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**SENSITIVE\*** : *Limited*

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL**

**Assessment of Norway`s action plan to remedy the deficiencies identified in the 2017  
evaluation on the application of the Schengen acquis in the field of return**

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## 1. Introduction

Regulation (EU) No 1053/2013<sup>1</sup> establishes an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*. Member States are evaluated on a regular basis based on annual evaluation programmes in a number of areas which form part of the Schengen *acquis*. On the basis of on-site visits, a team comprising Commission and Member States experts draws up an evaluation report with relevant findings and assessments, including any deficiencies identified during the evaluation. Following this evaluation report and a proposal from the Commission, the Council adopts a Council Implementing Decision setting out a Recommendation for remedial action on addressing the deficiencies identified in the evaluation.

In accordance with Article 16 of Regulation 1053/2013, the evaluated Member State is to provide the Commission and the Council with an action plan to remedy the deficiencies identified within three months of adoption of the Council Recommendation. The Commission, in consultation with the on-site team, then assesses the adequacy of the action plan and presents its assessment to the Council.

On 20 March 2019, Norway provided an action plan to remedy the deficiencies identified in the evaluation report<sup>2</sup> on its implementation of the *acquis* in the field of return, which relates to the recommendations set out in the Council Implementing Decision of 20 December 2018.<sup>3</sup> This Communication sets out the assessment of the adequacy of this action plan.

## 2. Return

### 2.1 General assessment

The Action Plan submitted by Norway on 20 March 2019 covers all recommendations of the Council. This assessment concerns the adequacy of the measures presented in the Action Plan against the Council Recommendation.

The Commission considers that with regard to recommendations 2 and 3, the Action Plan does not provide sufficiently exhaustive and specific information on the actions to be taken or measures that have been already implemented; it does not provide sufficient information on the exact content of such measures or their relevance with regard to the recommendation. At this stage, it is not possible to assess the adequacy of the proposed actions, which will therefore be finalised once the requested information is provided by Norway.

At the same time, with regard to recommendation 1 the response of the Norwegian authorities contests the underlying recommendation and the related finding. Furthermore, the proposed review of the existing legislation taking account of negotiations on the Return Directive is

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<sup>1</sup> OJ L 295, 6.11.2013, p. 27.

<sup>2</sup> C(2018) 1570 of 16/01/2018.

<sup>3</sup> Council document 15811/18.

considered to be insufficient as it does not imply adaptation of legislation or the related practice.

The Commission therefore considers that the Action Plan submitted by Norway does not present sufficiently adequate remedial actions to implement all recommendations of the Council. The Action Plan needs improvement taking into account the detailed assessment below, also in view of enabling the Commission to properly assess and monitor the timely follow-up and implementation of the actions by the competent Norwegian authorities and to inform the European Parliament and the Council in accordance with Article 16(6) of Regulation 1053/2013.

## 2.2 *Detailed assessment*

Action 1: the action described by the Norwegian authorities refers to the fact that Norway considers the national legislation on criminalisation of illegal stay to be in compliance with the Return Directive, thus contesting the underlying finding of the report and the recommendation. Thus, the action does not imply adaptation of legislation or the practice of imprisonment based solely on irregular stay; it only foresees a renewed review of the legislation taking into account the ongoing negotiations on the Return Directive. Given the fact that no timeline of such review has been specified and that the action does not imply adaptation of the legislation and national practice, the action cannot be assessed as adequate. The relevant authorities are invited to provide information on the foreseen time-frame of the review, updates on its results and information on practical measures taken in view of the implementation of the recommendation.

Action 2: the information provided in the Action plan in relation to this point does not contain sufficient information concerning the concrete measures taken with a view to practical implementation of the recommendation. In particular, it does not allow the Commission to assess the adequacy of the measures taken by the Norwegian authorities. The relevant authorities are invited to communicate to the Commission the contents of instructions issued or templates of decision, as well as updates on the state of play of their implementation.

Action 3: the Action Plan indicates that the competent authorities are working on a legislative proposal in order to establish a national legal framework for the forced return monitoring system. However, no timeline has been provided for this proposal, nor has sufficient information been provided on its contents or the ongoing practical implementation of the recommendation. It is unclear from the text of the Action Plan to what extent the remedial actions have already been implemented and whether forced-return monitoring is taking place in the absence of a legislative proposal. Thus, it is impossible for the Commission to assess the adequacy of the measures taken by the Norwegian authorities. The relevant authorities are invited to provide additional information on the state of play and measures taken, as well as to communicate the timeline of the legislative proposal and its draft text to the Commission once it becomes available.

### **3. Conclusion**

In line with Article 16(3) of Regulation (EU) No 1053/2013, Norway is requested to report and provide the necessary information to the Commission in the first follow-up report after adoption of this Communication on the still any pending actions and on actions for which additional information or clarification has been requested in this Communication. After the first report, Norway is requested to continue reporting regularly, every 3 months, until the Action Plan is fully implemented.