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2024/0207 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

setting out recommendations for remedial actions aimed at addressing the serious deficiencies identified in the 2024 Schengen evaluation of Hungary on the application of certain provisions of the Schengen *acquis* related to fundamental rights in the context of border management and return

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In accordance with Article 4(1)(b) of Council Regulation (EU) 2022/922[1] on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, the multiannual evaluation programme 2020-2024[2] and the 2024 annual evaluation programme[3], a periodic Schengen evaluation of Hungary was conducted by a team of Commission and Member State experts, supported by observers from EU agencies and bodies[4]. This evaluation verified Hungary's implementation of the Schengen *acquis* in the fields of border management, return, visa, police cooperation, large-scale IT systems (the Schengen Information System) and data protection. The evaluation also paid attention to verifying respect for fundamental rights in the application of the Schengen *acquis* by Hungary.

At the end of the evaluation activity, Hungary was informed that, in accordance with Article 2(10) of Council Regulation (EU) 2022/922, serious deficiencies were identified in the application of certain provisions of the Schengen *acquis*, namely the lack of access to the asylum procedures in Hungary as well as the failure to respect the principle of *non-refoulement* and the safeguards of Directive 2008/115, leading to the practice of collective expulsions. In accordance with Article 22(2) and (3) of Council Regulation (EU) 2022/922, the Commission adopted on 9 August 2024 an evaluation report[5], which sets out the findings and the assessments related to the serious deficiencies identified during the evaluation. As provided for in the Schengen Evaluation Guide for the implementation of Regulation 2022/922[6], this evaluation report includes only those findings that led to the determination of the serious deficiencies. The outcome of the full evaluation of Hungary, with the exception of the identified serious deficiencies, will be presented in the comprehensive evaluation report in accordance with Article 20 of Regulation 2022/922.

This proposal contains the recommendations for remedial action aimed at addressing the serious deficiencies identified in the report adopted by the Commission on 9 August 2024.

• Consistency with existing policy provisions in the policy area

These recommendations serve to implement correctly and effectively the existing provisions in the policy area concerned.

• Consistency with other Union policies

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

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1 Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) No 1053/2013; OJ L 160, 15/06/2022.

2 C(2019) 3692.

3 C(2023) 5300.

4 Frontex, the EU Fundamental Rights Agency, eu-LISA, Europol and the European Data Protection Supervisor.

5 C(2024) 9000.

6 C(2023) 6790 final, p. 42.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 22(4) of Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) No 1053/2013.

• Subsidiarity (for non-exclusive competence)

Article 22(4) of Council Regulation (EU) 2022/922 specifically requests the Commission to submit a proposal to the Council to adopt recommendations for remedial action aimed at addressing the serious deficiencies identified in the course of the evaluation activity. 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 correctly and effectively by the Member States.

• Proportionality

Article 22(4) of Council Regulation (EU) 2022/922 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. In that light, this proposal for a Council Implementing Decision is proportionate to the objective pursued.

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 30(3) of Council Regulation (EU) 2022/922 and Article 8 of Council Regulation (EU) No 182/2011, the evaluation report shall be submitted for ex-post consultation of the Schengen Committee within 14 days after the adoption by the Commission of the evaluation report.

• 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 the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) No 1053/2013[7], and in particular Article 22(4) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Schengen area without border control at internal borders relies on the effective and efficient application of the Schengen *acquis* by the Member States. That *acquis* comprises measures in the area of external borders, compensatory measures for the absence of controls at internal borders and a strong monitoring framework, which together strengthen free movement and ensure a high level of security, justice and protection of fundamental rights, including the protection of personal data.

(2) In accordance with Article 4(1)(b) of Council Regulation (EU) 2022/922, as well as the multiannual evaluation programme 2020-2024[8] and the 2024 annual evaluation programme[9], a periodic Schengen evaluation of Hungary was conducted by an evaluation team of Commission and Member State experts, supported by observers from EU agencies and bodies[10]. This evaluation verified Hungary's implementation of the Schengen *acquis* in the fields of border management, return, visa, police cooperation, large-scale IT systems (the Schengen Information System) and data protection. Schengen evaluations also pay particular attention to verifying respect for fundamental rights in the application of the Schengen *acquis*.

(3) Since the last evaluation in 2019, the operational environment in Hungary has significantly changed due to evolving migratory and security risks in the region. While the migratory pressure in the Western Balkan route remains high, the pressure at the Hungarian-Serbian border has decreased over the last months. Furthermore, Russia's

[7] OJ L 160, 15.6.2022, p. 1.
[8] C(2019) 3692.
[9] C(2023) 5300.
[10] Frontex, Europol, eu-LISA, the European Union Agency for Fundamental Rights and the European Data Protection Supervisor.

unprovoked and unjustified war of aggression against Ukraine has had widespread implications for Hungary and the Schengen area as a whole, requiring increased vigilance for European integrated border management to limit the security risks and safeguard the integrity of the Schengen area.

(4) In the 2024 Schengen evaluation of Hungary, serious deficiencies were identified in the application of certain provisions of the Schengen *acquis* concerning fundamental rights in the context of border management and return. The Council was informed thereof on 4 July 2024. The draft report was shared with the Hungarian authorities on 11 July 2024 and their comments were received on 19 July 2024. On 9 August 2024, Commission Implementing Decision C(2024) 9000 adopted the report identifying those serious deficiencies.

(5) Recommendations for remedial actions should be set out and immediately taken by Hungary in order to address the identified serious deficiencies. Considering the nature of the findings, their persistency, and the need to swiftly address them, all recommendations are given the same level of priority.

(6) Within one month of the adoption of this Decision, Hungary should, pursuant to Article 22(6) of Regulation (EU) 2022/922, establish an action plan to implement all recommendations and to remedy the serious deficiencies identified in the evaluation report. Hungary should provide that action plan to the Commission for the review of its adequacy, as well as to the Council. Hungary should report to the Commission and the Council on the implementation of its action plan every two months from the date of notice of receipt of the review of the action plan and until the Commission considers that all recommendations are fully implemented.

(7) In accordance with Article 22(7) of Regulation (EU) 2022/922, a revisit by the team should take place to verify the progress made in implementing the recommendations, which should be organised no later than one year from the date of the evaluation activity.

(8) These recommendations are without prejudice to the actions Hungary should undertake in order to comply with the judgments of the Court of Justice in Cases C-808/18[11], C-823/21[12], C-123/22[13], which the Commission is monitoring in line with the established procedures.

(9) This Decision will be transmitted to the European Parliament and to the national Parliaments of the Member States.

RECOMMENDS:

Hungary should

1. discontinue the practice of removing third-country nationals that have irregularly entered or are irregularly staying in Hungary, including those who have expressed their intention to apply for international protection, in accordance with Articles 3 and

[11] Judgment of the Court of Justice of 17 December 2020 in Case C-808/18 *Commission v Hungary*, ECLI:EU:C:2020:1029.

[12] Judgment of the Court of Justice of 22 June 2023 in Case C-823/21 *Commission v Hungary*, ECLI:EU:C:2023:504.

[13] Judgment of the Court of Justice of 13 June 2024 in Case C-123/22 *Commission v Hungary*, ECLI:EU:C:2024:493.

4 of Regulation (EU) 2016/399[14] and Articles 4(4), 5, 6(1), 12(1) and 13 of Directive 2008/115[15] read in conjunction with Articles 18 and 47 of the Charter of Fundamental Rights of the EU in order to ensure that third-country nationals seeking international protection on the territory, including at the border, can effectively access international protection;

2. amend the national law and change the administrative practice in order to provide the national authorities with the legal power to refer the third-country nationals applying for international protection to the relevant authorities in the Hungarian territory in order to fulfil the obligations of Articles 3 and 4 of the Schengen Borders Code read in conjunction with Article 18 of the Charter;

3. amend the national legislation and change the administrative practice to ensure that third-country nationals who have not been apprehended in connection with the irregular border crossing but who are irregularly staying on the Hungarian territory and meet the requirements for being granted a return decision are provided with a return decision following an individual assessment, including of the principle of *non-refoulement*, in accordance with Articles 5, 6(1), 12(1) and 13 of Directive 2008/115 read in conjunction with Article 47 of the Charter;

4. take the necessary measures to ensure the full respect of the principle of *non-refoulement* as regards the third-country nationals apprehended at the external border following the irregular crossing, as required by Article 4(4) point (b) of Directive 2008/115 and Articles 3 and 4 of the Schengen Borders Code read in conjunction with Articles 19 and 47 of the Charter.

Done at Brussels,

For the Council
The President

[14] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code); OJ L 77, 23.3.2016.

[15] 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.