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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 Portugal 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 Portugal 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 Portugal 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 is to recommend to Portugal 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(2018)302.

² OJ L 295, 6.11.2013, p. 27.

- (2) The cooperation between the Border and Immigration Service (SEF) and the Directorate-General of the prison services, which facilitates the immediate removal of third-country nationals who are in criminal detention and are subject to a return decision, promoting both effective return procedures and avoids additional periods of detention for the purpose of removal, should be regarded 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, 2, 4, 6, 7, 8, 9, 10.
- (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,

HEREBY RECOMMENDS

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.

that the Portuguese Republic should:

1. introduce in national law the objective criteria upon which competent authorities shall base their assessment on whether a third-country national subject of return procedures may abscond, in accordance with Article 3(7) of Directive 2008/115/EC;
2. ensure that decisions granting a period for voluntary departure set a clear legal obligation for illegally staying third-country nationals to leave the territory of the Member States and Schengen Associated countries, in accordance with Articles 3(4) and 6(1) of Directive 2008/115/EC;
3. amend Article 139(3) of the Law 23/2007 of 4 July 2007 on the entry, stay, exit and return of foreigners from the national territory (hereafter, "Immigration Act") to ensure that entry bans issued in connection with return decisions addressed to beneficiaries of the assisted voluntary return (and reintegration) programme prohibit entry and stay in the territories of the Member States and Schengen Associated countries, and not only in Portuguese territory; for this purpose, introduce in SIS II an alert for refusal of entry and stay for such entry bans;
4. amend Articles 139(3) and 147(2) of the Immigration Act to require competent national authorities to carry out an individual assessment of the relevant circumstances of each case to determine the actual length of entry bans related to beneficiaries of voluntary return (and reintegration) assistance and to third-country nationals subject to removals by escort to a border post;

5. set up a system ensuring that return decisions and, if appropriate, entry bans can be issued to illegally staying third-country nationals apprehended during exit checks at the external border, following a case-by-case assessment and respecting the principle of proportionality;
6. take measures to ensure that an entry ban is systematically issued to third-country nationals who did not return within the granted period for voluntary departure and are detected during an exit check at the external border, in accordance with Article 11(1)(b) of Directive 2008/115/EC;
7. take further measures to ensure the enforcement of return decisions in an effective and proportionate manner, in accordance with Article 8(1) of Directive 2008/115/EC; for this purpose: allow in national legislation for a maximum period of detention that is sufficient to conclude the necessary procedures for the return of illegally staying third-country nationals in all circumstances, using the flexibility provided for by Article 15(5) and (6) of Directive 2008/115/EC; allow in national legislation for the possibility to impose obligations aimed at avoiding the risk of absconding, in application of Article 7(3) of Directive 2008/115/EC; ensure an effective monitoring of the actions taken by third-country nationals to comply with a return decision granting a period for voluntary departure; regularly inform the European Border and Coast Guard Agency about return needs, in accordance with Article 28(2) of Regulation 2016/1624⁴, and consider requesting to organise and taking part in return operations organised by that Agency;

⁴ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ L 251, 16.9.2016, p. 1.

8. ensure separate accommodation guaranteeing adequate privacy for and unity of families at the EECIT in accordance with Articles 17(2) and 5(b) of Directive 2008/115/EC; ensure that minors detained at the EECIT have access to leisure activities, including play and recreational activities appropriate to their age, in accordance with Articles 17(3) of Directive 2008/115/EC;
9. take measures to ensure that the EECIT is not used for the detention of illegally staying third-country nationals subject to removal for a period longer than 48 hours;
10. take measures to improve the detention conditions at the EECIT by ensuring that its maximum capacity is strictly respected, that enough space and beds are available for the detained third-country nationals, that the men's dormitory provides for daylight and sufficient ventilation, that adequate furniture, recreational activities as well as a laundry service are available, that men and women in detention are separated as much as possible, and that the privacy of detainees is respected, notably in the sanitary facilities;
11. ensure that minors between 16 and 18 years of age are accommodated together with their family relatives in separate accommodation guaranteeing adequate privacy for and unity of families at the UHSA, in accordance with Articles 17(2) and 5(b) of Directive 2008/115/EC.

Done at Brussels,

For the Council

The President
