



**COUNCIL OF
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NOTE

from: Forthcoming Polish Presidency
to: Working Party on Integration, Migration and Expulsion/Mixed Committee
(EU-Iceland/Norway/Switzerland/Liechtenstein)
on 11 July 2011

Subject: Questionnaire on defining the conditions under which an entry ban can be imposed and the means by which Member States can have rapid access to information on an entry ban

Delegations will find attached the abovementioned questionnaire on defining the conditions under which an entry ban can be imposed and the means by which Member States can have rapid access to information on an entry ban, as submitted by the forthcoming Presidency.

Delegations are requested to reply to the questionnaire in the Annex to this Note, in a descriptive way (providing at least a few sentences on each point).

The preliminary discussion on the issues specified in the questionnaire will be held during the meeting of the Working Party on Integration, Migration and Expulsion on 11 July 2011.

The forthcoming Presidency invites the Working Party to agree that delegations should reply to the questionnaire by e-mail before 23 July 2011 at the latest to the General Secretariat of the Council (guillermo.troncosogonzalez@consilium.europa.eu and gavriil.kampouroglou@consilium.europa.eu) and to the Presidency (koordinacja.kg@strazgraniczna.pl)

1. The European Council, in the European Pact on Immigration and Asylum, made a commitment to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit.

The European Council reaffirmed its determination to control illegal immigration and recalled its commitment to the effective application of one of the basic principles, namely that illegal immigrants on Member States' territory must leave that territory.

The European Council agreed to put into full effect the Community provisions pursuant to which an expulsion decision taken by one Member State is applicable throughout the European Union, and, within that framework, an alert for such a decision entered in the Schengen Information System (SIS) obliges other Member States to prevent the person concerned from entering or residing within their territory.

2. The European Council recalled that commitment in the Stockholm Programme, stressing that Member States should put into full effect the Union provisions pursuant to which a return decision issued by one Member State is applicable throughout the Union, and that the focus should be placed on the effective application of the principle of mutual recognition of return decisions by recording entry bans in SIS and facilitating the exchange of information.
3. The *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals* underlines the fact that the effects of national return measures should be given a European dimension by establishing an entry ban prohibiting entry into, and stay on, the territory of all Member States.

In motive (18) of its preamble, the Directive states also that Member States should have rapid access to information on entry bans issued by other Member States. This information sharing should take place in accordance with Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen Information System (SIS II).

4. According to motive (10) of Regulation (EC) No 1987/2006, SIS II is to contain alerts for the purpose of refusing entry or stay. It also states that it is necessary to consider the further harmonisation of provisions for issuing alerts concerning third-country nationals for the purpose of refusing entry or stay, and to clarify their use within the framework of asylum, immigration and return policies. The Commission should therefore review, three years after the date from which this Regulation applies, the provisions on the objectives of, and conditions for, issuing alerts for the purpose of refusing entry or stay.

5. While Romania and Bulgaria are bound by the provisions of the return directive, by virtue of the Council decision of 29 June 2010 on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Bulgaria and Romania (2010/365/EU), and until the date of the lifting of checks at internal borders, those Member States shall not be obliged to refuse entry to their territory or to expel nationals of third States for whom a SIS alert has been issued by another Member State for the purposes of refusing entry. Furthermore, they shall refrain from entering the data covered by the provisions of Article 96 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the governments of the States of Benelux economic union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

6. Bearing in mind Article 11 of *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, and having regard to the above and to current migration flows, forthcoming Presidency invites the delegations to present their national solutions and best practices concerning entry ban policy by replying to the following questions:
 1. After how many days, counting from the day of issuing the return decision, and in what way is the entry ban registered by other Member States in order to prevent entry into European Union territory?

 2. Is the entry ban registered before or after establishing the nationality and identity of the undocumented third-country national?

3. Are third-country nationals who illegally entered the territory of the European Union through its external borders issued with a return decision, accompanied by an entry ban, without prejudice to their rights with regard to seeking protection in this territory?
4. Are third-country nationals who abuse the refugee procedure always issued with a return decision accompanied by an entry ban?
5. Which, out of the following, is the preferred practice of the Member States in apprehending a third-country national to whom a return decision, accompanied by an entry ban, has been issued by another Member State?:
 - a) readmission of the third-country national into the Member State issuing the return decision on the principles established in Article 6(3) of *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*;
 - b) executing a return decision issued by another Member State on the principles established in *Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals* and *Council Decisions of 23 February 2004 setting out the criteria and practical arrangements for compensation of the financial imbalances resulting from application of above mentioned directive*;
 - c) executing a return decision issued in spite of an existing decision issued by another Member State on the principles established in Article 6(1) of *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*;
 - d) allowing third-country nationals to continue their journey to the country of origin or to the country of current stay if these persons execute a voluntarily return decision, according to Commission principles (transit by land of third-countries nationals)?

6. If Member States apply the solution stated in point 5(c), are there any financial support instruments deriving from the European Return Fund which encourage the direct return of third-country nationals to the country of origin or to the country of current stay?

7. Is an entry ban suspended if the execution of a return decision is delayed, according to Article 9 of *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*?

8. Is there any mechanism for withdrawal of an entry ban before the term stated in the return decision has expired? In practice, can an entry ban be withdrawn if the third-country national returns to the country of return under the assisted voluntary return programme (i.e. after reporting his presence on the territory of the country of return)?

The forthcoming Presidency, after collecting the abovementioned information, intends to prepare a report as a basis for further discussion on possible directions for a common approach to return priorities and actions in the future.
