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| From: | Presidency |
| To: | Working Party on Integration, Migration and Expulsion (Expulsion) |
| Subject: | Presidency Paper on Member States' responses to the questions raised in the Presidency Paper "Enhancing cooperation between the Member States and Frontex under its expanded mandate in the field of returns" and possible next steps |

Delegations will find attached a Presidency Paper summarising the responses received by the delegations including an outlook on a possible way forward, with a view to further discussions at the IMEX working group meeting on 26 October 2020 and at operational level.

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

The Presidency thanks Member States for their comprehensive and fruitful responses to the questions included in the Presidency Paper 10299/20, “Enhancing cooperation between Member States and Frontex under its expanded mandate in the field of returns”. Below please find an executive summary of the answers received including an outlook on a possible way forward and questions as a basis for discussion in the next IMEX working group meeting. A more detailed summary of the answers received is attached as ANNEX 2.

Executive Summary and Outlook**- Use of Frontex escorts**

While some Member States currently have no need for support by Frontex forced-return escort and support officers, the majority of Member States are interested in this service; several Member States note legal challenges in connection with transferring sovereign tasks to Frontex staff, and are specifically concerned about the use of force by Frontex staff.

From the Presidency’s point of view, next steps could involve Member States’ reviewing their national legislation and the potential need to amend it with a view to complying with the requirements of Regulation (EU) 2019/1896, in particular Article 82.

Coordination and organisation of return flights by Frontex

Many Member States are generally interested in Frontex pro-actively organising Joint Return Operations at least occasionally or as required by circumstances to specific countries of origin.

Advantages would include the general support that Frontex could provide with regard to the planning of charter flights for returns, in particular in connection with the procurement of aircraft and routing or the reduction of existing administrative and logistical obstacles that Member States encounter with respect to certain countries of origin.

Member States acknowledge, however, that there are fundamental logistical, technical and resource problems involved in organising joint charter flights, especially with regard to establishing the

concrete needs across all Member States (including some Member States' federal structures) as a basis for planning the necessary charter flights.

Nonetheless, Member States seem confident that these challenges could be resolved and advantages could be achieved, for example by using established communication/reporting channels (Direct Contact Points in Return Matters (DCP)/Pre-Return Activities Network (PRAN)/Frontex offices/liaison offices) or by setting up central units at the Member State level (reporting points) to coordinate the operations on the day of departure.

Member States concur that the goal should be to optimise existing IT systems (Integrated Return Management Application (IRMA)/Frontex Application for Returns (FAR)) and streamline networks (High Level Round Table on Return (HLRT)/DCP/PRAN/Post Arrival Post Return Network (PAPR)) and make them more efficient and easier to handle; furthermore, Member States view regular contact and exchange with the contact partners at the agency as necessary.

Generally speaking, the existing, well-established procedures and practices (routines) should be maintained or expanded upon. Overall, the assistance from Frontex in this area could reduce costs and save resources for the Member States.

Subsequent discussions among practitioners in the relevant bodies, such as the DCP/PRAN network, could serve as a next step; their recommendations could then be submitted to the HLRT as necessary.

From the perspective of the Presidency, as a next step, Frontex could organize a charter flight to a relevant country of origin pro-actively, as a pilot project, provided this proved feasible in light of the COVID-19 situation.

Support from Frontex with respect to minors

Generally, Member States appreciate compiling best practices regarding the return of (unaccompanied) minors, even though for some Member States the return of an unaccompanied minor is a rather rare or theoretical case or may not even be allowed under national law. Most Member States underline the necessity of safeguarding the best interest of the child throughout the return process.

Only a few Member States indicate that they do not need the support of Frontex in this regard, the majority of Member States (18) would appreciate Frontex' support in the different stages of the return process. Some Member States suggest a number of concrete next steps.

From the perspective of the Presidency, given the large interest in support from Frontex in this area, next steps could include conducting a workshop and developing a strategy and standards with Member States who are willing to support this initiative.

Development of best practices for voluntary return and reintegration

Several Member States are especially interested in assistance from Frontex with the organisation of voluntary returns and refinancing of costs (refinancing of voluntary return charters); others see a benefit primarily in support with reintegration. Different views appear to exist with regard to the question of harmonisation of assistance. Member States have already developed some best practices in the area of voluntary return and have comprehensive expertise regarding counselling models. Several Member States report that they have well-established cooperation with the IOM.

As a next step, Frontex, with the support of Member States and in cooperation with the Commission, could analyse Member States' programmes and approaches to identify best practices and define common standards, considering the relevant aspects for comparison suggested by the Member States.

Next steps in this area should take into account the Voluntary Return and Reintegration Strategy that the Commission announced in the Pact and will be put forward in Q1 2021¹.

Way forward

Against this background, delegations are invited to share their views on the following points:

- With regard to the areas of cooperation mentioned in this Presidency Paper (operational support, support with regard to minors, voluntary return and reintegration), what should the next steps be and which forum should be used to further develop or implement them?
- How could Member States support Frontex in implementing the above-mentioned tasks?

¹ Annexes to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Asylum and Migration from Sept. 23, 2020, doc. 11186/20 ADD 1

Summary of responses

(1) Operational support from Frontex during returns

Use of forced-return escort and support officers

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?

Several Member States mention legal and organisational challenges:

Legal challenges:

- Transferring sovereign tasks to Frontex staff (especially statutory staff) under national legislation: some Member States stress that national requirements regulating return operations should be respected; others are reviewing the need to amend their national laws or are in the process of doing so
- Use of force by Frontex staff, specifically legal basis and compliance with national legislation
- Accountability for incidents involving the returnee

Organisational challenges:

- Language skills of Frontex staff: fluency in English and as much as possible knowledge of the language of Member State in which the assignment takes place would be helpful
- Training standards: these should correspond to national standards, and Frontex staff should be familiar with the relevant national rules
- Clearly defined framework conditions, powers and responsibilities of Frontex staff in connection with return operations, possibly through bilateral agreements
- Time-consuming integration of Frontex staff in existing structures: deployment locations should be selected based on a thorough needs assessment
- Managing differing quarantine rules and restrictions in a COVID-19 situation

With regard to the framework for promoting the use of Frontex forced-return escort and support officers and specific measures that may help promote this use, Member States suggest the following:

Framework of promotion:

- Promotion within the existing framework of meetings (DCP/PRAN, readmission expert meetings, etc.) or at other meetings attended by Frontex, or through joint training and workshops
- Promotion through joint return operations, arranged by Frontex, e.g. conducted as pilot projects
- Promotion by the Member States, as they are most familiar with the needs and sensitivities of domestic institutions
- Focus on supporting those Member States with gaps in the area of return operations, or Member States with large numbers of third country nationals

Specific measures:

- Timely and clear information on the types of support offered by Frontex
- Quick and easy support by Frontex escort and support staff, in compliance with the legal framework and practice of the Member State which initiated the return operation
- Simple procedure for requesting assistance (one-stop shop)
- Points of contact in the Member States and within Frontex
- Deployment for an extended time (e.g. two-year secondments) with the same agency in a given Member State
- Involvement of the competent national authority responsible for return operations in the allocation of the personnel selected by Frontex

Coordination and organisation of return flights by Frontex

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?

The majority of Member States responding to the questionnaire are basically interested in the agency organising joint charter flights (JRO) on a pro-active basis (NOR, LUX, ROU, HRV, GRC, BGR; EST, CHE, ITA, FRA, SVK, POL, HUN, LTU). Only a few Member States currently have no such interest or no specific need (AUT, NLD, BEL, SVN).

Member States suggest the following:

- The pro-active organisation of joint return operations should be considered in particular for those countries of destination or countries of origin which pose a challenge to Member States when it comes to organising return operations of their own (this may include problems regarding identification, obtaining passport substitutes, landing permits or problems that are due to the long distances involved)
- Against this background, it could be helpful to optimise FAR with regard to scheduled flights, ticket and hotel bookings for escorts assigned to joint return operations, etc.
- For example, practical support in the framework of pro-actively organised joint return operations could be provided by procuring aircraft, planning the routing or obtaining landing permits for example via the European Return Liaison Officers (EURLO) network, in particular for those Member States who do not have any contacts in the countries of destination concerned or a representation of those countries of destination in their territory.
- Having the option to put people on a joint charter flight at short notice would also be helpful; one could consider in particular deporting finally rejected asylum applicants who are required to leave directly to their home countries by means of Frontex charter flights rather than transferring them to another Member State in accordance with the Dublin III Regulation.
- Nevertheless, some respondents also emphasised that the main responsibility or the general jurisdiction for return operations should lie with the Member States.

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?

The majority of Member States who responded to the questionnaire declared that the existing IT systems, especially FAR (SVK, POL, AUT, ROU, HRV, GRC, BGR, HUN, EST, LTU, FRA, SVN) and IRMA (HRV, GRC, NLD, HUN, EST, ITA) should be applied or used to the full extent in order to provide the agency with the necessary information and supply all the data required under the EBCG Regulation. The Member States are already using these platforms.

In addition, the existing DCP/PRAN networks and meetings should be used as well (LUX, HRV, BGR, HUN, ITA).

Furthermore, regular contact or exchange with the contact partners at the agency is necessary in this context (SVK, POL, HRV, GRC, HUN, EST, BEL).

What challenges would need to be taken into account and what solutions could be considered in this regard?

Most Member States indicated that there were various challenges in connection with the coordination and organisation of joint return operations by the agency.

General challenges:

- Generally speaking, the overall organisation of joint return operations poses a logistical, technical and resource problem.
- The number of Frontex staff is relatively small; this could lead to the need for changes in the organisation and implementation of return operations.
- Basically, the existing IT systems (platforms) such as the Return Case Management System (RECAMAS) or IRMA can be used; however, the IT systems in the Member States differ and are not always compatible with each other or with RECAMAS.

Practical challenges:

- Need to determine who requests and obtains the necessary landing permits

- Need to determine who applies for and obtains the necessary visa for the members of the back-up teams/escorts
- Need to develop common standards and best practices
- Differing legal and practical conditions among the Member States
- Concrete identification of needs across all Member States (and some Member States' federal structures) for the planning of charter flights and needs assessment for charter flights
- Need for Member States to report changes in their needs as swiftly as possible

Frontex support:

Member States envision support provided by Frontex in the following area as beneficial:

- Regarding the cooperation to identify and obtain passport substitutes for third country nationals, in particular from specific countries of origin
- Regarding the planning of charter flights for voluntary returns, in particular with regard to the procurement of aircraft and routing
- Regarding the reduction of administrative and logistic obstacles that Member States encounter in connection with certain countries of origin

Proposals for solutions/improvements:

- Establish communication/reporting channels (national units), e.g. Frontex field offices/liaison officers (FLOs)
- On the day of departure, have a central authority at the Member State level (reporting point) coordinate joint return operations
- Focus on scheduled flights; this applies in particular with regard to voluntary returns
- Maintain existing well-established procedures and practices (routines)
- Consider specific legal requirements in the Member States for certain categories of persons (unaccompanied minors, etc.)

(2) *Support related to returns of minors*

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)?

Generally, Member States appreciate compiling best practices regarding the return of (unaccompanied) minors, even though for some Member States the return of an unaccompanied minor is a rather rare or theoretical case or may not even be allowed under national law. Most Member States underline the necessity of safeguarding the best interest of the child throughout the return process. Member States shared the following best practices:

Pre-return:

- Making use of the IOM's services, if possible – e.g. investigating the situation of the minor's family in the country of origin; assisted voluntary return programmes
- Individual decision-making (e.g. history of minor; family ties and living conditions in country of origin)
- Providing age-appropriate information/counselling services/group sessions
- Including local reintegration partners in counselling and as go-between for the minor and the family already at an early point in time
- Child-specific administrative preparation (enrolment in school, medical/social reports)
- Obtaining minors' consent to cooperate during return process
- Cooperating with diplomatic missions representing the minor's interests
- Providing an efficient system for designating legal representatives/guardians
- Providing age-appropriate accommodation; avoiding detention; providing medical/psychological care
- Continuous training of specialised staff (officers, escorts, interpreters, etc.); certified and obligatory training, conducted by national or Frontex experts based on a common European training schedule

Return operations:

- Having adult relatives or other legal representatives accompany minors, if possible
- Escorts and staff specially trained for this task

Post-return/reintegration:

- Involvement of EURLOs
- Minors should be handed over to legal representatives (ideally parents or other family members) or to representatives of the competent authorities of the country of return
- Individual follow-up by trained local reintegration partners; ensure communication channels from the local reintegration partner to the former network of the minor (e.g. guardian)

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?

Only a few Member States indicate that they do not need the support of Frontex in this regard, the majority of the Member States (18) would appreciate Frontex' support in the different stages of the return process:

Pre-return:

- Organising voluntary and forced return operations for all vulnerable persons falling under Art. 3 (9) of the Return Directive, especially (unaccompanied) minors, and defining procedures and requirements for Member States for this type of operation, including for EURLOs and FLOs
- Possibility to use Frontex' booking system FAR to book flights both for unaccompanied minors and for any escort/responsible adult accompanying the minor during the return
- Training and assistance by Frontex (for instance on return counselling, obtaining travel documents, tracing family of the unaccompanied minor in the country of origin, etc.)
- Financing return operations

Return operations:

- Providing escorts, translators, doctors, etc. (FAR system)

Post-return/reintegration:

- Arrangements with third countries: organising/facilitating/ensuring adequate reception in countries of origin; availability of Frontex staff in the country of origin; establishing a central office responsible for all matters of arrival in the relevant country of origin
- Providing reintegration support/European Return and Reintegration Network (ERRIN)

Possible next steps:

Specific possible next steps were suggested by **BEL, EST, GRC and NOR**:

BEL suggests workshops to share and discuss best practices on voluntary return for minors.

Furthermore, **BEL** proposes taking the issue of unaccompanied minors to the Consultative Forum and to the Fundamental Rights Officer (FRO) and presenting a solid plan for assistance for the voluntary return of minors. **BEL** would volunteer to help Frontex design this plan and its high standards, based on their national experience.

EST suggests that Frontex create a special network or best practices exchange environment for initiating and holding discussions on the subject.

GRC proposes establishing a detailed catalogue with common Standard Operational Procedures (SOPs), including deciding whether return is in the best interest of the child; accommodation; notification and transfer; complaints; monitoring each case after return, etc.

NOR has years of experience in tackling the challenges of returning (unaccompanied) minors. The National Police Immigration Service (NPIS) started large-scale training and competence building for police staff in 2017, developing a set of tools:

- Manual/guide for operational staff, available online (<https://www.politiet.no/globalassets/dokumenter/pu/police-guidelines-for-asylum-cases-involving-children.pdf>)
- Interactive educational film on the arrest and return of families with children
- Practical guide on how to speak with children and their families about rejection of asylum applications, arrest and return
- Complete information website for children on the entire asylum process, www.asylbarn.no
- Improvement of IT case management system RECAMAS; the new functions encompass registering asylum cases and the entire return process, from planning an arrest to carrying out the return assignment

NOR (NPIS) is willing to share their knowledge and experience with Frontex and Member States, in order to create a possible common European standard for police operational interactions with children during return. The NPIS may assist Frontex by developing a common curriculum, theoretical or practical training, or other activities.

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

In what areas would support from Frontex during voluntary returns be most important?

Member States list the following areas in which support by Frontex could be helpful:

General assistance:

- Sharing best practices; training by Frontex on different aspects of the return process
- Promoting voluntary return in pan-European promotional campaigns
- Creating a common European database on third country nationals who have received voluntary return and reintegration support
- Developing the Reintegration Assistance Tool (RIAT) as a single tool for case handling and monitoring of voluntary return cases
- Conducting evaluation and research programmes on voluntary return and reintegration

Pre-return assistance:

- Organising voluntary returns, including booking airline tickets for scheduled flights, transporting medical cases by means of special flights, organising joint charter flights for voluntary returns, using and further developing FAR, creating agile digital platforms for handling online booking, and providing updated information on available commercial flights
- Assisting in the communication with destination countries, e.g. regarding identification and issuance of travel documents
- Providing country-specific return counselling in the Member States

Post-return assistance:

- Establishing a common system for voluntary return and reintegration assistance, through information desks in the countries of return with all necessary information for returnees, in collaboration with local authorities, where possible
- Assisting with reintegration programmes, including assistance for unaccompanied minors
- Assisting in the cooperation with countries of return, e.g. through capacity building
- Harmonising reintegration assistance: with regard to the question of harmonising reintegration assistance, some Member States suggest that the level of Member States' voluntary return assistance should not differ significantly. They also proposed considering aligning support with the living standards in the country of return, or offering minimum reintegration packages through Frontex, which Member States could choose to use and/or which Member States could complement with national programmes. In this way, harmonisation would not lead to lower levels of support, and an individualised approach to support would remain. On the other hand, it was suggested that Member States at the external borders should be allocated greater financial assistance for voluntary returns than Member States of final destination.
- Building on well-established partnerships with service providers, ensuring timely and uninterrupted reintegration support with transition of responsibilities to Frontex
- Assisting in locating service providers in return countries and capacity building of service providers, as well as designing high standard service specifications and a quality matrix
- Collaborating with the IOM: a dialogue between Frontex and the IOM could help clarify the IOM's role and collaboration with the IOM as a partner. Frontex support for voluntary returns and reintegration could focus, for example, on countries that are not covered by the IOM.

From the perspective of your Member State, what are the best practices in regard to promoting voluntary return and reintegration?

Member States list the following best practices with regard to pre-return activities, including return counselling and post-return activities:

Return counselling best practices:

- Individual, needs-based, comprehensive return counselling according to uniform standards, in the mother tongue of the largest target groups
- Counselling should be offered early on while the asylum procedure is under way and should be mandatory starting from the first decision rejecting an asylum application
- Counselling should include reasons for the decision and be linked with the assistance offered in the country of return
- Counselling could be offered in return preparation centres

Other pre-return best practices:

- Information events and campaigns for potential returnees as well as disseminators
- Collaboration with the embassies of the countries of return
- Cooperation between governmental and civil society institutions
- Financial incentives for voluntary returns

Post-return best practices:

- Reintegration assistance: support should be provided immediately upon arrival, e.g. in arrival or counselling centres in the country of return; reintegration programmes should be flexible and provide short-term and long-term solutions and be based on a country-specific stock-taking and needs analysis for each country of return
- Reliable and experienced partner organisations in countries of return, cooperation with the IOM and other NGOs specialised in returns
- Flexible management of programmes such as those offered by ERRIN to allow Member States to participate under national frameworks and requirements
- Monitoring and evaluation of programmes

What aspects should be focused on in particular for the comparison of the various approaches of the Member States regarding voluntary return assistance?

- Return counselling, return support and reintegration assistance programmes

- Amount, scope and nature of assistance granted per person and family in the Member States
 - Impact of various return assistance programmes on promoting voluntary return and the viability of reintegration
 - Timing of return and effect on support
 - Number of voluntary returns and sustainability of returns
 - Processes of voluntary return assistance in the Member States
 - Role of the IOM in facilitating voluntary return
 - Participation of the Member States in the reintegration programmes in the destination countries
 - Measures put in place to prevent misuse of assistance granted
 - Information on Member States' programmes and ways to promote voluntary returns
 - Monitoring and evaluation tools and statistics
-