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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 Malta 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 Malta 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. 11331/17

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2016 evaluation of Malta 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 Schengen², 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 Malta remedial actions to address 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)1076.
- (2) It is important to remedy each of the deficiencies identified with the least possible delay. Therefore no indication of priority for implementation of the recommendations should be given.

² OJ L 295, 6.11.2013, p. 27.

- (3) 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 Malta should

1. ensure that an adequate individual assessment is systematically carried out when a third country national applies for a period of voluntary departure, and that voluntary return is preferred over forced return where there are no reasons to believe that this would undermine the purpose of a return procedure;
2. ensure that a return decision is issued to any third-country national whose asylum application or residence permit has been denied or revoked, without unnecessary delay, in line with Article 6 (1) of Directive 2008/115/EC;
3. carry out an individual assessment for each person subject to a return procedure and issue a return decision, as foreseen by Article 6(1) of Directive 2008/115/EC, also in case he/she is a dependant of a third country national already subject to a return procedure and he/she needs to be removed with him/her;
4. introduce in the text of the return decisions a clear obligation to return in the sense of Article 3(3) of Directive 2008/115/EC;
5. assess the length of the individual entry ban in all cases and in accordance with the principle of proportionality, in line with Article 11(2) of Directive 2008/115/EC;
6. ensure that the EU-wide effect of the entry ban and the possibility for reduction or withdrawal are clearly communicated to the third country national in writing;

7. ensure that the appeal system in place for return and detention decisions provides for an effective and speedy judicial review of return related decisions;
8. establish a systematic means of providing linguistic assistance to returnees where necessary throughout the whole return procedure, as foreseen in Articles 12(2) and 13(3) of Directive 2008/115/EC;
9. include in the removal order the reasons in fact and in law for imposing detention, reflecting the individual assessment made on the specific case;
10. provide sufficient information in the removal order on the length of detention and right to appeal against it;
11. ensure that decisions on extension of detention beyond the initial six months foreseen by Maltese legislation, and decisions on re-detention are ordered by appropriate authorities in writing, as resulting from Article 15(2) of Directive 2008/115/EC and confirmed by the ECJ's jurisprudence in the Mahdi case C-146/14;
12. ensure that reviews of detention decisions are subject to judicial supervision in all cases of prolonged detention periods to verify if the conditions for detention still exist according to Article 15(3) of Directive 2008/115/EC;
13. use less coercive measures as alternatives to detention, where appropriate, as prescribed by Article 15(1) of Directive EC/115/2008;
14. guarantee sufficient personal space for the detainees and provide for adequate facilities and equipment allowing for a more varied regime of activities for the detainees;
15. provide for all necessary information to detainees on their relevant rights and obligations applicable during their stay at the detention centre and ensure that the information is systematically available, including by making it visible in common sections of the facility;

16. improve removal capacity by taking advantage of the existing EU tools, mainly for identification of third-country nationals, acquisition of travel documents and receiving assistance for removal operations in transit in other Member States (Council Directive 2003/110/EC);
17. carry out an individual risk assessment on the need to use measures of restraint when escorting a detainee during operations pending removal, and refrain from systematically using restraints;
18. make the annual reports on the monitoring of forced returns systematically available to the public or at least to interested stakeholders (e.g. Parliament, or NGOs), for the sake of transparency and accountability, in compliance with data protection legislation.

Done at Brussels,

For the Council

The President
