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From: General Secretariat of the Council
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To: Delegations

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Subject: Council Implementing Decision setting out a recommendation addressing the deficiencies identified in the 2016 evaluation of Croatia in view of fulfilling the conditions necessary for the application of the Schengen acquis in the field of return

Delegations will find in the annex the Council Implementing Decision setting out a recommendation addressing the deficiencies identified in the 2016 evaluation of Croatia in view of fulfilling the conditions necessary for the application of the Schengen acquis in the field of return, adopted by the Council at its 3555th meeting held on 11 July 2017.

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

addressing the deficiencies identified in the 2016 evaluation of Croatia in view of fulfilling the conditions necessary for 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 1(b) and 15(3) 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 Croatia remedial actions to address the deficiencies identified during the Schengen evaluation of the conditions necessary for the application of the Schengen acquis 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(2017)1400.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) The risk analysis system for detection of irregular border crossings and illegally staying third country nationals on the Croatian territory can be seen as a good practice in light of the need for detection to terminate illegal stay.
- (3) In light of the importance to comply with the Schengen acquis, priority should be given to implement recommendations (1), (3) and (4) below aiming to align Croatian legislation to Directive 2008/115/EC.
- (4) This decision should be transmitted to the European Parliament and to the national parliaments. Within three months of its adoption, Croatia should, 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 submit it to the Commission and the Council,

HEREBY RECOMMENDS:

that the Republic of Croatia should:

1. align the Croatian Law on Foreigners to the obligation to issue entry bans in the cases covered by Article 11(3) of the Directive 2008/115/EC and implement the related provisions in national procedures;
2. extend the validity of the entry bans to the whole EU territory in line with Article 3(6) of the Directive 2008/115/EC;
3. align the Croatian Law on Foreigners to ECJ jurisprudence concerning criminalisation of illegal stay, and implement the related provisions in national procedures;
4. include in the Croatian Law on Foreigners the definition of risk of absconding, in line with Article 3(7) of the Directive 2008/115/E, and implement the related provisions in national procedures based on an individual assessment of each case;

5. apply all safeguards provided for by Directive 2008/115/EC to return decisions issued at the border or to third country nationals apprehended after having irregularly crossed the border in the cases where the exception covered by Article 2(2)a of the Directive 2008/115/EC is not applied;
6. provide for accommodation in separate rooms for families with children, unrelated men and women waiting to be returned in the transit zone of the airport Zagreb Pleso;
7. ensure that the authorities dealing with return are informed in time about the presence in ordinary prisons, following a criminal conviction, of a third country national illegally staying in the country, in order to enable early preparation of the return procedure in each case. This would allow shortening the return process and, if he/she is subject to a forced return decision, significantly reducing the period of detention or possibly avoiding it;
8. set up an assisted voluntary return and reintegration programme as soon as possible. In the meantime and/or in parallel, Croatia is encouraged to make full use of reintegration possibilities, as part of durable voluntary return system, available under EU-supported programmes, in particular the ERIN programme;
9. provide third country nationals subject to return procedures with appropriate information and wider possibility to access to free legal aid in compliance with conditions set by Article 13(4) of the Directive 2008/115/EC ensuring respect of the right to an effective remedy as enshrined in the Article 47 of the EU Charter of Fundamental Rights;
10. translate systematically all decisions related to the return procedure orally or in written form in a language the third country national can understand in accordance with Article 12(2) and (3) of Directive 2008/115/EC;
11. ensure that returnees can have linguistic assistance during the return procedure, in line with Article 13(3) of the same Directive;

12. ensure that the best interests of the child are always considered for all unaccompanied minors without any differentiation between age groups in all stages of the return procedures. In addition, Croatia should adopt appropriate measures in order to reduce the risk of absconding for unaccompanied minors;
13. make a better use of the available EU financial instruments, programmes and projects in the field of return and an appropriate level of coordination for these activities internally and externally. Participating in EU activities and programmes would facilitate return procedures and exchange of experiences and best practices with other Member States in the field of return;
14. provide for access to medical care on a daily basis in detention centres and ensure confidentiality of all medical consultations and examinations;
15. inform systematically third-country nationals kept in facilities used for detention about the rules applicable in the facility and about their rights and obligations, in line with Article 16 (5) Directive 2008/115/EC, e.g. by use of written material distributed individually or displayed at visible places. This should be done in a language that the third country national understands;
16. ensure access to education for minors during their stay in detention centres or places where alternative measures are applied as required in Article 17(3) of the Directive 2008/115/EC;
17. determine minimum space to be made available per person and maximum number of persons per room in the detention centres in line with international standards;
18. put in place a complaints' mechanism for detainees and inform adequately detainees about this possibility;
19. increase the number of officers who are trained as escorts in line with Frontex common guidelines and create and maintain a sufficient pool of escorts, including more female officers;

20. establish a regular national training in theoretical and practical aspects concerning removal by air;
21. set up an adequate and fully operational monitoring system as soon as possible in accordance with Article 8(6) of the Directive 2008/115/EC. The future system should take into consideration monitoring the return phase also on board of the aircraft until the final destination and in line with Frontex recommendation in Code of Conduct for Joint Return Operations.

Done at Brussels,

*For the Council
The President*
