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 2016 evaluation of France 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 2016 evaluation of France 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.

ANNEX

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2016 evaluation of France 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[2], and in particular Article 15 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The purpose of this Decision setting out a recommendation is to recommend to France remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2016. Following the evaluation, a report covering the findings and assessments, and listing best practices and deficiencies was adopted by Commission Implementing Decision C(2017) 760.

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

(2) The LOGICRA IT system, which ensures efficient case management for illegally staying third-country nationals who are subject to detention across the French territory, and the practical measures taken to reduce the risks of incidents during forced return operations (including the video recording of the pre-departure phase) and to address practical issues that may emerge with the transport company, should be considered as good practices.

(3) To ensure compliance with the Schengen acquis on return, notably with the standards and procedures set by Directive 2008/115/EC[3], priority should be given to implementing recommendations 1, 3, 4, 8, 9, 13 and 14.

(4) All necessary measures should be taken to return illegally staying third-country nationals in an effective and proportionate manner.

(5) This Decision setting out a recommendation should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, the evaluated Member State shall, 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 this to the Commission and the Council,

HEREBY RECOMMENDS

[3] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

that the French Republic should:

1. amend the return decisions issued to illegally staying third-country nationals, as well as the models provided by the *Direction Générale des Étrangers en France*, to explicitly state that illegally staying third-country nationals are under the obligation to leave the territory of the European Union and of the Schengen associated countries during the period for voluntary departure, in compliance with Article 3(3) of Directive 2008/115/EC and the applicable national legislation;

2. set up a system ensuring that return decisions and, if appropriate, entry bans can be issued to illegally staying third-country nationals apprehended during exit checks at the external border, following a case-by-case assessment and respecting the principle of proportionality;

3. ensure that the assessment of the best interests of the child conducted in relation to unaccompanied minors systematically considers, also in the light of the right to family life, whether return to the country of origin and reunification with the family is in their best interests; in cases in which the individual assessment of the situation of the unaccompanied minors concerned indicates that return would be in their best interests, take measures to ensure family tracing, the timely appointment of guardians or the identification of adequate reception facilities in the third country of return, to ensure that the return can be carried out;

4. amend Article L511-1-III, sixth sub-paragraph, of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* to ensure that entry bans are issued in relation to all third-country nationals who have not complied with the obligation to return within the period for voluntary departure, in accordance with Article 11(1)(b) of Directive 2008/115/EC;

5. amend Article L511-1-III of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* to ensure that entry bans take effect from the moment in which illegally staying third-country nationals leave the territory of the European Union and of the Schengen associated countries;

6. take measures to reduce the obstacles to the use of alternatives to detention provided for by national law, and increase their use when justified and needed; for this purpose, consider increasing the number of places available in open centres dedicated to the accommodation of illegally staying third-country nationals who should be subject to house arrest, and increase the means available to the competent administrative authorities to provide temporary accommodation for enforcing house arrest; consider introducing a range of alternatives to detention other than house arrest that can effectively prevent absconding;

7. ensure that the measures established by the *Code de l'entrée et du séjour des étrangers et du droit d'asile*, in accordance with Article 7(3) of Directive 2008/115/EC, aimed at preventing the absconding of illegally staying third-country nationals who have been granted a period for voluntary departure, are more extensively and effectively used by the competent administrative authorities;

8. increase the number of places for the detention of men available to the *Préfecture de Police de Paris*; for this purpose, improve the management and use of the existing places in specialised detention facilities across the French territory, to facilitate the transfers of returnees subject to detention from the Paris area, while ensuring an effective administrative and judicial follow-up of the cases;

9. take all necessary measures to ensure the availability of illegally staying third-country nationals who pose a risk of absconding in view of their removal in accordance with Article 8 of Directive 2008/115/EC; for this purpose, 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, and consider amending the *Code de l'entrée et du séjour des étrangers et du droit d'asile*, using the flexibility provided for by Article 15(5) and (6) of Directive 2008/115/EC, to provide for a maximum period of detention that is sufficient to conclude the necessary procedures for the removal and readmission of illegally staying third-country nationals in all circumstances;

10. take measures to ensure adequate privacy for families detained in the dedicated unit of the Le Mesnil-Amelot 2 detention facility, notably from men detained in the same facility, in accordance with Article 17(2) of Directive 2008/115/EC; at the same facility, improve the hygienic conditions of the rooms and the common toilets of the section dedicated to the detention of men;

11. take measures to improve conditions at the Palais de Justice de Paris detention facility, also by providing adequate and sufficient furniture in the rooms and a suitable outdoor area for recreational activities, with the purpose of avoiding a carceral environment;

12. provide third-country nationals in detention with opportunities to engage in recreational activities and improve the leisure facilities at their disposal, in order to promote their well-being and better reflect the nature of their deprivation of liberty;

13. 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, further increase the availability and use of the assisted voluntary return and reintegration programme offered by the *Office Français de l'Immigration et de l'Intégration*; take measures to facilitate the identification, including through biometrics, of illegally staying third-country nationals, in particular of those who were already subject to return procedures but provided a different identity when re-apprehended by the competent national authorities; ensure that the period of enforceability of return decisions is not limited to one year, after which new return procedures need to be launched; 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; take measures to reduce obstacles to the return of families; promote and facilitate contacts with third-country authorities in view of the identification and re-documentation of illegally staying third-country nationals, particularly those in detention, including by using tools that do not require the physical presence of the individuals concerned at the consulate, embassy or detention centre.

14. increase the number and share of forced return operations monitored each year by the *Contrôleur Général des Lieux de Privation des Libertés* and extend the scope of such monitoring to other means of transport (notably removals by boat), to operations involving families with children, and to operations conducted jointly with other Member States including with the support of the European Border and Coast Guard Agency; organise dedicated training for forced return monitors on monitoring and escorting techniques; consider taking part in the EU-funded Forced Return Monitoring II project (FReM II) pursuing a common European approach and harmonised procedures on forced return monitoring.

Done at Brussels,

For the Council

The President