



**Brussels, 13 November 2023
(OR. en)**

15277/23

LIMITE

**SCH-EVAL 236
SCHENGEN 59
MIGR 382
COMIX 518**

NOTE

From: Presidency

To: Working Party for Schengen Matters / Mixed Committee (EU-Iceland/Norway/Switzerland/Liechtenstein)

Subject: Making the return systems more effective

Recent events have put the need for effective returns at the heart of our political agenda, confirming an already high-level priority as identified by the Schengen Council in June 2023¹. We have one area of freedom and security and one shared external border. Effective returns of people with no right to stay, in particular if they are a security threat, is therefore a common European responsibility. It also has the aim of allocating the reception resources in the EU to those most in need and discourage people from taking perilous journeys to reach Europe. However, the numbers of effective returns to third countries remain low. To increase the number of effective returns, the EU and the Member States need to focus our efforts on both the internal and external dimensions of returns. Lately the external dimension, including the Visa Code Article 25a exercise, allowing to take restrictive visa measures against those third countries which do not sufficiently cooperate on returns, as well as other initiatives at political, legal, and operational level to improve cooperation with third countries on return and readmission, have been at the centre of the discussions at different Council bodies.

¹ 10059/23.

While efforts on improving the external dimension of returns continue, at the December 2023 Schengen Council meeting the Presidency would like to invite the Ministers to look into key aspects of the internal dimension of returns, notably to invest on common tools and further coordination. The low number of readmission requests sent to third countries still indicates that there are important national bottlenecks hampering returns.

The Delegations at the meeting of the Working Party for Schengen Matters on 17 November 2023 are invited to prepare the Schengen Council debate by reflecting on this topic, including on the actions proposed in this paper, in particular in the light of the Schengen Barometer + developed by from the Commission. To further prepare the debate at the Schengen Council, the issues mentioned in this Presidency paper will continue to be discussed at the SCIFA meeting on 23 November 2023.

Promoting effective communication and cooperation among national authorities and between Member States

Returns is a complex policy field, where a variety of stakeholders interplay. On one hand, Member States should ensure effective cooperation between migration and security authorities, with a smooth and timely flow of information between these authorities and efforts being pulled together to guarantee that third country nationals posing security threat are returned to their countries of origin without a delay. We are looking forward to practical recommendations from the EU Return Coordinator and the High-Level Network on Returns on how best to tackle such returns. The development of pilot projects in this area to pool efforts and resources allowing to establish clear priorities would be of considerable added value.

On the other hand, in many Member States there are different authorities playing a role in return procedures, for instance dealing with voluntary return, forced return and asylum policy. The latter ones are in particular closely interlinked given that many return decisions are the result of the rejected asylum applications. In this complex policy field, where a variety of stakeholders interplay, third-country nationals still have ample possibilities to abuse existing loopholes, which allow them to evade authorities' attention and remain in the territory without consequences. This results in the absconding of those that should be subject to return procedures, either because the procedure is not initiated or because it is delayed, as also recurrently identified by Schengen evaluations. The impact on the credibility of our systems is high and there are also important social consequences, especially when it concerns those that pose a threat to our society. To achieve effective returns, it is of utmost importance to ensure effective communication and cooperation among all these national authorities.

Efforts should be made to ensure the systematic issuance of return decisions to all third country nationals with no right to stay or no right to remain. Also, it is important that all return decisions are entered into *Schengen Information System (SIS)*, which as of March 2023 allows Member States to see the return decisions issued by other Member States.² Too many times too many Member States invest resources in the same case without capitalising on prior efforts, and too often, Member States are compelled to handle cases individually, missing the opportunity for a more coordinated approach. Referring further to relevant tools for the competent authorities, it is important to mention that *Entry/Exit System*, scheduled to entry into operations next year, will provide additional information to support Member States authorities in the field of return.

² According to the most recent statistics provided by eu-LISA, as of 8 November 2023, SIS contained 284 873 return alerts (there is in average an increase of 1000 alerts per day currently), out of which 39 731 return alerts for which the return decision has been suspended or postponed and 51 833 return alerts for which the period for voluntary departure has expired; moreover, 591 673 refusal of entry alerts were in SIS. (As defined in the legal base, if the person with a return alert including an entry ban is leaving the Schengen area, the return alert shall be deleted immediately and the refusal of entry alert for this person shall be created.) These statistics are showing a gradual use of the new return alerts since the SIS recast entered into operation.

One of the main challenges to an effective return system is the *abuse of asylum systems with a view to delaying or avoiding returns*. Many Member States come across situations where applications for international protection or subsequent applications are made solely for this purpose. Especially problematic are such unfounded last-minute applications that result in authorities having to cancel or postpone planned removal operations, leading to unreasonable loss of human and financial resources spent to organise such operations.

The Asylum Procedure Regulation, subject to the outcome of ongoing interinstitutional negotiations, addresses this challenge from different angles. First, it obliges Member States to examine the applications made to merely delay or frustrate the enforcement of a removal decision in an *accelerated procedure*. Second, it fosters the links between the *issuance of the negative asylum decision with the issuance of the return decision*, so as to avoid delays and accelerate returns. In a similar vein, when the asylum decision and the return decision are issued jointly, the appeal must also take place jointly, within the same judicial proceedings, before the same court, and within the same timelines.

Moreover, the Council's mandate on the Asylum Procedure Regulation establishes a *mandatory border procedure* for asylum and return, which will ensure a faster processing of those abusing the asylum procedure by misleading the authorities through presentation of false information or documents or by withholding of relevant information.

The Council in its general approach on the Asylum Procedure Regulation also addresses the *last minute subsequent applications* made to delay or frustrate the removal, by proposing that in such cases the third country nationals might not be authorised to remain pending the finalisation of the decision declaring the application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented and there is no risk of refoulement. The Spanish Presidency is determined to ensure that the Asylum Procedure Regulation is politically agreed before the end of this semester, together with the other legislative files of the Pact on Migration and Asylum, in accordance with the joint roadmap agreed with the European Parliament.

Putting in practice the above-mentioned elements will contribute to preventing the abuse of asylum systems so as to delay or frustrate returns.

To ensure an effective return policy, it is also essential to have good communication and cooperation with the authorities not dealing directly with migration issues. Recent tragic events remind us of the importance of effective returns of third country nationals posing a security threat, where cooperation with law enforcement and security services is of utmost importance.

The current Return Directive outlines a number of provisions to *facilitate the return of third country nationals posing a security threat*, and the *recast Return directive* should reinforce this by adding new elements to facilitate such returns. Subject to interinstitutional negotiations, it would require Member States not to grant a period of voluntary departure for returnees posing a threat to public order, public security, or national security. Also, it establishes a threat to public order, public security, or national security as a new ground for detention in return procedures.

The *Asylum Procedure Regulation* will also be helpful in this respect as it foresees that applicants for international protection who may be a danger to the national security or public order of the Member States, or who have been forcibly expelled for serious reasons of national security or public order under national law, should be channelled through the asylum border procedure. This would ensure a faster dealing with their applications, and, possibly, faster returns through the return border procedure.

Using Frontex' support and common assessments to their full extent

Thanks to its new mandate, Frontex, is now able to support Member States along the whole process of return, from pre-return to post-return activities, and on all types of return. Currently Frontex supports Member States through numerous activities, including through those less known such as support on identification missions, provision of interpretation services, a toolbox on the return of children, and a return mobility programme allowing Member States' return experts to learn from their counterparts.

Throughout 2023, the *numbers of returns supported by Frontex* continued to increase and by the end of October 2023, 31669 third country nationals have been returned to third countries with the support of Frontex, which represents an increase of 56 % compared to the same period last year. Frontex has been upgrading its efforts to promote voluntary return, and while the numbers of Frontex supported non-voluntary returns have been going up, there has also been a sharp increase in the number of voluntary returns supported by Frontex. The number of such returns grew by 114%, from 7893 over the same period last year to 16857. Moreover, lately the number of voluntary returns supported by Frontex has been higher than that of non-voluntary returns, and voluntary returns accounted for 53% of all Frontex supported returns. This is a good practical demonstration of the implementation of the EU strategy to promote voluntary returns.

Member States have increased the use of some services offered by Frontex, for example, the deployment of *return specialists* and *Frontex Return Escort and Support Officers (FRESO)*. However, Member States should step up their use of other services offered by Frontex.

Thanks to Frontex' *Joint Reintegration Services (JRS)* there is for the first time an EU-wide reintegration programme. Currently it covers 37 third countries, but it will be further expanded by April 2024, including some Latin American countries. The number of participating Member States and cases submitted for post-arrival and post-return support has been constantly growing and has sharply increased recently³. To make this initiative a truly European one, it is important that those who have not joined the initiative so far, would do it without a delay. It is also essential to continue with the expansion of the JRS geographical scope, devoting special attention to the inclusion of those third countries that are currently readmitting a growing number of returnees.

³ By 6 November 2023, 4 882 demands for JRS have been made, covering 6 138 (5 198 adults and 940 minors) third country nationals. Among top 5 countries where JRS has been requested are Iraq, Turkey, The Gambia, Nigeria and Pakistan

As regards return operations, in 2022 Frontex introduced a novelty and started organising *Frontex-organised returns on charter flights*. Such Frontex organised flights have already been implemented to Albania, Nigeria, Bangladesh and most recently, to Georgia and Albania. The flight to Bangladesh had a participation of 9 Member States, with 63 returnees on board of the flight, demonstrating a real European approach. The last Frontex organised flight to Albania and Georgia with 59 returnees on board, organised under a pilot project with Spain, apart from having a double destination for the first time, also tested another novelty, i.e., combining voluntary and non-voluntary returnees on board. Such Frontex return flights, where targeted efforts result in a better use of resources, present a new way of working together and should become a common practice. Member States should strive to ensure that such Frontex return flights are fully used and that there are enough returnees ready to board them.

Another important initiative led by Frontex to facilitate returns is the management of the *European Return Liaison Officers (EURLOs)*. Thanks to this network Member States can profit from local know-how and specific help on concrete return cases. Currently Frontex deploys 9 EURLOs, covering 13 third countries, while a new deployment to Ivory Coast also covering Guinea will start in early 2024. The discussion held at the April 2023 Migration, Integration and Expulsion (IMEX Expulsion) working party meeting confirmed the importance of the EURLOs network for facilitating returns, and Member States should make the full use of this valuable resource. Frontex is currently seeking for candidates for EURLO positions in two important countries – Iraq and Bangladesh, therefore Member States are encouraged to nominate their specialists for these positions.

Last but not least, as good policies cannot be implemented without good data, it is important that Member States provide to Frontex their return data within the requested deadlines. This will not only allow Frontex to have a good overview of the situation and current support needed but will also provide the Agency with the relevant data to carry out the necessary analysis, and therefore ensure that support given matches the Member State needs based on a common plan with coordinated actions taking into account agreed priorities.

The High-Level Return Network, under the steer of the EU Return Coordinator, is for the first time working on a number of targeted return actions. The implementation of this work would be substantially reinforced by a strengthened EU situational picture in the field of return supporting the strategic and operational decision-making. The development of robust national IT case management systems, with the support of Frontex through RECAMAS reference model, will be very useful also for this purpose and are the key step for the developments of an EU return case management system, that will ensure that information is not scattered under different authorities, Member States, or databases.

Advancing towards a European return decision

Steps need to be taken to further harmonise decisions, procedures and implementing processes so as to avoid that fragmented national approaches to returns hampers the collective efforts in this field. The Presidency looks forward to the further development of the Schengen model for return, as identified by President Von der Leyen in her letter to the leaders, and the implementation of the 2024 thematic evaluation dedicated to returns which will result in the Schengen-wide recommendations. The Presidency considers of utmost importance that the Schengen Council provides the necessary political steer to support the identification of the areas requiring particular focus.

During the Swedish and Spanish Presidencies, mutual recognition of return decisions has been discussed, following up on the Commission's Recommendation⁴. The conclusion can be drawn that there is room for improvement, but fragmentation will remain, and the end result will still be far from optimal. For this reason, and without prejudice to finalising in due time the current amendment of the Return Directive, it is probably worth looking ahead towards the new legislative period and start designing a European return decision, by analysing the elements and solutions it should contain.

⁴ Commission recommendation on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council.

In order to prepare the Ministers' debate in the next Schengen Council of 5th December, delegations are invited to share their views on the following questions:

1. *In the light of the above, do you agree that the quick return of those posing a security threat and further harmonization of return procedures are two key elements to improve the effectiveness of return?*
 2. *Do you consider this is the right moment to start working on a European return decision?*
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