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From: Presidency
To: Integration, Migration and Expulsion (IMEX Expulsion) working party
Subject: Presidency discussion paper on the evaluation report from the Commission on the EBCG regulation – return aspects

Delegations will find in annex a discussion paper on the above-mentioned topic for the Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 12 March 2024.

**PRESIDENCY DISCUSSION PAPER ON THE EVALUATION REPORT FROM THE
COMMISSION ON THE EBCG REGULATION – RETURN ASPECTS**

Context

On 2 February 2024, the Commission issued its report¹ on the evaluation of the European Border and Coast Guard (EBCG) Regulation² (thereafter “the EBCG Regulation”), including the review of the Standing Corps. The report was published together with an Action plan to be implemented by the Agency, its Management Board, Member States and the Commission and with a staff working document³, which follows up on the findings of the report.

A first general review of the most strategic aspects of this evaluation were discussed at the SCIFA meeting on 20 February 2024 and was followed by a discussion at the Schengen Council meeting on 4 March 2024. During the SCIFA discussion, many delegations welcomed the possibility to further discuss the evaluation report at technical level. Many Member States were particularly keen to address the return component of the EBCG Regulation.

Conclusions of the Commission’s evaluation

In general, the evaluation report from the Commission highlights that the Regulation delivered good results in terms of its relevance, coherence and EU added value, including on return. The Commission considers that the evaluation of the Regulation and the review of the Standing Corps confirm that overall, there is no immediate need for a revision of the EBCG Regulation or its annexes.

¹ ST 5490/24

² Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

³ ST 5490/24 - ADD2

There are nevertheless different challenges which are addressed by the Action plan⁴. During the SCIFA discussion, most of the Member States agreed with the actions proposed by the Commission and suggested that the implementation of the Action plan should be closely monitored by both Frontex Management Board and the Council.

More specifically on return, the evaluation concludes that Frontex has effectively supported Member States in all aspects of the return process. Nevertheless, there is room for improvement in several respects.

At the strategic level, the evaluation report shows that there is significant room for improvement in the area of return for all the actors involved. First, the report highlights some *weaknesses regarding the governance of the return activities*. This is an important area for action identified by the Commission in its Action plan. The limited presence of Member States' authorities responsible for return at the Management Board meetings and lack of sufficient attention in the Management Board to discussions on key aspects of the Agency's role in returns, lead to a limited strategic steer of the return-related parts of the mandate. Additionally, the work of the High-Level Round Table on Return is not adequately followed-up by the Management Board. During the SCIFA discussion, a few Member States raised these issues.

The Presidency considers that besides governance, the proportion of funds available is another important indicator to assess the importance given to the return activities among the various tasks assigned to the Agency. This is especially relevant given the expansion of the return activities and the fact that Member States are increasingly relying on the support of the Agency. During the discussion at SCIFA in February 2024, some Member States mentioned the necessity to have an adequate budget to carry out these tasks. This is particularly paramount in order for Member States to be able to properly plan their own returns activities on the basis of the services of the Agency that are available, notably the Joint Reintegration Services (JRS). In the framework of the budget procedure, the adaptation of the financial framework could be an opportunity to touch upon the issue of the attractiveness of the European Return Liaison Officer (EURLO) deployments. During the IMEX Expulsion meeting on 8 February 2024, Member States expressed the need to revalue the financial aspect related to the EURLOs.

⁴ ST 5490/24 - ADD1

Secondly, according to the report, *there is a need to improve coordination between the Commission and the Agency to ensure that the Agency operational support contributes to the implementation of the EU priorities*, including of the Roadmap on targeted return actions led by the EU Return Coordinator and of Article 25a of the Visa Code. The Presidency notes that the dedicated High-Level Round Table planning meetings organised by Frontex with a focus on targeted return operations to Bangladesh and Pakistan in the framework of the Roadmap of the High-Level Network for returns⁵ is an operational step in the right direction. The issue of coordination is also addressed in the Action plan.

At the operational level, further action is also needed. First, the Commission also draws the attention to the competences for return often being shared by different authorities within Member States. This can cause some *communication gaps* and lack of coherence between different competent authorities and the Agency. The report also highlights an insufficient availability of *monitors for forced returns*, which is also a strand of action identified in the Action plan.

Finally, the Commission identifies challenges related to the *definitions of certain key terms between the EBCG Regulation and the Return Directive*. While the definition of return in the EBCG Regulation is broad and refers to the entire return process, a clearer definition of return-related concepts (e.g. ‘voluntary return’, ‘voluntary departure’) would help to facilitate the implementation and the operational application of the Agency’s mandate on return⁶. Given the impact on the Agency’s operational activity in terms of voluntary return and reintegration⁷, this matter is included in the Action plan for further action.

⁵ 22 January on Bangladesh and 23 January on Pakistan

⁶ ST 5490/2024 - ADD2, p.226

⁷ ST 5490/2024 - ADD2, p.192-193

Additional elements from the staff working document

In addition to the main conclusions drawn by the Commission in its report and Action plan, in this section, the Presidency sheds light on certain areas that may also require some attention and reflection.

First, according to the Action plan, vulnerability assessment data is not fully used in *risk analysis* products. The recommended action focuses on the process, not on the content of these products. However, in the staff working document, the Commission states that returns, which are a key element of the European Integrated Border Management (EIBM), are missing from risk analysis products. This is mainly explained by the fact that the objectives of the return-related risk analysis are not clear enough and the data produced for such analysis is largely unavailable from Member States⁸.

Secondly, the Fundamental Rights Agency (FRA) raises questions about the appropriate framework for carrying out the *monitoring of forced-return operations*. The governance of the pool of forced-return monitors is currently assigned to the Fundamental Rights Office (FRO), which is an independent but not an external entity. The FRA considers that handing over this responsibility to a fully external entity could enhance the independence of the pool⁹.

According to the Frontex European Centre for Returns Division (ECRET), there is a lack of sustainability of return activities in/with third countries due to the *annual nature of the financial cycle*¹⁰, which hinders the effectiveness of the implementation of return activities. For instance, some EURLO deployments should be longer than a year and, as far as reintegration is concerned, the annual financing does not allow the Agency to build longer-term capacity or build relations with third countries in the field of return.

⁸ ST 5490/24 - ADD2, p.164

⁹ ST 5490/24 - ADD2, p.190

¹⁰ ST 5490/2024 - ADD2, p.193

Concerning the return operations, Frontex indicates a lack of clarity regarding the specific responsibilities of Frontex and the Member States during *joint charter flight operations*¹¹. During the SCIFA discussion, some Member States with limited administrative capacities also emphasized the difficulty to benefit from joint charter flights to priority third countries.

Finally, the absence of the possibility in the EBCG Regulation for the Agency to *return third country nationals from third countries* was highlighted by some Member States both in the staff working document¹² and during the SCIFA discussion.

At the forthcoming Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 12 March 2024 the Presidency would like to invite delegations to reflect and share their views on the following questions:

- 1) *What could be done to ensure that the Agency's operational support better links to and contributes to achieving the political priorities in the area of return?*
- 2) *Within the existing legal framework, how can the Management Board and the High-Level Round Table collaborate better to enhance strategic guidance and complementarity, including on budgetary decisions?*
- 3) *What actions should be addressed as a priority in order to improve the effectiveness of the Agency's return activities, also in relation to cooperation with priority third countries?*

¹¹ ST 5490/2024 - ADD2, p.226

¹² ST 5490/2024 - ADD2, p.193