Council of the European Union

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2022 evaluation of **Denmark** 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 recommendations on addressing the deficiencies identified in the 2022 evaluation of Denmark 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. 6951/24.

Council Implementing Decision setting out

RECOMMENDATION

on addressing the deficiencies identified in the 2022 evaluation of Denmark 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(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 Denmark in September 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) 820.

(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) The fact that Denmark gives primacy to voluntary return is considered to be **a best practice** point, since it promotes voluntary departure and thus fosters the efficiency of the overall return system.

2 OJ L 295, 6.11.2013, p. 27.

(4) Recommendations should be made on remedial actions to be taken by Denmark 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, 5, 7 and 9 below. This Decision should be transmitted to the European Parliament and to the national Parliaments of the Member States.

(5) 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.

(6) Council Regulation (EU) 2022/922[3] 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.

(7) Within two months of the adoption of this Decision, Denmark 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. Denmark should provide that action plan to the Commission and the Council.

RECOMMENDS

that Denmark should:

1. ensure that a return decision is issued to all illegally staying third-country nationals in accordance with Article 6(1) of Directive 2008/115/EC;

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 in individual cases, due to the impossibility to identify one in accordance with national law or national legal practice, the principle of *non-refoulement* is respected as required by Article 5 of the Directive 2008/115/EC;

3 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.

3. amend practice to ensure that minors are either issued individual return decisions or are included in the decision of the family member, including an individual assessment of their situation, in line with Article 5 and Article 6(1) of Directive 2008/115/EC; ensure that when implementing return decisions affecting children, the best interest of the child is taken into consideration in line with Article 5 of the Directive 2008/115/EC;

4. amend the practice in order to systematically issue entry bans to illegally staying third-country nationals who have not complied with an obligation to return within the period for voluntary departure, in accordance with Article 11(1)(b) of Directive 2008/115/EC;

5. amend national legislation to ensure that all entry bans last for a specified period, in line with Articles 3(6), 11(2) and recital (14) of Directive 2008/115/EC as interpreted by the Court of Justice of the European Union (case C-297/12 Filev and Osmani);

6. ensure that entry bans clearly indicate that the third-country national is not allowed to enter and stay in the EU/Schengen area, in line with Article 3(6) and Recital (14) of Directive 2008/115/EC;

7. ensure that families detained pending removal are provided with separate accommodation, guaranteeing adequate privacy in accordance with Article 17(2) of Directive 2008/115/EC;

8. ensure that the detention of illegally staying third-country nationals takes place as a rule in specialised detention facilities, and that when obliged to resort to prison accommodation, the third-country nationals, as a general rule, are kept separated from ordinary prisoners, in line with Article 16(1) of Directive 2008/115/EC;

9. take measures to ensure that~~,~~ the necessary safeguards are in place when using measures less coercive than detention, so as to ensure that the principles of proportionality and family unity (with family members present in the country) are a primary consideration, and ensure access to an effective remedy, in line with Articles 13, 14 and Recital (13) of Directive 2008/115/EC;

10. take further measures in order to reflect the administrative nature of detention, including by reducing the prison-like environment, providing further safeguards in relation to the application of solitary confinement, enhancing the possibility to communicate with the outside world (including among others with family members), increasing the number of trained staff and ensuring that the dietary regime in detention centres respects religious practices to the extent that this does not represent an excessive burden;

11. enhance the effectiveness of the forced-return monitoring system so as to ensure that more operations can be monitored live and to ensure that forced-return operations without escorts can also be monitored, in accordance with Article 8(6) of Directive 2008/115/EC.

Done at Brussels,

For the Council
The President