Council of the European Union

Brussels, 8 June 2023
(OR. en)

5184/23

Interinstitutional File: 2021/0185(NLE)

PARLNAT 3

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 **Liechtenstein** 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 2020 evaluation of Liechtenstein 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. 15832/22

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2020 evaluation of Liechtenstein 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 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The purpose of this Decision is to recommend to Liechtenstein 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) 1802.

[2] *OJ L 160, 15.6.2022, p. 1–27*
[3] 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) In light of the importance of complying with the Schengen *acquis*, priority should be given to implementing recommendations 1, 2, 4, and 6 below.

(4) In order to ensure a uniform application of the Return Directive, following the relevant ECJ case law, implementation of Recommendation 2 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.

(5) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States. Within two months of its adoption, Liechtenstein 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 Liechtenstein should:

Procedures

1. amend the relevant legislation and practice, to ensure that all return decisions and entry bans clearly state that the obligation to leave and the prohibition of entry refers to the territory of all states of the Schengen area;

2. 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;

3. amend the relevant legislation to ensure that imprisonment on the sole grounds of illegal stay only takes place once the return procedure has been applied and the third-country national is staying illegally with no justified reasons for non-return;

Detention

4. amend the relevant legislation to ensure that in case the third-country national does not appeal, detention decisions are always reviewed at reasonable intervals and that the reviews of prolonged detention periods are always subject to the supervision of a judicial authority;

5. adapt the rules and practices in the State Penitentiary prison in relation to returnees in order to ensure that detention conditions reflect the administrative nature of detention;

Forced return

6. set up an effective forced-return monitoring system in accordance with Article 8(6) of the Return Directive.

Done at Brussels,

For the Council
The President