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From:	General Secretariat of the Council
On:	19 December 2022
To:	Delegations
No. prev. doc.:	15524/22
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of the Netherlands on the application of the Schengen <i>acquis</i> in the field of return

Delegations will find attached the Council implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of the Netherlands on the application of the Schengen *acquis* in the field of return, adopted by the Council at its meeting held on 19 December 2022.

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.

RECOMMENDATION

on addressing the deficiencies identified in the 2021 evaluation of the Netherlands 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) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*¹, and in particular Article 31(3) thereof,

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) A Schengen evaluation in the field of return was carried out in respect of the Netherlands in March 2021. 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(2021) 4900.

¹ OJ L 160, 15.6.2022, p. 1–27

² OJ L 295, 6.11.2013, p. 27.

- (2) Article 31 (3) of Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* foresees that for evaluations carried out before 1 February 2023, the adoption of evaluation reports and recommendations shall be carried out in accordance with Regulation (EU) No 1053/2013 and in particular Article 15 thereof.
- (3) The use of IT tools effectively supports return procedures by ensuring easy access and exchange of comprehensive information, favouring the effective return of third-country nationals that are illegally staying in the territory of the Member State within the meaning of the Return Directive. Before the removal takes place, the authorities systematically inform returnees about the possibility to leave behind all sensitive documents that could lead to negative repercussions in the destination country. In case irregular stay is detected during the exit check, procedures have been set up allowing to issue a return decision and, if necessary, an entry ban without delaying the return and respecting the third-country national's rights. There is an active promotion of voluntary return throughout the entire return process, notably in Ter Apel freedom-restricting centre and through the cooperation with Frontex. The family centre in Zeist and the Centre for Transcultural Psychiatry Veldzicht are exceptional examples of centres catering for the particular needs of vulnerable persons in detention. These practices are considered as points of particular interest.
- (4) In light of the importance of complying with the Schengen *acquis*, in particular the Return Directive, priority should be given to implementing recommendations 1, 3 and 5.
- (5) In order to ensure a uniform application of the Return Directive, following the relevant ECJ case law, implementation of Recommendation 1 is to be supported by the dedicated discussions in the Contact Group – Return Directive. That clarification of the interpretation of the said recommendation should be without prejudice to the implementation of the [other] Council recommendations addressing deficiencies identified in the evaluations carried out pursuant to Council Regulation 1053/2013.

- (6) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within two months of its adoption, the Netherlands should, pursuant to Article 21(1) of Council Regulation (EU) 2022/922, establish an action plan to implement all recommendations to remedy any deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council.

RECOMMENDS:

that the Netherlands should

Procedures

1. state in all return decisions issued to illegally staying third-country nationals the obligation to leave the territory of all states of the Schengen area in order to reach a specific third country, in accordance with Articles 3(3) and 3(4) of Directive 2008/115/EC; take measures to ensure that, when the third country of return has not been specified in the return decision due to the impossibility to identify one in accordance with national law or national legal practice, the principle of *non-refoulement* is respected;
2. ensure that return decisions notified by post to third-country nationals that are illegally staying in the territory of the Netherlands within the meaning of the Return Directive comply with the requirements of Article 12(2) of Directive 2008/115/EC;

Detention

3. ensure that the maximum period of detention of 18 months prescribed by Article 15(5) and (6) of the Directive 2008/115/EC is not undermined by re-detaining third-country nationals that are illegally staying in the territory of the Netherlands within the meaning of the Return Directive beyond that maximum time limit;

4. take the necessary measures to ensure that, in case third-country nationals do not appeal the detention decision, reviews of prolonged detention periods are nonetheless subject to a judicial supervision to verify if the conditions for detention still exist according to Article 15(3) of Directive 2008/115/EC;

Forced-return

5. ensure that the removal to a third country different from the country of origin or transit, is carried out only with the consent of the third-country national, in line with Article 3(3), third indent of Directive 2008/115/EC;
6. increase the number of forced return operations monitored by the competent body and ensure that all phases of forced return operations are sufficiently covered.

Done at Brussels,

For the Council

The President
