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| From: | General Secretariat of the Council |
| To: | Delegations |
| No. prev. doc.: | 12342/19 |
| Subject: | Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2018 evaluation of Estonia 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 2018 evaluation of Estonia on the application of the Schengen *acquis* in the field of return, adopted by the Council at its meeting held on 7 October 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 Estonia 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 Estonia 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) 2350.
- (2) The extensive use of surveillance measures and alternatives to detention in order to prevent the risk that illegally staying third-country nationals abscond, and the collection and sharing of information through a common platform to support migration and return management and to perform return-related tasks, should be regarded as good practices.

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, 5, 6 and 7.
- (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

that the Republic of Estonia should:

1. amend Section 17(1) of the Obligation to Leave and Prohibition to Entry Act (hereafter "OLPEA"), and any other relevant pieces of legislation, to ensure that illegally staying third-country nationals can be returned to a third country that is not the country of origin or transit only when they voluntarily decide to do so, as established by the third indent of Article 3(3) of Directive 2008/115/EC; take measures to align the practice accordingly;
2. amend Section 7²(1) OLPEA, and any other relevant pieces of legislation, to ensure that return decisions impose a clear obligation to leave Estonia in order to return to a third country also during the period for voluntary departure, in accordance with the requirement of Article 3(3) of Directive 2008/115/EC; take immediate measures to align the practice accordingly

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.

3. take measure to ensure that third-country nationals who are illegally staying in Estonia and hold a valid residence permit issued by another Member State are subject to a return decision if they do not comply with the request to immediately go to the Member State that granted the permit, as provided for by Article 6(2) of Directive 2008/115/EC;
4. amend the entry ban decisions issued and handed over to illegally staying third-country nationals to clearly state that such bans prevent re-entry into the territories of Estonia, as well as of other Member States and Schengen Associated countries;
5. take measures to fully ensure the separation from other detainees of families held in detention and to guarantee adequate privacy, in compliance with Article 17(2) of Directive 2008/115/EC;
6. implement measure to fully ensure the separation from unrelated adults of unaccompanied minors held in detention, in order to take into due account the needs of persons of such age as provided for by Article 17(4) of Directive 2008/115/EC;
7. amend Section 23(4) OLPEA, and any other relevant piece of national legislation, to ensure that after initial apprehension by law-enforcement authorities, detention can take place only in specialised detention facilities that meet the requirement of Article 16(1) of Directive 2008/115/EC; if obliged to resort to the use of a “police arrest house” for duly justified reasons, ensure systematic separation of illegally staying third-country nationals from ordinary prisoners and detention conditions provided for by Directive 2008/115/EC.

Done at Brussels,

For the Council

The President
