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**NOTE**

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From:	Presidency
To:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC - Extracts concerning the establishment of the Frontex Return Office

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The Borders Package, aiming to contributing to the Treaty objective of a "gradual introduction of an integrated management system for external borders", as well as addressing the current challenges that threaten the integrity of the Schengen Area, was adopted by the Commission on 15 December 2015.

Among the different proposals of the Borders Package, the proposal for a Regulation for a European Border and Coast Guard is of prominent importance and should be treated as a matter of absolutely priority, in accordance with the mandate given by the European Council on 17-18 December 2015. The Working Party on Frontiers is responsible for the examination of the proposal at technical level. With a view to streamlining this work, the Presidency has decided to consult the Working Party on Integration, Migration and Expulsion with regard to the issues related to the return policy.

These issues are contained in Recitals 20-22, Article 2 (paragraphs 10-14) and Articles 26-32 of the proposal, as set out in the Annex.

The Working Party on Integration, Migration and Expulsion is invited to focus this consultation on return-related elements of the proposal with the understanding that the setting up and the functioning of the future Agency also including to its return-related activities will be dealt with by the Working Party on Frontiers.

The above-mentioned extracts will be discussed during the meeting of the Working Party on Integration, Migration and Expulsion on 29 January 2016.

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Proposal for a  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on the European Border and Coast Guard**  
**and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council**  
**Decision 2005/267/EC**

**Extracts concerning the establishment of the Frontex Return Office**

**Recitals 20-22:**

- (20) On 8 October 2015, the European Council called for enlarging the mandate of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union to assist Member States in ensuring the effective return of illegally staying third-country nationals, including by organising return operations on its own initiative and enhancing its role regarding the acquisition of travel documents. For this purpose, the European Council called for the establishment of a Return Office within the European Border and Coast Guard Agency which should be tasked with the coordination of the Agency's activities in the field of return.
- (21) The European Border and Coast Guard Agency should step up its assistance to Member States for returning illegally staying third-country nationals, subject to the Union return policy and in compliance with Directive 2008/115/EC of the European Parliament and of the Council.<sup>1</sup> In particular, it should coordinate and organise return operations from one or more Member States and it should organise and conduct return interventions to reinforce the return system of Member States requiring increased technical and operational assistance when complying with their obligation to return illegally staying third-country nationals in accordance with that Directive.

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<sup>1</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, 21.12.2008, p. 98).

- (22) The European Border and Coast Guard Agency should establish pools of forced return monitors, forced return experts and return specialists made available by Member States, who should be deployed during return operations and that should form part of tailor-made European Return Intervention Teams deployed in return interventions. The European Border and Coast Guard Agency should provide them with the necessary training.

## *Article 2*

### **Definitions**

- (10) ‘return’ means return as defined in point 3 of Article 3 of Directive 2008/115/EC;
- (11) ‘return decision’ means a return decision as defined in point 4 of Article 3 of Directive 2008/115/EC;
- (12) ‘returnee’ means an illegally staying third-country national subject to a return decision;
- (13) ‘return operation’ means an operation to return illegally staying third-country nationals, that is coordinated by the Agency and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either through forced return or in voluntary compliance with an obligation to return;
- (14) ‘return intervention’ means an operation to return illegally staying third-country nationals providing for enhanced technical and operational assistance consisting of the deployment of European Return Intervention Teams to Member States and the organisation of return operations.

**Articles 26-32:**

**SECTION 4**

**RETURN**

*Article 26*

**Return Office**

1. The Return Office shall be responsible for carrying out the return-related activities of the Agency, in accordance with the respect of fundamental rights and general principles of Union law as well as international law, including refugee protection and human rights obligations. The Return Office shall, in particular:
  - (a) coordinate at technical and operational level the return activities of the Member States, to achieve an integrated system of return management among competent authorities of the Member States, with the participation of relevant authorities of third countries and other relevant stakeholders;
  - (b) provide operational support to Member States subject to particular pressure on their return systems;
  - (c) coordinate the use of relevant IT systems and provide support on consular cooperation for the identification of third-country nationals and the acquisition of travel documents, organise and coordinate return operations and provide support to voluntary departure;
  - (d) coordinate the return-related activities of the Agency as set out in this Regulation;
  - (e) organise, promote and coordinate activities enabling the exchange of information and the identification and pooling of best practices in return matters between the Member States;

- (f) finance or co-finance the operations, interventions and activities referred to in this Chapter with grants from its budget, in accordance with the financial rules applicable to the Agency.
2. The operational support referred to in point (b) of paragraph 1 shall include action to help Member States carry out return procedures by the competent national authorities by providing, in particular:
- (a) interpreting services;
  - (b) information on third countries of return;
  - (c) advice on the handling and management of return procedures in compliance with Directive 2008/115/EC;
  - (d) assistance on measures necessary to ensure the availability of returnees for return purposes and avoid that returnees abscond.
3. The Return Office shall aim at building synergies and connecting Union-funded networks and programmes in the field of return in close cooperation with the European Commission and the European Migration Network.<sup>2</sup>
4. The Agency may make use of the financial means of the Union which are available in the field of return. The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect for the Charter of Fundamental Rights.

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<sup>2</sup> OJ L 131, 21.5.2008, p. 7.

*Article 27*

**Return operations**

1. In accordance with Directive 2008/115/EC, and without entering into the merits of return decisions, the Agency shall provide the necessary assistance and, at the request of one or several participating Member States, ensure the coordination or the organisation of return operations, including through the chartering of aircraft for the purpose of such operations. The Agency may, on its own initiative, propose to Member States to coordinate or organise return operations.
2. Member States shall at least on a monthly basis inform the Agency of their planned national return operations, as well as of their needs for assistance or coordination by the Agency. The Agency shall draw up a rolling operational plan to provide the requesting Member States with the necessary operational reinforcement, including technical equipment. The Agency may, on its own initiative, include in the rolling operational plan the dates and destinations of return operations it considers necessary, based on a needs assessment. The Management Board shall decide, on a proposal of the Executive Director, on the *modus operandi* of the rolling operational plan.
3. The Agency may provide the necessary assistance and ensure, at the request of the participating Member States, or propose on its own initiative, the coordination or the organisation of return operations, for which the means of transport and forced return escorts are made available by a third country of return ('collecting return operations'). The participating Member States and the Agency shall ensure that the respect of fundamental rights and the proportionate use of means of constraints are guaranteed during the entire removal operation. At least a Member State representative and a forced return monitor from the pool established under Article 28 shall be present throughout the entire return operation until arrival at the third country of return.

4. The Agency may provide the necessary assistance and ensure, at the request of the participating Member States or a third country, or propose on its own initiative, the coordination or the organisation of return operations, during which a number of returnees subject to a third-country return decision are passed from this third country to another third country of return ('mixed return operations'), provided that the third country that issued the return decision is bound by the European Convention on Human Rights. The participating Member States and the Agency must ensure that the respect of fundamental rights and the proportionate use of means of constraints are guaranteed during the whole removal operation, notably with the presence of forced return monitors and of third-country forced return escorts.
5. Every return operation shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of return operations shall be carried out on the basis of objective and transparent criteria and shall cover the whole return operation from the pre-departure phase until the hand-over of the returnees in the third country of return.
6. The Agency shall finance or co-finance return operations with grants from its budget, in accordance with the financial rules applicable to the Agency, giving priority to those conducted by more than one Member State, or from hotspot areas.

#### *Article 28*

#### **Pool of Forced Return Monitors**

1. The Agency shall constitute a pool of forced return monitors from national competent bodies who carry out forced return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC and who have been trained in accordance with Article 35.
2. The Executive Director shall determine the profile and the number of the forced return monitors to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and the number. Member States shall contribute to the pool by nominating the forced return monitors corresponding to the defined profile.

3. The Agency shall make available the forced return monitors, upon request, to participating Member States to monitor, on their behalf, the correct implementation of the return operation and to take part in return interventions.

*Article 29*

**Pool of Forced Return Escorts**

1. The Agency shall constitute a pool of forced return escorts from national competent bodies who carry out return operations in accordance with the requirements referred to in Article 8(4) and (5) of Directive 2008/115/EC and who have been trained in accordance with Article 35.
2. The Executive Director shall determine the profile and the number of the forced return escorts to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and the number. Member States shall contribute to the pool by nominating the forced return escorts corresponding to the defined profile.
3. The Agency shall make available these escorts, upon request, to participating Member States to escort returnees on their behalf and to take part in return interventions.

*Article 30*

**Pool of Return Specialists**

1. The Agency shall constitute a pool of return specialists from national competent bodies and from the staff of the Agency, who have the skills and expertise required for carrying out return-related activities and who have been trained in accordance with Article 35. Those specialists shall be made available to carry out specific tasks, such as identification of particular groups of third-country nationals, the acquisition of travel documents from third countries and facilitation of consular cooperation.

2. The Executive Director shall determine the profile and the number of the forced return escorts to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and the number. Member States shall contribute to the pool by nominating the specialists corresponding to the defined profile.
3. The Agency shall make available the specialists, upon request, to Member States participating in return operations and to take part in return interventions.

#### *Article 31*

#### **European Return Intervention Teams**

1. The Agency shall constitute, from the pools set out in Articles 28, 29 and 30, tailor-made European Return Intervention Teams for deployment during return interventions.
2. Articles 20, 21 and 23 shall apply *mutatis mutandis* to the European Return Intervention Teams.

#### *Article 32*

#### **Return Interventions**

1. In circumstances where Member States are facing a heavy burden when implementing the obligation to return illegally staying third-country nationals in accordance with Directive 2008/115/EC, the Agency shall, upon request of one or more Member States, provide the appropriate technical and operational assistance in the form of a return intervention. Such intervention may consist in the deployment of European Return Intervention Teams to the host Member States and the organisation of return operations from the host Member States. Member States shall regularly inform the Agency of their needs for technical and operational assistance, and the Agency shall draw up a rolling plan for return interventions on this basis.

2. In circumstances where Member States are facing specific and disproportionate pressure when implementing their obligation to return illegally staying third-country nationals in accordance with Directive 2008/115/EC, the Agency shall, upon the request of one or more Member States, provide the appropriate technical and operational assistance in the form of a rapid return intervention. The Agency may propose on its own initiative to provide to the Member States such technical and operational assistance. A rapid return intervention may consist in the rapid deployment of European Return Intervention Teams to the host Member States and the organisation of return operations from the host Member States.
3. The Executive Director shall draw up an operational plan without delay, in agreement with the host Member States and the Member States willing to participate in a return intervention.
4. The operational plan shall be binding on the Agency, the host Member States and the participating Member States, and it shall cover all aspects that are necessary for carrying out the return intervention, in particular the description of the situation, objectives, the start and foreseeable duration of the intervention, geographical coverage and possible deployment to third countries, composition of the European Return Intervention Team, logistics, financial provisions, modalities of cooperation with third countries, other Union agencies and bodies, relevant international and non-governmental organisations. Any amendment to or adaptation of the operational plan shall require the agreement of the Executive Director, the host Member State and the participating Member States. A copy of the amended or adapted operational plan shall be immediately sent by the Agency to the Member States concerned and the Management Board.
5. The Executive Director shall take a decision on the operational plan as soon as possible and, in the case referred to in paragraph 2, within five working days. The decision shall be immediately notified in writing to the Member States concerned and to the Management Board.
6. The Agency shall finance or co-finance return interventions with grants from its budget in accordance with the financial rules applicable to the Agency.