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From: General Secretariat of the Council

On: 15 February 2018

To: Delegations

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Subject: COUNCIL IMPLEMENTING DECISION setting out a Recommendation on addressing the deficiencies identified in the 2017 evaluation of **Denmark** on 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 2017 evaluation of Denmark on the application of the Schengen acquis in the field of return, adopted by the Council at its meeting held on 15 February 2018.

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

on addressing the deficiencies identified in the 2017 evaluation of Denmark on 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 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 Denmark remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2017. Following the evaluation, a report covering the findings and assessments, listing best practices and deficiencies was adopted by Commission implementing Decision C(2017) 5132.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) The forced return procedure in all its steps, in particular the direct contact between the escort officers/case handlers with the returnees during the organisation of the removal, which facilitate the preparation of removal operations, help reducing the risk of incidents and facilitate organising a higher share of unescorted removals, should be considered as a good practice.
- (3) To ensure compliance with the Schengen *acquis* on return, notably with the standards and procedures set by Directive 2008/115/EC², priority should be given to implement recommendations 1, 2, 3, 4, 5, 7, 8, 9.
- (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 establish, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, an action plan listing all recommendations to remedy any deficiencies identified in the evaluation report and provide this to the Commission and the Council,

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, p. 98.

HEREBY RECOMMENDS

that the Kingdom of Denmark should:

1. amend the Aliens Act to ensure that return decisions are systematically issued before removal to any third-country national found to be staying illegally in Denmark, including those who have not received a negative decision in relation to a request for a residence permit or to an application for international protection, in accordance with Article 6(1) of Directive 2008/115/EC; ensure that such return decisions are issued in writing, give reasons in fact and in law, and provide information about available legal remedies, in accordance with Article 12(1) of Directive 2008/115/EC;
2. systematically issue entry bans to illegally staying third-country nationals who have not complied with an obligation to return within the period for voluntary departure, in accordance with Article 11(1)(b) of Directive 2008/115/EC;
3. amend national law in order to ensure compliance with Article 3(7) of Directive 2008/115/EC by including providing objective criteria upon which competent authorities shall base their assessment on whether a third-country national poses a risk of absconding;
4. amend national legislation to ensure that alerts for refusal of entry or stay are introduced in the Schengen Information System II in relation to all entry bans issued by Danish authorities in application of Directive 2008/115/EC, including those based on Section 25a of the Aliens Act;
5. collect and provide reliable data and statistics in the field of return, in a manner that allows an adequate overview and assessment of the return situation and of the effective implementation of the *acquis* in Denmark;

6. widen the target group of assisted voluntary return and reintegration programmes in order to cover all illegally staying third-country nationals; actively promote the use of such programmes to other possible target groups; make full use of reintegration possibilities available under the EU-funded programme ERIN;
7. take measures, including by amending Section 59 of the Aliens Act, to ensure that criminal imprisonment for mere illegal stay can only be imposed in relation to third-country nationals to whom the return procedures established by Directive 2008/115/EC have been unsuccessfully applied and who continue to stay illegally in Denmark without there being any justified ground for non-return, in compliance with the provisions of Directive 2008/115/EC as interpreted by the Court of Justice of the European Union;
8. ensure that the detention of illegally staying third-country nationals takes place in specialised detention facilities that respect the conditions of Article 16(1) of Directive 2008/115/EC; if obliged to resort to the use of the Vestre prison for detention in view of removal, ensure systematic separation of illegally staying third-country nationals from ordinary prisoners;
9. ensure that the detention of third-country nationals who are refused entry at the Copenhagen airport and cannot be detained at the airport's premises takes place in specialised detention facilities that respect the conditions of Article 16(1) of Directive 2008/115/EC;
10. amend Section 36(5) of the Aliens Act to require the Danish Police to assess whether other less coercive measures than detention could be sufficient and be applied effectively in the case of illegally staying third-country nationals who do not cooperate in the organisation of their return;

11. ensure that the conditions of detention applicable in the specialised facilities are suitable for the detention of illegally staying third-country nationals and reflect the nature of the deprivation of liberty, in particular in the Vridsløselille facility; review rules related to the detainees' contacts with the outside world and access of competent national, international and non-governmental organisation, as well as of visitors, and ensure that leisure activities and facilities are practically accessible; provide specialised training on the detention of illegally staying third-country nationals for staff working at the facilities;
12. ensure that the cells at the Copenhagen airport are adequately furnished and in a good state of repair, offering sufficient living space; improve the conditions of the waiting room in the transit area of the Copenhagen airport, in particular to ensure adequate conditions for overnight stay for families with children await return;
13. take practical measure to ensure that third-country nationals accommodated at the Sjælsmark departure centre actively work and cooperate with national authorities on their return during their stay at the centre.

Done at Brussels,

For the Council

The President