Council of the European Union

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NOTE

From:	General Secretariat of the Council
To:	National Parliaments
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of **Italy** on the application of the Schengen acquis in the field of **return**

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 2021 evaluation of Italy on the application of the Schengen acquis in the field of return[1].

[1] Available in all official languages of the European Union on the Council public register, doc. 10402/22

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2021 evaluation of Italy 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[1], and in particular Article 15(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) A Schengen evaluation in the field of return was carried out in respect of Italy between 28 of June and 2 of July 2021. 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(2022) 950.

[1] OJ L 295, 6.11.2013, p. 27.

(2) The Italian return case management system provides the national authorities with an efficient and integrated tool, favouring the effective management of return cases, and it is considered a point of particular interest contributing to the effect of Article 8(1) of the Directive 2008/115/EC. Furthermore, the independence of the National Guarantor, the scope of its action, the trainings provided to the return escorts on fundamental rights, as well as the regional network of trained forced return monitors operating on the whole Italian territory, are considered as points of particular interest in relation to the monitoring of forced return.

(3) Recommendations should be made on remedial actions to be taken by Italy in order to address deficiencies identified during the evaluation. In light of the importance of complying with Directive 2008/115/EC, priority should be given to implementing recommendations 1, 3, 4 and 7.

(4) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within three months of its adoption, Italy should, pursuant to Article 16 (1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy the deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council.

RECOMMENDS:

that Italy should

1. ensure that a return decision is issued, without delay, to any third-country national whose request for legal stay or international protection has been denied, in line with Article 6 (1) of the Directive 2008/115/EC, as also stated in Recommendation 1 of Council Implementing Decision 6358/17;

2. ensure that the return decisions and orders to leave 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;

3. ensure observance of the right to be heard before issuing a return decision in order to take due account of all relevant circumstances of each individual case;

4. ensure that when assessing the best interests of the child conducted in relation to unaccompanied minors, by virtue of Article 5(a) of Directive 2008/115/EC, it is systematically considered whether forced return is in their best interests as a durable solution taking into account the child particular needs as well as the reception conditions in the country of return as required by Article 10 of Directive 2008/115/EC, as also stated in Recommendation 5 of Council Implementing Decision 6358/17;

5. amend national legislation in order to enable the issuing of a return decision and the imposition of an entry ban also in cases where illegal stay is discovered during an exit check on a-case-by-case basis and taking into account the principle of proportionality, in accordance with article 11 of Directive 2008/115/EC, as also stated in Recommendation 6 of Council Implementing Decision 6358/17;

6. improve the infrastructure, services and living conditions in detention centres. Ensure that privacy is respected both in the sanitary areas and during visits with lawyers and/or psychologists;

7. take all necessary measures to ensure the enforcement of return decisions in an effective manner, in accordance with Article 8(1) of Directive 2008/115/EC; for this purpose, in particular, ensure appropriate human resources; bring detention capacity in line with actual needs; remove the obstacles limiting the use of alternatives measures to detention; increase the promotion of the assisted voluntary return and reintegration projects, amongst others, through proactive outreach and counselling.

Done at Brussels,

For the Council
The President