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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 2021 evaluation of Malta 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 2021 evaluation of Malta 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. [10401/22](#)

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2021 evaluation of Malta 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(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) A Schengen evaluation in the field of return was carried out in respect of Malta from 27 September to 1 October 2021. Following the evaluation, a report covering the findings and assessments, listing the best practice and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2022) 1300.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) The newly established ‘Returns Unit’, which seeks to contribute to the increase of return paying particular attention to supporting voluntary return in order to ensure the humane, effective and sustainable return of irregular migrants, was considered a point of particular interest.
- (3) Recommendations should be made on remedial actions to be taken by Malta in order to address deficiencies identified as part of evaluation. In light of the importance of complying with the Schengen *acquis*, in particular Directive 2008/115/EC, priority should be given to implementing recommendations 1, 2, 6, 7, 8, 9 and 12 below.
- (4) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within three months of its adoption, Malta should, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy the deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council.

RECOMMENDS:

that Malta should

Return procedures

1. amend the text of the return decisions so that they include a clear obligation to return as provided for by Article 3(4) of Directive 2008/115/EC;
2. ensure that return decisions that affect minors include an assessment of the situation of the minor concerned and of the best interests of the child;
3. take measures to ensure that returnees are given the opportunity to be granted a period for voluntary departure, ensuring that this is treated as the preferred option for return, in line with Directive 2008/115/EC;

4. increase the number of staff involved in return related activities to ensure adequate resources to issue and enforce return decisions;

Entry bans

5. carry out a case-by-case assessment of the relevant circumstances of the individual cases of the third-country nationals subject to return procedures to determine the specific and appropriate length of entry bans, as required by Article 11(2) of Directive 2008/115/EC;
6. determine *ex officio* in advance in each individual case the fixed length of the entry ban, as required by Article 3(6) of Directive 2008/115/EC;

Procedural safeguards

7. ensure that all return and detention decisions contain reasons in fact as required by Articles 12(1) and 15(2) of Directive 2008/115/EC;
8. take measures to ensure that appeals against return-related decisions are available and accessible in practice to third-country nationals in a way which does not undermine the third country national's right to an effective remedy. Also ensure that the deadline for this appeal is clearly formulated and is reasonable for third-country nationals to effectively exercise their right to an effective remedy in line with Article 47 of the EU Charter of Fundamental rights;

Detention

9. ensure that detention is only used as a measure of last resort, including by increasing the availability and use of effective less coercive measures;
10. take measures to ensure that the judicial review of detention also includes an assessment of the proportionality of the measure, as prescribed by Article 15(2) of Directive 2008/115/EC and that detention decisions are subject to judicial supervision in all cases of prolonged detention periods to verify whether the conditions for detention still exist, in accordance with to Article 15(3) of Directive 2008/115/EC;

11. ensure that the detainee is heard when considering the prolongation of detention, that a decision is issued in writing with reasons being given in fact and in law and that the detainee is notified of the outcome of the review;
12. ensure that material detention conditions and the detention regime in the detention facilities always comply with the fundamental rights standards and reflect the nature of the deprivation of liberty, by ensuring sufficient living space, adequate furniture and hygienic conditions, adequate privacy, possibility to anonymously file complaints, sufficient contact with the outside world and by providing for recreational activities and adequate outside access;
13. take measures to provide for all necessary information to detainees on their rights and obligations applicable during their stay in the detention centre and ensure that the information is systematically available, including by providing a written copy and/or making it visible in common sections of the facility;
14. carry out an individual risk assessment on the need to use means of restraint with detainees and refrain from systematically using such means;

Forced-return

15. take measures to increase the effectiveness of the forced-return monitoring system, by broadening the scope of the monitoring activity to all phases of the forced return operation in all types of forced returns.

Done at Brussels,

For the Council

The President
