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From:	General Secretariat of the Council
On:	13 July 2021
To:	Delegations
No. prev. doc.:	10107/21
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2019 evaluation of **Hungary** 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 Hungary on the application of the Schengen acquis in the field of return, adopted by the Council at its meeting held on 13 July 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 Hungary 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 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The purpose of this Decision is to recommend to Hungary 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(2021) 10.

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

(2) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within three months of its adoption, Hungary should, pursuant to Article 16 (1) of Regulation (EU) No 1053/2013, establish 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 Hungary should

1. amend the national legislation to ensure that the decision whether a period for voluntary departure should be granted to the third-country national concerned is based on an individual assessment in line with Directive 2008/115/EC;

2. ensure that appeals against return decisions issued to persons suffering from a serious illness, where the enforcement of that decision may expose that third-country national to a serious risk of grave and irreversible deterioration in his state of health, are endowed with suspensive effect in line with Directive 2008/115/EC and Articles 19(2) and 47 of the Charter of Fundamental Rights as interpreted by the Court of Justice of the European Union;

3. ensure that return decisions are issued to any third-country national staying illegally on the territory of Hungary in accordance with Article 6(1) of Directive 2008/115/EC;

4. ensure that the competent public prosecutor is notified in sufficiently due time to allow the preparation and organisation of the forced-return monitoring activities;

5. amend the national legislation to fully comply with the definition of "return" in line with the third indent of Article 3(3) of Directive 2008/115/EC;

6. improve the detention facilities at Budapest airport and Nyírbátor and its outdoor areas, including to avoid any impression of a prison-like environment;

7. ensure sufficient visiting space according to the capacity of the facility to receive visits of all kind and make the visiting room in the detention facility at Budapest airport child-friendly;

8. ensure sufficient organised recreational activities in the detention facility at Budapest airport;

9. ensure adequate privacy in the detention facilities at Budapest airport and Nyírbátor;

10. conduct an individual assessment based on the principle of proportionality when considering the use of means of restraint on detainees in line with Directive 2008/115/EC.

Done at Brussels,

For the Council
The President