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**NOTE**

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From: Presidency  
To: Integration, Migration and Expulsion (IMEX Expulsion) working party  
Subject: Presidency discussion paper on making the return system more effective: a reflection towards the future of the EU return policy

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Delegations will find in annex a discussion paper on the above-mentioned topic for the Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 23 April 2024.

**PRESIDENCY DISCUSSION PAPER ON MAKING THE RETURN SYSTEM MORE  
EFFECTIVE: A REFLECTION TOWARDS THE FUTURE OF THE EU RETURN  
POLICY (PART III)**

Following the discussions that took place in the Integration, Migration and Expulsion (IMEX Expulsion) meeting on 12 March 2024<sup>1</sup> and in the SCIFA meeting on 10 April 2024<sup>2</sup> regarding the reflection towards the future of the EU return policy, the Belgian Presidency will organise the third discussion on this issue at the forthcoming IMEX Expulsion meeting on 23 April 2024. We would like to focus this discussion on voluntary return, the external dimension of return and the governance structure. While we will tackle the first two topics from the perspective of a legal framework, the third one will be taken from an operational perspective.

**Voluntary return**

Despite the richness of the practice at EU and Member States levels, the field of voluntary return is very modestly defined from a legal perspective. Directive 2008/115/CE (Return Directive) establishes the principle of prevalence of voluntary return but does not regulate this area in detail.

In recent years, several developments have particularly impacted voluntary returns: the European Commission published its Strategy on Voluntary Returns and Reintegration in April 2021; the Joint Reintegration Services were launched in 2022<sup>3</sup> and have expanded exponentially; Frontex's mandate was expanded in the field of return and the services offered by the Agency have multiplied; many operational tools were created (RIAT, FAR); etc. All these developments resulted in an important growth of voluntary returns from the European Union to third countries, and lately, more than half of the returns supported by Frontex are voluntary returns.

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<sup>1</sup> ST 6936/24

<sup>2</sup> ST 8016/24

<sup>3</sup> On 1 April 2024 the Joint Reintegration Services (JRS) have been renamed to EU Reintegration Programme (EURP).

**Definitions.** Although the term “voluntary return” is the one that is the most commonly used to refer to this policy field, the Return Directive only defines the concept of “voluntary departure”.<sup>4</sup> The 2018 proposal for a recast Return Directive<sup>5</sup> and the 2019 Council’s partial general approach<sup>6</sup> lack any clear definition addressing the nexus between “voluntary return” and “voluntary departure” or any other term used to refer to the action of voluntarily leaving the European Union territory. Rather, the texts refer to various terminologies without clearly establishing formal definitions and differentiations. Considering the ongoing developments in this policy field, calls have been made to address this lack of definition.

Indeed, defining the concepts could help to clarify return procedures and to determine with more precision which profiles fall under the Return Directive. In its evaluation on the EBCG Regulation published in February, the Commission highlighted that “clearer definitions on various return related concepts and activities, such as ‘voluntary return’ and ‘voluntary departure’, beyond the definition of return in Article 3 (3) of the Return Directive, would facilitate the operational application of the mandate [*i.e. of Frontex*] in the area of return”. Finally, it has also been established that better definitions also lead to better statistics and, ultimately, to a better situational awareness.

**Support to voluntary return and reintegration.** In the recast Return Directive, the Commission proposed to include an obligation to establish programmes for supporting the return of illegally staying third-country nationals who are nationals of third countries subject to visa obligation (Article 14 (3)). The Council made it clear in its partial general approach that while reintegration assistance might be included in the scope of such programmes, abuses of reintegration assistance should be avoided and reintegration assistance should not be granted to a third-country national who has already benefited from such an assistance provided by a Member State. However, as support to voluntary return and reintegration has significantly expanded since the Council adopted its partial general approach, we might need to have a fresh look at the need for legislative changes in this field such as, for example, further alignment and coherence between national programmes and with EU-RP, as well as further alignment with development programmes in third countries.

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<sup>4</sup> Article 3 (8) of 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: “compliance with the obligation to return within the time-limit fixed for that purpose in the return decision”.

<sup>5</sup> ST 12099/18+ADD1

<sup>6</sup> ST 10144/19

***Return decision.*** The Return Directive establishes the principle that, without prejudice to some exceptions, Member States shall issue a return decision to any third-country national staying illegally on their territory, regardless of whether the return is voluntary or not. Return decisions are at the heart of the EU system for return: they trigger legal effects for the returnee and the Member States that issue them, they are the basis of entry bans, statistics and also of EU funding and also play a role in acting as a dissuasive effect to irregular arrival to the EU. However, in case of voluntary return, a simplification of the return decision in case of voluntary return might be a solution to explore to reduce administrative burdens and simplify the process.

*Question for discussion:*

*What measures, including legislative changes, could be considered at the EU level to further strengthen the development of voluntary returns and to further incentivise third country nationals to return voluntarily?*

### **External dimension of return**

Both the internal and the external dimensions of return are complementary and essential in order to make the return system work more effectively. The cooperation of third countries on readmission is key to increase the number of effective returns but it remains a major challenge both at the Member States and EU levels.

The Return Directive deals with the internal dimension of returns, namely with the return procedure that takes place in the Member States. However, during the discussions on the recast Return Directive within the Council in 2018-2019, Member States went further than the original Commission proposal and agreed to include elements relating to the external dimension of returns.

First, the definition of ‘return’ was broadened to diversify the types of third countries to which a third country national should go back to. The Council partial general approach provides that return can be carried out towards a third country where the third country national has a right to enter and reside (Article 3 (3) (d)); or, as a last resort, where there is no link between the returnee and the third country, towards any third country with which there is an EU or bilateral agreement on the basis of which the third country national is accepted and is allowed to remain, and where fundamental rights are respected (Article 3 (3) (e)).

In the partial general approach, the Council also agreed to include a provision on readmission cooperation with third countries. Therefore, a new Article 24a on the relationship with Article 25a of the Visa Code was introduced. This provision echoes the repeated calls of the European Council to use all relevant EU policies as leverages to improve readmission cooperation from third countries. Besides Article 25a of the Visa Code, two new leverages have or should be created. First, the Samoa Agreement, the provisional application of which started as from January 2024, provides for the possibility to take proportionate measures if the other Party fails to comply with its obligations. Second, the proposal for a regulation on applying a generalised scheme of tariff preferences (the so-called ‘GSP’ proposal) foresees a leverage on readmission cooperation in the trade area. This proposal has yet to be adopted by the colegislators.

Furthermore, Article 7 of the Asylum and Migration Management Regulation (AMMR) proposal set out a formal mechanism to identify the appropriate actions to undertake with regard to third countries that do not cooperate sufficiently on readmission. However, during the negotiations with the European Parliament, this provision was removed. Consequently, the establishment of such a formal general leverages and incentives mechanism is currently not envisaged. However, consideration could be given, whether such a mechanism should be part of the future legislation on return.

*Questions for discussion:*

*When it comes to readmission cooperation of third countries, do you consider the tools at our disposal sufficient and well-adapted to our needs? If not, what legal changes could be envisaged in order to expand the toolbox and further improve the readmission cooperation of third countries?*

## Governance structure

Return is not a “standalone” public policy concern in the field of asylum and migration. At the strategic level, two regulations define the framework for action. Regulation 2019/1896 (EBCG Regulation) establishes a multiannual strategic policy cycle for European integrated border management. It provides the policy priorities and strategic guidelines for five years in the area of border management and return. On the other hand, the soon to be adopted Asylum and Migration Management Regulation (AMMR) provides that the actions of the Union should be guided by a comprehensive approach to asylum and migration management, which notably covers return. The national and European management strategies of asylum and migration will also include the field of return.

To ensure a strengthened coherence and an effective approach in the field of return, in 2022 the European Commission appointed an EU Return Coordinator, supported by a High-Level Network for Return. Since her appointment, the Return Coordinator introduced multiple initiatives to strengthen the coherence of return policies, including developing an “Operational Strategy for more effective Returns” and work in the context of the Return Roadmap on targeted return actions, which started in October 2023. The Network is in charge of the follow-up on these guiding documents.

However, despite the above-mentioned recent developments, we still come across the challenge of a fragmented governance in the field of returns at the EU level: numerous actors, networks, institutions and fora are involved in the chain of returns along the Member States authorities. From strategic to operational level, multiple discussions take place in parallel and multiple decisions are taken without always considering broader synergies. It renders the governance structure complex, sometimes even confusing.

As a consequence, there may be room to further rationalise and streamline the governance structure and clarify the role of operational networks in order for them to be instrumental towards a more coherent and comprehensive implementation of return policy and practices.

### *Questions for discussion:*

*How do you evaluate the current governance structure in the field of return? How could it be improved? Should the option to further rationalise the number of bodies be explored?*