. correct the information leaflet to reflect the rules on the authorised duration of stay as determined in the Schengen *acquis*.

Done at Brussels,

For the Council

The President
