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 2018 evaluation of Latvia 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 2018 evaluation of Latvia 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. 8622/19

ANNEX

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the deficiencies identified in the 2018 evaluation of Latvia 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 Latvia remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2018. Following the evaluation, a report covering the findings and assessments, listing best practices and deficiencies was adopted by Commission implementing Decision C(2019) 250.

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

(2) The systematic practice of issuing *in absentia* return decisions which allows the authorities to consider on a case-by-case basis issuing an entry ban for an illegally staying third-country national who is detected when leaving the territory of the Member States, without postponing departure or hampering return, should be regarded as a good practice.

(3) It is important to remedy all deficiencies within the shortest possible time frames. Therefore no indication of priority for implementation of the recommendations should be given.

(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 establish, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, 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:

that the Republic of Latvia should:

1. ensure that third-country nationals when appealing against detention decisions can have access, upon request, at any appropriate moment of the procedure, to legal assistance and/or representation free of charge, in accordance with Article 13(4) of Directive 2008/115/EC of the European Parliament and of the Council[3];

[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).

2. ensure that decisions to accommodate a minor below the age of 14 with his or her detained family member(s) are based on an individual assessment of the specific circumstances of the case in relation to the minor concerned – taking into due account the best interests of the child – and that they provide reasons in fact and in law in relation to the minor concerned, in accordance with Articles 5 and 15 of Directive 2008/115/EC; such conditions need to be fulfilled both if the minor is subject to an individual decision and if the minor is included in the detention decision addressed to his or her family member(s);

3. ensure that, without prejudice to the initial apprehension period, the detention of illegally staying third-country nationals takes place, as a rule, in specialised detention facilities that respect the conditions of Article 16(1) of Directive 2008/115/EC; if obliged to resort to the use of the short-term detention facilities of the State Police for detention in view of removal, ensure that the detention regime fully reflects the administrative nature of detention and the systematic separation from detainees under criminal procedures, also taking into account the relevant CPT standards;

4. increase the number of removal operations being monitored, including by ensuring an appropriate allocation of resources to and within the Latvian Ombudsman office for this purpose.

Done at Brussels,

For the Council
The President