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NOTE

From: Working Party for Schengen Matters (Evaluations) - Mixed Committee (EU-Iceland/Norway/Switzerland/Liechtenstein)

To: Permanent Representatives Committee (Part 2) / Council

No. prev. doc.: 11045/17

Subject: Draft Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of **Germany** on the application of the Schengen *acquis* in the field of **return**

Delegations will find enclosed the Draft Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Germany on the application of the Schengen *acquis* in the field of return, approved in silence procedure by the Working Party for Schengen Matters (Evaluations) on 16 August 2017.

Draft Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2016 evaluation of Germany 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 Schengen¹, 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 Germany 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(2017)2632.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) Since 2014, a massive inflow of third-country nationals has been arriving in Germany, notably in Bavaria, and lodged asylum applications. Indications are that a significant number of these applications has been or may be rejected, leading to the issuing of return decisions in accordance with the common standards and procedures set by Directive 2008/115/EC².
- (3) The assisted voluntary return programme REAG/GARP, through which a significant number of voluntary returns are carried out in a sustainable, workable and humane manner, as well as the arrival and repatriation centre in Manching / Ingolstadt, which contributes to the effective return of third-country nationals coming from third countries for which the recognition rate of applications for international protection is very low, should be regarded as good practices.
- (4) This Decision setting out a recommendation should be transmitted to the European Parliament and to the parliaments of the Member States. Within six months of its adoption, the evaluated Member State shall, pursuant to Article 16, paragraph 8 of Regulation (EU) No 1053/2013, provide the Commission its assessment on a possible implementation of the recommendations containing indications for possible further improvements,

HEREBY RECOMMENDS:

that the Federal Republic of Germany should:

1. collect and provide reliable data and statistics in the field of return, in a manner that allows an adequate assessment of the effective implementation of the return *acquis* in Germany;

² 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.

2. for the purpose of ensuring legal certainty, establish clear policy and practice on the status and on the return of third-country national unaccompanied minors who are staying illegally in Germany allowing, based on an individual assessment of their best interests in accordance with Article 5 of Directive 2008/115/EC, either to carry out returns respecting the conditions of Article 10 of that Directive, or to grant an authorisation or right to stay in Germany; the individual assessment of their best interests should be carried out by a multi-disciplinary and experienced team involving the child's appointed guardian;
3. establish a system for ensuring early family tracing, the appointment of guardians, as well as the identification of adequate reception facilities in the country of return, allowing to carry out returns in accordance with Article 10 of Directive 2008/115/EC of unaccompanied minors who are not entitled to stay in Germany, including with the support of targeted reintegration measures.

Done at Brussels,

For the Council

The President
