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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 2016 evaluation of Luxembourg 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 2016 evaluation of Luxembourg 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. 15483/16

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of return

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 Schengen ², 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 Luxembourg remedial actions to address the deficiencies identified during the Schengen evaluation in the field of return carried out in 2016. 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)3257].
- (2) The swift procedures for issuing return decisions to illegally staying third-country nationals, ensuring the prompt start of return procedures; the promotion of assisted voluntary return programmes at every stage of the asylum and return processes, contributing to a high rate of voluntary return; and the forced return procedure in all its steps, in particular the direct contact between the escort officer and the returnees during the whole process, ensuring successful and smooth removal operations and reducing the risk of incidents, should be considered as good practices.

² OJ L 295, 6.11.2013, p. 27.

- (3) To ensure compliance with the Schengen *acquis* in the field of return, priority should be given to implement recommendations (2) and (3).
- (4) All necessary measures should be taken to effectively return illegally staying third-country nationals in an effective and proportionate manner, in accordance with Article 8, paragraph 1 of Directive 2008/115/EC³.
- (5) This Decision setting out a recommendation should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, the evaluated Member State shall, pursuant to Article 16, paragraph 1 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

that the Grand Duchy of Luxembourg should:

take all necessary measures to ensure the enforcement of return decisions in an effective and proportionate manner, in accordance with Article 8, paragraph 1 of Directive 2008/115/EC;

- (1) ensure that reviews of detention decisions are subject to judicial supervision in case of prolonged detention periods⁴, in accordance with Article 15, paragraph 3 of Directive 2008/115/EC, in order to verify whether the conditions for the detention of the third-country national concerned still exist;

³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

⁴ The present Council Decision is without prejudice to a possibly different interpretation of the notion of "prolonged detention period" by the Contact Group Return Directive, or to any ruling of the European Court of Justice in the pending infringement procedure (DE 2014/2192).

- (2) take measures to reduce the predictability of the operations for the removal of families with children attending school subject to an obligation to return, to address abuses and prevent absconding, by ensuring that the removals can be carried out during the whole year if the families concerned do not act in good faith, taking due account of the particularities of each case and of the best interest of the child, and in accordance with Article 5 of Directive 2008/115/EC;
- (3) establish a clear policy on the legal status of unaccompanied minors allowing, based on an individual assessment of their best interests and for the purpose of ensuring legal clarity, either to issue return decisions to and carry out returns of unaccompanied minors who are staying illegally in the country in accordance with Article 10 of Directive 2008/115/EC, or to grant them a right to stay, with due regard to the applicable rules on international protection and the European Union and national law; the individual assessment should ideally be carried out by a multi-disciplinary and experienced team involving the child's appointed guardian;
- (4) bring detention capacity in line with actual needs, in order to ensure the effective removal of the third-country nationals concerned;
- (5) provide for a realistic and practicable period for the detention of families with minors in the detention facility with a view to carrying out their removal, in compliance with Article 17 of Directive 2008/115/EC;
- (6) ensure that the national legal framework provides for the possibility to monitor any type of forced-return operation, including those conducted by commercial flights, as well as the pre-removal phase taking place at the detention facility.

Done at Brussels,

*For the Council
The President*
