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From: General Secretariat of the Council
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To: Delegations

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Subject: Council Implementing Decision setting out a Recommendation on addressing the deficiencies identified in the 2016 evaluation of Italy on the application of the Schengen *acquis* in the field of return

Delegations will find in the annex the Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Italy on the application of the Schengen *acquis* in the field of return, adopted by the Council at its 3518th meeting held on 17 February 2017.

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 2016 evaluation of Italy 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 Schengen¹, 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 Italy remedial actions to address the 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, listing best practices and deficiencies identified during the evaluation was adopted by Commission Implementing Decision C(2016)6001.
- (2) The practice of always translating in written form all the administrative decisions addressed to the third-country national in a language he/she can understand, the presence of cultural mediators along the entire return process and the presence of an NGO at the airport Leonardo da Vinci in Rome in order to provide assistance to migrants refused at the border and potential asylum seekers, in line with Art. 4 (4) of the Return Directive, can be all seen as examples of good practises.

¹ OJ L 295, 6.11.2013, p. 27.

- (3) To ensure compliance with the Schengen acquis in the field of return, priority should be given to implement the recommendations on the lack of detention capacity, the immediate issuance of return decisions to those whose legal stay is discontinued and the functioning of an effective forced return monitoring system.
- (4) All necessary measures should be taken to effectively return illegally staying third-country nationals in an effective and proportionate manner, in accordance with Article 8(1) of Directive 2008/115/EC ².
- (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 to remedy the deficiencies identified in the evaluation report and provide this to the Commission and the Council,

HEREBY RECOMMENDS:

that the Republic of Italy should

1. ensure that a return decision is issued to any third-country national whose request for legal stay or international protection has been denied, without unnecessary delay, in line with Art. 6 (1) of the Directive 2008/115/EC;
2. incorporate the practice of issuing return decisions and refusals of entry, issued in connection with irregular border crossing, fully into the hotspot approach in order to swiftly identify and register all third country nationals illegally entering and/or staying on the Italian territory and treat them in accordance with the aquis on return, in full compliance with the principle of non-refoulement;

² 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.

3. introduce in the return decisions the information that the third country national must leave the whole EU/Schengen territory in order to comply with the return decision, and that he/she cannot re-enter the Schengen area before the expiry of the entry ban, if applied; by providing this information the content of return decisions will be in line with the definitions of return and entry ban provided by Art. 3(3) and recital 14 of the Directive 2008/115/EC;
4. finalise the public tender procedure for an assisted voluntary return and reintegration programme as soon as possible; in the meantime and/or in parallel, Italy is encouraged to make full use of reintegration possibilities, available under EU-supported programmes, in particular the ERIN programme, as part of durable voluntary return strategy;
5. consider changing the relevant national legislation so as to allow the best interests of the child assessments to include the option of return, in line with child protection safeguards and, in case of unaccompanied minors, provided that the conditions of Art. 10 (2) of Directive 2008/115/EC are met;
6. allow in the national legislation for the possibility to issue a return decision and to impose an entry ban also in cases where illegal stay is discovered during an exit check, following a case by case analysis and taking into account the principle of proportionality.
7. bring detention capacity in line with actual needs, at least up to the commitments taken in the Roadmap for hotspots (1350 places); taking measures in this sense is of the utmost importance in order to ensure effectiveness of return decisions in line with Art. 8 (1) Directive 2008/115/EC;
8. increase the use of alternative measures to detention also in cases of removals and not only in case of voluntary return as currently done by Italy; this could be a suitable complementary measure to improve effective enforcement of return decisions;
9. consider amending national legislation, allowing for the possibility of a longer period of detention, in line with Art. 15 (5) of the Directive 2008/115/EC, whenever necessary and proportional to ensure that return decisions are enforced and removal arrangements can be executed;

10. improve the infrastructure, services and living conditions in the detention centres, in line with basic standards, as foreseen in the AMIF National Programme for Italy;
11. ensure that sufficient and appropriate visiting rooms are available in the detention centres and that the contact between a lawyer and the third-country national takes place in a room where privacy is ensured;
12. Ensure that adequate and fully operational monitoring system is in place as soon as possible in accordance with Art. 8(6) of the Directive 2008/115/E;
13. consider setting up a system to assess the relevance of any last minute asylum application during removal operations in order to decide whether the application for international protection needs to be evaluated more carefully or whether there is no need to postpone the removal; in this way, the effectiveness of forced return operations and the respect for the principle of non-refoulement can be fully reconciled.

Done at Brussels,

For the Council

The President
