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NOTE

From:	Presidency
To:	Delegations
Subject:	Presidency paper on making the return systems more effective

Delegations will find below the Presidency paper on the above-mentioned topic for the Integration, Migration and Expulsion (IMEX Expulsion) working party meeting to be held on 20 December 2023.

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Making the return systems more effective

Recent events have brought the need for effective returns to the heart of our political agenda, confirming what was already a high-level priority identified by the Schengen Council in June 2023. To increase the number of effective returns, the EU and the Member States need to focus efforts on both the internal and the external dimensions of returns. Lately the external dimension, including the Visa Code Article 25a exercise, as well as other initiatives at political, legal, and operational level to improve cooperation with third countries on returns and readmissions, have been at the centre of the discussions in different Council bodies.

While efforts to improve the external dimension of returns continue, in this document **the Presidency would like to concentrate on key aspects of the internal dimension of returns**. The low number of readmission requests sent to third countries indicates that there are still significant national bottlenecks hampering returns.

This Presidency paper focuses on actions which could strengthen the functioning of our return systems and advance towards a common European return system, in particular prioritising effective returns of third country nationals posing a security threat and advancing towards a European return decision. Both issues were dealt with at the Schengen Council on 5 December 2023 and, as a preparation, in the Working Party for Schengen Matters meeting on 17 November 2023 and at the SCIFA meeting on 23 November 2023.

1. Prioritising effective returns of third country nationals posing a security threat

This issue is also being dealt with by the High-Level Network on Returns among its targeted return actions.

At the Schengen Council, SCIFA and Working Party for Schengen Matters several elements were identified as being relevant:

- **Cooperation** among national authorities, especially **between migration and security authorities**. Solutions are diverse, depending on the distribution of competences at national level, but there are examples such as liaison officers from security authorities working in the migration departments in order to prioritize the security-relevant cases, dedicated groups that liaise with prison authorities in order to avoid any gaps between imprisonment and removal, etc.

- Tools that will be provided by the **Pact on Migration and Asylum** in order to **avoid the abuse of asylum systems** with a view to delaying or avoiding returns, such as:

  - The Asylum Procedure Regulation, subject to the outcome of ongoing interinstitutional negotiations, addresses this challenge from different angles. First, it obliges Member States to examine the applications made to merely delay or frustrate the enforcement of a removal decision in an accelerated procedure. Second, it fosters the links between the issuance of the negative asylum decision with the issuance of the return decision, so as to avoid delays and accelerate returns. In a similar vein, when the asylum decision and the return decision are issued jointly, the appeal must also take place jointly, within the same judicial proceedings, before the same court, and within the same timelines.

  - Moreover, the Council's mandate on the Asylum Procedure Regulation establishes a mandatory border procedure for asylum and return, which will ensure a faster processing of those abusing the asylum procedure by misleading the authorities through presentation of false information or documents or by withholding of relevant information.

  - The Council in its general approach on the Asylum Procedure Regulation also addresses the last-minute subsequent applications made to delay or frustrate the removal, by proposing that in such cases the third country nationals might not be authorised to remain pending the finalisation of the decision declaring the application inadmissible in cases where it is

–   The current **Return Directive** outlines a number of provisions to facilitate the return of third country nationals posing a security threat, and the **recast Return Directive** should reinforce this by adding new elements to facilitate such returns. Subject to interinstitutional negotiations, it would require Member States not to grant a period of voluntary departure for returnees posing a threat to public order, public security, or national security. Also, it establishes the threat to public order, public security, or national security as a new ground for detention in return procedures.

–   The Asylum Procedure Regulation will also be helpful in this respect as it foresees that applicants for international protection who may be a **danger to the national security or public order of the Member States** should be channelled through the asylum border procedure. This would ensure a faster dealing with their applications, and, possibly, faster returns through the return border procedure.

–   Avoiding absconding by providing sufficient legal and material resources to use **detention** for these cases, resorting automatically to forced removal instead of voluntary return or voluntary departure (unless voluntary return/departure would be the only feasible option, due to lack of cooperation on readmission from the relevant third country).

–   Efficient use of national and EU **IT systems**, including the provision of all relevant information regarding the potential security threat when entering the alert on return decision into SIS. In particular, Member States are obliged to indicate whether the returnee poses a security threat by ticking the 'security flag' box in relation to the return alert in SIS, and given that many returnees are undocumented, the importance of uploading biometric data has to be underlined.

–   Increasing and making a better and more strategic use of Frontex support on return related activities.

On the other hand, an obstacle frequently encountered is the application of the **non-refoulement principle**.

2. Advancing towards a European return decision

The mutual recognition of return decisions was discussed under the Swedish and Spanish Presidencies (in the IMEX Expulsion meeting of 27 July 2023), following up on the Commission's Recommendation[1].

In preparation for the Schengen Council and without prejudice to finalising in due time the current recast of the Return Directive, the Presidency proposed looking ahead to the new legislative period and starting to reflect on other elements that could help to improve the effectiveness of returns in the European Union, and on the possible contours and parameters of a European return decision, by analysing the elements and solutions it should contain.

At the Schengen Council and at the SCIFA meeting, delegations registered interest in further discussing the possibility of having a European return decision. Views differed as to whether this objective should be considered in the short term or in the long term. In any case, some requirements for a future European return decision have started to be identified:

– It must involve reaching mutual recognition of return decisions.

– It must set a limit to the number of possible appeals throughout the process.

– A solid link with the refusal of legal stay and of asylum applications must be established.

– Lesson can be learnt from the European Arrest Warrant.

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[1] Commission recommendation on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council.

A number of delegations considered that the Council's general approach on the recast Return Directive, on which the European Parliament still has not adopted its position, should be revised to take into account the policy developments (extension of Frontex mandate for returns, Visa Code Article 25a exercise) and developments in the migratory and security situation that happened since its adoption in June 2019. It is not the intention of the Spanish Presidency, now coming to an end, to decide if, how or when this should happen, but it is probably worth reflecting on which are the elements that need to be incorporated into the European return system, regardless the way we finally convey them through.

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The two above-mentioned issues represent, respectively, good examples of short-term and middle-to long-term actions aimed at improving our return systems. At the forthcoming Integration, Migration and Expulsion (IMEX Expulsion) meeting on 20 December 2023, t**he Presidency invites the delegations to take note of these conclusions**, deriving from the discussions in the Schengen Council, SCIFA and Working Party on Schengen Matters, **and to make any comments that may further help to advance on both issues**.