

SIS II SUPERVISION COORDINATION GROUP
&
VISA INFORMATION SYSTEM SUPERVISION COORDINATION GROUP

Ms Ylva JOHANSSON
Commissioner for Home Affairs
European Commission
1049, Brussels

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Subject: SIS II & VIS SCG's joint comments on the Commission Proposal for a Council Regulation on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing Regulation (EU) No 1053/2013

Dear Commissioner,

As representatives of the data protection authorities (“DPAs”) supervising the Schengen Information System of the second generation (“SIS II”) and the Visa Information System (“VIS”) within the Supervision Coordination Groups (“SCGs”) , we took note of the Commission’s Proposal for a Council Regulation on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing Regulation (EU) No 1053/2013, which was published on 2 June 2021.

The Proposal introduces a modification of the Schengen evaluation and monitoring mechanism in order to strengthen the Schengen area. The main changes concern the evaluation schedule, the establishment of the teams and the participation of different European institutions.

The SIS II SCG and VIS SCG welcome the Commission’s goal of strengthening the Schengen acquis by amending the relevant legal framework. We appreciate the general approach of the Commission to offer a greater variety of evaluation types and specialisation by introducing thematic evaluations, changes in the multiannual evaluation programme and remote working methods via videoconference. Nevertheless, we would like to comment on some essential issues and highlight some key points:

1. Relevance of an evaluation on data protection and resources of the data protection supervisory authorities

The Schengen evaluations focussing on data protection carried out in the past have shown how important it is to evaluate data protection and, in particular, the rights of data subjects when implementing the Schengen acquis. To our knowledge, the evaluations have led to a number of recommendations in this area. For this reason, data protection monitoring should continue to play an important role in future evaluations.

For the successful performance and for achieving the purpose of those evaluations it is essential that the evaluation teams are composed of experts from the DPAs. The peer-to-peer character of the evaluations is important for a consistent application of the Schengen acquis, while it provides relevant experience for the DPAs. Moreover, the independent nature of DPAs is key to prevent any possible conflict of interest that might arise; therefore, as a general rule, the experts from the DPAs should not be replaced by experts from other institutions when evaluating data protection matters.

However, in order for the supervisory authorities to be able to fulfil their responsibilities, including participating in the data protection Schengen evaluation missions, it is crucial that DPAs are adequately staffed. This is a basic prerequisite for the functioning of the proposed mechanism.

As a matter of fact, Member States are already legally required to ensure DPAs have sufficient resources, including human resources, to accomplish their tasks on Schengen matters¹. Nevertheless, such legal obligation upon the Member States have not been complied with, at least not satisfactorily. Similar provisions are contained in the new SIS regulations. Yet, to give such legal provisions effectiveness, a close monitoring from the Commission on compliance by Member States would be necessary. Within the context of the Schengen evaluation, it would be most welcome that this Proposal expressly provided for the obligation of Member States to ensure the necessary conditions, in particular financial, for the DPAs to actively participate in the evaluation missions in the field of data protection.

2. Workload during evaluations and invitation of experts

The experts of the data protection authority usually have profound knowledge in their respective fields and are active both nationally and internationally. This, however, also means that they are heavily involved in various structures. In order to ensure that participation can still take place alongside their regular work, two points in particular are important: an improvement in the working conditions on site and the possibility of planning the assignment at an early stage.

In the past, it has been shown that participation in Schengen evaluations involves very long working hours and a lot of effort. It has been reported, for example, that working days with 15 to 16 working hours are not uncommon. In addition, there is the preparation and follow-up work as well as the related meetings. Streamlining the process would therefore be desirable.

¹ Article 44(3) of Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation of the Schengen Information System (SIS II) and Article 60 (3) of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation of the Schengen Information System (SIS II).

Additional compensation of experts for participating in an evaluation could also provide incentives.

In addition, it must be taken into account that most experts are also heavily involved at national level and have other monitoring obligations. Thus, the timeframe of 10 weeks of notice before the evaluation provided by Article 18(3) of the Commission Proposal, is too short in our opinion to balance with the experts' work obligations at national level

To avoid overlaps and to enable the DPAs to plan their work, we suggest an earlier invitation to experts by extending the period to four months in advance. A note directed to the DPAs during the year before the envisaged evaluations, similar to the provision under Article 13(1), would be even more effective.

3. Training of data protection experts

A prerequisite for the successful implementation of the evaluation mechanism is the availability of well-trained personnel. Therefore, we highly appreciate the fact that the proposal also focuses on the training of experts.

Especially for new colleagues, but also for experienced experts, training is of great benefit. After all, the experts provided by the DPAs are highly trained in data protection issues. However, training in the evaluation process, the related policy fields and the structures of the country under evaluation is considered to be very useful. Therefore, sufficient training opportunities should be offered to the DPA experts.

We sincerely hope that the ongoing legislative work on the proposals will be an opportunity for the European Commission and the co-legislators to duly consider the suggestions of the SIS II SCG and VIS SCG. We would also like to emphasize our willingness to cooperate and to contribute in further discussions on these issues.

Yours sincerely

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