Council of the European Union

**Brussels, 6 February 2024
(OR. en)**

5496/24

LIMITE

**JAI 193
MIGR 17
ASILE 15
SCHENGEN 8
SCH-EVAL 25
COMIX 58**

NOTE

From:	Commission services
To:	Integration, Migration and Expulsion (IMEX Expulsion) working party
Subject:	Key conclusions from the 2020-2023 Schengen evaluations as regards return

Delegations will find in the Annex a non-paper on the above-mentioned subject, as received from the Commission services.

———————

Key conclusions from the 2020-2023 Schengen evaluations as regards return

Enhancing the effectiveness of returns has been a long-standing key priority for Member States and a significant work strand of the European Commission. The complexity of this field is widely recognised, and numerous initiatives have been launched in recent years to tackle both internal and external challenges. During the 2023-2024 Schengen cycle, the Schengen Council agreed on prioritising this field and the Spanish Presidency launched a reflection on how to make the return system more effective and advance towards a common European return system[1].

The Schengen evaluation and monitoring mechanism is at the core of an effective Schengen governance framework allowing for the timely identification and remedying of strategic vulnerabilities having an impact on the Schengen area. This peer-to-peer instrument is, therefore, essential for fostering trust among Schengen States and their national systems and is a key tool to bring substantial improvements.

Since 2020, the Commission, together with experts from Member States and observers from JHA Agencies, have initiated the second cycle of Schengen evaluations. These evaluations monitor the successful implementation of the Schengen acquis, focusing on the measures supporting its well-functioning, including the effective return of third country nationals with no legal right to stay, which is an important measure compensating for the absence of controls at the internal borders.

This non-paper takes stock of the evaluations carried out during the second cycle of evaluations (2020-2023). It also includes the main results of those that have taken place in 2023 under the new Regulation[2], and, which shift the focus towards integrated country assessments allowing to better connect policy areas (e.g. management of the external borders and measures to return third country nationals with no right to stay, or use of large-scale IT systems to support the return policy) and reduce the gap between the operational and political levels. In view of complementing the Compendium of best practices[3] adopted together with the 2023 State of Schengen Report, this non-paper reflects additional good practices observed in the 2023 evaluations.

*While Schengen evaluations have demonstrated improvements in this field, evaluations also revealed that there are **persistent obstacles** at national level hampering the possibilities to carry out returns. Furthermore, while there has been progress in terms of putting in place more common elements and cooperation as part of the objective of the Pact on Migration and Asylum to establish a common EU system for returns, the divergent practices revealed through the Schengen evaluations point to a fragmented approach among Member States' return systems, which may impact the trust in the Schengen area. In addition, evaluations recently conducted in 2023 also revealed additional emerging challenges arising from instrumentalisation practices from third countries, which require effective responses, while safeguarding fundamental rights.*

---

[1] 15925/23.

[2] Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013.

[3] Compendium of best practices identified in the framework of the Schengen evaluation and monitoring mechanism (resource html (europa.eu)

Persistent deficiencies with regards to the effective enforcement of return decisions

Member States continue to face challenges in allocating **adequate human resources** to authorities responsible for implementing returns. Furthermore, limited **detention capacity** and limited possible duration of detention poses a significant obstacle for the majority of Member States. Overall, evaluations revealed that only in a limited number of Member States there is an overview of the **national capabilities,** and planning of resources is usually carried out in a fragmented manner. Consequently, in the majority of Member States, there is a lack of strategic approach to allocation of resources based on the existing and expected needs in light of migratory flows and decisions (to be) taken by other authorities, in particular asylum authorities, which significantly prevents authorities from taking sustainable measures.

In several Member States, including those where asylum and return decisions are issued simultaneously, there is a lack of operational mechanisms or arrangements to ensure **systematic follow-up** and enforcement of return decisions. Frequently, third-country nationals with an obligation to return manage to evade attention of authorities due to poor communication between relevant authorities initiating and executing the return process, in particular follow-up in cases of non-compliance with voluntary return remains an issue, as well as due to the lack of active return case management. Individuals with an obligation to leave often exploit these gaps, remaining within the EU/Schengen area, and even within reception centers, effectively escaping the scrutiny of responsible authorities. The absence of an effective digitalised return case management system is often at the heart of these vulnerabilities, leading to gaps, poor follow-up, and inefficiencies.

Following the entry into operation of the renewed **Schengen Information System** in March 2023, the European/Schengen dimension of return decisions is facilitated. While Member States are introducing return alerts into the Schengen Information System, there is potential to further and better exploit the new functionalities. In particular, there is a lack of established procedures between the relevant authorities, which negatively impacts the overall access to the Schengen Information System and to all relevant searches, including fingerprint searches, as well as the information flow between the actors involved at the national level responsible for inserting and validating the return alerts with all the available supplementary information and biometrics. Furthermore, there is large untapped potential for effectively exchanging information between Member States to adequately benefit from available information acquired from other Member States and avoid duplicating processes, including through the mutual recognition of decisions.

Member States continue to face significant challenges related to **asylum applications** lodged solely to obstruct returns. In many Member States, return procedures are automatically suspended, instigating the asylum process anew and causing considerable delays in the return process. Given the severity of this issue, authorities in some Member States have started implementing specific procedural measures, such as the deployment of dedicated teams at airports, to efficiently manage last-minute applications and ensure that return operations are not cancelled or postponed.

While cooperation from third countries on **readmission** continues to be a significant problem for Member States to enforce return decisions, there are also internal national obstacles hampering this cooperation. This includes limited resources, a lack of internal coordination in communicating with third-country authorities, underutilisation of EU tools (e.g., Readmission Case Management System, liaison officers deployed in third countries), and the absence of a comprehensive overview on readmission preventing national authorities from establishing an intelligence-based escalation process within their national systems and through the EU. In some Member States, the relevant embassy/consulate that is accredited is in another country. Evaluations revealed that in several Member States there is a limited number of readmission requests sent to third countries when compared to the number of return decisions. All these internal challenges exacerbate the difficulties already existing due to the cooperation by third countries on readmission and in some Member States.

These persisting obstacles reveal a fragmented national governance in Member States that prevents Member States from streamlining national procedures, focusing on priorities, and optimally utilising the available (albeit limited) resources. The complexity of returns calls for structured internal cooperation and coordination, regular information exchanges, common priorities, and a more strategic use of resources. There is a need for active return case management system and not just in cases of third-country nationals that are under the radar of law enforcement authorities for other reasons. These limitations negatively impact the understanding of the overall needs resulting in significant limitations in benefiting from and pursuing existing EU initiatives, notably those put forward by the EU Return Coordinator as well as in the context of Frontex support. It also restricts the possibilities to establish EU priorities based on common needs.

The increasing pressure of irregular migration, particularly in the area of return, is likely to further negatively impact the effective enforcement of return decisions. This is especially true if the pressure continues to rise, and the asylum system becomes more efficient in handling the existing backlog.

In 2024, a thematic evaluation towards an effective EU return is being carried out in all countries fully applying the Schengen acquis, with the aim of identifying and addressing the key common obstacles and common EU solutions in the area of return.

Return procedures – inconsistencies in implementation

Evaluations conducted during this cycle have underscored the existence of **substantial divergences** among Member States in the implementation of the return framework. Specifically:

- **Issuance of decisions**: Several Member States do not consistently issue return decisions to all illegally staying third-country nationals and Member States practices on timing of issuance differs. This results in a significant number of these nationals remaining in the Schengen area without being subject to the obligation to return. However, an emerging good practice among Member States is the simultaneous issuance of negative asylum and return decisions, which helps mitigate this risk. Furthermore, there is no uniform format or content for the return-related decisions issued by Member States. Some Member States provide detailed justifications in fact and in law for their decisions, while others adopt a minimalistic approach, often leading to insufficient information about the decision's underlying reasons. In this regard, crucial elements are omitted, such as the absence of the obligation to return to a third country (with only a general reference to leaving the concerned Member State) or a failure to individually assess the principle of *non-refoulement*.

- **Voluntary Return and Return and reintegration Counselling**: Member States have varied approaches and strategies regarding voluntary returns. In some Member States, return and reintegration counselling is a mandatory part of the return process, in others this is only carried out sporadically or only during certain parts of the return process. The content and resources dedicated to this also vary significantly, impacting the uptake of voluntary return by third-country nationals. As regards Assisted Voluntary Return and Reintegration (AVRR) programme, there are also important differences in terms of eligibility, as in some Member States only third-country nationals that have been in the asylum procedure are eligible and not all Member States offer return and reintegration support for forced return. Furthermore, there are differences in the nature and financial size of the programmes, which could lead to AVRR shopping.

- **Measures to prevent absconding:** Less coercive measures than detention are seldom applied, particularly in Member States where only traditional measures (e.g., financial or travel document deposit, regular reporting etc.) are available. However, an emerging good practice involves using case management systems or other advanced measures to assess varying levels of absconding. While the risk of absconding is assessed based on objective criteria in most evaluated States, the factors considered by national authorities differ, leading to inconsistent detention approaches across the EU/Schengen area. In several Member States, detention decisions are only issued to those posing a security threat due to limited detention capacity, even if removal is feasible. A

common challenge is the difficulty in assessing desired capacity and the lack of advanced planning when the EU and Member States experience large migratory flows.

- **Digitalised return case management system**: Despite Frontex establishing the RECAMAS model and available AMIF-funding, numerous Member States have yet to set up or update an efficient digitalised return case management system. This significantly limits not only the effective enforcement of return decisions but prevents from having a national overview and ability to plan proactively return related activities both operationally and in terms of capability developments. In addition, the EU's overall situational picture on returns tends to have gaps and data-collection remains fragmented.

- **Procedural safeguards**: The effective provision of safeguards, notably interpretation and access to free legal aid, varies greatly among Member States, with some lacking a system altogether.

- **Detention conditions**: In the absence of a common (binding) framework which sets standards and practices, significant differences exist in terms of detention regimes and material conditions in specialised detention facilities. In detention facilities in the EU there is generally room to improve conditions, avoid carceral environment more attention given to improving the detention regime and more can be done to provide return counselling. These—are essential factors for ensuring the psychological well-being of returnees, limiting violent incidents, and fostering increased cooperation for the return process.

- **Suspension of the obligation to the return:** Practices vary among Member States when it comes to issuing a written confirmation of the fact that an obligation to return has been suspended. This divergence of practices is also reflected in the marking of return alerts in the Schengen Information System, where not all Member States indicate that the obligation to return has been temporarily suspended.

- **Forced-return monitoring system**: Despite significant developments in recent years, there still exists a divergent approach to the measures that underpin its effectiveness. As a result, certain national monitoring systems still exhibit inadequate information flow, limited transparency regarding the results of the monitoring activities, and limited monitoring intensity.

> ### *Good practices*
>
> The complex challenges arising from the broader context at the European Union's external land borders have spurred Member States to devise innovative tools and practices. In 2023, the following best practices are worth noting:
>
> - Following the entry into operation of the renewed Schengen Information System, there has been a stronger interest to expedite the return process and enhance regional collaboration through mutual recognition of decisions.
> - There are examples of preparedness measures, such as simulation exercises being conducted to train various authorities in dealing with unforeseen situations of mass influx of migration, including as a result of the instrumentalisation of migration as part of hybrid threats.
> - The use of aircraft and simulators for training forced – return escorts contributes to a robust training curriculum.
> - Effective access to mental health care is provided, offering assistance to third-country nationals dealing with mental health issues such as post-traumatic stress disorder and suicide prevention, and aiding their adaptation. This practice facilitates early detection of psychological issues, ensuring an effective approach and handling of such cases. It also fosters an open and safe environment, particularly when interacting with victims of trafficking and other vulnerable individuals.
> - The instructors/staff in detention facilities possess extensive language skills, which facilitate smooth and comprehensive communication between the detainees and the detention centre staff, thereby eliminating the need for an interpreter in most instances.