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From: General Secretariat of the Council
On: 8 March 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 **Iceland** 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 Iceland on the application of the Schengen acquis in the field of return, adopted by the Council at its meeting held on 8 March 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 Iceland 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 is to recommend to Iceland 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) 5136.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) The possibility to hold an illegally staying third-country national who does not return voluntarily liable for the costs of their forced removal, together with the possibility to bar the person concerned from obtaining legal residence in Iceland as long as those costs are not settled, and the practical application of those possibilities, may serve as an incentive for migrants to opt for voluntary return. Therefore, it 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/EC of the European Parliament and of the Council², priority should be given to implement recommendations 1 to 7 and 9.
- (4) All necessary measures should be taken to return illegally staying third-country nationals in an effective and proportionate manner.
- (5) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Iceland should, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy any deficiencies identified in the evaluation report and provide at action plan to the Commission and the Council,

RECOMMENDS

that the Republic of Iceland should:

1. bring the relevant provisions concerning criminalization of illegal stay in Iceland fully in line with the interpretation of Directive 2008/115/EC by the European Court of Justice³;
2. ensure that any decision of the Icelandic authorities stating or declaring the stay of a third-country national to be illegal and imposing or stating the obligation to return is, both in law and in practice, considered as a return decision in the meaning of Directive 2008/115/EC;

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).

³ See for example *El Dridi*, C-61/11.

3. ensure that legal remedies are available as from the moment a return decision is issued and that that possibility is indicated in the decision;
4. ensure, where necessary, the availability of linguistic assistance in line with the requirements of Directive 2008/115/EC;
5. ensure that the prolongation of the period of voluntary departure is based on individual assessment in line with the requirements of Article 7(2) of Directive 2008/115/EC;
6. ensure that, as a matter of practice, return decisions which do not grant a period for voluntary departure are systematically accompanied by an entry ban in line with the requirements of Article 11(1)(a), of Directive 2008/115/EC;
7. introduce in all return decisions the information that the third-country national must leave the whole Union and Schengen territory in order to comply with the return decision, ensuring that the content of return decisions is in line with the definitions of return provided by Article 3(3) of Directive 2008/115/EC;
8. ensure that return decisions and, if appropriate, entry bans, can be issued to illegally staying third-country nationals detected during exit checks at the external border, following a case-by-case assessment and respecting the principle of proportionality;
9. amend the regulatory framework to ensure that an entry ban longer than five years may only be issued when an illegally staying third-country national represents a serious threat to public policy, public security or national security, based on individual assessment of each case and in respect of the principle of proportionality;
10. collect and provide reliable data and statistical information in the field of return, to ensure an adequate overview and to allow for an informed assessment of the effective implementation of the return *acquis* in Iceland;

11. amend the relevant national legislation to allow for the possibility to detain an illegally staying third-country national in view of removal and adjust the practice accordingly, including when the use of less coercive measures has already been taken into consideration while evaluating the individual circumstances of each case but has not been imposed because it was considered not to be effective;
12. ensure adequate detention capacity in line with the requirements of Article 16(1) of Directive 2008/115/EC for illegally staying third-country nationals awaiting removal whenever the need may arise;
13. ensure full and systematic separation of returnees from ordinary prisoners;
14. provide dedicated training to the staff of the Probation Service in charge of the detention of illegally staying third-country nationals pending removal;
15. formalise the legal position, funding and the role of the monitoring body; and define a framework for a reporting system and implement it;
16. allow appropriate financial means to ensure the sustainability of the assisted voluntary return ('AVR') system;
17. consider reinforcing the AVR system by providing a range of AVR offer to specific target groups. To this end, the Icelandic authorities should also consider participation in EU-funded programmes on return.

Done at Brussels,

For the Council

The President