



Council of the  
European Union

Brussels, 20 March 2017  
(OR. en)

7112/17

**LIMITE**

**MIGR 33**  
**COMIX 180**

**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee/Council
No. Cion doc.:	6943/17 MIGR 28 COMIX 166 + ADD 1 6949/17 MIGR 29 COMIX 170
Subject:	Return Policy: enhancing effectiveness a) Commission Recommendation on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council b) Commission Communication on a more effective return policy in the European Union - A renewed Action Plan = Policy debate

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Developing and further strengthening the efficiency of the EU policy on return is a key objective for the EU and its Member States. The importance of taking resolute action in this area has been repeatedly underlined by the European Council in its Conclusions. The Malta Declaration, adopted on 3 February 2017, also refers to the importance of identifying potential barriers in relation to conditions to be met for returns, and of reinforcing EU return capacities, while respecting international law.

The European Commission has adopted a Communication<sup>1</sup> and Recommendation<sup>2</sup> on this subject.

The Communication contains a renewed Action Plan on return, complementing the Action Plan of 2015<sup>3</sup>, setting the more general framework of the EU action in the field of return and defining a number of measures to be implemented by the Commission, EU agencies and Member States. On the other hand, the Recommendation is addressed to all Member States and Schengen Associated Countries bound by the Return Directive<sup>4</sup>, and it invites them to adjust their regulatory frameworks and/or administrative practices where necessary, and to instruct their authorities responsible for carrying out return-related tasks to apply all their national measures in line with the Recommendation when performing their duties, so that returns become swifter and more effective.

As clearly stated in the renewed Action Plan, the challenges that the EU's return policy needs to respond to have increased since the adoption of the 2015 Action Plan. The most significant one is improving the rate of effective returns. It appears that, while the total return rate from 2014 to 2015 increased from 41.8% to 42.5%, the rate of effective returns to third countries dropped from 36.6% to 36.4% (27% in case returns to Western Balkans are not included)<sup>5</sup>.

#### A. *The renewed Action Plan*

The Communication proposes a number of actions to deal with internal challenges and notably covers various aspects of the EU return system, setting out several issues and steps to be taken for each to address abuses of the asylum procedures; to enhance the sharing of information, to better use the European Border and Coastguard Agency

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<sup>1</sup> Communication from the Commission on a more effective return policy in the European Union - A renewed Action Plan (doc. 6943/17 + ADD 1).

<sup>2</sup> Commission Recommendation of 7 March 2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council (doc. 6949/17).

<sup>3</sup> Doc. 11846/15.

<sup>4</sup> 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, p.98.

<sup>5</sup> Communication from the Commission on a more effective return policy in the European Union - A renewed Action Plan.

The renewed Action Plan also presents actions to overcome the challenges of readmission. The third report on the implementation of the Partnership Framework presents progress achieved with the new approach of working with third countries and coordinating internally in the EU. It invites the EU and the Member States to employ their collective leverage in a coordinated and effective manner to improve cooperation on readmission, also in line with the European Council Conclusions of June 2016

1. *In your opinion, among the different actions identified in the renewed Action Plan, which measures should be taken as a matter of priority in order to significantly improve the efficiency of the return system within Europe?*
2. *In your opinion, which further measures should be taken at EU level in order to improve the cooperation of third countries on readmission, and to better coordinate actions and leverage among Member States on one hand, and between Member States and the EU level on the other?*

*B. The Recommendation on making returns more effective*

In order to prevent the risk of absconding, the Recommendation suggests that Member States should use detention as needed and appropriate, as a means for effective enforcement of return decisions.

The Return Directive contains a specific provision on detention (Article 15), which may be used unless other sufficient but less coercive measures can be applied effectively in a specific case, once a series of conditions set in the same article are fulfilled. The Recommendation suggests a more targeted use of detention, in particular when there is a risk of absconding (a list of presumptions and indications of possible cases of absconding are mentioned in points 15 and 16 of the Recommendation).

The Recommendation also invites Member States to align the maximum initial period of detention with the Directive and to set it at six months, which can subsequently be examined by the judicial authorities in individual cases, and for the Member States to use the possibility of further prolonging it up to a maximum of 18 months in cases provided for in Article 15(6) of the Directive. It also mentions the need to bring detention capacity in line with actual needs, including by using, where necessary, the derogation for emergency situations as provided for in Article 18 of the Return Directive. According to this Article, in situations where an exceptionally large number of third-country nationals who are to be returned places an unforeseen heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff, this Member State may, as long as the exceptional situation persists, decide to allow for periods for judicial review that are longer than those provided for in the Directive and to take urgent measures in respect of the conditions of detention derogating from those set out in the same Directive.

The Return Directive contains a specific provision on detention of minors (Article 17), which can only be applied as a last resort and for the shortest appropriate period of time. The Recommendation outlines that the possibility to place minors in detention - in the full respect of their fundamental rights and under the conditions provided for by the Return Directive - should not be precluded in national legislation. This can be done where it is strictly necessary for the execution of a final return decision, insofar as Member States are not able to ensure less coercive measures, which can be applied effectively to ensure effective return.

3. *Which measures do you envisage, if any, in order to implement the above Commission recommendations, including in your national legislation and in your judicial and detention systems? Which measures do you envisage, if any, in order to provide for appropriate measures to ensure the return of minors, including as regards detention of minors for return purposes, under the strict conditions set by the Return Directive, including the best interests of the child, as underlined by the Commission in its Recommendation?*