Council of the European Union

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PARLNAT 1

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 2022 evaluation of **Sweden** on 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 2022 evaluation of Sweden on 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. 15831/22

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2022 evaluation of Sweden 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[2], 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[3], and in particular Article 15(3) thereof,

Having regard to the proposal from the European Commission,

[2] *OJ L 160, 15.6.2022, p. 1–27*

[3] OJ L 295, 6.11.2013, p. 27.

Whereas:

(1) A Schengen evaluation in the field of return was carried out in respect of Sweden from 3 to 9 April 2022. 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(2022) 4780.

(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) Sweden pays particular attention to ensuring that detainees are treated in a humane and dignified manner, which was considered a point of particular interest.

(4) Recommendations should be made on remedial actions to be taken by Sweden in order to address deficiencies identified as part of evaluation. In light of the importance of complying with the Schengen *acquis*, in particular Directive 2008/115/EC, priority should be given to implementing recommendations 1, 2, 3, 7 and 9 below.

(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, Sweden should, pursuant to Article 21(1) of Council Regulation (EU) 2022/922, establish an action plan to implement all recommendations to remedy the deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council.

RECOMMENDS:

that Sweden should

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 Articles 3(3) and 3(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. take the necessary measures to ensure that return decisions issued to illegally staying third-country nationals impose the obligation to leave the EU/Schengen area and go back to one of the third countries defined in Article 3(3) of the Directive 2008/115/EC;

3. amend the implementation practice to ensure that the EU/Schengen wide effect is given to entry bans issued in relation with return decisions, according to the definition of entry ban set out in Article 3(6) of Directive 2008/115/EC;

4. ensure that the validity of the return decisions is not temporally limited;

5. enhance the interoperability of the case management systems used by the authorities involved in the removal process;

6. take the necessary measures to ensure that all illegally staying third-country nationals are notified their return decisions, even in case of absconding, in order for the return decisions to enter into force without delay;

7. amend the national legislation to ensure that the length of an entry ban is decided after an individual assessment of each case in accordance with Article 11(2) of the Directive 2008/115/EC;

8. amend the implementation rules and the practice in order to ensure that detention pending removal, including in the cases of aggressive third-country nationals, takes place in specialised detention facilities as required by Article 16(1) of the Directive 2008/115/EC;

9. ensure the effectiveness of the forced-return monitoring system in accordance with Article 8(6) of Directive 2008/115/EC by guaranteeing the full independence of the monitoring body; increasing the forced returns monitoring intensity and setting-up an effective feedback mechanism.

Done at Brussels,

For the Council
The President