



Council of the
European Union

Brussels, 31 August 2020
(OR. en)

10299/20

LIMITE

JAI 652
MIGR 82
RELEX 597
COMIX 356

NOTE

From: Presidency
To: Working Party on Integration, Migration and Expulsion (Expulsion)
Subject: Enhancing cooperation between Member States and Frontex under its expanded mandate in the field of returns

Delegations will find below the Presidency paper on “Enhancing cooperation between Member States and Frontex under its expanded mandate in the field of returns”. **Delegations are invited to send written comments to the questions by 15 September 2020** to pol-in1-4-eu@brue.auswaertiges-amt.de and asile-migr@consilium.europa.eu. The replies received will be compiled and discussed at the IMEX meeting on 23 October 2020. The outcome may then be further discussed and developed at operational level.

**ENHANCING COOPERATION BETWEEN MEMBER STATES AND FRONTEX UNDER
ITS EXPANDED MANDATE IN THE FIELD OF RETURNS**

Scope and background

The European Border and Coast Guard Agency (Frontex) has successfully assisted the Member States with the operational protection of the external borders and the organisation of joint return operations since it went into operation on 1 May 2005 and in the area of return since the entry into force of Regulation (EU) 2016/1624. The entry into force of Regulation (EU) 2019/1896 on the European Border and Coast Guard significantly expanded the Agency's mandate in the area of returns. One important new feature is, for example, the "return teams" which can be deployed in Member States to provide technical and operational support for returns. The Agency will also offer technical and operational assistance related to voluntary returns, including supporting and coordinating assistance measures to third-country nationals prior and immediately following their arrival in the country of return, as well as longer-term post-return assistance. Sufficient funding for Frontex' new tasks in the area of return is crucial.

Frontex has already made considerable progress in implementing its new mandate and is still in the process of establishing other measures.

Under Finland’s Presidency of the Council of the EU, the IMEX Working Party discussed the expectations and needs of the Member States in the context of this new mandate,¹ on the basis among other things of a Presidency Paper² and several presentations. In addition, the German delegation submitted a position paper on the use of the European Border and Coast Guard Agency’s mandate in the field of returns.³ The discussion of the proposals for cooperation with Frontex in the field of returns set out in the position paper started under Finland’s Presidency and continued during Croatia’s Presidency of the Council of the EU.⁴

During our Presidency of the Council of the EU, Germany would like to follow on from this dialogue and discuss with the Member States, if possible with close involvement of Frontex, how the Agency can continue to provide appropriate support for returns.

The goal of the present initiative is to discuss in the IMEX Working Party, and at operational level, possible specific areas of cooperation between the Member States and Frontex within the framework of the new mandate. Member States’ needs, potential organisational or legal requirements and/or challenges are to be identified in particular on the basis of the questions below, and recommendations for implementation by Frontex are to be developed.

-
- 1 IMEX Working Party meeting on 3 July 2019 and the Informal Meeting of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 15/16 July 2019
 - 2 Presidency paper on the new mandate of the European Border and Coast Guard Agency in the area of returns (10254/19)
 - 3 Position paper on the use of the European Border and Coast Guard Agency’s mandate in the field of returns (13680/19) of 31 October 2019 (“German position paper”)
 - 4 IMEX Working Party meetings on 17 January 2020 and 4 March 2020

Based on the above mentioned German position paper and earlier discussions in the IMEX Working Party, and following consultation with the Agency, we have identified the following areas of cooperation as suitable key topics:

- Operational support from Frontex during returns
 - Use of escort and support staff⁵
 - Coordination and organisation of return flights by Frontex⁶
- Support from Frontex with respect to minors⁷
- Development of best practices and common standards for voluntary return and reintegration⁸

Member States are therefore invited to share their views of the further expansion of cooperation between the Member States and Frontex in the field of returns and to answer the questions below.

(1) Operational support from Frontex during returns

- ***Use of forced-return escort and support officers***

The German position paper proposed creating a pool of Frontex' own escort staff as part of category 1 of the Standing Corps as a useful addition to the Member States' own resources. The Member States who need Frontex escort staff should be able to request this directly at short notice and using a simple procedure.

5 German position paper, page 5

6 German position paper, page 5

7 IMEX Working Party meeting on 4 March 2020

8 German position paper, page 6

Frontex already provides forced-return escorts from the Frontex pool (according to Article 30 of Regulation 2016/1624 in conjunction with Article 123 (2) of Regulation 2019/1896) at the request of the Member States. This option is apparently not yet fully used by the Member States. This may be due to legal or organisational obstacles. Starting in January 2021, this pool will become part of the Standing Corps; it will consist of Frontex statutory staff (category 1, Article 55 of Regulation (EU) 2019/1896) and operational staff from the Member States on long-term secondment and short-term deployment (Standing Corps categories 2 and 3, Articles 56 and 57 of Regulation (EU) 2019/1896). According to the EBCGA Management Board Decision on adopting the European Border and Coast Guard standing corps annual planning for 2021 and indicative multiannual planning of profiles, 169 forced return escort and support officers are to be recruited in category 1 and 29 seconded to category 2 in 2021. The Standing Corps will, among others, provide support to the Member States during forced returns and voluntary departures, or act as escorts during return operations.

To identify any concerns Member States may have or obstacles they face with regard to the current arrangement and to be able to take such concerns or challenges into account when setting up the new Standing Corps, as well as to ensure the most efficient use of the Standing Corps by the Member States, Member States are invited to express their opinions on the following questions:

- What challenges, for example of a legal or organisational nature, must be taken into account with regard to the use of Frontex escort and support staff?
- How can the use of this staff be promoted in the Member States?

- *Coordination and organisation of return flights by Frontex*

The German position paper mentioned above also recommended that Frontex independently organise and carry out return flights for the Member States (in agreement with the Member State in question, but without a lead Member State). In the Presidency's view, Frontex independently conducting return flights would provide major relief for the Member States most affected.

Some Member States explicitly welcomed this proposal in the IMEX Working Party.⁹ In response to questions raised by some Member States, Germany explained that the proposal meant that the Member States should of course inform Frontex about their need for Frontex charter flights; such flights should therefore not be organised by Frontex independently of the Member States.

According to Article 50 (1) sentence 2 of Regulation (EU) 2019/1896, Frontex may, on its own initiative and with the agreement of the Member State concerned, coordinate and organise return operations.

At the same time, Frontex pointed out in the IMEX Working Party that it does not have an overview of the Member States' needs for charter flights. In order to be able to initiate joint charter flights, Frontex would need to have real time information from the Member States at its disposal on the numbers of illegally staying third-country nationals of a particular nationality who could be returned. Using RECAMAS in order to support Member States in building return management data bases (as also required by the recast Return Directive) which will be able to feed IRMA can be a feasible solution.

Based on this information, Frontex could then develop pro-active and tailor-made support measures; for example, operations could be proposed to organise for multiple Member States where third country nationals reside who are to be returned to the same destination country or who have the same nationality. Also, aircrafts of the right size could be proposed or chartered for short-haul or long-haul operations.

9 IMEX Working Party meeting on 17 January 2020

Member States are therefore invited to express their opinions on the following questions:

- Would your Member State have an interest in Frontex pro-actively proposing the organisation of joint charter flights ? What support could Frontex provide in this regard that would be particularly helpful?
- Which measures is your Member State taking to ensure that Frontex receives up-to-date information on current needs for return operations, as provided for by the EBCG Regulation?
- What challenges would need to be taken into account and what solutions could be considered in this regard?

(2) Support related to returns of minors

In the IMEX Working Party,¹⁰ some Member States suggested discussing possible support by Frontex with regard to returns of minors, including unaccompanied minors.

Different return stages have to be distinguished:

- Pre-return: to date, Frontex has held a workshop in which best practices and tools for informing and preparing minors for return measures were discussed. Frontex plans to hold a follow-up workshop later this year.

¹⁰ IMEX Working Party meeting on 4 March 2020

- Return operations: at this stage, in line with the recommendations of the Frontex Consultative Forum and the current internal Frontex policy for return operations, Frontex does not support the return of unaccompanied minors despite the fact that such returns are basically possible under the return *acquis*.
- Reintegration: in view of the transfer of ERRIN activities to Frontex, there are plans for the Frontex Joint Reintegration Programme to include support for (unaccompanied) minors.

To be able to discuss potential support measures by Frontex in this area, Member States are invited to share their views on the following questions:

- What do you consider being best practices in preparing returns of (unaccompanied) minors (e.g. in terms of taking the child's best interest into account, providing age-appropriate information, offering counselling services, taking family unity into account, sharing best practices for member state officials involved in the return of minors)?
- Does your Member State see a scope for support from Frontex? And if so, how could Frontex provide support with regard to the various stages of return?

(3) Developing best practices and common standards for voluntary return and reintegration

The proposals from the German position paper on support by Frontex during voluntary return and reintegration were also discussed in the IMEX Working Party.¹¹

Given the wide range of Member-State programmes and approaches to promoting voluntary return, the German position paper included the proposal that Frontex should analyse and compare the Member States' various approaches in order to identify best practices and propose common standards. Frontex has already held a workshop on voluntary return with the Member States which offered an opportunity to exchange best practices.

In addition, because "voluntary return" is not defined as a legal term in Directive 2008/115/EC or Regulation (EU) 2019/1896, Frontex has outlined the scope of its possible assistance for voluntary returns as follows, based on the outcome of the workshop with Member States on voluntary return:

- Support is provided exclusively to Member States' national institutions
- Legally staying third-country nationals are excluded from support measures
- Support is not conditional on the adoption of a return decision

In this context, Member States are invited to express their opinion on the following questions:

- In what areas would support from Frontex during voluntary returns be most important?
- From the perspective of your Member State, what are the best practices in regard to promoting voluntary return and reintegration?
- What aspects should be focused on in particular for the comparison of the various approaches of the Member States regarding voluntary return assistance?

¹¹ IMEX Working Party meeting on 4 March 2020