



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 1 February 2011

5957/11

LIMITE

**MIGR 13
COMIX 62**

NOTE

| | |
|-------------|---|
| from: | Presidency |
| to: | Working Party on Integration, Migration and Expulsion on 7 February 2011 |
| Prev. doc.: | 14541/10 MIGR 86 COMIX 633 |
| Subject: | Transit by land of returnees |

1. Delegations will find attached a Presidency note setting out draft recommendations in respect of a draft standard form for recognising a return decision for the purposes of transit by land, with a view to being discussed at the above meeting of the Working Party.
2. This compromise reflects delegations' views following the discussions that took place during the meetings of the Working Party on 14 October and 7 December 2010, as well as their written contributions. Amendments suggested by the Presidency are in bold and underlined. Outstanding questions and comments are indicated in the footnotes.
3. The Presidency proposes that, if delegations reach an agreement on these draft recommendations, they would be annexed to the Handbook of the Schengen Borders Code.



**STANDARD FORM FOR RECOGNISING A RETURN DECISION FOR THE PURPOSES
OF TRANSIT BY LAND¹**

I – REQUEST

(Request for recognition shall be sent at the latest four working days before departure)

| | |
|----------------------|------------------------|
| Requesting Authority | Place, Date |
| Address | Telephone, Fax, e-mail |
| | name of officer |
| | Signature |

| |
|---------------------|
| Requested Authority |
| Address |

The third-country national(s) listed below²

| Request No. | Surname | Name | m/f | Date of birth | Nationality | Travel document (No, Type, Validity) |
|-------------|---------|------|-----|---------------|-------------|--------------------------------------|
| 1. | | | | | | |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |

Is (are) subject of a return decision issued in accordance with Article 6 of Directive 2008/115/EC. This return decision provides for a period for voluntary departure in accordance with Article 7 of Directive 2008/115/EC as indicated below. **The transit shall be carried out within the period of the voluntary departure granted by the requesting Member State.**

¹ **AT, SI:** the standard form should be in English.

² **PRES** suggestion: attach a photo of the returnee as well to the form.

| No. and date of the return decision(s) | Period for voluntary return | |
|--|-----------------------------|--------|
| | Starting | Ending |
| | | |

In order to comply with the obligation to return within this period of voluntary departure, the abovementioned person(s) is (are) intending to transit by land through the territory of the requested State as indicated below:

Travel details³

| From | Departure date | Route (selected means of transport) | To | Arrival date |
|------|----------------|---|----|--------------|
| | | | | |

In order to give a clear legal coverage to the transit by land of the abovementioned person(s) through the territory of the requested State, its authorities are hereby requested to recognise – in accordance with Council Directive 2001/40/EC on mutual recognition of decisions on the expulsion of third-country nationals⁴ – the abovementioned return decision, including the period of voluntary departure afforded by it.

Further comments

Agreement and signature of concerned person(s)

"I agree with the above request and I give my consent that the personal data contained in this request are processed by the authorities of the requesting and the recognising State for the purposes of my (our) return."

Annex:

Certified copy of the return decision;

[...] **Translation in English of the main elements** of the return decision **in accordance with Article 12(2) of Directive 2008/115/EC** (if required by national law of requested MS)

³ CZ: Part I: the travel details should not specify the exact date and route, because the decision for voluntary return concerns a period

⁴ DE: ~~in accordance with Council Directive 2001/40/EC on mutual recognition of decisions on the expulsion of third-country nationals~~. This reference should be deleted, since DE questions whether the return decisions covered by Directive 2001/40/EC (threat to public order; or failure to comply with national rules on the entry or residence of aliens cover in practice all return decisions which may give rise to voluntary departure).

II – RECOGNITION

(Replies to the request shall be sent at the latest two working days before departure)

In accordance with the above request, the recognising Member State hereby recognises the return decision(s) including the period of voluntary departure granted in it for the purpose of transit by land through its territory as indicated in the request.

| |
|--|
| Yes. <input type="checkbox"/> |
| No. <input type="checkbox"/> |
| Yes, subject to the following conditions or modifications: |
| _____ |
| _____ |

| | |
|---------------------|------------------------|
| Requested Authority | Place, Date |
| | Telephone, Fax, e-mail |
| Address | Name of officer |
| | Signature |

III – EXIT CONFIRMATION⁵

(in case of exit to third country – to be faxed or mailed by the [...] **competent authorities** of the recognising **Member State** to the contact point of the **Member State** which issued the return decision)

The person(s) who is (are) subject of the present recognition presented itself (themselves) to an exit check, crossed the external border and left the territory of the Member States.

| Request No. | Surname | Name | <u>m/f</u> | <u>Date of birth</u> | <u>Nationality</u> | <u>Travel document</u> <u>(No, Type, Validity)</u> ⁶ | Exit confirmation |
|-------------|---------|------|-------------------|-----------------------------|---------------------------|--|-------------------|
| 1. | | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |
| 4. | | | | | | | |

⁵ **SI:** doubts about the need for an exit confirmation, since it will be an extra burden for border guards without having any added value.

⁶ **PRES:** this table should contain the same information as that in Part I.

| | |
|--|--|
| <p>[...] Competent authority</p> <p>Address</p> | <p>Place, Date</p> <p>Telephone, Fax, e-mail</p> <p>name of officer</p> <p>Signature</p> |
|--|--|

Comments

IV – COMMENTS

1. The authority issuing the return decision and the person concerned **shall** receive a copy of this document. **All sections shall be considered as one single document, taking into account that all three sections shall be sent together.**

2. The authority issuing the return decision will inform the competent authority of the recognising Member State about any relevant changes, such as withdrawal of the period of voluntary departure or relevant changes in the travel details (timing or route).

~~3. Request for recognition should be send at the latest three working days before departure, replies to the request should be sent at the latest two working days before departure.~~

3. Indication of **travel details**: Normally the quickest route to the country of return should be chosen. In order to allow for flexibility having regard to the traffic situation and individual circumstances, a general description of the route is sufficient and details (e.g. highways and border crossing points) should not be specified. The indicated timing should also provide for a sufficient margin of flexibility.

4. Under the heading "**further comments**" any other information considered helpful/necessary for the recognising State (relating e.g. to special needs or the state of health of the returnee) may be indicated. – Such information may be provided only with the express consent of the concerned person.

5. In application of Decision 2004/191/**EC** setting out the criteria for compensation of financial imbalances resulting from the application of Directive 2001/40/**EC** possible costs related to the eventual removal of the concerned person by the recognising Member State can be charged to the Member State which issued the return Decision.⁷

6. Promoting an orderly voluntary departure in full compliance with a return decision issued by one Member State is in the common interest of all Member States and the present decision is therefore delivered free of charges.

⁷ **CZ**: clarification is requested on the costs of healthcare.

V – ANNEX

National Contact Points and information on national requirements⁸:

(UK and Ireland are not bound by Directives 2008/115/EC and 2001/40/EC and cannot submit or accept requests; Member States who do not yet apply the Schengen Acquis but are bound by it, may submit and accept requests)

| Member State | <u>Accepts to send requests from other MS (in principle)</u> | <u>Accepts receiving requests from other MS (in principle)</u> | Languages accepted (all States are encouraged to accept EN) | <u>Translation of the main elements of return decision required</u> | National Contact Point (name, address, phone, fax, e-mail, working hours) |
|----------------|--|--|---|---|---|
| Austria | | | | | |
| Belgium | | | | | |
| Bulgaria | | | | | |
| Cyprus | | | | | |
| Czech Republic | | | | | |
| Denmark | | | | | |
| Estonia | | | | | |
| Finland | | | | | |
| France | | | | | |
| Germany | | | | | |
| Greece | | | | | |
| Hungary | | | | | |
| Iceland | | | | | |
| Italy | | | | | |
| Latvia | | | | | |
| Lithuania | | | | | |
| Luxembourg | | | | | |
| Malta | | | | | |
| Netherlands | | | | | |
| Norway | | | | | |
| Poland | | | | | |
| Portugal | | | | | |
| Romania | | | | | |
| Slovenia | | | | | |
| Slovakia | | | | | |
| Spain | | | | | |
| Sweden | | | | | |
| Switzerland | | | | | |
| Liechtenstein | | | | | |
| | | | | | |

⁸ PRES invites the delegations to notify the same entities as already notified under Directive 2003/110/EC.