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From:	General Secretariat of the Council
On:	18 September 2018
To:	Delegations
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Subject:	Council implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2017 evaluation of Spain on the application of the Schengen <i>acquis</i> 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 2017 evaluation of Spain on the application of the Schengen *acquis* in the field of return, adopted by the Council at its meeting held on 18 September 2018.

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 2017 evaluation of Spain
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 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 Spain remedial actions to address the 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 identified during the evaluation was adopted by Commission Implementing Decision C(2018) 1400.
- (2) ADEXTTRA, the Spanish migration case management system run by the National Police, should be regarded as a good practice as it provides return-related authorities with an easily accessible and efficient tool, which may facilitate the identification, apprehension and return of illegally staying third-country nationals.

¹ OJ L 295, 6.11.2013, p. 27.

- (3) To ensure compliance with the Schengen *acquis* on return, notably with the standards and procedures set by Directive 2008/115/EC², priority should be given to implement recommendations 1, 2, 3, 4, 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, Spain 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:

that the Kingdom of Spain should

1. introduce in national law a definition of "return" in accordance with Article 3(3) of Directive 2008/115/EC;
2. ensure that return decisions issued to third country nationals mention a clear obligation to leave the territory of the Member States and depart to a third country, in accordance with Article 3(3) and 3(4) of Directive 2008/115/EC;
3. ensure that return decisions issued to third country nationals adequately and clearly inform them about the full geographical scope of validity of the entry ban and their obligations in that respect, in accordance with 3(6) of the Directive;

² 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 national legislation to ensure compliance with Article 6(1) of Directive 2008/115/EC by removing the possibility that in case of illegal stay third country nationals are imposed a fine as an alternative to the conduct of return procedures;
5. take measures to ensure that, in line with Article 6 (1) of the Directive 2008/115/EC, return decisions are issued without delay to third-country nationals who no longer fulfil the conditions for legal stay, including those whose requests for residence permit or international protection were denied;
6. consider amending national legislation using the flexibility provided for by Article 15(5) and (6) of Directive 2008/115/EC, to provide for a maximum period of detention that is sufficient to conclude the necessary procedures for the removal and readmission of illegally staying third country nationals in all circumstances;
7. consider issuing return decisions and entry bans during exit checks, following a case-by-case analysis and taking into account the principle of proportionality;
8. ensure that minors who are family members of third country nationals subject to return are issued individual return decisions, following an individual assessment of their situation, in accordance with Article 6(1) and Article 12(1) of Directive 2008/115/EC;
9. amend national legislation to allow for an individual assessment regarding the issuing and actual length of an entry ban imposed in return procedures under Article 58(3)(a) of the Aliens Law;
10. amend Article 58(2) of the Aliens Law to remove public health as a ground for issuing an entry ban for a period of more than five years;

11. take measures to improve the conditions of the detention in the *Centro de Internamiento de Extranjeros* (CIE) of Madrid, Algeciras and Tarifa, as well as Valencia, by ensuring that all facilities are adequately furnished, including with adequate storage space for personal belongings; that the CIEs of Madrid, Algeciras and Tarifa are in a good state of repair; that natural daylight in the dormitories of all CIEs is adequate, in particular in Tarifa; that the privacy of detainees is respected, notably when using the toilets that are located in the dormitories in the CIEs of Tarifa and Algeciras; that visits in all CIEs take place in an environment that respects the right of privacy and family life; that the outdoor area of the CIE in Valencia is equipped with a shelter protecting from inclement weather and with benches; that a prayer room to carry out religious activities is provided in the CIEs in Valencia, Algeciras and Tarifa;
12. take measures to actively promote the use of assisted voluntary return at all stages of the return procedures and without delay when a request for legal stay or international protection has been denied;
13. increase the number of monitored operations and extend the scope of such monitoring to cover all types of removal operations, including national operations, be it by air, by sea or via land; in this respect ensure an appropriate allocation of resources to and within the National Mechanism for the Prevention of Torture of the Spanish Ombudsman for monitoring forced-return operations.

Done at Brussels,

*For the Council
The President*
