Council of the European Union

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of **Iceland** on the application of the Schengen *acquis* in the field of **data protection**

In accordance with Article 15(3) of Council Regulation 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, the Council hereby transmits to national Parliaments the Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of Iceland on the application of the Schengen *acquis* in the field of data protection[1].

[1] Available in all official languages of the European Union on the Council public register, doc. 14598/24.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2022 evaluation of Iceland on the application of the Schengen *acquis* in the field of data protection

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[2], 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 personal data protection was carried out in respect of Iceland in September 2022. Following the evaluation, a report containing the findings and assessments, listing best practices, areas of improvements and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2024)5000.

(2) The following best practices were identified: exceptional physical, technical and organisational security measures of the national Visa Information System (VIS) and Schengen Information System (SIS II) back-up servers and Directorate of Immigration has implemented comprehensive, state of the art Information Security Management System; one-stop website that includes comprehensive information on the rights of the data subjects in relation to VIS data and a dedicated form for making a data subject request. In addition, the National Commissioner the Icelandic Police continues to make the effort, where possible, to answer to data subject's requests in the language used by the data subject.

[2] OJ L 295, 6.11.2013, p. 27.

(3) Recommendations should be made on remedial actions to be taken by Iceland in order to address deficiencies and areas of improvement identified during the evaluation. In light of the importance of complying with the Schengen *acquis* on personal data protection and specifically on the supervision by the Icelandic data protection authority and on the SIS and VIS priority should be given to implementing recommendations 1, 2, 5, 10, 11, 14, 16, 17 and 20 set out in this Decision.

(4) In accordance with Article 15(3) of Regulation (EU) No 1053/2013, the Council should transmit this Decision to the European Parliament and to the national Parliaments of the Member States.

(5) Council Regulation (EU) 2022/922[3] 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) Within two months of the adoption of this Decision, Iceland should, pursuant to Article 21(1) of Regulation (EU) No 2022/922, establish an action plan to implement all recommendations and to remedy the deficiencies identified in the evaluation report. Iceland should provide that action plan to the Commission and the Council.

RECOMMENDS that

Iceland should

Data Protection Authority

1. ensure that members of the Board of the Icelandic data protection authority are appointed in accordance with the requirements of Articles 53 of Regulation (EU) 2016/679[4] and Articles 43 of Directive (EU) 2016/680[5].

2. ensure that the Data Protection Commissioner of the Icelandic data protection authority is appointed in accordance with the requirements of Articles 53 of Regulation (EU) 2016/679 and Articles 43 of Directive (EU) 2016/680.

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3 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.

4 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) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.

5 Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131.

3. ensure that the Icelandic data protection authority has legal means to defend the budget it proposes before the Parliament of Iceland and the parliament is informed upon the reception about the budget requested by the data protection authority.

4. ensure that the Icelandic data protection authority has sufficient human resources to execute its supervisory task with respect to SIS II and VIS effectively.

5. ensure that the Icelandic data protection authority establishes comprehensive and detailed annual supervisory plans for SIS II and VIS.

6. ensure that the Icelandic data protection authority performs regular SIS II and VIS audits and establishes dedicated follow-up plans for the identified shortcomings and takes appropriate follow-up actions.

Schengen Information System

7. strengthen technical and organisational security measures for working stations in SIRENE bureau.

8. improve physical, technical and organisational measures of SIS II and VIS primary server location.

9. ensure regular trainings on data protection issues for staff having access to SIS II.

10. regularly issue log files for data protection monitoring in accordance with Article 12(6) SIS II Regulation[6].

11. ensure that the Icelandic police performs self-auditing of personal data in accordance with Article 10(1)(l) of SIS II Regulation.

Visa Information System

12. ensure that the role and responsibilities of the Ministry of Foreign Affairs with respect to the processing of personal data for VIS purposes are clearly defined, including in relation to the Directorate of Immigration and National Commissioner of the Icelandic Police.

13. bring in line the data processing contracts between the Ministry of Foreign Affairs and the external service providers with Visa Code[7].

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6 Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, OJ L 312, 07/12/2018, p. 14–55.

7 Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, p. 1–58.

14. establish data processing arrangement within the meaning of Article 28 Regulation (EU) 2016/679 between Directorate of Immigration and National Commissioner of the Icelandic Police.

15. ensure regular trainings on data protection issues for staff having access to VIS.

16. enable regular data protection monitoring based on log files in accordance with Article 34(1) and (2) VIS Regulation[8].

17. ensure self-auditing of personal data in accordance with Articles 32(2)(k) and 35 of the VIS Regulation.

18. establish internal rules or procedures on the existence and retention of paper copies of personal data processed by the police and the Directorate of Immigration when they are involved in the visa issuing process.

19. only keep the electronic data processed in national copy of VIS in line with Article 37 of the Visa Code.

Public awareness and rights of data subjects

20. ensure that the National Commissioner of the Icelandic Police provide for several different modalities for submitting data subject requests and correctly inform data subject about the possibilities to submit data subject requests.

21. establish appropriate retention period for data subject requests in SIS II and VIS and documents submitted together with such requests.

Done at Brussels,

For the Council
The President

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8 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. 60–8