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 2020 evaluation of **Cyprus** on fulfilling the conditions necessary for 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 2020 evaluation of Cyprus on fulfilling the conditions necessary for 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. 12636/21

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2020 evaluation of Cyprus on fulfilling the conditions necessary for 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 Cyprus in December 2020. 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) 3601.

(2) Recommendations should be made on remedial action to be taken to address shortcomings identified during the evaluation. In light of the importance of complying with the Schengen acquis, in particular with the Return Directive, priority should be given to implementing recommendations 1, 4, 6, 7 and 8 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, Cyprus 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 Cyprus should

Procedures

1. Increase the effectiveness of the return system by:

- reinforcing the capacity of the authorities responsible for return and ensuring that sufficient staff has decision-making power in return-related decisions;
- drafting and implementing detailed standard operating procedures for return;
- making use of the already existing EU-readmission tools;
- issuing the EU travel document;
- making full use of Frontex assistance under their return mandate also for the development and implementation of a case-management systems based on Frontex' Return Case Management System (RECAMAS); and
- ensuring that the system in place is able to assess subsequent asylum applications lodged for the sole purpose of delaying or hampering a return procedure in a swift manner;

2. ensure that return decisions comply with Articles 3(3), 7(1), 7(2), 12(1) of the Return Directive by:

   - including in the return decisions a clear obligation to leave the territories of the European Union and Schengen Associated countries;

   - setting a specific period for voluntary departure and extending it where necessary; and

   - including in the return decisions the reasons in fact that lead to the issuance of the decision, reflecting the individual assessment made on the specific case;

3. set up a system ensuring that, following a case-by-case assessment and respecting the principle of proportionality, return decisions and, if appropriate, entry bans are issued in writing to illegally staying third-country nationals apprehended during exit checks at the external border;

4. amend the relevant national legislation to ensure that the list of so-called 'prohibited immigrants' is in line with the EU Charter of Fundamental Rights, all relevant fundamental rights provisions in EU law as well as international law, including the principle of non-discrimination;

5. ensure that when assessing the best interests of the child, return is considered as a possible durable solution;

6. amend the national law and practice in order to ensure compliance with Article 47 of the EU Charter of Fundamental Rights and provide for automatic suspensive effect in case of appeals against return decisions issued to third-country nationals where the enforcement of that decision may expose the returnee to risk of *refoulement*;

Detention

7. ensure sufficient capacity in specialised detention facilities to avoid resorting to police detention centres on a regular basis and for prolonged periods of time, in accordance with Article 16(1) of the Return Directive;

8. ensure that when detention pending removal exceptionally takes place in non-specialised facilities for prolonged periods of time, material detention conditions always comply with all relevant fundamental rights standards and reflect the administrative nature of deprivation of liberty;

9. ensure that detention decisions give reasons in fact in accordance with Article 15(2) of the Return Directive. Ensure that reviews of prolonged detention periods are subject to *ex officio* judicial supervision, as required by Article 15(3) of the Return Directive;

Forced return

10. provide a written confirmation that the return decision will temporally not be enforced in case the removal operation has been suspended;

11. enhance the capacity of the forced return monitoring to enable an effective monitoring of all phases of forced return operations.

Done at Brussels,

For the Council
The President