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From:	General Secretariat of the Council
On:	20 February 2024
To:	Delegations
No. prev. doc.:	5755/24
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of **Portugal** on the application of the Schengen acquis in the field of **return**

Delegations will find enclosed the draft Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of Portugal on the application of the Schengen acquis in the field of return, adopted by the Council at its meeting held on 20 February 2024.

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.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2022 evaluation of Portugal 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(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) A Schengen evaluation in the field of return was carried out in respect of Portugal in December 2022. Following the evaluation, a report containing the findings and assessments, listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision [C(2023) 3800].

(2) The extensive training programme for forced-return escorts with a focus on practical exercises conducted by highly qualified trainers is considered as a best practice.

(3) Recommendations should be made on remedial actions to be taken by Portugal in order to address deficiencies identified as part of the evaluation. In light of the importance of complying with the Schengen *acquis*, in particular to establish common standards and procedures in Member States for returning third-country nationals with no right to stay, priority should be given to implementing recommendations 1,2,5 and 7 below.

(4) This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States.

1 OJ L 295, 6.11.2013, p. 27.

(5) Council Regulation (EU) 2022/922[2] applies as of 1 October 2022. In accordance with Article 31(3) of that Regulation, the follow-up and monitoring activities of evaluation reports and recommendations, starting with the submission of the action plans, should be carried out in accordance with Regulation (EU) 2022/922.

(6) Within two months of the adoption of this Decision, Portugal should, pursuant to Article 21(1) of Council Regulation (EU) 2022/922, establish an action plan to implement all recommendations and to remedy the deficiencies identified in the evaluation report. Portugal should provide that action plan to the Commission and the Council,

RECOMMENDS:

that Portugal should:

1. ensure that decisions granting a period for voluntary departure impose an obligation to return, in accordance with Articles 3(4) and 6(1) of Directive 2008/115/EC, and provide all relevant information about legal remedies, in accordance with Article 12(1) with the said Directive; in line with Article 47 of the EU Charter of Fundamental Rights take measures to ensure that the right to be heard can be effectively exercised before the adoption of a decision related to return;

2. take further 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:

   (a) provide for appropriate detention capacity in line with detention needs to guarantee a more effective approach in conducting returns;

   (b) allow in national legislation for a maximum period of detention that is sufficient to conclude the necessary procedures in all circumstances for the return of third-country nationals with no legal right to stay in the territory of the Member States within the meaning of Directive 2008/115/EC, as provided for by Article 15(5);

   (c) provide the possibility of extension of the maximum period of detention established by Portugal for a limited period of time in cases where, regardless of all reasonable efforts, the return of third country nationals will take longer due to the delay in obtaining the necessary documentation or the lack of cooperation of the third country national concerned in line with Article 15 (6) of the said Directive;

2 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, and repealing Regulation (EU) N° 1053/2013, OJ L160 of 15.6.2022, p. 1.

(d) ensure an effective monitoring of the actions taken by third-country nationals to comply with a return decision when granting a period for voluntary departure; continue cooperating with Frontex in developing an effective return case management system;

(e) increase the promotion of the assisted voluntary return projects and ensure a wider eligibility for third-country nationals;

3. ensure in law and in practice that the removal to a third country different from the country of origin or transit, is carried out only with the consent of the third-country national, in line with Article 3(3), third indent of Directive 2008/115/EC;

4. as concerns the EECIT facilities:

(a) ensure that they are used for detention duration suitable to their nature as temporal holding facilities and not for long-term detention;

(b) ensure separate accommodation guaranteeing adequate privacy for and unity of families at the EECIT in accordance with Articles 17(2) and 5(b) of Directive 2008/115/EC;

(c) ensure that minors detained at the EECIT have further access to leisure activities, including play and recreational activities appropriate to their age, in accordance with Article 17(3) of Directive 2008/115/EC;

(d) take measures to improve the detention conditions at the EECIT by ensuring that its maximum capacity is strictly respected, that enough space, daylight, beds and adequate furniture are available for the detained third-country nationals, that recreational activities are available, that men and women are separated, and that the privacy of detainees is respected, notably in the sanitary facilities;

5. as concerns the UHSA facility:

(a) take measures to repair and improve the overall state of the conditions of the UHSA facility;

(b) take measures to ensure that the first or second floor of the facility are easily accessible to persons with disabilities and provide for specialised (sanitary) facilities for disabled persons;

6. ensure that families detained and pending removal, including couples, are provided with separate accommodation, guaranteeing adequate privacy in accordance with Article 17(2) of Directive 2008/115/EC and Article 7 of the EU Charter of Fundamental Rights;

7. ensure that there is an effective forced-return monitoring system in place with enough well trained staff and resources, which guarantees an adequate level of cooperation between the authority responsible for forced-returns and the monitoring body.

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Done at Brussels,

For the Council

The President