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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 Greece 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 Greece 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. 8466/17

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2016 evaluation of Greece 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 Greece 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 the identified best practices and deficiencies was adopted by Commission implementing Decision C(2017) 84.
- (2) The Attiko Alsos open centre, offering a safe environment and concrete support to third-country nationals willing to return voluntarily to their country of origin, and promoting a humane and dignified return, should be regarded as a good practice.

² OJ L 295, 6.11.2013, p. 27.

- (3) To ensure compliance with the Schengen acquis in the field of return, notably with the standards and procedures set by Directive 2008/115/EC³, priority should be given to implement recommendations 1, 2, 3, 4, 8, 10, 11, 12, 13, 14, 15 and 17.
- (4) All necessary measures should be taken to return illegally staying third-country nationals in an effective and proportionate manner.
- (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(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 Hellenic Republic should:

1. take all necessary measures to ensure the enforcement of return decisions in an effective and proportionate manner, in accordance with Article 8(1) of Directive 2008/115/EC, to avoid illegal stay in Greece and prevent unauthorised movements to other Member States;
2. issue return decisions, in compliance with the common standards and procedures set by Directive 2008/115/EC, to third-country nationals who are staying illegally in the country, including to those who have been apprehended in connection with the illegal crossing of the external sea border and have been subject to a return decision based on a readmission procedure in accordance with Article 34 of Law 3907/2011 and whose application for international protection has been declared inadmissible;

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.

3. systematically provide third-country nationals subject to return procedures with effective access to linguistic and free legal assistance, in compliance with Article 13(3) and (4) of Directive 2008/115/EC, to ensure access to effective remedy in accordance with Article 47 of the Charter of Fundamental Rights of the European Union;
4. review the national guardianship system to ensure appropriate support to all illegally staying unaccompanied minors, based on a systematic individual assessment of their best interests, in accordance with Article 10(1) of Directive 2008/115/EC; allocate sufficient resources to ensure effective guardianship and daily care that is appropriate to the needs of unaccompanied minors, and take the necessary measures to empower entities other than the Public Prosecutor for minors to act as legal guardian of these unaccompanied minors;
5. carry out a thorough, case-by-case assessment of the relevant circumstances of the individual cases of the illegally staying third-country nationals subject to return procedures to determine the specific and appropriate length of entry bans, as required by Article 11(2) of Directive 2008/115/EC; for this purpose, define clear rules and guidelines to be applied by the Hellenic Police;
6. set up a system ensuring that return decisions and, if appropriate, entry bans can be issued to illegally staying third-country nationals apprehended during exit checks at the external border, following a case-by-case assessment and respecting the principle of proportionality;
7. ensure that third-country nationals illegally staying in Greece, in particular those who entered illegally prior to the entry into force of the EU-Turkey Joint Statement of 18 March 2016, who were not subject to return procedures and are still present on the Greek territory, are subject to return decisions in accordance with Article 6(1) of Directive 2008/115/EC, without prejudice to Article 6(4) of that Directive;

8. ensure that return decisions are issued without unjustified delay and in accordance with Article 6(1) of Directive 2008/115/EC to third-country nationals whose claims for international protection have been rejected; for this purpose, establish the necessary communication and cooperation channels between the Hellenic Asylum Service and Police for the swift issuance of return decisions;
9. finalise as soon as possible the public tender procedures for establishing an assisted voluntary return programme; as part of a durable voluntary return strategy, make full use of reintegration possibilities available under programmes supported with Union funding, notably the European Reintegration Network (ERIN) programme;
10. discontinue the practice of regularly detaining in dedicated facilities illegally staying unaccompanied minors, including those who are no longer subject to return procedures, and of keeping in the same facilities for an undetermined period of time and for purposes other than return unaccompanied minors who are not subject to return procedures; ensure that detention of unaccompanied minors in return procedures is used as a measure of last resort and lasts for the shortest appropriate period of time, and provide for appropriate alternative accommodation adequate to the minors' needs, in compliance with Articles 15 and 17 of Directive 2008/115/EC;
11. bring detention capacity in line with actual needs, including through the full use of the capacity of the existing detention facilities, to ensure the effectiveness of return procedures in accordance with Article 8(1) of Directive 2008/115/EC; ensure that the detention of illegally staying third-country nationals awaiting removal takes place as a rule in specialised facilities and it does not regularly take place in facilities that are neither designated nor suitable for detention for the purpose of removal, in compliance with Article 16 of Directive 2008/115/EC;

12. take the necessary measures ensuring that the rules and recommendations on material conditions of detention, in particular the Council of Europe Guideline on Forced Return No 10 and the standards set by the Council of Europe Committee on the Prevention of Torture, are respected in all detention facilities and that detention conditions reflect the nature of the deprivation of liberty; for this purpose, ensure in particular that the facilities are adequately furnished, clean and in a good state of repair, that food meets the requirements of a nutritious diet and is prepared and served hygienically, that there is access to leisure activities, that procedures are in place to allow detainees to file complaints for alleged instances of ill-treatment or for failure to protect them from violence by other detainees, that medical staff is present on a daily basis, and that a medical screening of the third-country nationals entering the facilities takes place;
13. ensure conditions of detention in the Petrou Ralli detention facility and in the pre-removal facility for return by bus in Thessaloniki that guarantee a dignified treatment of the third-country nationals concerned, in compliance with Article 4 of the Charter of Fundamental Rights of the European Union; for this purpose, as a priority, improve significantly the hygienic conditions and the general state of repair of the facilities, provide adequate food to detainees, ensure that the regime of detention reflects the nature of the deprivation of liberty, and grant access to open air and leisure activities;
14. provide for conditions of detention of unaccompanied minors subject to return procedures that, in accordance with Article 17 of Directive 2008/115/EC, take into due account their best interests as a primary consideration and take due account of their age-specific needs; in particular, take measures to guarantee that only facilities specifically designated for the detention of unaccompanied minors are used, that such facilities are appropriately furnished, that separation from adults is systematically applied and ensured, that unaccompanied minors have access to leisure activities (including play and recreational activities) appropriate to their age and to education where relevant, and that the staff of these facilities is trained to take into account the needs and the rights of the minors;

15. provide for conditions of detention of families subject to return procedures that, in accordance with Article 17 of Directive 2008/115/EC, ensure the separation from other detainees and the privacy of the family; take measures to guarantee that, in accordance with that same provision, minors in detention have access to leisure activities (including play and recreational activities) appropriate to their age and to education where relevant;
16. make full use of the Asylum, Migration and Integration Fund appropriations allocated to Greece for return, either under the national programme or under emergency assistance, to help cover the costs for running detention facilities and to ensure adequate material detention conditions;
17. improve national coordination to monitor the return situation across the country in view of organising return operations and increasing the rate of return of illegally staying third-country nationals; for this purpose, finalise as soon as possible the establishment of the dedicated national database, increase participation in joint return operations coordinated by Frontex, significantly increase the number of national return operations, take necessary measures to finalise as soon as possible all relevant national tendering procedures (including for the chartering of aircrafts), increase the use of commercial flights for carrying out return of third-country nationals who do not need to be escorted by the Hellenic Police, and establish working methods between the Hellenic Asylum Office and Police to rapidly manage cases of subsequent asylum applications introduced for the sole purpose of frustrating or preventing removal;
18. allocate appropriate funding to ensure the sustainability and proper functioning of the Ombudsman office to monitor forced return operations.

Done at Brussels,

For the Council

The President
