Council of the European Union

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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 Belgium 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 Belgium 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. 5536/21

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2020 evaluation of Belgium 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) The purpose of this Decision is to recommend to Belgium 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(2020) 8050.

(2) In light of the importance of complying with the Schengen *acquis*, priority should be given to implementing recommendations 1, 2, 3, 4, 5 and 7 below.

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

(3) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Belgium 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 Belgium should:

1. take all necessary measures to ensure the enforcement of return decisions in an effective and proportionate manner, in accordance with Article 8(1) of Directive 2008/115/EC; for this purpose, in particular, ensure appropriate resources; take measures to ensure adequate follow-up to the cases of illegally staying third-country nationals who have not complied with the obligation to leave within the period for voluntary departure, in view of enforcing removal; remove legal and operational obstacles to return illegally staying third-country nationals directly from prisons; provide an effective combination of the measures available for preventing the absconding of illegally staying third-country nationals, including detention as a measure of last resort and when no less coercive measures can be applied in a specific case.

2. amend national legislation in line with the jurisprudence of the Court of Justice of the European Union (Achughbabian, C-329/11, and El Dridi, C- 61/11);

3. make sure that the right to be heard is respected and effectively implemented before issuing a return decision and / or adopting a detention decision, providing the procedural guarantees for the returnees and allowing an individual assessment of each case. Ensure systematic use of interpretation in any case where misunderstandings due to linguistic barriers may not be ruled out and by ensuring that the questions are comprehensive, articulated and asked so to minimise the risk of generic and unclear replies or omission of pertinent elements in the light of the individual situation of the third-country national;

4. ensure that return decisions are systematically issued before returning any third-country national found to be staying illegally in Belgium, including those who have not received a negative decision in relation to a request for a residence permit or to an application for international protection, in accordance with Article 6(1) of Directive 2008/115/EC;

5. amend the national legislation in line with the jurisprudence of the Court of Justice of the European Union (*Ouhrami*, C-225/16), to ensure that the duration of an entry ban is not unduly reduced and its effectiveness is not undermined, as also stated in Recommendation 3 of Council Implementing Decision 7125/16;

6. ensure that the assessment of the best interests of the child conducted in relation to unaccompanied minors, by virtue of Article 5(a) of Directive 2008/115/EC, systematically considers 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 also stated in Recommendation 5 of Council Implementing Decision 7125/16;

7. amend national legislation to ensure that in case an illegally staying third-country national is re-detained the maximum length for detention is in accordance with Articles 15(5) and (6) of the Return Directive;

8. amend national legislation using the flexibility provided for by Article 15(5) and (6) of Directive 2008/115/EC, to provide an adequate period of detention that is sufficient to conclude the necessary procedures for the preparation of return and/or carrying out the removal of illegally staying third country nationals;

9. ensure adequate privacy in the holding facility for escorted returnees, to come fully in line with the Return Directive, the European Prison Rules and Article 7 of the EU Charter of Fundamental Rights;

10. take appropriate measures to ensure that conditions of the Repatriation Centre 127bis and the Detention Centre for Illegal Migrants Merksplan are in accordance with standards no. 29 and 79 of the European Committee on the Prevention of Torture on immigration detentions;

11. ensure the requirements of health and hygiene are met in the sectors dedicated to single male detainees at Repatriation Centre 127bis;

12. use where appropriate alternatives to detention, a possibility that is provided for in Belgian law, but rarely used in practice, as also stated in Recommendation 8 of Council Implementing Decision 7125/16;

13. consider changing the legal definition of the Family Units from closed to open centres to reflect more accurately the real nature of these facilities, as also mentioned in Recommendation 10 of Council Implementing Decision 7125/16;

14. provide for the possibility to detain families with minors, as a measure of last resort and for the shorter appropriate period of time, when this is necessary in order to enforce return decisions in line with Article 8(1) of the Return Directive;

15. take all the necessary measures to ensure an effective and independent forced-return monitoring system in line with Article 8(6) of the Return Directive, systematically monitoring all phases of the return operations in a transparent way.

Done at Brussels,

For the Council
The President