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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 2017 evaluation of Sweden 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 2017 evaluation of Sweden 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.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2017 evaluation of Sweden 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 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 for Sweden is to take remedial actions in order 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 identified during the evaluation was adopted by Commission Implementing Decision C(2018)105.

² OJ L 295, 6.11.2013, p. 27.

- (2) The escorting procedure for forced returns, in particular the humane, personal and highly professional approach of the escorts towards the returnees during the preparation and execution of the operations, as well as the training/mentorship received by escorts which helps reducing the risk of incidents during the operation 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/EC³, priority should be given to implement recommendations 1, 3, 4, 12.
- (4) 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 Sweden should:

1. take the necessary measures to ensure that entry bans start developing their effect from the moment in which illegally staying third-country nationals leave the territory of the European and of the Schengen Associated countries;
2. clarify the use of the derogation provided under Article 2(2)(a) of the Directive 2008/115/EC and ensure uniform implementation of the return procedures following a refusal of entry;

³ 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. ensure that detention decisions are subject ex officio of judicial review/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;
4. ensure that an illegally staying third-country national is granted free legal assistance and/or representation pursuant to Article 13(1) and (4) of Directive 2008/115/EC when she/he wants to appeal solely against a return decision;
5. bring detention capacity in line with actual needs. Taking measures in this sense is of the utmost importance in order to ensure effectiveness of return decisions in line with Art. 8 (1) Directive 2008/115/EC;
6. ensure presence of medical staff and medical screening for illegally staying third-country nationals upon arrival in detention centres;
7. at the Mårsta detention centre, make use of appropriate facilities for isolation of detainees when needed, in a manner that fully respects dignity and privacy;
8. find practical ways of addressing the challenge of coping with aggressive or disruptive detainees within specialised facilities and without resorting to prison accommodation. If prison accommodation is used for detention for return purposes allow for broader access to common areas and outdoor activities, as well as ensure a regime appropriate to the legal status of this detention;
9. increase the availability and use of the assisted voluntary return and reintegration programmes;
10. take measures to facilitate the identification, including increasing the use of fingerprinting in the return context;

11. make available sufficient resources to ensure that applications for work permits submitted by illegally staying third-country nationals, are processed in a timeframe which does not hamper returns;
12. set up an adequate and fully operational monitoring system as soon as possible in accordance with Art. 8(6) of the Directive 2008/115/EC;

Done at Brussels,

For the Council

The President
