Council of the European Union

Brussels, 8 October 2021
(OR. en)

12635/21

Interinstitutional File:
2021/0256(NLE)

SCH-EVAL 119
MIGR 223
COMIX 492

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	7 October 2021
To:	Delegations
No. prev. doc.:	12051/21
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of **France** 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 2021 evaluation of France on the application of the Schengen acquis in the field of return, adopted by the Council at its meeting held on 7 October 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 2021 evaluation of France 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) A Schengen evaluation in the field of return was carried out in respect of France in February 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(2021) 3602.

(2) Recommendations should be made on remedial actions to be taken by France in order to address deficiencies identified as part of evaluation. In light of the importance of complying with the Schengen *acquis*, in particular the Return Directive, priority should be given to implementing recommendations 1, 2, 4 and 11 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, France 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 France should

Procedures

1. systematically issue return decisions to third-country nationals that are illegally staying in France within the meaning of the Return Directive, in accordance with Article 6(1) of Directive 2008/115/EC, including also during exit checks;

2. observe systematically the principle of *non-refoulement*, when contemplating the adoption of a return decision, notably by amending the standard questionnaire and providing staff with specific training for this purpose;

3. provide a written confirmation that the return decision will temporally not be enforced in case the removal has been postponed, in accordance with Article 14(2) of Directive 2008/115/EC;

4. take all necessary measures to enforce return decisions effectively by:

    - ensuring a proactive case management of all third-country nationals that are subject to a return decision who are not in detention and house arrest, and ensuring a systematic approach to follow-up on third-country nationals under house arrest who have not complied with their obligations;

- increasing significantly detention capacity urgently, and providing for longer periods of detention in accordance with current operational needs;

- ensuring the interoperability of all databases relevant for return purposes across services, including ensuring a user-friendly IT environment based on Frontex' Return Case Management System (RECAMAS);

- ensuring a systematic escalation ladder in case of refusal of being fingerprinted;

5. ensure systematically that when notifying return decisions by post, the possibility to ask for the translation of the main elements of the decision is in a language the third-country national can understand;

6. conduct a case-by-case assessment when establishing the length of the period for voluntary departure so that a period between 7 and 30 days is granted according to the specific circumstances of the case, in accordance with Article 7(2) of Directive 2008/115/EC;

7. take actions to ensure that appeals against return-related decisions, in cases when a period for voluntary departure is not provided, are available and accessible in practice to third-country nationals, and that the deadline for this appeal is reasonable for third-country nationals to exercise their right to an effective remedy in line with Article 47 of the EU Charter of Fundamental rights;

8. ensure that all entry bans clearly state that the prohibition of entry refers to the territory of the EU Member States and Schengen Associated countries, in accordance with the definition set out in Article 3(6) of Directive 2008/115/EC;

9. 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;

Detention

10. take measures to improve the detention conditions in ‘Mesnil-Amelot’, ‘Coquelles’ and ‘Cornebarrieu’ pre-removal detention centres by:

- avoiding the ‘prison-like’ environment to reflect the administrative nature of the detention;
- providing adequate outdoor and indoor leisure facilities in ‘Mesnil-Amelot’ and ‘Coquelles’ pre-removal detention centres;
- ensuring the required privacy when the detainee consults their lawyer in ‘Coquelles’ pre-removal detention centre, and ensuring adequate privacy for families detained in the dedicated unit of the ‘Mesnil-Amelot 2’ detention facility, notably from men detained in the same facility, in accordance with Article 17(2) of Directive 2008/115/EC;

Forced-return

11. take measures to ensure the effectiveness of the forced-return monitoring system, by increasing the monitoring intensity and by broadening the scope of the monitoring activity to cover all phases of the forced return operation.

12. contribute to Frontex’ pool of forced-return monitors as required by Article 51 of Regulation 2019/1896.

Done at Brussels,

For the Council
The President