



Council of the
European Union

Brussels, 4 October 2023
(OR. en)

13551/23

LIMITE

JAI 1227
MIGR 297
IRAQ 9
VISA 195

'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: A non-binding instrument on return and readmission between the EU and Iraq
– Authorisation to negotiate an NBI

1. The EU-Iraq Partnership and Cooperation Agreement¹ in force since 2018 reiterates the obligation for both Parties to readmit their own nationals who are illegally present on the territory of the other Party. However, in practice, since the entry into force of the agreement, the cooperation by Iraq has been limited to voluntary returns and on the non-voluntary return of some criminals.
2. Given insufficient Iraq's cooperation on readmission in July 2021 the Commission tabled a proposal for an implementing Council decision to take temporary restrictive visa measures against Iraq². The decision has been under the discussions in the Council since then.

¹ OJ L 204 of 31.7.2012, p. 20 (text of agreement), OJ L 203, of 10.8.2018, p. 1 (Council Decision on conclusion)

² Doc. 10860/21

3. With an aim to increase Iraq's cooperation on readmission the EU launched an extensive and continuous outreach towards the Iraqi authorities at political and technical level. This resulted in the Iraqi government's announcement in March 2023 according to which it denounced the previous policy of general non-acceptance of non-voluntary returns and it committed to start cooperating on all returns.
4. The Iraqi Government subsequently approached several Member States offering them to conclude arrangements detailing cooperation on return and readmission. Several such arrangements have been concluded with individual Member States and some are under negotiation or under consideration.
5. In this context, having an overarching arrangement at EU level on return and readmission would provide clarity, transparency and predictability to the process to both Parties. The Iraqi government has demonstrated openness and willingness to consider such an instrument.
6. On 14 September 2023, the Commission submitted to the Council an information note setting out its intention to enter discussions with Iraq on a non-binding instrument with the EU, which would present a procedure that should be followed for the identification and return of persons without an authorisation to stay and which would support the implementation of the Partnership and Cooperation Agreement. The note was circulated to Member States in document WK 11588/2023.
7. The Commission proposed that this instrument would aim to include:
 - the principle of acceptance of all type of returns, including non-voluntary returns, in line with the Partnership and Cooperation Agreement and with the obligation under international customary law to take back own nationals.

- a presentation of a procedure for the effective identification and issuance of travel documents, detailing the kind of evidence to be presented the timeframes for the confirmation of nationality, with the shortest possible timeframes for cases supported by strong evidence (ex. copies of passports, biometric data, VIS records),
 - timeframes for the issuance of travel documents and their renewal, and the duration of their validity,
 - provisions relating to the organisation of identification missions,
 - provisions relating to the organisation of return operations, including the acceptance of charter flights, and the timely issuance of landing permits,
 - a political commitment to work towards a substantial reduction of the backlog of readmission cases,
 - in line with the EU's voluntary return and reintegration strategy and the EU's legislation, the instrument could contain, upon Iraq's request, a reference to the EU's support for sustainable reintegration.
8. As part of the first step of the procedure, the Spanish Presidency organised a JHA Counsellors (Expulsion) meeting which took place on 25 September 2023. During this meeting the Commission informed delegations about its intention to enter into negotiations with the Iraqi government on a non-binding instrument on return and readmission and the proposed content of such an instrument.

9. The discussion at the meeting demonstrated very wide support for concluding a non-binding instrument on return and readmission between the EU and Iraq, along the negotiating lines presented by the Commission, and in full complementarity with bilateral arrangements in place between Member States and Iraq.
10. The Commission explained that the NBI should reflect at least the most advantageous standards in the bilateral arrangements of the Member States. The EU level NBI should not replace the bilateral arrangements. The EU level NBI and bilateral arrangements would be complementary in nature. The existing and those yet to be concluded bilateral arrangements between Iraq and Member States may further be used. At the same time all Member States may apply the EU level NBI to foster returns, where appropriate.
11. On the negotiating lines, in case reintegration-related provisions are included in the NBI, only general lines on EU policy in this respect should be incorporated. The NBI should not establish obligations on Members States in this respect. The EU should clearly indicate that reintegration support is not a prerequisite for implementing actual or future returns. The obligation to readmit own nationals remains unconditional.
12. Negotiations on the NBI should start promptly and should be rapidly concluded, so as to facilitate the implementation of all types of returns by helping to overcome the current practical challenges. These should also take into consideration the ongoing negotiations on bilateral arrangements.

13. The negotiations on the NBI should not disrupt or delay the actual implementation of all types of returns, in accordance with the above-mentioned recent commitments of the Iraqi government. The actual implementation of all types of returns remains a primary priority. The conclusion of the NBI is a measure to contribute to achieving this goal and to develop a structured operational framework for sustainable cooperation.
14. A close monitoring of the progress in implementing all types of returns should continue to be ensured and Iraq's level of readmission cooperation should continue to be regularly assessed. In case the level of cooperation is still deemed to be insufficient by the end of 2023, a discussion should be organised at the Council on the proposal for an implementing Council decision to take temporary restrictive visa measures against Iraq.
15. It is further understood that the Commission will regularly update the Council, at the appropriate level, on the evolution of negotiations and will revert to the Council at the end of negotiations to seek the Council's authorisation for the signing of the non-binding instrument on behalf of the Union.
16. It is also understood that the conclusion of such non-binding EU instrument does not prevent the future negotiation and conclusion of a fully-fledged and legally binding EU-Iraq readmission agreement.
17. In light of the above, and subject to confirmation by the Permanent Representatives' Committee, the Council is invited to:
 - authorise the Commission to enter on behalf of the Union into negotiations on the conclusion of a non-binding instrument on return and readmission between the EU and Iraq, along the negotiating lines outlined in point 7 and subject to the general principles presented above at points 10-16.