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From:	General Secretariat of the Council
On:	16 July 2020
To:	Delegations
No. prev. doc.:	9090/20
Subject:	Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2019 evaluation of **Poland** on the application of the Schengen acquis in the field of **return**

Delegations will find enclosed the Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2019 evaluation of Poland on the application of the Schengen acquis in the field of return, adopted by written procedure on 16 July 2020.

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 2019 evaluation of Poland on the application of the Schengen acquis in the field of return

THE COUNCIL 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 Poland remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2019. 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) 40.

(2) The Reservation system of the detention centres in Poland allows for determining the place of detention on the basis of the occupancy rate in different detention centres and other criteria, which leads to enhanced efficiency of the process of selection of detention centres and improves their functioning, avoiding possible overcrowding, and thus can be considered a good practice.

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

(3) The outdoor areas at the detention centres in Przemyśl and Kętrzyn provide suitable outdoor surroundings for families with minors and single adults. The long opening hours and the wide range of activities make it attractive to use and reflect well the nature of the administrative detention of third country nationals, with limited restrictions in place, and thus can be considered a good practice.

(4) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within three months of its adoption, Poland should, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, establish an action plan to remedy the deficiencies identified in the evaluation report and provide this to the Commission and the Council.

HEREBY RECOMMENDS:

that the Republic of Poland should:

1. amend national legislation to allow a case-by-case assessment for considering whether or not to issue an entry ban in line with the provisions of the Directive 2008/115/EC;

2. set a limited period of detention in the holding facility at Warsaw airport, in line with Article 15(5) of the Directive 2008/115/EC;

3. ensure the prompt and systematic provision of information to detainees which explains the rules applied in the holding facility at Warsaw airport, and sets out their rights and obligations, in accordance with Article 16(5) of the Directive 2008/115/EC;

4. ensure adequate privacy for families accommodated in the holding facility at Warsaw airport, and play and recreational activities taking account of the needs of children, pursuant to Article 17(2) and 17(3) of the Directive 2008/115/EC;

5. ensure that a qualified body, other than the authority enforcing the decision, is appointed to assist the unaccompanied minor throughout the return procedure, in accordance with Article 10(1) and Article 5(a) of the Directive 2008/115/EC;

6. ensure that cross-border service of decisions related to return are effected in a way that guarantees the exercise of the right to an effective remedy in accordance with Article 13(1) of the Directive 2008/115/EC and Article 47 of the Charter of Fundamental Rights;

7. provide for an adequate legal, financial and organizational framework, including an exchange of relevant information, to enable an effective forced return monitoring system, in line with Article 8(6) of the Directive 2008/115/EC;

8. ensure that the regime applicable to the detention for foreigners placed in the arrest for foreigners in Przemyśl is adjusted to reflect the nature of the administrative detention, and that the appropriate measures are taken to ensure the conditions in the facility guarantee adequate privacy and effective access to leisure activities in accordance with the provisions of the Directive 2008/115/EC;

Done at Brussels,

For the Council
The President