



Brussels, 2 December 2020
(OR. en)

13589/20

Interinstitutional File:
2020/0236(NLE)

SCH-EVAL 191
VISA 134
COMIX 557

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council

On: 1 December 2020

To: Delegations

No. prev. doc.: 12858/20

Subject: Council Implementing Decision setting out a recommendation on addressing the serious deficiency identified in the 2019 evaluation of the **Netherlands** and the deficiencies identified in the 2019 evaluation of **Spain, France, the Netherlands and Switzerland** on the application of the Schengen acquis in the field of the **common visa policy**

Delegations will find enclosed the Council Implementing Decision setting out a recommendation on addressing the serious deficiency identified in the 2019 evaluation of the Netherlands and the deficiencies identified in the 2019 evaluation of Spain, France, the Netherlands and Switzerland on the application of the Schengen acquis in the field of the common visa policy, adopted by written procedure on 1 December 2020.

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 serious deficiency identified in the 2019 evaluation of the Netherlands and the deficiencies identified in the 2019 evaluation of Spain, France, the Netherlands and Switzerland 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 the Netherlands remedial actions to address the serious deficiency identified during the Schengen evaluation in the field of the common visa policy carried out in 2019, and to recommend to Spain, France, the Netherlands and Switzerland remedial actions to address other deficiencies identified during that Schengen evaluation in Rabat, Morocco. 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(2020) 20.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) The on-site visit to the external service provider and the embassy of the Netherlands in Rabat, Morocco, revealed a serious deficiency with regard to the practical inability for applicants to lodge a visa application whenever the Netherlands is the competent Member State. As no appointments were available at all, even with a waiting time of several months, this situation also has a severe negative impact for other Member States in Rabat. The Netherlands is thus seriously neglecting its obligation as regards an essential aspect of the common visa policy.
- (3) As regards the Netherlands, it is therefore important to remedy the serious deficiency with the least possible delay and give priority to implementing recommendations 4 and 5. In addition, in light of the importance of ensuring a harmonised implementation of the Schengen *acquis* in the field of the common visa policy in Rabat, in particular regarding procedures for the collection of biometric identifiers, assessment and decision-making, and the protection of personal data, priority should also be given to implementing recommendations 1, 6, 7 and 9.
- (4) As regards Spain, France and Switzerland, it is important to reduce waiting times for appointments and ensure the harmonised implementation of provisions on the collection of biometric identifiers, assessment and decision-making, and the protection of personal data. Spain should thus give priority to implementing recommendations 1 to 3, 18 to 21, 31, 34, 42 and 44. France should give priority to implementing recommendations 1 to 3, 46, 54 and 55. Switzerland should give priority to implementing recommendations 1 to 3, 57 to 60 and 64.
- (5) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within one month its adoption, the Netherlands should, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy any deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council. Within three months of the adoption of this Decision, Spain, France and Switzerland should also each establish such an action plan and provide it to the Commission and the Council,

RECOMMENDS:

Spain, France, the Netherlands and Switzerland should

1. ensure that applicants who have given their fingerprints as a part of an earlier application lodged less than 59 months before the new application do not have to give fingerprints again; fingerprints should be copied from previous applications in the Visa Information System (VIS) even when these applications were lodged with a different Member State;

Spain, France and Switzerland should

2. take organisational measures to ensure that applicants receive an appointment for lodging an application within two weeks after requesting an appointment; an increase of staff at the consulates should be considered if necessary to achieve that goal, so as to maintain quality assessment while enhancing capacity;
3. ensure that VIS Mail is used for the exchange of data on applicants and applications;

The Netherlands should

4. take immediate measures to allow applicants to book an appointment for lodging a visa application, which should take place, as a rule, within two weeks after requesting an appointment;
5. ensure urgently that the central services organisation in The Hague deploys sufficient staff to process visa applications within the deadlines foreseen by the Visa Code;
6. ensure that decision-makers have access to updated local knowledge of sufficient quality;
7. ensure that the ability of the embassy to examine documents or interview applicants is properly exploited, so as to guarantee a sufficient level of assessment of applications even in complicated cases;

8. consider instructing the external service provider to revise its website to make it easier to navigate and more user-friendly;
9. instruct the external service provider to exercise stricter data hygiene and to refrain from collecting and retaining unnecessary data;
10. ensure that the external service provider makes sure that all relevant fields of the application form are filled in by the applicant;
11. consider the use of a scanning system for the handover of envelopes with passports between the external service provider and the embassy;
12. abolish the practice of making excessive copies of the application form and photos;
13. modify its IT system to prevent the validity period of a visa from starting before the date of issuing of the visa;
14. instruct the external service provider to change its practice to ensure that the decision on the application is not revealed to the external service provider;
15. introduce a proper procedure for the verification of the admissibility of applications;
16. ensure that visa officers are fully aware of the criteria of admissibility and follow proper procedures in cases of both admissible and inadmissible applications;
17. ensure that the authenticity of the passport is verified properly and that the external service provider is instructed to provide a high quality colour copy of all pages of the passport to the central services organisation or preferably an electronic scan in colour and high resolution;

Spain should

18. ensure that existing knowledge of migratory risk and fraudulent practices is summarised in a written document that is regularly updated, so that new or replacement staff can quickly familiarise themselves with the main challenges for issuing visas in the host country;
19. ensure that the consulate develops a harmonised practice of assessing applications and clear criteria for taking decisions (both on whether a visa should be issued or refused and on the validity period of the visa issued); document those in a written document; organise regular team meetings to share experience and knowledge and discuss particular cases;
20. broaden the focus when examining visa applications, with the view to assessing requirements other than the means of subsistence, such as the purpose of the journey and the applicant's will to return;
21. establish clear criteria for when an applicant will be called for an interview and share these amongst all visa officers;
22. ensure that the French version of the consulate's website contains the same information as the Spanish version;
23. instruct the external service provider to update the checklist on the noticeboard at its premises;
24. ensure that visa holders are not given the impression that multiple-entry visas are only valid if Spain is the main destination also for the second and any subsequent trips to the Schengen area;
25. instruct the external service provider to improve its premises by installing ventilation in the biometric booths, privacy partitions between the counters and adequate lighting in all areas;

26. install intercoms at the counters to improve communication with applicants, and identify a suitable space for private interviews (e.g., close off one of the counters with partition walls);
27. consider updating the computers and screens at the consulate to ensure efficient and smooth working procedures;
28. abolish the practice of entering the personal data of the sponsor in the field for 'legal guardian of minor', as this information is transmitted to the Visa Information System (VIS) and the field should only be used for entering information about the parents or the legal guardians of a minor;
29. abolish the practice of entering the application number and other information in the field designated for the applicant's e-mail;
30. establish a more customer-friendly procedure for informing applicants of missing supporting documents, avoiding that the applicant has to come to the external service provider in person several times for this purpose; use electronic means of communication for contacting the applicant to request additional documents;
31. identify a team leader of the visa section to ensure daily leadership and make sure that the visa practices of the consulate are harmonised in all areas; hold regular team meetings to ensure that the staff gets familiar with new rules, regulations and fraud trends, and that the whole staff is aware of the division of tasks;
32. verify the authenticity of travel documents with a special focus on risk cases and nationalities whose travel documents are not well known to the consulate; the consulate should be equipped with suitable devices for this purpose and existing databases (e.g. PRADO) should also be used as necessary;

33. reconsider its use of the return control procedure, which should not be regarded as a safeguard to mitigate migratory risk nor as a means of identifying ‘bona fide’ applicants;
34. consult its national data protection authority on the compatibility of its local warning list with the General Data Protection Regulation and follow the authority’s recommendation; refrain from transmitting applicants’ personal information via unsecured email;
35. ensure that the word “visa” is destroyed when a visa sticker is invalidated;
36. instruct the external service provider to allow anyone to make the prepayment of the service fee; electronic means of payment that do not require physical appearance at a banking agency should be made available (for example, bank transfer, mobile payments or online payment by credit card, which could then also be done by the host/sponsor in the EU);
37. ensure that payments for premium services do not allow the applicant to obtain an appointment at the external service provider any earlier than applicants who do not pay for optional services;
38. ensure that the notices at the external service provider’s premises state that the processing time is 15 calendar days, not 15 working days;
39. ensure that the checklists are in line with the harmonised list of supporting documents applicable for Morocco;
40. accept French-language documents in Morocco and not require translations into Spanish;
41. only request one photograph and one application form from the applicants;
42. change access management in its national IT system so that the search functionality in the Visa Information System (VIS) and Schengen Information System (SIS) available to local staff is limited to a search that is clearly connected with an ongoing application (i.e. disallowing unrestricted free-text searches by name);

43. ensure that there is a clear distinction in its IT system between the dates of entry and exit intended by the applicant for the first/next trip as indicated on the application form, and the dates of validity and duration of authorised stay of an issued visa;
44. ensure that the validity period and duration of authorised stay of a visa is based on the examination of the application and determined in accordance with the travel plans, visa history and bona fide status of the applicant;
45. ensure that staff are properly trained in the distinction between annulment and revocation of an issued visa and the invalidation of a visa sticker and that the stamps for annulment and revocation are available at the consulate;

France should

46. instruct the external service provider to exercise stricter data hygiene, not to collect and retain unnecessary data or copies of documents and to inform applicants about the use of their data as regulated by the General Data Protection Regulation;
47. anonymise the examples of fraudulent/falsified documents, as the personal data contained therein are not of significance for the identification of future fraudulent/falsified documents;
48. ensure that applicants receive general information on the required documents without first having to submitting their personal data and making an appointment;
49. make available electronic means of pre-payment of the service fee, which do not require physical appearance at a banking agency (for example, bank transfer, mobile payments or online payment by credit card, which could then also be done by the host/sponsor in the EU);

50. reconsider its use of the return control procedure, which should not be regarded as a safeguard to mitigate migratory risk nor as a means of identifying ‘bona fide’ applicants;
51. ensure that the alert list can only be consulted as a part of processing a visa application; consult the French data protection authority specifically on the compatibility of the local warning lists (‘fichiers consulaires d'attention’) with the General Data Protection Regulation (unless France plans to phase out such lists with the deployment of its new national IT system), and follow its recommendations;
52. ensure 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, so that the management of the visa stickers excludes any manipulation and prevents loss of visa stickers;
53. consider developing an IT-integrated system of tracking visa stickers all the way down to the member of staff in charge of printing;
54. ensure that all required information is correctly entered on each application, so that complete and correct data is transmitted to the Visa Information System (VIS);
55. take immediate action to ensure that the Schengen Information System (SIS) check can be carried out only as a part of the processing of an application, to prevent unlawful use of the SIS;
56. ensure that the annulment and revocations of visas are properly distinguished from the invalidation of visa stickers, and that they are correctly recorded in the Visa Information System (VIS);

Switzerland should

57. establish guidelines for local staff on how to conduct the interviews at the counter with the view to gather useful information on the applicant and the planned journey;

58. investigate the applicant's will to and possibility to return, and not base the decision exclusively on the stated purpose of the trip and the documentation thereof;
59. fully apply the provisions of the Visa Code on issuing multiple-entry visas with long validity for applicants travelling regularly who have proven their integrity and reliability;
60. avoid differentiating between visas issued by Switzerland 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;
61. permit access to its online application database only once the applicant is lodging an application, for example via a unique identifier;
62. ensure that applications are examined in depth before reaching a decision, which should not be taken under time pressure while the applicant waits at the counter; if Switzerland wishes to maintain its current policy of allowing formal proofs of sponsorship and/or private accommodation to be obtained only after having lodged an application, the applicant should nonetheless be given the opportunity to obtain a sponsorship by the host in Switzerland in case there is the slightest doubt about the outcome of the application and whenever the applicant does not have sufficient own means of subsistence;
63. instruct the embassy to also request such proofs of sponsorship and/or private accommodation as needed in the course of the examination of an application, and not only upon lodging the application at the counter;
64. consult its national data protection authority on the compatibility of its local warning lists with applicable data protection legislation and follow the authority's recommendation; refrain from transmitting applicants' personal information via unsecured email;

65. change access management in its national IT system so that the search functionality in the Visa Information System (VIS) available to local staff is limited to a search that is clearly connected with an ongoing application (i.e. disallowing unrestricted free-text searches by name);
66. ensure that the application form is always signed in the signature field(s);
67. ensure that the applications of applicants travelling together are properly grouped in the Visa Information System (VIS).

Done at Brussels,

For the Council
The President
