Council of the European Union

Brussels, 3 October 2025
(OR. en)

9205/25

Interinstitutional File:
2025/0059 (COD)

LIMITE

JAI 647
MIGR 183
COMIX 150
CH
IS
LI
NO

NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Presidency paper on mutual recognition of return decisions issued by other Member States

Over recent years, more effective return policy has been high on our agenda. It remains essential to ensure that we have an effectively functioning policy and manage to increase the numbers of returns from the EU to the third countries so that our societies can trust in governments' ability to manage migration and to direct resources to those in need of international protection. An effective return policy will also send a clear message to all third country nationals without protection needs, discouraging them from undertaking perilous journeys to the European Union and will help to prevent putting people's lives at risk.

There is no quick fix to achieving an effective return policy. It is a complex and time-consuming process, involving multiple bodies/authorities in the Member States as well as third countries.

To have an effective return policy, first and foremost, we need an up-to-date legal framework, which should address Member States' needs and should enable us to proceed with returns in a swift and effective manner. The European Commission has listened to our leaders' call to come up quickly with a proposal for new return legislation that was presented in March. Since then, our experts have been very busy discussing the Commission proposal for a Return regulation establishing a common EU system for return and making sure that its provisions enable the authorities to proceed to fast and efficient returns.

The proposal is very complex and detailed and necessitates time for discussions. Nevertheless, we believe that there is an urgent need to have updated and contemporary rules for return of illegally staying third country nationals in place. We are convinced that thanks to our determination to work hard on this, and thanks to the continuous efforts of the Member States, we can establish our position on the proposed Return regulation by the end of the Danish Presidency. We count on Member States' support in this challenging endeavour.

The proposed Return regulation brings different novelties. At the forthcoming discussion at the October JHA Council, we would like to focus on one of the major novelties – the proposed mandatory mutual recognition of return decisions issued by other Member States.

Mutual recognition

During the last few years, the issue of mutual recognition has been raised to the highest level, with the European Council inviting Member States to recognise each other's return decisions[1]. Mutual recognition is not a new tool and was agreed upon as an optional tool as early as in 2001. The debates on this tool were first relaunched in the context of the Council mandate on the Recast Return directive in 2018-2019. Some stronger provisions were added to the Council mandate on this tool, but some Member States regretted the lack of a substantial solution on the mutual recognition of return decisions in the recast.

In its proposal for the Return regulation, the Commission considerably strengthened mutual recognition by making recognition of return decisions issued by other Member States mandatory following a transitional period. The Commission considers mandatory mutual recognition as one of the major components of the Commission's proposed common European system for returns.

The Commission's intention is that mandatory mutual recognition will send a clear message not only to all illegally staying third country nationals, but also to our citizens, that once a return decision is issued in one of the Member States, it will be implemented across the entire Schengen area. According to the Commission it should also discourage absconding and disincentivise secondary movements, which remains an important challenge, and reinforce voluntary returns. On the practical side, mutual recognition, facilitated by a European Return Order, which according to the Commission, will complement the national return decisions and contain their key elements, should provide a procedural simplification, avoid duplication and enable Member States not to start the return process from zero, but rather to pick it up from the moment where they enforce the return decision.

1 Eg. European Council conclusions of 9 February 2023, 1/23.

During the discussions on the proposed Return regulation at the Integration, Migration and Expulsion (IMEX Expulsion) working party meetings, many Member States have pointed to the need for flexibility and the risk of an administrative burden, also when it comes to mutual recognition and the European Return Order. Many Member States believe that different legal, practical and operational issues will lead to a situation where issuing a national return decision, instead of recognising one issued by another Member State, would be less burdensome, faster and more effective.

The Presidency understands the importance of the signal that would be sent by the mandatory mutual recognition of return decisions, but it also hears the strong call from Member States for flexibility. We believe this could be achieved by introducing certain changes to the provisions governing mandatory mutual recognition that were proposed by the Commission.

Therefore, the Presidency has in its compromise proposal added ***additional exceptions*** when it comes to mandatory mutual recognition. Most importantly, where it is considered that issuing a new return decision would lead to a faster and more effective return or removal, Member States should be allowed to follow this path with a view to ensuring swift returns. This also applies where the third-country national is transferred to another Member State in accordance with Article 23a of the Schengen Border Code or pursuant to bilateral agreements or arrangements. The compromise proposal also further clarifies that Dublin cases are not covered.

In addition, ***Member States should be given more time before the mutual recognition becomes mandatory*** to ensure a better preparation for this important step. The mutual recognition will become mandatory three years after the entry into application of the Pact, instead of one year proposed by the Commission.

Other elements in the Presidency compromise proposal include not making use of the European Return Order mandatory, thereby reflecting Member States' concerns about avoiding unnecessary administrative burdens, and removal of the complex compensation mechanism for reimbursement of return-related costs when implementing the return decision issued by another Member State.

These elements ***should also provide the necessary flexibility*** that Member States are looking for.

Finally, our proposal to have a ***future review by the Commission of the effectiveness of the mandatory mutual recognition*** and a possibility to propose targeted amendments, should help us to have a future-proof mechanism.

The Presidency believes that all the above-mentioned elements, bringing additional flexibility for the Member States, should allow us in the near future to have mandatory mutual recognition of return decisions in the European Union, which would send a strong message that returns cannot be avoided just by absconding to another Member State and at the same time ensuring that returns happen in the fastest and swiftest manner possible. This is also an area of the Regulation where it will be essential for Member States to show willingness to compromise in order to make progress on the proposal.

At the forthcoming October JHA Council meeting, Ministers are invited to agree to the above-outlined solution for achieving a mandatory mutual recognition of return decisions issued by other Member States.

Ministers are also invited to comment on the scope and nature of the additional exceptions to mandatory mutual recognition with a view to striking the right balance between achieving the full potential of mutual recognition while maintaining flexibility.