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COMIX 567

**Interinstitutional File:
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NOTE

From: Italian delegation
On: 25 November 2022
To: Working Party for Schengen Matters / Mixed Committee (EU-Iceland/Norway/Switzerland/Liechtenstein)

No. prev. doc.: 10402/22

Subject: Schengen evaluation of **Italy - Action Plan** to remedy the deficiencies identified in the 2021 evaluation of **Italy** on the application of the Schengen acquis in the field of **return**

Delegations will find annexed the Action Plan to remedy the deficiencies identified in the 2021 evaluation of Italy on the application of the Schengen acquis in the field of return, provided by Italy on 25 November 2022.

In conformity with Article 16(2) of Council Regulation (EU) No 1053/2013 of 7 October 2013, Member States are invited to send comments, if any, **by Monday 12 December 2022 (cob)** to schengen.evaluation@consilium.europa.eu.

ACTION PLAN to remedy the deficiencies identified in the 2021 evaluation of Italy on the application of the Schengen acquis in the field of return

(Article 16 of Regulation 1053/2013)

25/11/2022

I. Return

- Document C (2002) 95 final of 12/05/2022 Proposal for a Commission Implementing Decision
- Document 10402/22 (Brussels, 17 June 2022) SCH-EVAL 88 MIGR 196 COMIX 329 European Council Recommendation

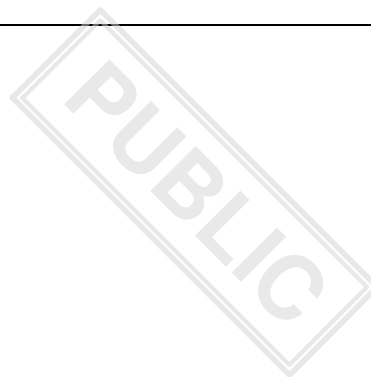
RECOMMENDATION	PRIORITISED RECOM YES/NO	PLANNED ACTION/SUB ACTION (TO BE) TAKEN BY [MS]	RESPONSIBLE AUTHORITY	STATE OF PLAY/FORESEEN TIME-FRAME**
1. ensure that a return decision is issued, without delay, to any third-country national whose request for legal stay or international protection has been denied, in line with Article 6 (1) of the Directive 2008/115/EC, as also stated in Recommendation 1 of Council Implementing Decision 6358/17;	YES	It is under evaluation, by the competent bodies and legislative offices, a proposal to modify the legislation that provides for the introduction of the intimidation to leave the national territory /Schengen area directly together with the decision that rejects the application for international protection. The proposal introduces a significant innovation in the legislation concerning the decisions of the Territorial Commissions for the Recognition of International Protection and of the National Commission for the Right to Asylum (CNA); it establishes, in particular, that in case of rejection, closure of the proceedings or inadmissible application, as well as in case of withdrawal or cessation of the international protection status, the decision adopted by the relevant Commission also contains the statement of the obligation to return and of the <i>re-entry ban</i> , upon verification, by the Questore, of the absence of conditions preventing the	Ministry of the Interior – Department of Public Security	6 - 12 months IN PROGRESS / Q4 2023

		<p>expulsion referred to in Article 19 of the legislative decree No. 286/1998.</p> <p>To that end, the proposal intervenes -with a new approach- on the regulation of the activities of the Territorial Commissions for the Recognition of International Protection and on the decisions adopted by the above-mentioned Commissions and by the National Commission for the Right to Asylum, respectively under the articles 27,32 and 33 of the legislative decree No.25/2008.</p> <p>In particular, in paragraph 1, letter a), through the introduction of paragraph <i>2-bis</i> in the aforementioned article 27, it is indicated that, where the Territorial Commission ascertains that the conditions for the recognition of international protection do not exist and also the conditions for the communication of the documents to the Questore, for the purpose of issuing a residence permit for special protection or for medical treatment, do not exist, then, the above-mentioned Commission asks the Questore to check the possible existence of causes preventing the expulsion, referred to in Article 19 of legislative decree No. 286/1998, except for the existence of one of the conditions referred to in Article 32, paragraphs 3.2 and <i>3-bis</i>, namely the requirements, respectively, for reporting to the Public Prosecutor's Office at the Juvenile Court in order to activate measures of assistance for the benefit of the child and for the verification of well-founded reasons to believe that the applicant has been victim of crimes referred to in Articles 600 and 601 of the Criminal Code.</p> <p>Furthermore, the paragraph 1, letter b) no.1), through the reformulation of paragraph 4 of the Article 32 of the same legislative decree, states that the decisions of the Territorial Commissions rejecting the application, referred to in paragraph 1 letter b) , b-bis) and b-ter), as well as the pronouncement of the closure of the proceedings referred to in Article 23 and also the inadmissible applications referred to in</p>		
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		<p>Articles 29 and 29-bis of the mentioned legislative decree No.25/2008, require the obligation for the applicant to leave the national territory, where the person does not have another document legitimating the stay in our country. The decision adopted by the competent Commission also includes the <i>re-entry ban</i>, referred to in Article 13, paragraphs 13 and 14 of the legislative decree No. 286/1998.</p> <p>Consequently, the paragraph 1, letter b) no.2), through the introduction of paragraph 4-<i>bis</i> in the above-mentioned Article 32, states that where the causes preventing the execution of an expulsion decision do not exist, the decision adopted by the Territorial Commission under the Article 32, paragraph 1, letter b), b-<i>bis</i>) and b-<i>ter</i>) as well as the rulings referred to in articles 23, 29 and 29-<i>bis</i> of the legislative decree no.25/2008, contain the obligation for the rejected applicant to return. The implementation methods of the return will be evaluated by the Questore according to the Article 13, paragraphs 4 and 5 of the legislative decree no. 286/1998.</p> <p>The paragraph 1, letter c), through the reformulation of the paragraph 3 of the Article 33 of legislative decree no. 25/2008, extends the above-mentioned executions and decisions also to the procedures that are under the responsibility of the National Commission for the Right to Asylum, in matters of withdrawal or termination of the international protection status.</p> <p>The commented provisions seem to be consistent with the euro-community framework in force and from a <i>de iure condendo</i> prospective as well. Actually, all proceeds in harmony with what is provided for by the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 (the so-called “Asylum Procedures Directive”), by the Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 (the so –called “Return Directive”) and also with what is proposed by the new Pact on Migration and Asylum, with particular reference to the</p>		
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		<p>Proposal for a Regulation COM (2020) 611, in the section in which it adjusts and integrates, on the subject of the common procedure for international protection, the Proposal COM (2016) 46, through the introduction of Recital 31-<i>bis</i> and of the Article 35-<i>bis</i> of the above-mentioned Regulation.</p> <p>In particular, Article 9 of the above-mentioned Directive 2013/32/EU, states, in Paragraph 1, that “<i>Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III</i>” ...”.</p> <p>The above-mentioned Directive 2008/115/EC, Article 3, Paragraph 1, no.4, defines the “<i>return decision</i>” as “<i>an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return</i>. Furthermore, Article 6, Paragraph 6, states that “<i>this Directive shall not prevent Member States from adopting a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation, ...</i>”.</p> <p>Concerning the Proposal for a Regulation COM (2020) 611, the Recital 31-<i>bis</i> states that “<i>... there should be no procedural gaps between the issuance of a negative decision on an application for international protection and of a return decision. A return decision should immediately be issued to applicants whose applications are rejected. Without prejudice to the right to an effective remedy, the return decision should either be part of the negative decision on an application for international protection or, if it is a separate act, be issued at the same time and together with the negative decision</i>”. The Article 35-<i>bis</i> of the same Proposal, lastly, states that “<i>The Member State shall issue a return decision ...where an</i></p>		
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		<p><i>application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status or subsidiary protection status, or as implicitly or explicitly withdrawn. The return decision shall be issued as part of the decision rejecting the application for international protection or, in a separate act...”.</i></p> <p>It is under evaluation, by the competent bodies and legislative offices, a proposal, to modify the legislation, that provides for the automatism between the refusal of the issuance/renewal of the residence permit and the issuance of a return decision.</p> <p>Actually, through the paragraph 2 highlighted in red, the mechanism of imposing the obligation to leave the national territory within the period of fifteen days, that is provided for when the foreigner is notified of the refusal of the residence permit, is abolished as it has been surpassed by the EU regulations on the subject of return. The issue had also been recently criticized and brought to Italy’s attention during the Schengen Evaluation visit, held in July 2021, on the subject of returns. The amendment in question constitutes, indeed, the precise implementation of Article 6, paragraph 1, of Directive 2008/115 / EC, in the matter of return.</p>		
2. ensure that the return decisions and orders to leave 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 Directive 2008/115/EC;	NO	<p>A possible modification of the <i>form</i> of the return decisions is under evaluation. More specifically, the possibility to add, among the information given to the concerned person and in addition to the expulsion order from the national territory, the clear obligation to go back to the Country of origin or a Country of transit in accordance with the EU or bilateral readmission agreements or other arrangements, or to another third country where the foreigner voluntarily decides to return and in which he or she will be accepted.</p>	Ministry of the Interior – Department of Public Security	In progress INITIATED / Q2 2023



3. ensure observance of the right to be heard before issuing a return decision in order to take due account of all relevant circumstances of each individual case;	YES	<p>Every foreigner is carefully interviewed by the competent territorial offices, for the purpose of evaluating each personal and legal condition prior to the adoption of a return decision. In particular, the current <i>form</i> allows the foreigner to: indicate the reasons for the entry into the national territory, (work-tourism-other reasons), to state whether he/she has already submitted an application for international protection, to express his/her own will against the return to the country of origin/departure; it also allows him/her to provide further information in the empty spaces, to report possible personal or family situations significant for the evaluation of his /her legal status.</p> <p>Therefore, a possible modification of the above mentioned <i>form</i> will be examined in order to give a greater attention to the principle of <i>non-refoulement</i>. Among the options to be assessed: the introduction of the asylum/international protection option among the reasons for the entry into the national territory and in the section related to the statements about the return to the Country of origin, the introduction of a specific space to indicate that the return could pose a risk to his/her own safety.</p>	Ministry of the Interior – Department of Public Security	In progress INITIATED / Q2 2023

<p>4. ensure that when assessing the best interests of the child conducted in relation to unaccompanied minors, by virtue of Article 5(a) of Directive 2008/115/EC, it is systematically considered whether forced return is in their best interests as a durable solution taking into account the child particular needs as well as the reception conditions in the country of return as required by Article 10 of Directive 2008/115/EC, as also stated in Recommendation 5 of Council Implementing Decision 6358/17;</p>	<p>YES</p>	<p>There will be several consultations with different central institutions relevant in the area of unaccompanied foreign minors, so as to agree upon a possible amendment to the pertinent legislation that introduces forced return as an option to be systematically taken into account in the assessment of the best interest of the minor.</p>	<p>Ministry of the Interior Ministry of Labour and Social Policies Ministry of Justice</p>	<p>6-12 months IN PROGRESS / Q4 2023</p>
<p>5. amend national legislation in order to enable the issuing of a return decision and the imposition of an entry ban also in cases where illegal stay is discovered during an exit check on a case-by-case basis and taking into account the principle of proportionality, in accordance with article 11</p>	<p>NO</p>	<p>In the scheme of the draft law containing provisions for compliance with the obligations deriving from Italy's Membership in the European Union- European Law 2022, in Article 14 (<i>Provisions for the adjustment to the EU regulations 2017/2225, 2017/2226, 2018/1240, 2019/817 and 2019/818 concerning interoperability of the information systems for borders, immigration and security</i>), adjustments are proposed to the legislative decree No. 286 of the 25 July 1998, and subsequent amendments. Mainly, paragraph 3, letter <i>d</i> regulates the amendments to the article 13 of the</p>	<p>Ministry of the Interior – Department of Public Security</p>	<p>6-12 months IN PROGRESS / Q3 2023</p>

<p>of Directive 2008/115/EC, as also stated in Recommendation 6 of Council Implementing Decision 6358/17;</p>		<p>above-mentioned legislative decree, providing for the application of a re-entry ban in the territory of the State, for the outgoing foreigner.</p>		
<p>6. improve the infrastructure, services and living conditions in detention centres. Ensure that privacy is respected both in the sanitary areas and during visits with lawyers and/or psychologists;</p>	<p>NO</p>	<p>The recommendation is aimed to:</p> <p>a) Improve infrastructures, services and living conditions in the detention centres (CPR).</p> <p>b) Ensure respect for privacy in the medical rooms as well as during the meetings with lawyers and/or psychologists</p> <p>For what concerns the improvement of infrastructures, since long time this Department has undertaken several initiatives that have allowed: the compliance of some centres with the suitability standards (such as the Detention Centre of Potenza), implementation of safety measures, the increase of the number of places in the already existing Centres, as well as renovation works that have allowed the reactivation of centres that have remained closed for a long time.</p> <p>Regarding the respect for privacy, through the Directive of the Minister of Interior dated 19 May 2022, the “Criteria for the organization and management of the detention centres (CPR) provided for by the Article 14 of the Legislative Decree No. 286 of 25 July 1998, and subsequent amendments” have been adopted, in order to adjust the previous criteria in force to the latest rules regulating detention and to also establish clearer and more consistent living rules inside the detention centres (CPR), with particular attention to those provisions regarding</p>	<p>Ministry of the Interior – Department for Civil Liberties and Immigration</p>	<p>IN PROGRESS / Q4 2023</p>

		<p>the protection of the rights of the detained foreigners.</p> <p>With regard to the medical examinations it is indicated that the medical examinations carried out inside the Centre “<i>take place in the medical building, so as to ensure the respect of the privacy and the protection of the personal dignity. In cases of special needs and subject to the doctor’s request, the presence of the Police may be allowed.</i> Furthermore, in relation to the conversations with visitors it is, expressly, established that during private conversations the police supervision activity is carried out in ways that do not limit the right to the privacy”.</p>		
<p>7. take all necessary measures to ensure the enforcement of return decisions in an effective manner, in accordance with Article 8(1) of Directive 2008/115/EC; for this purpose, in particular, ensure appropriate human resources;</p> <p>bring detention capacity in line with actual needs;</p> <p>remove the obstacles limiting the use of alternatives measures to detention;</p> <p>increase the promotion of</p>	YES	<p><u>Adequate human resources</u>: at the central level, a written note has been presented to the Chief of Police for the realization of a new operational unit focused on post-return reintegration and assisted voluntary return. The Central Directorate intends, as much as possible, to avail itself of the human resources provided by Frontex in the context of the Standing Corps. In particular, since February 2022, the Central Directorate has availed itself of the collaboration of 3 Frontex Return Specialists (for activities related to pre-return and return areas). Furthermore, the FRESO activities at the Fiumicino airport are continuing with a growing involvement. At the level of the territorial offices, the Department of Public Security has arranged the implementation of 15 additional Immigration Offices mainly committed to manage the irregular immigration, with a particular reference to the disembarkation events, secondary movements and detention centres.</p> <p>For what concerns the improvement of infrastructures, since</p>	<p>Ministry of the Interior – Department of Public Security and Department for Civil Liberties and Immigration</p>	<p>6-12 months</p> <p>IN PROGRESS / Q2 2024</p>

<p>the assisted voluntary return and reintegration projects, amongst others, through proactive outreach and counselling.</p>		<p>long time this Department has undertaken several initiatives that have allowed: the compliance of some centres with the suitability standards (such as the Detention Centre of Potenza), implementation of safety measures, the increase of the number of places in the already existing Centres, as well as renovation works that have allowed the reactivation of centres that have remained closed for a long time.</p> <p><u>To eliminate the obstacles that limit the use of alternative measures to detention.</u> Art. 14 paragraph 1-bis of the Legislative Decree No. 286/1998, first clause: “ <i>In cases where the foreigner has a passport or another equivalent valid document and the expulsion has not been decided yet under the Article 13, paragraphs 1 and 2, letter c, of this Consolidate Immigration Act or under the Article 3 , paragraph 1 of the legislative decree of 27 July 2005, no. 144, converted into law, with amendments, by the law of 31 July 2005, no.155, the Questore, instead of the detention referred to in paragraph 1, could use one or more of the following measures:</i></p> <p><i>a) obligation to hand over a passport or other equivalent valid document, to be returned upon departure;</i></p> <p><i>b) obligation to reside in a place previously identified, where the person can be easily contacted;</i></p> <p><i>c) obligation to report, on established days and time, to the police office territorially competent.”</i></p> <p>It is under evaluation a normative adjustment relating to the provision referred to in Article 14, paragraph 1 <i>bis</i> of the Legislative Decree No. 286/1998, which states that “to have a</p>		
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		<p>passport or other equivalent valid document” by the foreigner is the necessary condition for the activation of the alternative measures to detention. Mainly, there is need to work on the possibility that the measures referred to in letter <i>b</i> and <i>c</i> could also be applied to foreigners who do not have passport or other equivalent valid document “in cases where concrete elements have arisen allowing to regard the identification as probable, namely ... the foreigner is a citizen of a Country with which Italy has signed agreements related to return”.</p> <p><u>To encourage the use of assisted voluntary return and reintegration programmes, also through proactive awareness-raising and counselling activities.</u></p> <p>The Central Directorate of Immigration and Border Police (Department of Public Security) is the contact point of the Frontex Agency within the networks on post return and reintegration and on assisted voluntary return. A pilot project is going to be activated involving 16 Police Headquarters, selected on the basis of statistical criteria and on the presence of reception centres for asylum seekers and detention centres; the operators will receive specific training for the access and use of the RIAT platform, as well as for the activation of support packages within the Joint Reintegration Services. At the central level, an operational unit has been set up with operators similarly trained, who will support the local offices. When this first phase will be concluded, Frontex will be asked to send return specialists to this Central Directorate in order to develop these projects with the remaining territorial offices. For what concerns the training, the intention is to use operators already trained as trainers.</p>		
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		<p>The recommendation is also aimed to encourage the use of assisted voluntary return and reintegration projects through awareness-raising and counselling activities.</p> <p>In that regard it should be noted that three of the six Assisted Voluntary Return and Reintegration projects, funded by the Asylum Migration and Integration Fund (AMIF), ended on 31 March 2022.</p> <p>Currently three projects are still ongoing: “Integrazione di Ritorno 4” made by Consiglio Italiano per i Rifugiati–CIR (Italian Refugee Council); “Ermes 3” made by CIES (Centro Informazione e Educazione allo Sviluppo- Center for Information and Development Education) and “The way of Future” made by Arci Mediterraneo. The expected closing dates of the above-mentioned projects are respectively: 31 March 2023 for CIR and 30 September 2023 for CIES and Arci Mediterraneo.</p> <p>The activities, carried out in the contest of the aforementioned projects and aimed to raise awareness on the AVRR measure, are the following ones:</p> <ul style="list-style-type: none"> - Raise-awareness, guidance and specific information on the AVRR measure for the potential applicants for the return. These activities also require the involvement of the relevant foreign communities/associations of third-country nationals that are present on the national territory. In this first phase, the AVRR measure is promoted and advertised through multilingual information brochures and information sessions on the territory in order to find potential beneficiaries who are interested in the project. - To identify the potential beneficiaries eligible for the AVRR measure in accordance with the AMIF regulatory framework. This phase entails the evaluation of the beneficiary’s 		
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		<p>eligibility for the measure through individual interviews and in case of a positive outcome, the registration of his/her application on the Assisted Voluntary Return platform of this Ministry.</p> <p>-<i>Counselling</i> made by qualified personnel, information services, cultural mediation and where needed psychological support to outline the profile of the applicant and highlight the reasons for the return.</p> <p>It is also worth to recall that in the past years specific counselling and information activities related to the return measure have been implemented.</p> <p>It has to be reported, for the completeness of information, that since 2016 a total of 3,290 Assisted Voluntary Returns have been implemented, moreover 2016 is the first year in which AVRR measure started to be funded by the Asylum Migration and Integration Fund (data updated to 7 October 2022).</p> <p>Regarding the future activities, a new public notice for the presentation of new projects to be financed by the next AMIF 2021-2027, is going to be arranged. The subject of this public notice will be the realization of Assisted Voluntary Return and Reintegration measures for migrants in the Countries of origin. The above mentioned public notice will also include information and counselling activities on the territory.</p>		
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