Council of the European Union

Brussels, 22 October 2020
(OR. en)

12177/20

Interinstitutional File: 2020/0237(NLE)

SCH-EVAL 167
MIGR 130
COMIX 498

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	20 October 2020
To:	Delegations
No. prev. doc.:	11298/20
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2020 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 2020 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 2020 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 2020. Following the evaluation, a report covering the findings and assessments, and listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2020) 4111.

(2) In light of the importance of complying with the Schengen *acquis*, priority should be given to implementing recommendations 2, 8, 9, 12 below.

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

(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, 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 Germany should

1. ensure that every unaccompanied minor, regardless of the form of contact he or she may maintain with the parents in the country of origin or any other third country, is appointed a guardian at the earliest point in time and in any case before the issuing return decision ;

2. amend national legislation and bring the practice in line with the jurisprudence set out by the Court of Justice of the European Union (Achughbabian, C-329/11 and El Dridi case, C-61/11) and recommendation (3) of Council Implementing Decision 12413/16;

3. amend the national legislation and the practice to ensure the EU/Schengen-wide effect of entry bans, according to the definition set out in Article 3(6) of the Return Directive;

4. amend the national legislation and practice 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;

5. amend the national legislation to make it compliant with Article 7(1) of Directive 2008/115/EC;

6. ensure that competent authorities consider the possibility to extend the period for voluntary departure by an appropriate period, when specific circumstances of the individual case justify such an extension, in accordance with Article 7(2) of Directive 2008/115/EC;

7. 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, as also stated in recommendation (4) of Council Implementing Decision 12413/16;

8. reassess the existence of the emergency situation, ensure the availability of adequate specialised detention capacity and, in any case, ensure that detention of third-country nationals takes place as a rule in specialised detention facilities;

9. amend national legislation to ensure that detention decisions are reviewed *ex officio* at reasonable intervals so as to verify whether the conditions for detention still exist, as also stated in as also stated in recommendation (8) of the Council Implementing Decision 12413/16;

10. take appropriate measures to avoid the general impression of a prison-like environment in the detention facilities in Büren and Langenhagen. Ensure sufficient organised recreational activities in the detention facility in Langenhagen as well as adequate shelter against inclement weather in the outdoor area of the detention centre in Langenhagen;

11. ensure adequate privacy in the visiting room of the detention facility in Langenhagen and the sanitary facilities in the detention facilities in Büren and Langenhagen;

12. amend the Residence Act to ensure that the removal to any other country than the country of origin or the country of transit in accordance with EU or bilateral readmission agreements or other arrangements, requires the consent of the returnee concerned as specified in Article 3(3) of the Return Directive, as also stated in recommendation (6) of the Council Implementing Decision 12413/16;

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

Done at Brussels,

For the Council
The President