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From: General Secretariat of the Council

On: 19 December 2019

To: Delegations

No. prev. doc.: 14647/19

Subject: Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2019 evaluation of **Poland** 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 2019 evaluation of Poland on the application of the Schengen acquis in the field of the common visa policy, adopted by the Council at its meeting held on 19 December 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.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2019 evaluation of Poland 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 Poland remedial actions to address the deficiencies identified during the Schengen evaluation in the field of the common visa policy carried out in 2019. 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(2019) 5555.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) In the light of the importance of the correct implementation of the provisions linked to migratory risk assessment, the decision-making process, the Visa Information System (VIS) and data protection, priority should be given to implementing recommendations 1, 3, 4, 7, 9 to 17, 22, 36 and 37 in this Decision.
- (3) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Poland 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 send that action plan to the Commission and the Council,

RECOMMENDS:

that Poland should:

General

1. establish and implement a risk assessment system to monitor migratory risks systematically and regularly in third countries under the visa obligation, drawing on various sources of information (asylum and irregular migration statistics, including data from the Dublin system, information from migration, border and police authorities, information exchange under Local Schengen Cooperation, and analyses of the political and socioeconomic situation). Regularly share Dublin system statistics with the consulates as essential feedback to improve the quality of assessment of visa applications;
2. consider possible forms of training for newly recruited local staff, such as e-learning and courses held centrally or regionally, and improve in-service training for expatriate staff, including as regards tools for examining applications;

3. ensure that all visa officers are sufficiently trained to use all functionalities of the national visa IT system (“*Wiza-Konsul*”), the VIS (e.g. ‘fuzzy’ searches, unlinking, correcting and deleting data in the VIS, grouping applications and finding invitation letters, VIS Mail) and other relevant IT systems, such as the appointment system. Instruct the heads of visa sections about possible back-up procedures in the event of an extended system failure;
4. ensure that findings from the examination, verifications, interviews and reasons leading to decisions on applications are better documented in *Wiza-Konsul* (or at least in the paper file), so as to facilitate later reconstruction of the decision, for example, in the event of judicial appeals or subsequent applications by the same applicant;
5. consider a more centralised approach to managing consulates’ websites on visa procedures (such as templates, links or a common structure), so that they provide the public with consistent, complete and correct information;
6. ensure that the *e-Konsulat* website for online applications contains information on data protection that complies with the General Data Protection Regulation¹ and that only one photograph is required from visa applicants;
7. ensure that the arrival and departure dates for the applicant’s first/next intended stay in the Schengen area are entered in fields 29 and 30 of the application form and that this information is correctly stored in the VIS. Instruct consular staff and the external service provider (ESP) and inform applicants that these fields should not be used to indicate the desired length of validity of the visa;
8. abolish the ‘VIS’ marking on printed visa stickers;

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

VIS/IT system

9. establish a data retention policy for *Wiza-Konsul* and consult the national data protection agency in relation to it. Regularly purge the application data in *Wiza-Konsul* in accordance with the policy;
10. ensure that, in the VIS, all consulates systematically link application files of persons travelling in a group or with their family;
11. ensure that, when visa officers detect incorrect data in the application file, the data is corrected in the VIS, and that all decisions on applications, including refusals, are always recorded in the VIS;
12. modify *Wiza-Konsul* so that it sends application data to the VIS immediately after the creation of the application file in the national system;
13. ensure that *Wiza-Konsul* conducts a proper search in VIS, including a ‘fuzzy’ search as a default search setting;
14. improve the quality of the data sent to the VIS by strengthening the data quality rules in *Wiza-Konsul*, in particular:
 - ensure that the application files registered in *Wiza-Konsul* and recorded in the VIS are complete and contain all data required by Article 9 of the VIS Regulation¹, including the host organisation’s contact person and the employer;
 - provide a free text field for entering further details where the purpose of travel or the occupation is set as ‘other’;
 - prevent applications from being validated and sent to the VIS if any text field contains numeric or special characters and avoid sending characters in Cyrillic (or other scripts) to the VIS;

¹ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

15. modify *Wiza-Konsul* so that a uniform visa cannot be issued where the prior consultation is ongoing or a negative response has been received. Consider integrating the prior consultation table in the system to ensure that prior consultation is always performed automatically when required;
16. modify *Wiza-Konsul* to ensure that the SIS search is launched automatically (including a relaunch where relevant application data is changed in the system at a later stage) and that a uniform visa cannot be issued to an applicant who is the subject of a SIS alert without previous verification of the alert;
17. extend VIS Mail access to all visa officers working in a given consulate and to all workstations where decisions on visa applications are taken;
18. consider introducing user-friendly and updated guidance on how to use *Wiza-Konsul*;

Embassy in Minsk

19. maintain ongoing efforts to deploy more expatriate staff to the consulate or look for other ways of dealing with the increasing number of visa applications;
20. consider increasing the number of appointments available to at the ESP and/or at the consulate (where its processing capacity allows), taking into account the potential to make better use of local staff for certain tasks (*see following recommendation*);
21. consider entrusting the local staff with more tasks (such as checking the admissibility of applications, creating application files in VIS, grouping applications and verifying information in supporting documents) with a view to making better use of their spare capacity and reducing the burden on the visa officers;
22. ensure more thorough verification of supporting documents by means of online tools (e.g. for hotel bookings, company registers) or phone calls to applicants or their employers, especially in cases of unusual profiles or travel plans;

23. consider contacting other Member States' consulates (using VIS Mail where possible) to understand better the detailed reasons for previous refusals, where this would be useful for the decision;
24. establish clear guidelines on the validity of multiple-entry visas issued, with a view to ensuring consistency in visa officers' work practices;
25. take a renewed initiative, together with the EU Delegation in the context of Local Schengen Cooperation, to revise the harmonised list of supporting documents for the purpose of one-day trips to neighbouring Member States, for instance to require a written explanation of the applicant's travel plans rather than a hotel reservation;
26. update the ESP and consulate websites as regards fees for court appeals, the circumstances in which these can be waived and information on the language(s) in which the application form can be filled in. Correct and clarify information on visa fee waivers and reductions. Delete the 'prime slot' teaser (for preferential appointments) from the ESP website;
27. instruct the ESP to enhance privacy at the counters by installing more appropriate partitions;
28. instruct the ESP to clean glass plates on the fingerprint scanners regularly;
29. instruct the ESP to rely on applicants' statement in field 27 of the application form as to whether they have given fingerprints in the previous 59 months (if they have not filled in the field or do not remember clearly, the ESP may inform them that they will be called back to the ESP or the consulate if fingerprints have not been registered in the VIS and therefore recommend that fingerprints be collected again);
30. take measures at the consulate to manage the queues better (e.g. by spreading appointments over different times of the morning/day) and to ensure privacy at the counters (e.g. by installing partitions) and better communication with applicants (e.g. by intercom);

31. ensure that applicants who pay the visa fee by bank transfer incur no additional costs, or provide alternative, free-of-charge payment options;
32. ensure that applicants pay the visa fee on lodging their application at the consulate, or before;
33. make arrangements for informing applicants when their travel document can be collected at the consulate in cases where the usual decision making time is not respected;
34. designate one consul/visa officer to be responsible for the supply of blank visa stickers and to have sole access to the safes at a given time;
35. give due consideration to all complaints from applicants and ensure adequate follow-up and response;

Embassy in Yerevan

36. carry out a migratory risk assessment for Armenia, based on data on irregular migration to the Schengen area, other relevant information from migration, border and police authorities, and other Member States' experiences (as shared through Local Schengen Cooperation), and update it regularly. Actively seek relevant information from other Member States' consulates;
37. ensure that the consulate examines applications more thoroughly, in line with the level of migratory risk. Ensure a more thorough verification of supporting documents by means of online tools (e.g. for hotel bookings, company websites and/or registers if available), more frequent interviews with applicants (including by phone), checks with employers and other means;
38. ensure that visa officers fully understand the essential content of supporting documents in Armenian when taking decisions (e.g. by asking local staff to briefly summarise it) or request translations;

39. consider contacting other Member States' consulates (using VIS Mail where possible) to understand better the detailed reasons for previous refusals, where this would be useful for the decision;
40. update the consulate website as regards the judicial appeal procedure and information on the language(s) in which the application form can be filled in;
41. ensure that application forms filled in by hand are accepted and that applicants can obtain an appointment without having to fill in the online application form beforehand, at least in certain cases (family members of EU/EEA citizens, repeated appointments);
42. ensure that applications are considered admissible even if supporting documents (such as the consent of one parent) are missing;
43. fully apply the visa fee exemptions provisions of the EU-Armenia Visa Facilitation Agreement;
44. take a consistent approach to the collection of fingerprints, relying on applicants' statement in field 27 of the application form as to whether they have given fingerprints in the previous 59 months (if they have not filled in the field or do not remember clearly, the consulate may inform them that they will be called back if fingerprints have not been registered in the VIS and therefore recommend that fingerprints be collected again);
45. clarify with the Swiss authorities (represented in Armenia by Poland) whether the personalised sponsorship form could be sent to applicants by email (to avoid the need for them to make another visit to the consulate) and whether it is required for all visits to family or friends, even where the applicant has sufficient means of subsistence;
46. when deciding on the admissibility of an application with a non-biometric Armenian passport, take into consideration the expiry date of the passport and not of the stamp authorising its use for international travel. Enter the correct expiry date for such passports in the VIS. If necessary, raise the issue of Armenian non-biometric passports in Local Schengen Cooperation with a view to harmonising practices;

47. consider taking measures to improve privacy at the counters. Ensure that interviews take place outside of general admission hours or find another way of guaranteeing interviewees' privacy;
48. ensure that the applicable appeal procedure is systematically set out on the refusal form;
49. ensure that the correct procedures for the invalidation of visa stickers are followed in all cases and that consular staff are well trained in those procedures.

Done at Brussels,

For the Council
The President
