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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 France (Pas-de-Calais) 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 France (Pas-de-Calais) 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. 9522/17

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2016 evaluation of France (Pas-de-Calais) 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 France remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2016 in the area of Pas-de-Calais. 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(2017) 86.
- (2) At the time of the Schengen evaluation, France was facing an exceptional challenge as a significant number of third-country nationals who had no right to stay in the EU were present in the Pas-de-Calais area, awaiting for an opportunity to illegally cross the border to reach the United Kingdom, necessitating emergency measures in the fields of humanitarian care, public order and the fight against illegal immigration.

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 implementing recommendations 2, 3 and 4, taking into account the evolution of the situation, and notably the dismantling of the camp in ‘La Lande’ between 24 and 26 October 2016 and the entry into force on 1 November 2016 of the provisions of the Law of 7 March 2016 amending the French Code of entry and stay of foreigners and on right to asylum.
- (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:

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.

That the French 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;
2. ensure that, while preserving public order and security, the identity and legal status of the third country nationals present in the area of "La Lande" and surroundings are determined and, where appropriate, return decisions are issued to those who have no right to stay in France, in compliance with Article 6(1) of Directive 2008/115/EC;
3. issue entry bans to illegally staying third-country nationals to whom no period of voluntary departure has been granted, and to those who did not comply with the obligation to return within the period of voluntary departure, in compliance with Article 11(1) of Directive 2008/115/EC;
4. ensure that third-country nationals ordered to leave France, and who have no right to stay in another EU Member State or Schengen associated country, leave the Union and return to a third country in accordance with Article 3(3) of the Return Directive and in application of the new legal framework which entered into force in November 2016; for this purpose, amend Article 1 of the return decisions issued by the Préfecture of Pas-de-Calais, where the country of return is usually identified;
5. ensure that the return to a third country that is not the country of origin or transit of the illegally staying third-country national, and in which the returnee will be accepted, is carried out with the prior agreement of the returnee on the country of destination, in accordance with Article 3(3), third indent of the Return Directive;

6. implement actions aimed at reaching unaccompanied minors present in "La Lande" and in the Pas-de-Calais area in order to ensure, after an individual assessment of the specific needs of the minor, appropriate and effective guardianship and assistance guaranteeing primary consideration of their best interests; if the placement in a dedicated structure is not possible for some unaccompanied minors, provide appropriate assistance directly to the minor concerned, including in the camp of "La Lande".

Done at Brussels,

For the Council

The President
