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From: General Secretariat of the Council

On: 8 November 2019

To: Delegations

No. prev. doc.: 13186/19

Subject: Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of **Lithuania** 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 on addressing the deficiencies identified in the 2018 evaluation of Lithuania on the application of the Schengen *acquis* in the field of return, adopted by the Council at its meeting held on 8 November 2019.

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 2018 evaluation of Lithuania on the application of the Schengen acquis in the field of return

THE COUNCIL 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 setting out a recommendation is to recommend to Lithuania remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2018. Following the evaluation, a report covering the findings and assessments, listing best practices and deficiencies was adopted by Commission implementing Decision C(2019) 2220.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) The procedure established for systematically controlling the compliance by a third country national with his/her obligation to return within the period for voluntary departure contributes to the effectiveness of the Lithuanian return system. The children's room in the Foreigners Registration Center provides appropriate and stimulating surroundings for children without giving the impression of a detention environment, which, together with the long opening hours and accessibility without restrictions, the presence of a social worker, the large amount of games and organised activities available, make it attractive for children to use. Both 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/EC¹, priority should be given to implement recommendations 1, 3, 4, 5.
- (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

¹ 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 Republic of Lithuania should:

1. ensure that return decisions or expulsion decisions are systematically issued without delay to any third-country national staying illegally on the territory of Lithuania, irrespective of the fact that his/her identity is confirmed, in accordance with Article 6(1) of the Directive 2008/115/EC;
2. ensure that decisions issued to third country nationals in relation to entry bans adequately and clearly inform them about the full (EU-wide) geographical scope of the prohibition of entry and their obligations in that respect, in accordance with Article 3(6) and Recital 14 of the Directive 2008/115/EC;
3. amend the national legislation to ensure that illegal entrants are not excluded from the possibility of being granted a period for voluntary departure, unless there are reasons to conclude that this would undermine the purpose of return in accordance with the provisions of Article 7(4) of the Directive 2008/115/EC;
4. amend the national legislation in order to ensure that detention decisions are subject to ex officio judicial review in all cases of prolonged detention periods to verify if the conditions for detention still exist according to Article 15(3) of the Directive 2008/115/EC;
5. ensure that detention decisions imposed by the competent courts are systematically issued on a case-by-case basis, reflecting the individual assessment, in accordance with general principles of EU law and Recital 6 of the Directive 2008/115/EC; ensure that such decisions explicitly refer to the grounds of pre-removal detention pursuant to Article 15 (1) of the Directive 2008/115/EC, as well as indicate the exact length of the detention period, which shall be for as short as possible, in accordance with Article 15 (1), (5) and (6) of the Directive 2008/115/EC;

6. take measures to improve the detention conditions in the Foreigners Registration Center, by ensuring that the detention facility is designed and guarded in a way that reflects the nature of immigration detention, both inside and outside; that the outdoor area of the Foreigners Registration Center is sufficiently large to allow outdoor activities, that the area is equipped with a shelter protecting from inclement weather and that there are benches; that a wider variety of organized leisure activities is provided more frequently; that visiting rooms are available in a sufficient number to allow for visits of any kind, including family members and lawyers, without undue limitation; that qualified medical staff is present every day; that the common rooms are all adequately furnished, being proportionate to the capacity; that a prayer room to carry out religious activities is provided; that there is access to a library;
7. ensure that appropriate funding is allocated to and within the body entrusted with forced-return monitoring activities in order to cover adequately monitoring needs with regard to all types of operations carried out, including by air; ensure that monitors are duly trained, for instance through available EU programmes such as the Forced Return Monitoring project (FReM).

Done at Brussels,

For the Council
The President
