



Council of the
European Union

**Brussels, 5 June 2024
(OR. en)**

10414/24

LIMITE

**JAI 896
MIGR 245
RELEX 721
COMIX 257**

NOTE

From:	Presidency
To:	Integration, Migration and Expulsion (IMEX Expulsion) working party
Subject:	Presidency summary of the discussions on making the return systems more effective: a reflection towards the future of the EU return policy

Delegations will find in annex a summary on the above-mentioned topic for the Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 7 June 2024.

**Presidency summary of the discussions on making the return systems more effective:
a reflection towards the future of the EU return policy**

In June 2019 the Council adopted its partial general approach on the proposal for a recast of the Return Directive. However, the European Parliament has been unable to establish its position on the proposal, therefore interinstitutional negotiations never started.

Since 2019, many legislative and operational developments have occurred in the field of return. Taking into account these changes as well as the preparation for the implementation of the Pact on Migration and Asylum, and looking ahead towards the next legislative cycle, the Presidency deemed necessary to discuss the Member States' needs as regards the future of the EU return policy and, in particular, as regards its legal framework.

This topic was addressed in a series of three discussions at the Integration, Migration and Expulsion (IMEX Expulsion) meetings on 12 March¹ and 23 April 2024² and at the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) meeting on 10 April 2024.³ Through this document, the Presidency would like to present the main conclusions of this broad reflection exercise.

While there were some diverging views, it was commonly accepted that the current legal framework could be further improved. Delegations considered that the Council's general approach on the recast Return Directive outlined important elements allowing to improve the return systems. However, opinions were mixed as to whether the general approach on the recast Return directive was sufficient or whether it should be modified and updated. Some also considered continuing work on the recast Return Directive in parallel to a more in-depth reflection on the revision of the legal framework to be another option.

¹ ST 6936/24

² ST 8751/24

³ ST 8016/24

The Presidency inquired to what extent Member States were interested and willing to move towards more harmonization, notably in the areas of issuance of return decisions, mutual recognition of return decision/moving towards a European decision, prevention of absconding, detention and alternatives to detention as well as voluntary return.

On *mutual recognition of return decisions* issued by other Member States, some delegations requested that it should remain optional and should be used as long as it allowed for swift and efficient implementation of returns. For many Member States, there are still many legal and practical obstacles that should be dealt with before being able to recognize other Member States' return decisions. Some delegations were ready to go even further and expressed openness to start working towards a common European return decision, which would have an EU-wide effect. However, this should rather be considered as a long-term objective. To combine these different positions, the Council could consider working on two parallel tracks, i.e. working on the recast Return directive to introduce the most urgent changes, including adapting the legislation with the recent European Court of Justice rulings, while further reflecting on the future European return decision. At the same time practical cooperation and increased use of mutual recognition should continue. This can further feed into the reflections on future steps.

Most Member States considered that it was not necessary to further legislate on *alternatives to detention and conditions of detention*. As regards the possibility for the legislation to establish minimal detention capacities at the EU and Member States level, most Member States questioned the idea, arguing that national specificities had to be respected and that each Member State must be able to decide for themselves. For those in favor of this possibility, it should take the form of a political engagement rather than a legal commitment.

As to the return of *persons posing a security threat*, while many Member States considered the recast Return Directive to offer a good framework, some delegations, however, expressed a need to go further in the reflection with regard to different components, such as the assessment of the risk of non-refoulement, detention, or the establishment of a particular procedure in such cases to ensure fast returns.

During the IMEX Expulsion meetings, a ***number of issues were identified***, which were briefly discussed, but which would merit some further attention: some uncertainties created by the jurisprudence of the European Court of Justice regarding the Return Directive, the improvement of identification, the use of European laissez-passer, the definition of the concept of voluntary return, the situation of illegally staying third country nationals who cannot be returned, and the accessibility of Schengen Associated States to the readmission case management system (RCMS). The long-standing challenge of bringing closer the asylum and return procedures in order to make the procedure faster and more efficient and to limit abuses of the system, is an element to be addressed under the Pact implementation.

Besides the legal framework, another important lesson that could be learned from the discussions is that Member States found it equally important to address ***operational issues***, especially in terms of implementation of the return decisions. Member States were mainly concerned about the effectiveness of the return procedure, and therefore the focus should be on improving it. A key aspect to achieve that is through working towards a better exchange of information via the Schengen Information System. This tool must be used in the best possible way, both as regards providing the most complete information when introducing return alerts and swiftly responding to the requests for any additional information through the consultation procedure. More generally, increased digitalisation of return, readmission and reintegration processes is essential to improve the effectiveness of the return procedure as a whole.

Regarding the ***governance structure of the return at the EU level***, delegations generally agreed that it needs to be rationalized. To improve the situation, proposals were made, *inter alia*, to better coordinate the agendas of the various groups dealing with returns, to align topics for discussion on the technical or strategic nature of the group, and to organise the meetings of different bodies back-to-back as well as to ensure cross-reporting. The important role of the EU Return Coordinator and of the High-Level Network for Returns was underlined in this respect.

Despite the fact that most discussions focused on the internal dimension of returns, Member States recalled that the *cooperation of third countries on readmission* remained essential for an effective EU return policy. Different leverages were evoked during the discussions: delegations called to use the Visa Code Article 25a mechanism strategically and to find an agreement with the next European Parliament on the proposal for a new EU's Generalised Scheme of Preferences (GSP), through which a trade leverage would be established. While talking about external dimension, some Member States also referred to the need for innovative solutions and “out-of-the box” ideas to ensure effective returns. Also, some Member States considered that Frontex should be able to help with returns from third countries to other third countries.

It is a shared understanding that swift and effective return is important for the implementation of the Pact on Migration and Asylum. In the months and years to come, return will remain a priority. Besides, it is a priority of the new annual Schengen cycle (2024-2025) for the second time in a row. The results of the thematic Schengen evaluation on return will also provide some complementary and useful information on what still needs to be done.

The Presidency invites the Commission to build upon the conclusions of the above-mentioned discussions, which should be fully integrated into the broader asylum and migration management system, and to put forward proposals to solve the problems identified.