Council of the European Union

Brussels, 10 November 2021
(OR. en)

13662/21

Interinstitutional File:
2021/0321(NLE)

SCH-EVAL 144
MIGR 250
COMIX 553

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	9 November 2021
To:	Delegations
No. prev. doc.:	13067/21
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of **Greece** 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 Greece on the application of the Schengen acquis in the field of return, adopted by the Council at its meeting held on 9 November 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 Greece 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 Greece in May 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) 5650.

(2) Recommendations should be made on remedial actions to be taken by Greece in order to address deficiencies identified as part of evaluation. In light of the importance of complying with the Schengen *acquis*, priority should be given to implementing recommendations 1, 2, 7 and 9.

[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 one month of its adoption, Greece 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 Greece should

Procedures

1. systematically provide third-country nationals subject to return procedures with effective access to linguistic assistance in order to ensure the right to be heard and to ensure access to effective remedy in accordance with Article 47 of the Charter of Fundamental Rights of the European Union and to comply with Article 12(2) of Directive 2008/115/EC;

2. systematically provide third-country nationals subject to return procedures with effective access to free legal assistance, in compliance with Article 13(3) and (4) of Directive 2008/115/EC;

3. carry out a case-by-case assessment of the relevant circumstances of the individual cases of the third-country nationals subject to return procedures to determine the specific and appropriate length of entry bans, as required by Article 11(2) of Directive 2008/115/EC;

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

Detention

5. ensure that the maximum detention period stipulated by Directive 2008/115/EC is respected and detention is only maintained as long as there is a reasonable prospect of removal;

6. assess in each individual case whether less coercive measures can be applied as required by Article 15(1) of Directive 2008/115/EC;

7. ensure that detention pending removal takes place as a rule in specialised detention facilities as required by Article 16(1) of Directive 2008/115/EC, in particular by discontinuing the practice of detaining third-country nationals pending their removal in police stations;

8. ensure that when detention pending removal exceptionally takes place in police stations, detainees pending removal are separated from ordinary prisoners by appropriate means that fully reflect the administrative nature of detention as required by Article 16(1) of Directive 2008/115/EC, for instance by means other than confining third-country nationals in their cells;

9. ensure that material detention conditions and the detention regime, particularly in Tavros, Amygdaleza and Kos, always comply with the fundamental rights standards and reflects the nature of the deprivation of liberty, by ensuring sufficient time outside the cell, adequate furniture and hygienic conditions, the possibility to access open-air space and by providing for recreational activities;

10. ensure that detention of unaccompanied minors is exclusively used to prepare the return and/or carry out the removal process, as required by Article 15(1) of Directive 2008/115/EC, by discontinuing the practice of placing unaccompanied minors in detention for reasons not linked to the return procedure;

11. ensure that when depriving minors of their liberty, appropriate accommodation with personnel and facilities which take into account the needs of persons of their age is provided, and the minors are separated from unrelated adults and have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, the best interest of the child always being a primary consideration as required by Article 17(3), (4) and (5) of Directive 2008/115/EC;

12. ensure that family members are always detained together as required by Article 17(2) of Directive 2008/115/EC;

Forced return

13. take all necessary measures to enforce return decisions if no period for voluntary departure has been granted or if the obligation to return has not been complied with within the period for voluntary departure granted, as required by Article 8(1) of Directive 2008/115/EC. In particular:

- increase the number of staff involved in pre-return activities (screeners, case handlers, and staff involved in consular engagement) and provide them with adequate training and interpretation assistance, where necessary, using the support of Frontex to its full extent;

- ensure an adequate flow of information between all authorities dealing with return, notably between the Appeals Authority and the Hellenic Police to ensure that return decisions issued in mainland Greece can be enforced immediately;

- ensure that a mechanism to deal swiftly with asylum applications lodged for the sole purpose of delaying or hampering a return procedure is implemented in order to have an effective enforcement of return decisions, in particular for forced returns by air;

- ensure the timely completion of the procurement for the upgrade and further development of the IT national platform for migration management, 'Police online', following the Frontex Return Case Management System (RECAMAS), so that it also contains information on detention, identification and removal activities.

Done at Brussels,

For the Council
The President