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NOTE

From:	General Secretariat of the Council
To:	National Parliaments
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2019 evaluation of Slovenia on the application of the Schengen acquis in the field of return

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 2019 evaluation of Slovenia on the application of the Schengen acquis in the field of return¹.

¹ Available in all official languages of the European Union on the Council public register, doc. [9769/20](#)

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2019 evaluation of Slovenia on the application of the Schengen acquis in the field of return

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 Slovenia remedial actions to address the deficiencies identified during the Schengen evaluation in the field of return carried out in 2019. 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) 249.
- (2) To ensure compliance with the Schengen *acquis* on return, notably with the standards and procedures set by Directive 2008/115/EC², priority should be given to implement recommendations 1, 3, 4, 5, 6, 8, 9, 10 and 11.

¹ OJ L 295, 6.11.2013, p. 27.

² OJ L 348, 24.12.2008, p. 98.

- (3) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Slovenia should establish, pursuant to Article 16 (1) of Regulation (EU) No 1053/2013, 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,

RECOMMENDS:

that the Republic of Slovenia should:

1. amend the relevant provision of national law, notably the Aliens Act, to ensure that return decisions impose a clear obligation on illegally staying third-country nationals to leave Slovenia in order to return to a third country within the meaning of Article 3(3) of Directive 2008/115/EC; take immediate measures to adapt accordingly the content of return decisions issued to illegally staying third-country nationals;
2. amend the relevant provisions of national law, notably the Aliens Act, to empower the Administrative Units to extend, in accordance with Article 7(2) of Directive 2008/115/EC and where necessary, the period for voluntary departure originally granted in the return decisions issued to illegally staying third-country nationals, taking into account the specific circumstances of each individual case;
3. discontinue the practice of the Administrative Units to systematically grant a period for voluntary departure of the duration of 30 days to any third-country national subject to a return decision, irrespective of the individual circumstances; take immediate measures to ensure that the Administrative Units carry out an assessment of the specific circumstances of the individual cases to determine the duration of the period for voluntary departure for the return decisions that they issue;

4. amend the relevant provision of national law, notably the Aliens Act, to establish an exhaustive list of objective criteria upon which competent authorities shall base their assessment to decide whether a third-country national poses a risk of absconding, in compliance with Article 3(7) of Directive 2008/115/EC; take immediate measures to ensure that the assessment on whether a third-country national poses a risk of absconding is based only on the objective criteria established in national law;
5. amend the relevant provisions of national law, notably the Aliens Act, to ensure that the Administrative Units systematically conduct an assessment of the risk of absconding for deciding on whether to grant a period of voluntary departure to illegally staying third-country nationals, for determining the duration of such a period when granted and, where justified, for imposing detention, in accordance with Articles 7 and 15 of the Directive 2008/115/EC;
6. amend the relevant provisions of national law, notably the Aliens Act, to clarify that entry bans prohibit re-entry into the territory of Slovenia as well as of other EU Member States and Schengen Associated countries, in accordance with the meaning of “entry bans” of Article 3(6) of Directive 2008/115/EC; modify the content of entry ban decisions accordingly;
7. widen the group of third-country nationals that can benefit from assisted voluntary return and reintegration programmes, covering at least any illegally staying third-country national subject to a return decision, notably those subject to a return decision issued by the Administrative Units; take measures to further inform all target groups about the existence and possibility to use such programmes, including illegally staying third-country nationals not yet subject to a return decision and those undergoing procedures for obtaining a permit or right to stay;

8. provide systematically to third-country nationals consistent and clear information on the possibilities and the modalities to appeal against return decisions issued by the Administrative Units, to ensure access to an effective remedy in accordance with Article 13 of the Directive 2008/115/EC;
9. ensure that an oral or written translation of return decisions issued by the Administrative Units is systematically granted, free of charge, upon request of the third-country national concerned, in compliance with Article 12(2) of Directive 2008/115/EC; take measures to ensure that third-country nationals are informed about the possibility to request such a translation free of charge;
10. take measures, including by amending the relevant provisions of the Aliens Act, to ensure the availability of a wider range of alternatives to detention, notably measures that would be better suited to address the type of irregular migration experienced by Slovenia; take measures to ensure that the Police systematically assesses whether other measures less coercive than detention could be sufficient and applied effectively in individual cases, in accordance with Article 15 of Directive 2008/115/EC;
11. immediately discontinue the practice of placing unaccompanied minors in detention for reasons other than the grounds for detention provided for by Article 15 of the Return Directive; take immediate measures to ensure that adequate solutions are provided for accommodating unaccompanied minors outside specialised detention facilities, in accordance with Article 17;
12. amend national legislation to ensure that detention decisions are subject to an *ex officio* judicial supervision in all cases of prolonged detention periods, notably when the detention period exceeds three months, in accordance with Article 15(3) of Directive 2008/115/EC.

Done at Brussels,

For the Council

The President
