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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 on addressing the deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of Return by Belgium

Delegations will find in the Annex the Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of Return by Belgium, adopted by the Council at its 3458th meeting held on 15 March 2016.

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.

RECOMMENDATION

on addressing the deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of Return by Belgium

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 Recommendation is to recommend to Belgium remedial actions to address deficiencies identified during the Schengen evaluation in the field of Return carried out in 2015. 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(2016)22.
- (2) Intake procedures in detention centres, the humane approach used in administrative detention, the role of return coaches, educators and psychologists can be seen as examples of good practice.
- (3) Strengthening the analytical capacity to develop an effective strategy to apprehend and detect illegally staying third country nationals can be seen as a preliminary condition to have an effective return policy.

¹ OJ L 295, 6.11.2013, p. 27.

- (4) It is important to address all deficiencies within the shortest possible time frames. Therefore no indication of priority for implementation of the recommendations should be given.
- (5) The available statistics show a significant difference between the number of return decisions issued and the number of irregular migrants effectively returned.
- (6) This 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 of Regulation (EU) No 1053/2013, provide its assessment on a possible implementation of the indications for possible further improvements identified in the evaluation report and provide this to the Commission,

HEREBY RECOMMENDS:

Belgium should:

1. take all necessary measures, according to Article 8(1) of Directive 2008/115/EC, to enforce return decisions and to return the persons concerned in an effective and proportionate manner.
2. explore options for starting preparing the return procedure at an earlier stage, in cases when administrative detention immediately follows a period of imprisonment related to criminal convictions, in order to make the period of stay of the third country national in administrative detention as short as possible, or preferably to avoid it;
3. introduce provisions foreseeing that the entry ban period should start from the moment in which the third country national left the Schengen area to make sure that the ban does not lose its effect in case the third country national absconds; in those cases in which this would not be possible, the entry ban should start from the moment of its notification;

4. handle the existing backlog and immediately register new entry bans into the Schengen Information System (SIS), to give full effect to the European dimension of the entry bans issued under the Directive 2008/115/EC;
5. consider more carefully return as a possible option for unaccompanied minors, where the conditions of Article 10(2) of Directive 2008/115/EC are satisfied and where this might be in the best interests of the child;
6. set up a system to issue a return decision also in cases where illegal stay is discovered during an exit check, following a case-by-case analysis and taking into account the principle of proportionality. Where duly justified, following an individual assessment, impose an entry ban where deemed necessary to prevent future risks of irregular stay;
7. make use of pre-removal administrative detention, under the conditions of the Directive. An adequate assessment of the existence of sufficient grounds for detention needs to be carried out and reflected in the motivation of the detention decision;
8. use where appropriate alternatives to detention, a possibility that is foreseen in the Belgian Aliens act, but not used in practice;
9. explore alternative solutions to the use of isolation rooms to separate returnees from the other detainees prior to departure;
10. consider changing the legal definition of, at least some Family Units, from closed centres to open centres to present them as being an alternative to detention. This would reflect more accurately the real situation of these structures and would also go in the recommended direction of using more alternatives to detention. Take measures to minimize the risk of absconding from Family Units which will remain closed centres;
11. use Family Units, which are currently defined as detention facilities, only for pre-removal purposes and where the conditions set by Article 15(1) of Directive 2008/115/EC are in place. Accommodate families with different needs in other facilities;

12. make the reports on the monitoring of forced returns systematically available to interested stakeholders (e.g. Parliament or NGOs) for the sake of transparency, in compliance with data protection legislation.

Done at Brussels,

For the Council

The President
