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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 83 final
Subject:	Proposal for a Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of France on the application of the Schengen <i>acquis</i> in the field of the common visa policy

Delegations will find attached document COM(2023) 83 final.

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Brussels, 27.4.2023
COM(2023) 83 final

2023/0120 (NLE)

SENSITIVE*

Proposal for a

COUNCIL IMPLEMENTING DECISION

setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of France on the application of the Schengen acquis in the field of the common visa policy

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 7 October 2013, the Council adopted Regulation (EU) No 1053/2013¹, establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*. In line with Regulation No 1053/2013, the Commission has established a multiannual evaluation programme 2020-2024² and an annual evaluation programme for 2022³ with detailed plans for on-site visits to the Member States to be evaluated, areas to be evaluated and sites to be visited.

The areas to be evaluated cover all aspects of the Schengen *acquis*, in particular management of the external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters, as well as the absence of border control at internal borders. In addition, fundamental rights issues and the functioning of authorities that apply the relevant parts of the Schengen *acquis* are taken into account in all evaluations.

Based on the multiannual and annual programmes, and in accordance with Article 14 of Regulation (EU) No 1053/2013, a team of Member State and Commission experts, supported by an observer from eu-LISA, carried out an evaluation of France's application of the Schengen *acquis* in the field of the common visa policy on 24-25 October 2022. The team's evaluation report⁴ sets out its findings and assessments, including best practices and any deficiencies identified during the evaluation.

Alongside the report, the team made recommendations for remedial action aimed at addressing the deficiencies.

A new Council Regulation (EU) 2022/922⁵ was adopted on 9 June 2022. Article 31(3) of this Regulation contains transitional provisions according to which for evaluations carried out before 1 February 2023, the adoption of evaluation reports and recommendations should be carried out in accordance with Regulation (EU) No 1053/2013. The follow-up and monitoring activities of such evaluations, starting with the submission of the actions plans, should be carried out in accordance with Regulation (EU) 2022/922.

Consequently, the recommendations set out in this Council Implementing Decision should be adopted in accordance with Regulation No 1053/2013, whereas the follow-up and monitoring activities of such evaluations, starting with the submission of the actions plans, should be carried out in accordance with Regulation (EU) 2022/922.

¹ OJ L 295, 6.11.2013, p. 27.

² Commission Implementing Decision C(2020) 8045 of 14 December 2020 amending Implementing Decision C(2019) 3692 establishing the multiannual evaluation programme for 2020-2024.

³ Commission implementing Decision C(2021) 7727 of 4 November 2021 establishing the first section of the annual evaluation programme for 2022 in accordance with Article 6 of the Council Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

⁴ C(2023) 830.

⁵ Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) N° 1053/2013, OJ L160 of 15.6.2022, p. 1.

This proposal contains recommendations that aim to ensure that France applies all Schengen rules related to Schengen visa processing correctly and effectively.

- **Consistency with existing policy provisions in the policy area**

These recommendations serve to implement the existing provisions in the policy area.

- **Consistency with other Union policies**

These recommendations do not have links with other key Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 15 of Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

- **Subsidiarity (for non-exclusive competence)**

Article 15(2) of Council Regulation (EU) No 1053/2013 specifically requests the Commission to submit a proposal to the Council to adopt recommendations for remedial action aimed at addressing any deficiencies identified in the course of the evaluation. Action at Union level is required to strengthen mutual trust between the Member States and to ensure better coordination at Union level in order to guarantee that all Schengen rules are applied correctly and effectively by the Member States.

- **Proportionality**

Article 15(2) of Council Regulation (EU) No 1053/2013 mirrors the specific powers of the Council in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice. This proposal for a Council Implementing Decision is therefore proportionate to the objective pursued.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

Member States gave their positive opinion on the evaluation report in the Schengen Committee.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The protection of fundamental rights when applying the Schengen *acquis* was taken into account during the evaluation process.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

n.a.

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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 Schengen⁶, and in particular Article 15(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) A Schengen evaluation in the field of the common visa policy was carried out in respect of France in October 2022. Following the evaluation, a report containing the findings and assessments, listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2023) 830.
- (2) Recommendations should be made on remedial actions to be taken by France in order to address deficiencies identified as part of the evaluation. In light of the importance of the proper implementation of the provisions related, among other things, to the lodging of visa applications; the timing of creation of application files in the Central Visa Information System and the launching of the necessary consultations; the use of the uniform visa application form; the staff situation and to the secure storage of visa applications at the consulate, priority should be given to implementing recommendations 1, 4, 5, 10, 17, 18, 22 and 23 in this Decision.
- (3) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States.
- (4) Council Regulation (EU) 2022/922⁷ applies as of 1 October 2022. In accordance with Article 31(3) of that Regulation, the follow-up and monitoring activities of evaluation reports and recommendations, starting with the submission of the action plans, should be carried out in accordance with Regulation (EU) 2022/922.

⁶ OJ L 295, 6.11.2013, p. 27.

⁷ Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) N° 1053/2013, OJ L160 of 15.6.2022, p. 1.

- (5) Within two months of its adoption, France should, pursuant to Article 21(1) of Council Regulation (EU) 2022/922, establish an action plan to implement all recommendations and to remedy the deficiencies identified in the evaluation report. France should provide that action plan to the Commission and the Council.

RECOMMENDS:

France should

General

- (1) ensure that visa applicants can lodge their application within two weeks from the date when the appointment was requested, for instance by stepping up the efforts to reinforce the staff involved in Schengen visa processing and also by engaging with the external service provider(s) on how to reduce the waiting time for appointments where the delays are (primarily) due to the staff shortages at external service providers;
- (2) ensure, e.g. by reinforcing at least temporarily the staff at consulates under the heaviest pressure (Senegal, in particular), that the processing time of visa applications never goes beyond 45 calendar days and it is only extended beyond 15 calendar days in individual cases, notably when further scrutiny of the application is needed;
- (3) until the entry into application of Regulation (EU) 2021/1134⁸ (the VIS Reform Regulation), suspend consulting the Visa Information System when examining long-stay visa applications;
- (4) ensure that admissibility checks are systematically carried out by by duly authorised staff of the consulates and there are no inadmissible files in the Central Visa Information System;
- (5) ensure that the consultations are launched only once the staff of the consulate has done the necessary data quality checks after the applications has been deemed admissible;
- (6) ensure that VIS Mail is used for the exchange of data on applicants and applications and technical problems (error messages) do not obstruct the use of the system;
- (7) ensure that the visa processing IT system allows the amendment and deletion of data in the Visa Information System even after a decision was taken on an application;
- (8) ensure that in case a refusal of a visa is overruled in the appeal procedure and the higher instance rules that the visas is to be issued, the decision is amended in the already existing application file in the Visa Information System; or, as an alternative, continue to create a new application file for these cases, but ensure to delete the original file from the Central Visa Information System;

⁸ *OJ L 248, 13.7.2021, p. 11–87.*

- (9) ensure that the content of the online version of the application form (on the ‘France-Visas’ portal) fully corresponds to the latest version of the uniform application form;
- (10) refrain from collecting additional information for national purposes on the online form, including even when the collection of extra information does not appear on the printout of the online form;
- (11) improve the structure of the ‘Registration receipt’ generated by France-Visas so that staff at the external service provider can easily determine which documents are generic and required in all cases and which ones are subject to the purpose of the journey or other circumstances; in the meantime, train the staff at the external service provider how to interpret the ‘Registration receipt’;
- (12) entitle locally employed staff dealing with data quality checks to change any erroneous data in the national IT system while carrying out data quality checks and ensure that the system does not pose technical constraints in this regard;
- (13) improve the functionalities of the national IT system so that it could become a helpful tool better arranging the workflow at consulates;
- (14) introduce new functionalities so that relevant reports and statistics could be also generated by the consulates themselves;

Dakar

- (15) as regards the external service provider,
 - (a) ensure that the legal instrument (contract) signed in Dakar complies with the provisions of Regulation (EC) No 810/2009⁹ (hereinafter: the Visa Code) and Annex X, in particular as regards the protection of personal data;
 - (b) instruct the external service provider to review the scroll down list of visa types in its booking system and investigate why the platform sends error messages;
 - (c) ensure adequate privacy at the counters by reinforcing the physical separation of them;
 - (d) improve the ticketing system and ensure that visa applicants are called at the counters in accordance with their ticket numbers;
 - (e) instruct the external service provider to provide appropriate explanation about the visa application process and relevant documents to the applicants and consider drawing up a training manual in this regard;
 - (f) fix the ticketing machine for the biometrics and payment counter;
- (16) refrain from differentiating on the basis of the purpose of the journey when granting appointments;
- (17) apply Article 9 of the Visa Code in case of applications lodged later than 15 days before the start of the intended visit;

⁹ *OJ L 243, 15.9.2009, p. 1–58*

- (18) review the workflow for determining and prioritising the applications to be decided on and ensure that as a rule, the processing of the application follows the sequence of the date of submission or admissibility of the application and only in justified cases the date of the intended journey or other factors (e.g. quality of the application, purpose of the journey);
- (19) ensure that interviews are held whenever the examination of the visa application based on the information and the documentation available does not allow a well-founded decision to be taken to either issue a visa or refuse the application;
- (20) limit the direct or indirect access to the Visa Information System to staff members processing short-stay visa applications;
- (21) improve the examination of applications submitted by Gambian nationals through better training of the staff regarding the specificities of these applicants and their supporting documents and, when relevant, by holding more interviews;
- (22) increase the number of expatriate decision-makers at the consulate in Dakar;
- (23) ensure that at least the applications containing travel documents are not stored in the corridors of the visa section and are securely stored when staff members are not processing them (e.g. in locked room/closets);
- (24) establish a transparent complaint handling process, ensure that all complaints are registered and provide relevant information to the public about the complaint procedure.

Done at Brussels,

*For the Council
The President*