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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	6269/21
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2019 evaluation of Slovakia on the application of the Schengen acquis in the field of return

Delegations will find enclosed the Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2019 evaluation of Slovakia on the application of the Schengen acquis in the field of return, adopted by written procedure on 4 March 2021.

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 2019 evaluation of Slovakia 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 is to recommend to Slovakia remedial actions to address the 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 identified during the evaluation was adopted by Commission Implementing Decision C(2020) 4200.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) 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, 2, 4 and 7.
- (3) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Slovakia should 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 that action plan to the Commission and the Council,

RECOMMENDS:

that the Slovak Republic should:

1. state in all return decisions issued to illegally staying third-country nationals the obligation to leave the territory of the EU Member States and Schengen Associated countries 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. take immediate measures to ensure that only the objective criteria set in the relevant national legislation transposing Article 3(7) of Directive 2008/115/EC are used for determining in individual cases the risk that an illegally staying third-country national may abscond;

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.

3. ensure that the procedures applied to third-country nationals illegally staying in Slovakia and holding a valid residence permit issued by another Member State fulfil the provisions of Article 6(2) of Directive 2008/115/EC, notably as regards the requirement to go immediately back to that Member State before issuing a return decision;
4. take measures to ensure that entry bans systematically accompany return decisions not granting a period for voluntary departure, in accordance with Article 11(1) of Directive 2008/115/EC;
5. ensure that the assessment of the best interests of the child conducted in relation to illegally staying unaccompanied minors by virtue of Articles 5(a) and 10 of Directive 2008/115/EC systematically considers whether return is in their best interests, based on an individual evaluation of the needs of the minors concerned; in cases in which the individual assessment concludes that return is in the minors' best interests, ensure that a return decision is issued respecting the conditions of Article 10(1) of that Directive;
6. amend national legislation to ensure that prolonged detention periods, notably those longer than 3 months, are subject to an *ex officio* judicial supervision, in accordance with Article 15(3) of Directive 2008/115/EC, in order to verify whether the conditions for the detention still exist;
7. take measures to reinforce the independence from the Bureau of the Border and Foreigners Police of the Slovak forced-return monitors system established in accordance with Article 8(6) of Directive 2008/115/EC; ensure the sustainability of the system by ensuring stable, timely and sufficient funding; take measures to ensure that forced-return monitors are duly trained on monitoring and escorting techniques; make available to the stakeholders concerned the reports of the forced-return operations subject to monitoring.

Done at Brussels,

For the Council

The President