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**NOTE**

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| From:           | General Secretariat of the Council   |
| To:             | National Parliaments   |
| No. prev. doc.: | 8995/20  |
| Subject:        | Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2019 evaluation of the Czech Republic on the application of the Schengen acquis in the field of return |

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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 2019 evaluation of the Czech Republic on the application of the Schengen acquis in the field of return<sup>1</sup>.

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<sup>1</sup> Available in all official languages of the European Union on the Council public register, doc. [8995/20](#)

Council Implementing Decision setting out a

**RECOMMENDATION**

**on addressing the deficiencies identified in the 2019 evaluation of the Czech Republic 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 Schengen<sup>2</sup>, 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 the Czech Republic remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2019. Following the evaluation, a report covering the findings and assessments, listing best practices and deficiencies was adopted by Commission implementing Decision C(2020) 250.
- (2) The regular online publication of the forced-return monitoring reports by the Public Defender of Rights should be regarded as a good practice, as it ensures an additional layer of scrutiny over the removal process, enhancing its transparency, and further supports the effectiveness of the forced-return monitoring mechanism.

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<sup>2</sup> OJ L 295, 6.11.2013, p. 27.

- (3) It is important to remedy all deficiencies within the shortest possible time frames. Therefore no indication of priority for implementation of the recommendations should be given.
- (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 Czech Republic should, 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,

RECOMMENDS:

that the Czech Republic should:

1. amend the national legislation to ensure that any penal sanctions imposed on illegally staying third country nationals comply with settled case-law of the Court of Justice of the European Union and that such sanctions would not delay return;
2. amend the national legislation to ensure that entry bans take effect at the moment when the illegally staying third-country nationals leave the territory of the European Union and of the Schengen Associated Countries; take measures to align the practice accordingly;
3. amend the national legislation to ensure that third-country nationals who are illegally staying in the Czech Republic and who hold a valid authorisation to stay issued by another Member State are requested to go immediately to that Member State, in accordance with Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council<sup>3</sup>; take measures to align the practice accordingly;

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<sup>3</sup> 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).

4. amend the national legislation to ensure that return decisions issued to illegally staying third-country nationals impose a clear obligation to return to a third country within the meaning of the definition of ‘return’ set out in Article 3(3) of Directive 2008/115/EC; take measures to align the practice accordingly;
5. amend the national legislation to ensure compliance with the 7-30 days’ time frame set out in Article 7(1) of Directive 2008/115 when establishing the period for voluntary departure; take measures to align the practice accordingly;
6. amend the national legislation to ensure that return decisions are issued in all cases and without delay to illegally staying third-country nationals, including those who no longer fulfil the conditions for legal stay further to the rejection of their requests for residence permit or for international protection, in accordance with Articles 6(1), 3(3) and 3(4) of Directive 2008/115/EC; take measures to align the practice accordingly;
7. take measures to ensure that the detention conditions in the Foreigners Detention Facility of Balková, reflect the administrative nature of immigration detention, by modifying as much as possible the design and layout of the facility, preventing as much as possible the limitations of access to leisure activities, improving the hygienic conditions of the facility and repairing the sanitary infrastructure;
8. amend the national legislation to ensure that detention decisions are subject to ex officio judicial review/supervision in case of prolonged detention periods to verify if the grounds for detention still exist, in accordance with Article 15(3) of Directive 2008/115/EC;
9. ensure that formal decisions to accommodate a minor with his or her detained family member(s) are issued in writing, with reasons being given in fact and in law, and are based on an individual assessment of the specific circumstances of each minor’s case – taking into due account the best interests of the child and the situation of the family concerned, in accordance with Articles 5 and 15(2) of Directive 2008/115/EC; such conditions need to be fulfilled both if the minor is subject to an individual decision and if the minor is included in the detention decision addressed to his or her family member(s);

10. ensure that monitoring staff has access to the returnee during all stages of the removal process (from the preparation of departure until reception in the country of return) and ensure continuity of an effective monitoring mechanism with sufficient dedicated staff and predictable and timely allocation of funding;

Done at Brussels,

*For the Council*

*The President*

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