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LIMITED

Proposal for a

COUNCIL IMPLEMENTING DECISION

setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of France (Pas-de-Calais) on the application of the Schengen acquis in the field of return

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 7 October 2013 the Council adopted Regulation (EU) No 1053/2013¹, establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

On 20 January 2016, in accordance with Article 6(3) of Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, the Commission established an annual evaluation programme listing the unannounced visits to be carried out in 2016².

Based on this annual programme, a team of experts from the Member States and the Commission carried out an evaluation of the application of the return *acquis* in the area of Pas-de-Calais in France from 23 to 26 May 2016. Their evaluation report³ sets out the findings and assessment, including best practices and any deficiencies identified during the evaluation.

Alongside the report, the team made recommendations for remedial action aimed at addressing the deficiencies. This proposal reflects those recommendations.

Against this background, the current proposal for a Council implementing Decision setting out a recommendation seeks to ensure that France applies all Schengen rules related to return correctly and effectively.

- **Consistency with existing policy provisions in the policy area**

These recommendations serve to implement the existing provisions in the policy area.

- **Consistency with other Union policies**

These recommendations do not have links with other key Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

- **Subsidiarity (for non-exclusive competence)**

Article 15(2) of Council Regulation (EU) No 1053/2013 specifically requests the Commission to submit a proposal to the Council to adopt recommendations for remedial action aimed at addressing any deficiencies identified in the course of the evaluation. Action at Union level is

¹ OJ L 295, 6.11.2013, p. 27.

² Commission Implementing Decision C(2016)145.

³ C(2017) 86.

required to strengthen mutual trust between the Member States and to ensure better coordination at Union level in order to guarantee that all Schengen rules are applied effectively by the Member States.

- **Proportionality**

Article 15(2) of Council Regulation (EU) No 1053/2013 mirrors the specific powers of the Council in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

In line with Article 14(5) and Article 21(2) of Council Regulation (EU) No 1053/2013, Member States gave their positive opinion on the evaluation report in the Schengen Committee of 29 November 2016.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The protection of fundamental rights when applying the Schengen *acquis* was taken into account during the evaluation process.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

n.a.

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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 Schengen⁴, 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 France remedial actions to address deficiencies identified during the Schengen evaluation in the field of return carried out in 2016 in the area of Pas-de-Calais. 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(2017) 86.
- (2) At the time of the Schengen evaluation, a significant number of third-country nationals who had no right to stay in the EU were present in the Pas-de-Calais area, awaiting for an opportunity to illegally cross the border to reach the United Kingdom.
- (3) To ensure compliance with the Schengen *acquis* in the field of return, notably with the standards and procedures set by Directive 2008/115/EC⁵, priority should be given to implement recommendations 2, 3 and 4.
- (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, pursuant to Article 16(1) of Regulation

⁴ OJ L 295, 6.11.2013, p. 27.

⁵ 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.

(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 French Republic should:

- (1) take all necessary 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;
- (2) take immediate measures to ensure that, while preserving public order and security, the identity and legal status of the third country nationals present in the area of "La Lande" and surroundings are determined and, where appropriate, return decisions are issued to those who have no right to stay in France, in compliance with Article 6(1) of Directive 2008/115/EC;
- (3) issue entry bans to illegally staying third-country nationals to whom no period of voluntary departure has been granted, and to those who did not comply with the obligation to return within the period of voluntary departure, in compliance with Article 11(1) of Directive 2008/115/EC;
- (4) ensure that third-country nationals ordered to leave France, and who have no right to stay in another EU Member State or Schengen associated country, leave the Union and return to a third country in accordance with Article 3(3) of the Return Directive; for this purpose, amend article 1 of the return decisions issued by the Préfecture of Pas-de-Calais, where the country of return is usually identified;
- (5) ensure that the return to a third country that is not the country of origin or transit of the illegally staying third-country national, and in which the returnee will be accepted, is carried out with the previous agreement of the returnee on the country of destination, in accordance with Article 3(3), third indent of the Return Directive;
- (6) design and implement actions to reach unaccompanied minors present in "La Lande" and in the Pas-de-Calais area in order to ensure, after an individual assessment of the specific needs of the minor, appropriate and effective guardianship and assistance guaranteeing primary consideration of their best interests; if the placement in a dedicated structure is not possible for some unaccompanied minors, provide appropriate assistance directly to the minor concerned, including in the camp of "La Lande".

Done at Brussels,

*For the Council
The President*