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LIMITE

**SCH-EVAL 157
MIGR 114
COMIX 421**

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 July 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION on setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Spain on the application of the Schengen acquis in the field of return
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Delegations will find attached document COM(2018) 300 final.

Encl.: COM(2018) 300 final



Brussels, 17.7.2018
COM(2018) 300 final

2018/0285 (NLE)

LIMITED

Proposal for a

COUNCIL IMPLEMENTING DECISION

**on setting out a recommendation on addressing the deficiencies identified in the 2017
evaluation of Spain 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*. In line with the Regulation, the Commission has established a multiannual evaluation programme 2014 - 2019² and an annual evaluation programme for 2017³ with detailed plans for on-site visits to the Member States to be evaluated, areas to be evaluated and sites to be visited.

The areas to be evaluated cover all aspects of the Schengen *acquis*; management of the external borders, return, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters, as well as the absence of border control at internal borders. In addition, fundamental rights issues and the functioning of authorities that apply the relevant parts of the Schengen *acquis* are taken into account in all evaluations.

Based on the multiannual and annual programmes, a team of experts from the Member States and the Commission carried out an evaluation of the application of the return *acquis* by Spain between 15 and 21 October 2017. Their evaluation report⁴ sets out their findings and assessments, 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, except the ones included in the report that were aimed to promote a 'best practice' and were not linked to a deficiency.

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

- **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.

¹ OJ L 295, 6.11.2013, p. 27.

² Commission Implementing Decision C(2014)3683 of 18 June 2014 establishing the multi-annual evaluation programme 2014 - 2019 in accordance with Article 5 of the Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

³ Commission Implementing Decision C(2016) 7387 of 21 November 2016 establishing the first section of the annual evaluation programme for 2017 in accordance with Article 6 of Council Regulation (EU) No1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*.

⁴ C(2018)1400.

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 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 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 30 May 2018.

- **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.

Proposal for a

COUNCIL IMPLEMENTING DECISION

on setting out a recommendation on addressing the deficiencies identified in the 2017 evaluation of Spain 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 Schengen⁵, 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 Spain remedial actions to address the deficiencies identified during the Schengen evaluation in the field of return carried out in 2017. 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(2018)1400.
- (2) ADEXTTRA, the Spanish migration case management system run by the National Police, should be regarded as a good practice as it provides return-related authorities with an easily accessible and efficient tool, which may facilitate the identification, apprehension and return of illegally staying third-country nationals.
- (3) To ensure compliance with the Schengen *acquis* on return, notably with the standards and procedures set by Directive 2008/115/EC⁶, priority should be given to implement recommendations 1, 2, 3, 4, 8, 9, 10.
- (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, Spain shall establish, pursuant to Article 16 (1) of Regulation (EU) No

⁵ OJ L 295, 6.11.2013, p. 27.

⁶ 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.

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 Kingdom of Spain should

1. introduce in national law a definition of "return" in accordance with Article 3(3) of Directive 2008/115/EC;
2. ensure that return decisions issued to third country nationals mention a clear obligation to leave the territory of the Member States and depart to a third country, in accordance with Article 3(3) and 3(4) of Directive 2008/115/EC;
3. ensure that return decisions issued to third country nationals adequately and clearly inform them about the full geographical scope of validity of the entry ban and their obligations in that respect, in accordance with 3(6) of the Directive;
4. amend national legislation to ensure compliance with Article 6(1) of Directive 2008/115/EC by removing the possibility that in case of illegal stay third country nationals are imposed a fine as an alternative to the conduct of return procedures;
5. take measures to ensure that, in line with Article 6 (1) of the Directive 2008/115/EC, return decisions are issued without delay to third-country nationals who no longer fulfil the conditions for legal stay, including those whose requests for residence permit or international protection were denied;
6. consider amending national legislation using the flexibility provided for by Article 15(5) and (6) of Directive 2008/115/EC, to provide for a maximum period of detention that is sufficient to conclude the necessary procedures for the removal and readmission of illegally staying third country nationals in all circumstances;
7. consider issuing return decisions and entry bans during exit checks, following a case-by-case analysis and taking into account the principle of proportionality;
8. ensure that minors who are family members of third country nationals subject to return are issued individual return decisions, following an individual assessment of their situation, in accordance with Article 6(1) and Article 12(1) of Directive 2008/115/EC;
9. amend national legislation to allow for an individual assessment regarding the issuing and actual length of an entry ban imposed in return procedures under Article 58(3)(a) of the Aliens Law;
10. amend Article 58(2) of the Aliens Law to remove public health as a ground for issuing an entry ban for a period of more than five years;
11. take measures to improve the conditions of the detention in the *Centro de Internamiento de Extranjeros* (CIE) of Madrid, Algeciras and Tarifa, as well as Valencia, by ensuring that all facilities are adequately furnished, including with adequate storage space for personal belongings; that the CIEs of Madrid, Algeciras and Tarifa are in a good state of repair; that natural daylight in the dormitories of all CIEs is adequate, in particular in Tarifa; that the privacy of detainees is respected,

notably when using the toilets that are located in the dormitories in the CIEs of Tarifa and Algeciras; that visits in all CIEs take place in an environment that respects the right of privacy and family life; that the outdoor area of the CIE in Valencia is equipped with a shelter protecting from inclement weather and with benches; that a prayer room to carry out religious activities is provided in the CIEs in Valencia, Algeciras and Tarifa;

12. take measures to actively promote the use of assisted voluntary return at all stages of the return procedures and without delay when a request for legal stay or international protection has been denied;
13. increase the number of monitored operations and extend the scope of such monitoring to cover all types of removal operations, including national operations, be it by air, by sea or via land; in this respect ensure an appropriate allocation of resources to and within the National Mechanism for the Prevention of Torture of the Spanish Ombudsman for monitoring forced-return operations.

Done at Brussels,

*For the Council
The President*