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From: Presidency
To: Strategic Committee on Immigration, Frontiers and Asylum

Subject: EU return policy – gaps and opportunities
- discussion paper

1) Introduction

Various past events, such as long-lasting conflicts in Syria, Libya and elsewhere, as well as the current rapidly changing situation in Afghanistan, have had or risk having a significant impact in the area of migration, primarily by causing significant migratory flows towards the EU. How to address these migratory developments effectively is an important challenge for the EU and its Member States.

An effective and common EU return policy is one of the cornerstones of the comprehensive EU migration and asylum policy. However, despite different measures mobilised in this area, it remains one of the most challenging elements, and additional efforts are still needed to improve the low figures of third-country nationals effectively returned to their country of origin.

A common EU system for returns is therefore needed, one, which combines stronger, structures inside the EU with more effective cooperation with third countries on return and readmission.

2) Building an effective EU return policy – addressing shortcomings

Several initiatives aimed at ensuring the humane and effective return, readmission and reintegration of those not eligible to stay in the EU have been presented over the last few years.

The EU **legal framework** must be strengthened in order to support a common EU system: the proposals for a recast Return Directive and an Asylum Procedure Regulation aim at addressing the existing shortcomings and closing the loopholes between asylum and return, including at the external borders.

In April 2021, the Commission presented the **EU strategy on voluntary return and reintegration**¹, which aims to develop a more uniform and coordinated approach among Member States to unlock the full potential of voluntary return/reintegration and establish a more sustainable return policy for the mutual benefit of the returnees, the EU and third countries. The strategy also identifies several challenges in the existing framework and sets out a wide range of measures under seven pillars. At its meeting on 6 July the Working Party on Integration, Migration and Expulsion (IMEX) held a discussion on these measures. There, the Member States identified several key priorities in the area of return, including, in particular:

- effective coordination of relevant stakeholders at EU and national level;
- enhanced cooperation with third countries to ensure return and sustainable reintegration.

Effective coordination

The New Pact on Migration and Asylum² recognised the need to address the challenge of a fragmented approach. Its aims include setting up governance structures to promote a coherent approach among national and EU return, readmission and reintegration policies and reducing fragmentation. The soon to be appointed **EU Return Coordinator**, supported by a **High Level Network**, should contribute to this end. The Coordinator will work in cooperation with the **new Deputy Executive Director for Return** within the European Border and Coast Guard Agency (Frontex). Enhanced coordination, cooperation and consistent return processes are paramount for the successful implementation of the New Pact. These new structures complement the activities of several stakeholders, which already have roles in the area of return, in particular Frontex and Member States' national authorities.

¹ COM (2021) 120 final

² COM/2020/609 final

Frontex, particularly within its enhanced mandate, should further support Member States in increasing the number of return operations by providing technical and operational assistance in all phases of the return and reintegration process. This includes identification of returnees, acquisition of travel documents, pre-return counselling, organisation of return operations (including through the chartering of aircraft and organising returns on scheduled flights) post-arrival support and reintegration assistance. Discussion at the above-mentioned IMEX meeting revealed high expectations of Member States in this regard.

Alongside the increasing EU-level dimension in returns, **Member States** remain the main actors and ought to contribute at their end as well, in particular by ensuring effective procedures for issuing and enforcing return decisions, overcoming the existing fragmentation of approaches towards data collection, return counselling and return and reintegration programmes. It is also up to Member States to improve coordination and enhance capacities related to return and reintegration.

External dimension

In line with the recognised obligation in customary international law for each State to take back its nationals, an effective return system relies on effective cooperation with partner countries on readmission, and on their capacity and readiness to readmit irregular migrants. In past experience, such cooperation has often proved challenging, also for third countries, which at times have refused to cooperate or have chosen to cooperate with individual Member States only.

To overcome this, return policy has been recognised as one of the priority areas of **cooperation with third countries**, including in the New Pact. This is reflected also in action plans for priority countries that the Commission and the EEAS will present in the coming weeks. Furthermore, the revised **Visa Code** aims at improving readmission cooperation and provides for a regular assessment of readmission cooperation to be carried out by the Commission³, which may be followed by proposals for temporary restrictive visa-related measures in relation to third countries that do not sufficiently cooperate on readmission, or positive ones for those that are cooperating sufficiently. The first such exercise is currently ongoing, and temporary restrictive visa measures towards three countries, namely Iraq, the Gambia and Bangladesh are being considered in the Council.

Also, in June 2020 Coreper endorsed a comprehensive EU leverages mechanism, which proposes using other policy areas as leverage to improve third country cooperation on readmission. It is complementary to the visa leverage mechanism and can be launched in addition to visa measures or measures suspending the exemption from the visa requirement, in the absence of such measures or where such measures did not (sufficiently) improve cooperation. A similar mechanism has also proposed been proposed in the context of the New Pact, namely Article 7 of the Migration and Asylum Management Regulation.

Furthermore, cooperation with third countries is based mainly on the concluded **readmission agreements** that set out clear obligations and procedures for the authorities of the non-EU country and of EU Member States as to when and how to readmit people who are residing irregularly on their respective territories. In addition to multiple bilateral readmission agreements and arrangements between EU Member States and partner countries, the EU has concluded 18 readmission agreements and six non-binding arrangements, and is following their implementation via joint readmission committees (in the case of agreements) or joint working groups (in the case of arrangements).

³ The Commission has published first such assessment in its *Communication on enhancing cooperation on return and readmission* in February 2021 (COM(2021) 56 final)

Negotiating and concluding new readmission agreements (or arrangements) has proven increasingly difficult for a variety of reasons which can stem from factors relating to third countries - such as the domestic political context and the partner's declared preference for bilateral relations - or from the EU side. For that reason, six negotiating mandates, some of them dating back almost twenty years, have remained unfulfilled to date (see table in Annex 1).

On 13 September 2021, the European Court of Auditors published its Special Report on EU readmission cooperation with third countries⁴. The report observes that the suboptimal results in negotiations with third countries are linked to the limited progress at the EU level in creating structural incentives for third countries to implement their readmission obligations, and to the insufficient use of synergies with Member States and across policies, in particular a lack of collective EU and Member State action and the various levels of support for the Commission's negotiating efforts. In addition, the inclusion of the 'third country nationals clause' (the obligation for partner countries to readmit third country nationals who transited to the EU via their territory) in the mandates for negotiations has proved to be a major obstacle to the successful conclusion of agreements. In contrast, the Commission has had more success in concluding legally non-binding readmission arrangements that are more flexible. The Court of Auditors therefore suggests to the Commission that it pursue an approach that is more flexible, create synergies with Member States, and strengthen the incentives for third countries.

⁴ <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59347>

At the forthcoming SCIFA meeting, delegations are invited to share their views on the following questions:

- 1) Taking into consideration the new structures to be set up alongside the existing ones, are there any missing links that should be included to address the shortcomings in relation to coordination? How can we ensure that the different actors, including the EU Return Coordinator, work in synergy with one another?**
- 2) Are the enhanced emphasis on return and readmission in the external dimension and planned activities sufficient or should additional measures be put in place?**
- 3) In particular, further to the findings of the European Court of Auditors, would Member States be willing to support a more flexible approach in negotiations on return/readmission cooperation, and should existing mandates be revised accordingly? If priority is given to EU-level instruments and more synergy ensured, how could negotiating efforts be improved?**

Open mandates for negotiations of readmission agreements

	Date	Start negotiations	Last round	Comment
Morocco	September 2000	April 2003	16 th round, January 2015	Parallel visa Facilitation Agreement negotiations
Algeria	November 2002	Never started		
China	November 2002	December 2017	3 rd round May 2019	Parallel visa Facilitation Agreement negotiations
Tunisia	December 2014	October 2016	5 th round, January 2019	Parallel visa Facilitation Agreement negotiations
Jordan	April 2016		Exploratory round, October 2016	Parallel visa Facilitation Agreement negotiations
Nigeria	September 2016	October 2016	7 th round March 2021	

The Commission has negotiating directives to negotiate readmission agreements with Morocco, Algeria, Tunisia, China, Jordan and Nigeria.

Now that political relations between the EU and **Morocco** have been revived, the parallel negotiations for a readmission agreement and a visa facilitation agreement, which have been on-hold since 2015, could restart once all the conditions for the relaunch of a wider dialogue on migration and mobility are in place. The pandemic has delayed the potential holding of such a dialogue.

Negotiations with **Nigeria** restarted on 28 January 2021, honouring the commitment Nigeria made in the seventh ministerial dialogue of 18 November 2020. Since then, four negotiating sessions have taken place, on 18 and 25 February, and on 2 and 18 March. Progress has been slow, with Nigeria showing little openness towards compromise. Avenues for moving the negotiations forward are being explored.

The negotiations with **Tunisia**, after good progress at technical level in 2018, have been on hold during the electoral period in 2019 and due to the Covid-19 pandemic. The EU is seeking to relaunch the process in the framework of the wider dialogue on migration with the country.

The negotiations of a readmission agreement with **Jordan** have stalled and it seems unlikely that they will be re-launched in the foreseeable future.

As regards **Algeria**, recent progress in engagement on combating irregular migration and the fight against migrant smuggling could pave the way for discussions on other aspects of migration management.

Although negotiating directives for an agreement on cooperation in combatting irregular migration (including on readmission) with **China** were already adopted in November 2002, it was not possible to start negotiations until 2017, under the umbrella of the EU-China High Level Dialogue on Migration and Mobility. Despite three rounds held to date (in December 2017, September 2018 and May 2019), the talks are still in an exploratory phase. Progress on the parallel negotiations for a visa facilitation agreement is equally slow. The next round of negotiations as well as the next meeting of the High Level Dialogue could take place when the health conditions allow.