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From: General Secretariat of the Council
On: 18 July 2016
To: Delegations

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Subject: Council implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of return by the Netherlands

Delegations will find in the Annex the Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2015 evaluation on the application of the Schengen acquis in the field of return by the Netherlands, adopted by the Council at its 3482nd meeting held on 18 July 2016.

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 2015 evaluation on the application of the Schengen acquis in the field of return by the Netherlands

THE COUNCIL 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 setting out a recommendation is to recommend to the Netherlands remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2015. 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(2016)5098.
- (2) The system of guardianship for unaccompanied minors ensured by the foundation NIDOS, the individual coaching throughout the return process, the use of body scan in pre-removal detention centres and the last minute asylum application mechanism available during forced return operations can be seen as examples of good practises.

¹ OJ L 295, 6.11.2013, p. 27.

- (3) It is important to remedy each of the deficiencies identified immediately. Therefore no indication of priority for implementation of the recommendations should be given.
- (4) This Recommendation should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, the Netherlands shall, pursuant to Article 16 of Regulation (EU) No 1053/2013, establish an action plan to remedy the deficiencies identified in the evaluation report and provide this to the Commission and the Council,

HEREBY RECOMMENDS:

The Netherlands should

1. improve the collection and provision of data and statistics in the field of return policy;
2. set up a system for better monitoring unassisted voluntary return, to enable the authorities to have a more accurate picture of actual return rates;
3. take all necessary measures to ensure the proper enforcement of return decisions in accordance with Article 8(1) of Directive 2008/115/EC, in order to increase the execution of the decisions and better deter irregular migration; this encompasses, among others, measures to prevent absconding from open facilities and regularly assessing the cooperation of returnees on their non-forced return, in view of taking appropriate steps, including forced return;
4. ensure that, in accordance with Article 11(1) of the Directive 2008/115/EC, entry bans are systematically issued in all cases in which a period of voluntary departure has not been granted to the third-country national, and the obligation to return has not been complied with, without prejudice to Article 11(3) of the same Directive;

5. ensure that reviews of detention decisions are subject to judicial supervision in case of prolonged detention period to verify if the conditions for detention still exist according to Article 15(3) of Directive 2008/115/EC;
6. ensure that “house rules” of the detention centres are handed out systematically to the detainees and are conceived in a manner that can be understood easily;
7. take the necessary measures to shorten the period when detainees are locked in their rooms in detention centres (currently from 5 pm to 8 am) in order to extend the time of free movement of the detainees and allow them to spend more time outdoors; such more favourable practice would better reflect the nature of administrative detention and might be taken by revising the “house rules” of the detention centres.

Done at Brussels,

For the Council
The President