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European Union

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SCH-EVAL 194  
MIGR 408  
COMIX 610

#### OUTCOME OF PROCEEDINGS

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| From: | General Secretariat of the Council |
| On:   | 19 December 2022                   |
| To:   | Delegations                        |

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| No. prev. doc.: | 15528/22 |
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| Subject: | Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2020 evaluation of <b>Austria</b> on the application of the Schengen <i>acquis</i> in the field of <b>return</b> |
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Delegations will find attached the Council implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2020 evaluation of Austria on the application of the Schengen *acquis* in the field of return, adopted by the Council at its meeting held on 19 December 2022.

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.

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Council Implementing Decision setting out a

## **RECOMMENDATION**

### **on addressing the deficiencies identified in the 2020 evaluation of Austria 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) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*<sup>1</sup>, and in particular Article 31(3) thereof,

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<sup>2</sup>, 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 Austria 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, listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2021) 2850.

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<sup>1</sup> OJ L 160, 15.6.2022, p. 1–27.

<sup>2</sup> OJ L 295, 6.11.2013, p. 27.

- (2) Article 31 (3) of Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* foresees that for evaluations carried out before 1 February 2023, the adoption of evaluation reports and recommendations shall be carried out in accordance with Regulation (EU) No 1053/2013 and in particular Article 15 thereof.
- (3) The extensive use of the mandate of Frontex in the area of return, in particular in the development of a national IT system interlinked with the integrated return management platform managed by Frontex, is considered a good practice that contributes largely to the efficiency of the Austrian return policy.
- (4) In light of the importance of complying with the Schengen *acquis*, in particular with Directive 2008/115/EC, priority should be given to implementing recommendations 1, 3, 4 and 8.
- (5) In order to ensure a uniform application of the Return Directive, following the relevant ECJ case law, implementation of Recommendation 1 is to be supported by the dedicated discussions in the Contact Group – Return Directive. That clarification of the interpretation of the said recommendation should be without prejudice to the implementation of the [other] Council recommendations addressing deficiencies identified in the evaluations carried out pursuant to Council Regulation 1053/2013.
- (6) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within two months of its adoption, Austria should, pursuant to Article 21(1) of Council Regulation (EU) 2022/922, establish an action plan to implement all recommendations to remedy any deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council.

## RECOMMENDS:

that Austria should

### **Return procedures**

1. state in all return decisions issued to illegally staying third-country nationals the obligation to leave the territory of all states of the Schengen area in order to reach a specific third country, in accordance with Article 3(3) and (4) of Directive 2008/115/EC; take measures to ensure that, when the third country of return has not been specified in the return decision due to the impossibility to identify one in accordance with national law or national legal practice, the principle of *non-refoulement* is respected;
2. amend the national law in order to correctly transpose Article 3(3) of Directive 2008/115/EC;

### **Procedural safeguards**

3. amend the national law to ensure that appeals against return decisions, where the decision would expose the third-country national to a real risk of suffering treatment contrary to Article 3 of the European Convention on Human Rights or Article 4 of the Charter of Fundamental Rights of the EU, are endowed with suspensive effect at least until the court has taken a decision on whether or not to grant suspensive effect to the appeal;

### **Entry bans**

4. amend the national law with respect to the duration of entry bans to bring the legislation in line with the provisions of Directive 2008/115/EC;
5. amend the national law in order to ensure that entry bans are issued in accordance with Article 11(1) of Directive 2008/115/EC;

## **Detention**

6. take measures to improve the detention conditions in the detention centres, by ensuring that the detention facilities are designed in a way that reflects the nature of administrative detention; that third-country national are, in principle, detained in the open regime; that a wider variety of organised leisure activities is provided more frequently; and that the rooms and common areas are all adequately furnished and in good state;
7. take the necessary measures to allow that visits in Roßauer Lände police detention centre and in Hernalser Gürtel police detention centre take place in an environment that respects the right of privacy and family life;
8. ensure that minors detained are separated from unrelated adults in all circumstances; and amend the relevant national legislation so that the obligation to provide accommodation and care appropriate to their age also refers to minors over 16 years old; align the practice accordingly;
9. ensure that an individual assessment is made before deciding on the use of strip searches and consider the use of less intrusive methods;

## **Forced-return**

10. take measures to increase the effectiveness of the forced-return monitoring system, by also monitoring forced-returns performed by scheduled flights and by broadening the scope of the monitoring activity to all phases of the forced return operation.

Done at Brussels,

*For the Council*

The President

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