



EUROPEAN COMMISSION
DIRECTORATE-GENERAL HOME AFFAIRS

Directorate C: Migration and Protection
Unit C.1: Irregular Migration and Return Policy

MIGRAPOL
CG Return Dir 76

CONTACT GROUP “Return Directive” (2008/115/EC)

Subject: Minutes of the 22nd meeting of the Contact Group Return Directive

Minutes of the 22nd meeting of the Contact Group Return Directive (E02232)
Brussels, 3 May 2017

1. Approval of the agenda

The draft agenda was approved without changes.

2. Nature of the meeting

The meeting of the Contact Group Return Directive (E02232) was a non-public meeting, with the participation of Member States experts, Schengen Associated countries, other European Union institutions and bodies (see full list under section 6). Unit HOME C.1 chaired the meeting.

3. List of points discussed, including conclusions / recommendations / opinions

a) Policy developments affecting return

The Commission presented the main elements of the renewed EU Action Plan¹ and of the Recommendation on making returns more effective². One of the measures foreseen by the Action Plan is to update the Return Handbook³ taking into account the above-mentioned Recommendation.

Member States expressed general support in relation to the policy line and specific recommendations put forward by the Commission. They also stressed that, on some specific recommendation, there may be divergences of views among Member States and with the Commission, and that some may be difficult to apply in practice for technical or political reasons. Member States also stressed the work being done at national level to increase the effectiveness of return, and the need to avoid the proliferation of European norms on return.

b) Revision of the Return Handbook

Participants discussed the draft text submitted by the Commission before the meeting. The main purpose of the first round of discussions is to focus on how the provisions of the Recommendation of 7 March on return can be included in a revised version of the Handbook. The Commission informed that several meetings (likely 3) will be organised before the summer break, that all possible needs for adjustments and amendments will be addressed during this process, and that civil society organisations will be invited to one of the upcoming meetings to discuss in particular the point on detention and alternatives to detention, including in relation to unaccompanied minors.

Following the order of the Recommendation, participants discussed the proposed Commission text.

¹ COM(2017) 200 final.

² C(2017) 1600.

³ C(2015) 6250.

Rec. 1: because of its political nature, this recommendation is not reflected in the text of the Handbook.

Rec. 2: amendments to Section 5 of the Handbook cover the elements of this recommendation. Some Member States considered that, due to the political and non-operational nature of this recommendation, it should not be included in the Handbook, or should only be included in the introductory section / foreword. Reference was made to the work of the guardianship for UAMs in the coordinated approach, with different views among participants. A request was made to include a recommendation to Member States to systematically scrutinise internal return procedures to improve efficiency.

Rec. 3 and 4: amendments to Sections 5 and 7 of the Handbook cover the elements of these recommendations. A suggestion to make the relevant text of Section 5 more operational was put forward, as well as to add a reference also to the Entry-Exit System. In relation to the relevant text of Section 7, the last sentence of the paragraph was discussed, indicating some divergences of views between participants concerning the practice and scope of the medical check, notably on taking into account only medical certificates that are well justified and meeting a certain threshold of quality. Existing national systems (e.g. collegial assessment, systematic availability of medical doctors provided by the State) should possibly be mentioned in this respect as good practices. Several Member States requested to clarify that there is no obligation to issue a fit-to-fly declaration to all returnees and that there is a general presumption that returnees are fit-to-fly, except if proven otherwise. The paragraph will be amended.

Rec. 5 and 6: amendments to Sections 5 and 12.2 of the Handbook cover the elements of these recommendations. In Section 5, it was agreed to reformulate the text on apprehension and to integrate examples of good practices, to make reference to the inspections foreseen by the Employer Sanctions Directive and to better clarify what "apprehension" means. A reserve on the text concerning the time validity of return decision was expressed by one Member State. On the relevant text of Section 12.2, it was agreed to clarify the text of the last sentence and to possibly make a reference to the ongoing *Gnandi* case.

Rec. 7: amendments to Sections 5 and 12.3 of the Handbook cover the elements of this recommendation. Following a discussion on whether the return decision should systematically include information on the country of destination, and after a clear distinction between the cases of voluntary and forced removal was established, it was agreed to introduce amendments to improve the clarity of the texts also by adding a reference to the definition of "return" and to other decisions complementing the return decisions (e.g. decisions determining the country of destination).

Rec. 8: amendments to Section 2.1 of the Handbook cover the elements of this recommendation. Reference to "swift return procedures at the border" needs to be considered.

Rec. 9: amendments to Sections 7 of the Handbook cover the elements of this recommendation. A participant observed that it may go beyond the scope of the Handbook to invite Member States to use accelerated or border asylum procedures. Following a discussion on who should be asking for valid travel documents to third countries (national authorities or the irregular migrant), and on the difficulties of acceptance by third countries of the European *laissez-passer*, it was agreed that a general reference to the Commission's support on the issue of the *laissez-passer* could be added, and that a more precise reference to the procedures for

requesting the use of this *LP* should be included. The EMN REG will be asked to further explore this issue in practice.

Rec. 10: amendments to Sections 14.1, 14.4.2 and 15.2 of the Handbook cover the elements of this recommendation. Some Member States observed that there may not be a direct link between the duration of detention and the effectiveness of return, and that legislative changes to prolong the duration of detention may not be possible at this stage. It was agreed to simplify the text to avoid repetitions, to amend the introductory part on the duration of detention and to try to find an alternative wording to refer to "non-cooperative third countries".

Rec. 11: amendments to Section 4 of the Handbook cover the elements of this recommendation. It was agreed to list possible good practices to be provided by the Member States.

Rec. 12: amendments to Sections 12.1 and 12.4 of the Handbook cover the elements of this recommendation. A discussion took place, without reaching a conclusion, on how short can a "short period" for appeal be; jurisprudence of the ECtHR on the matter was recalled. The link between the length of the appeal and the suspensive effect of appeals was highlighted. The text may be complemented by national good practices.

Rec. 13: amendments to Sections 10 and 10.2 of the Handbook cover the elements of this recommendation. Discussions took place on the reference to the compulsory hearing of the minor, on the scope of the assessment of the best interests, on the fact that the proposed text may be perceived by national courts as putting additional burden / requests, and on the reference to return to a facility as not being a durable solution. The relevant text need to be amended taking into account some of these remarks, including good practices on family tracing.

Rec. 14: amendments to Section 16 of the Handbook cover the elements of this recommendation. After having discussed the coherence of this text with the recently adopted Communication on minors, and after having reminded that the Directive allows – under strict conditions – detention, it was agreed to amend the proposed text to better explain what are the conditions for its use (notably with reference to alternatives) and to clarify that the text refers to UAMs.

Rec. 15 and 16: amendments to Section 1.6 of the Handbook cover the elements of this recommendation. Some clarification and addition were suggested and accepted. Clarity on the use of ECRIS for checking the existence of convictions in other Member States should be considered.

Rec. 24(a): amendments to Section 11.5 of the Handbook cover the elements of this recommendation. Discussion focused in particular on the possible systems for checking the voluntary departure of returnees. Some Member States agreed on the need to include some examples of practice aimed at facilitating the collection of this information at the border (e.g. providing a paper to be stamped at exit and to be sent back to the competent authority), and the use of Annex 39. The text should be complemented by example of existing practices. On the entry force of entry bans, while waiting for the *Ouhrami* judgment and while some Member States indicated that their national system does not meet the recommendation, no specific requests for amendment were put forward.

Rec. 17 – 23 and 24(b)-(d) were not discussed and will be subject to written comments.

c) EMN activities related to return

Due to lack of time, the point was not discussed.

d) Schengen evaluation in the field of return

In addition to the information provided in the background document, the Commission invited Member States to make an additional effort to take part to Schengen evaluations, taking into account that the number of trained experts should be sufficient to cover all the annual evaluations and that the European Border and Coast Guard Agency makes a significant investment to ensure adequate training.

e) Relevant case law

The Commission highlighted in particular the judgments of cases C-601/15 and C-528/15, described in the background document. All relevant judgments will be included in the Handbook.

f) AOB

The Commission provided a short update of the ongoing negotiations on the Eurodac and SIS II proposals.

FRA reminded Member States of the ongoing EMN consultation on the report on the detention of children in migration.

4. Next steps

Participants were asked to send within a 10-day deadline written suggestions on all the issues concerning the Handbook discussed during the meeting, as well as any other additional suggestion / request for amendment of the Handbook to be discussed during the next meeting of the Contact Group.

5. Next meeting

Friday 2 June, but it may be decided to organise a 2-day meeting starting on 1 June.

Topic of discussion will be the revision of the Handbook; a revised version will be distributed possibly 10 days / 2 weeks before the meeting.

6. List of participants

- EU Member States except, UK, IE, EL, CY, HR
- Schengen Associated Countries, except IS
- General-Secretariat of the Council of the EU
- European Border and Coast Guard Agency
- European Union Agency for Fundamental Rights (FRA)