Council of the European Union

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**Interinstitutional File: 2020/0235(NLE)**

**SCH-EVAL 166**
**MIGR 129**
**COMIX 497**

**OUTCOME OF PROCEEDINGS**

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| From: | General Secretariat of the Council |
| On: | 20 October 2020 |
| To: | Delegations |
| No. prev. doc.: | 11296/20 |
| Subject: | Council Implementing Decisions setting out a recommendation on addressing the deficiencies identified in the 2019 evaluation of **Germany** 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 Germany on the application of the Schengen acquis in the field of return, adopted by written procedure on 20 October 2020.

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 Germany 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 Germany 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) 4810.

[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/EC[1], it is important to remedy each of the deficiencies identified within the shortest possible timeframe.

(3) This Decision should be transmitted to the European Parliament and to the national parliaments of the Member States. Within three months of its adoption, Germany 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 Federal Republic of Germany should:

1. amend the national legislation to ensure that return decisions issued to illegally staying third-country nationals 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 the Return Directive;

2. amend the Residence Act in order to fully comply with the definition of return provided by Article 3(3) of the Directive 2008/115/EC, as also stated in recommendation six of Council Implementing Decision 12413/16;

3. ensure that the assessment of the best interests of the child conducted in relation to unaccompanied minors, by virtue of Article 5(a) of Directive 2008/115/EC, systematically considers whether return is in their best interests;

4. amend the national legislation to align it with Article 11(1)(b) of Directive 2008/115/EC to ensure systematic issuing of entry bans to third-country nationals who fail to comply with the obligation to leave within the period for voluntary departure;

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[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.

5. take all the necessary measures to ensure an effective forced-return monitoring system in line with Article 8(6) of the Return Directive, systematically monitoring all phases of the return operations;

6. amend national legislation on criminalisation of illegal stay and bring the practice in line with the jurisprudence set out by the European Court of Justice (El Dridi case, C-61/11) and recommendation three of Council Implementing Decision 12413/16.

Done at Brussels,

*For the Council*
*The President*