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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND TO THE COUNCIL**

**EU Action Plan on return**

## **I. Introduction**

Return of irregular migrants who do not have a right to stay in the EU to their home countries, in full respect of the principle of *non-refoulement*, is an essential part of EU's **comprehensive efforts to address migration** and in particular to reduce irregular migration. The *European Agenda on Migration*<sup>1</sup>, adopted by the European Commission on 13 May 2015, highlighted that one of the incentives for irregular migration is the knowledge that the EU's system to return irregular migrants is not sufficiently effective.

In 2014 **less than 40%** of the irregular migrants that were ordered to leave the EU departed effectively. One of the most effective ways to address irregular migration is the systematic return, either voluntary or forced, of those who do not or no longer have the right to remain in Europe. Fewer people that do not need international protection might risk their lives and waste their money to reach the EU if they know they will be returned home swiftly.

The **effectiveness of the EU system to return irregular migrants must be enhanced**. This is essential for maintaining public trust in the EU's asylum system and support for helping persons in need of international protection. Increasing the rate of return of irregular migrants needs to go hand in hand with the EU's renewed efforts to protect those in need, including through relocation and resettlement.

The European Council invited the Commission "*to set up a dedicated **European Return Programme***". This EU Action Plan on return answers this call by defining the immediate and mid-term measures that will be taken to enhance the effectiveness of the EU return system. It seeks to maximise the impact of the actions that are already being carried out as well as proposing new initiatives, to fully use and, where needed, strengthen EU legislation. The aim is to achieve a coherent framework for action, backed by strong operational cooperation between the Member States, EU Agencies and countries of origin of migrants. The Action Plan acknowledges the key role and responsibility of the Member States in implementing EU return policy and develops a concept for stronger interaction on return between them and the EU Agencies, which provide significant support.

The implementation of all actions under this Communication will have to be **compliant with international human rights standards**, in particular the Charter of Fundamental Rights of the European Union, the European Convention for the protection of Human Rights and Fundamental Freedoms, the 1951 UN Refugee Convention and its 1967 Protocol, and with the principle of *non-refoulement*, as guaranteed in the applicable EU legislation. The EU Return Directive<sup>2</sup> sets out specific legal safeguards to guarantee the effective protection of returnees' rights in the whole return process. When personal data are involved, particular care should be devoted to the full implementation of applicable provisions.

**Adequate resources need to be allocated** to increase the effectiveness of the EU policy on return, in line with the request from the European Council of 25-26 June 2015. Building on the European Return Fund (2008-2013), the Asylum, Migration and Integration Fund (AMIF) will support substantially the return activities of the Member States, which are planning to devote more than EUR 800 million to return in their national programmes in the period 2014-2020. The Commission will carefully consider the need to increase the resources allocated to

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, Brussels, 13.5.2015 COM(2015) 240 final.

<sup>2</sup> 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, OJ L 348/98, 24.12.2008.

return activities at the EU level, notably as regards the funding of Frontex actions in this field, and will make proposals as appropriate in the following years.

## **II. Increasing the effectiveness of the EU system to return irregular migrants**

### **1. Enhancing voluntary return**

Voluntary return of irregular migrants to their home countries remains **the preferred option** whenever possible. Voluntary return and accompanying reintegration measures help consolidate the position of returnees in their home countries and thus deter new irregular migration. They are generally considered to be more cost-effective than forced return. Voluntary return can also help overcome the reluctance of certain third-countries to cooperate on the return of their nationals. The share of voluntary returns out of the total number of returns has gradually increased in the EU over the past years. In 2013, it is estimated that around 40% of returns were voluntary departures, from just 14% in 2009<sup>3</sup>.

While the Member States are primarily responsible for designing and implementing voluntary return programmes, the **EU provides funding** for such programmes, as well as a forum for exchanging best practices and increasing operational cooperation on voluntary return. Under the AMIF national programmes for 2014-2020, Member States are planning to return twice as many irregular migrants through voluntary returns, as through forced returns. The Commission encourages Member States to develop an effective framework enabling irregular migrants to have easy access to voluntary return programmes. Assisted voluntary return programmes<sup>4</sup> should be designed in such a way as to avoid creating a 'pull-factor' - incentives for further irregular migrants to come to Europe to benefit from such programmes<sup>5</sup>.

The Commission will monitor and assess through the European Migration Network<sup>6</sup> (EMN) whether disparities among voluntary return and reintegration programmes of the Member States could lead to 'return shopping' – with migrants picking those Member States offering the most lucrative packages<sup>7</sup>. It encourages Member States to develop **joint reintegration projects**, which could improve both the quality of the support provided to migrants and its cost-efficiency – through economy of scale on the administrative costs.

To further increase the rate of voluntary return, the Commission funds **assisted voluntary return programmes** through the AMIF in cooperation with governmental and non-governmental partners, such as the International Organization for Migration (IOM). It supports the European Reintegration Instrument Network (ERIN), which provides reintegration support, and social and job support for returnees. Beyond the financial possibilities of the AMIF, the provision of funding for sustainable return and reintegration will be a **clear priority** under EU financial programmes in the areas of development cooperation and neighbourhood policy. In particular, the Trust Fund that will be launched by the Valletta EU-Africa Summit on migration (11-12 November 2015) should provide substantial funding for return and reintegration of migrants in their home countries.

But the success of voluntary return schemes also depends on **how credible the prospect of forced return is**. Migrants who often paid their lives' savings to smugglers to bring them to

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<sup>3</sup> EMN inform, *Overview: Incentives to return to a third country and support provided to migrants for their reintegration*, January 2015.

<sup>4</sup> Voluntary return or voluntary departure supported by logistical, financial and / or other material assistance.

<sup>5</sup> For example, in relation to Western Balkans countries, many Member States have discontinued assistance to voluntary returns other than covering the costs of the transport for the return, to avoid further attracting migrants.

<sup>6</sup> The EMN's task is to provide up-to-date, objective, reliable, comparable information on migration and asylum.

<sup>7</sup> *Idem* 2.

Europe may not be ready to take up assisted voluntary return unless they see that they will be returned anyway. When migrants do not go back voluntarily, return must be enforced.

<b>Immediate actions</b>	<ul style="list-style-type: none"> <li>• Monitoring the effects of disparities between national voluntary return schemes</li> <li>• Funding through AMIF of assisted voluntary return programmes</li> </ul>
<b>Mid-term actions</b>	<ul style="list-style-type: none"> <li>• Promoting best practices on voluntary return and reintegration programmes through the EMN</li> <li>• Support for joint reintegration programmes</li> </ul>

## 2. Stronger enforcement of EU rules

Applying the EU rules on return thoroughly and systematically is essential for increasing the effectiveness of the system. The **EU Return Directive** imposes a legal obligation on Member States<sup>8</sup> to issue a return decision to any third-country national who stays irregularly on their territory and – where called for – to take measures to enforce it<sup>9</sup>. It also sets out safeguards to **protect the rights of returnees**, and enable return to be carried out in a humane and proportionate manner.

To meet their obligation to enforce return, **Member States should use detention**, as a legitimate measure of last resort, where it is necessary to avoid that the irregular migrants abscond and to prevent them from moving on to other Member States (secondary movements)<sup>10</sup>. As long as there is a reasonable likelihood of removal, prospects for such removal should not be undermined by a premature ending of detention. The maximum detention period foreseen by national law should enable Member States' authorities to take the steps that are necessary for the identification of an irregular migrant and the delivery of travel documents by the country of origin. Member States should explore **new alternatives to detention** and the use of less coercive measures, as appropriate. This could include placement of irregular migrants under electronic surveillance or the use of semi-closed facilities.

The Return Directive also grants Member States flexibility to handle situations of particular migratory pressure. Under the **emergency clause**<sup>11</sup>, Member States confronted with a sudden and unexpected arrival of large numbers of migrants are allowed flexibility regarding the conditions of closed detention of migrants. Member States may also apply **simplified and swift return procedures** to migrants apprehended or intercepted in connection with irregular border crossings, under national law, with respect for certain basic safeguards<sup>12</sup>.

The Commission is currently evaluating the state of the application of the Directive and will use all means to enforce its correct implementation, both as regards the protection of irregular migrants' rights and the full and effective enforcement of the return process. It will provide assistance to Member States to enable them to fulfil their obligations. And it will **initiate**

<sup>8</sup> The term "Member States" refers to 30 States: the 28 EU Member States excluding the UK and Ireland, but including Iceland, Liechtenstein, Norway and Switzerland. The Directive is part of the Schengen *acquis* and is binding on the Schengen Associated States. The UK and Ireland are not bound, although they could opt into it.

<sup>9</sup> According to Article 8(1), Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

<sup>10</sup> The Return Directive allows keeping returnees in detention for up to six months and up to 18 months if, regardless of all reasonable efforts the removal operation is likely to last longer.

<sup>11</sup> Article 18(1) and (2) of the Return Directive.

<sup>12</sup> Respect for the principle of *non-refoulement* in the context of immediate return operations at the external border can be sufficiently assured if those who are subject to return have – both in law and in practice – the possibility to submit a possible request for international protection at an easily accessible border crossing point.

**infringement procedures** against Member States that do not fully comply with all its provisions including with the obligation to issue and enforce return decisions. Moreover, the Commission will present at the latest in 2017 a second report to the European Parliament and the Council, which will also consider if it is necessary to revise the Return Directive.

**Member States' legal and administrative frameworks** also play a key role in creating the enabling conditions for an effective return policy. They should ensure brisk action, starting with the identification of illegally staying third-country nationals, the issuing and enforcement of return decisions, and swift legal procedures<sup>13</sup>. For this, Member States must show sufficient resolve and devote adequate resources including funding, staff and detention capacity, to ensure the physical availability of an irregular migrant for return, including through detention if necessary.

**Diverging Member States' practices** in the implementation of the Return Directive hamper the effectiveness of the EU return system, as irregular migrants can avoid return by moving to another State in the Schengen area. Statistical data suggest that certain Member States do not systematically issue return decisions to migrants in irregular situation apprehended on their territory or persons whose asylum applications were rejected.

The Commission will regularly identify and share best practices on returns in national laws and administrative practices. The '**Return Handbook**', adopted together with this EU Action Plan on Return, provides guidelines, best practices and recommendations for carrying out return in an effective and humane manner in full respect of fundamental rights and safeguards as guaranteed by the relevant EU legislation. In parallel, the systematic assessment of how each Member State implements EU rules on return, under the **Schengen Evaluation Mechanism**, facilitates the identification and remedying of deficiencies. These reports will be used for disseminating best practices in overcoming obstacles to returns. In addition, the EMN will further map best practices and hurdles to return in national legislation and administrative systems, to help Member States improve the effectiveness of their return systems.

An effective return policy requires the existence of a **functioning asylum system**, to ensure that unfounded asylum claims lead to swift removal of the person from the European territory. The Asylum Procedures Directive already provides for the fast processing of certain applications. Under the so-called border procedure, an applicant may be detained at the border and very short deadlines for the examination of the claim apply. Asylum-seekers need to be informed of the possibility of assisted voluntary return early on and at all stages of the asylum procedure, to provide a sound alternative to rejected asylum-seekers and to those who wish to discontinue their claim to return to their countries in dignity. Where voluntary return is not possible, adequate measures must be taken to prevent absconding by rejected asylum-seekers.

<b>Immediate actions</b>	<ul style="list-style-type: none"> <li>• Evaluation of the state of implementation of the Return Directive</li> <li>• Schengen evaluations on return (on-going)</li> </ul>
<b>Mid-term actions</b>	<ul style="list-style-type: none"> <li>• Possible review of the Return Directive based on the second implementation report (at the latest in 2017)</li> <li>• Mapping of best practices and obstacles to return in national law and administrative practice through the EMN</li> <li>• Integration of information on assisted voluntary return in asylum process</li> </ul>

<sup>13</sup> For example, several Member States grant automatic suspensive effect without distinction and in all cases where legal recourse against a return decision is sought. Such practices can cause delay in return procedures. Automatic suspensive effect should only be granted in cases where the principle of *non-refoulement* is at stake.

### 3. Enhanced sharing of information to enforce return

The existing **European information systems** - in particular the Schengen Information System (SIS), the Visa Information System (VIS) and the Eurodac – should be better used to enhance the effectiveness of the EU return system.

Currently, Member States do not systematically share information on the return decisions or entry bans that they issue to migrants. It is, thus, possible for an irregular migrant who is under the legal obligation to leave to avoid return by simply moving to another Member State in the Schengen area<sup>14</sup>. If apprehended, a new procedure will have to be engaged, delaying further that person's return. It is, thus, not possible to ensure in practice the **mutual recognition of return decisions** issued by the Member State and their enforcement EU-wide.

The Commission will propose **changes to the SIS** to enhance its use for the return of irregular migrants. The Commission will, first of all, propose to make it compulsory for Member States to **introduce all entry bans in the SIS**<sup>15</sup> to help prevent the re-entry into the Schengen area of migrants that were subject to entry bans issued by a Member State through another Member State. It will also propose that Member States introduce in the SIS all return decisions that they issue<sup>16</sup>. This should make it possible to track an individual trying to evade a return order by moving to another Member State. Moreover, it will propose the development of a **central Automated Fingerprint Identification System** for SIS, to help establish the identity of persons without confirmed identity, including irregular migrants.

Return is also hampered by inadequate communication and cooperation among Member States on persons who have a residence permit in one Member State but, at the same time, are subject to a return decision in another Member State. Member States should set up a **network of national contact points** to exchange information on withdrawal of residence permits, in particular for migrants with a criminal record. Member States also have the obligation to enter all invalidated documents, such as residence permits, in the SIS for seizure<sup>17</sup>. The Commission urges Member States to ensure that this obligation is complied with systematically.

In addition, the revised proposal on **Smart Borders** that the Commission will present at the beginning of 2016<sup>18</sup> will help enhance rates of return, by creating a record of all cross-border movements by third country nationals. This will allow tracing persons who over-stay as well as facilitating the identification of those who have destroyed their identity documents.

The Commission will also explore the possible **extension of the scope and purpose of the Eurodac Regulation**<sup>19</sup>, to enable the use of data for return purposes. The aim would be to

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<sup>14</sup> In such situations the Member State of stay of the irregular migrant can either return the person to the Member State that took the return decision on the basis of bilateral agreement, or take the necessary steps to enforce the original return decision pursuant to the Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, JO L149/34, 2.6.2001.

<sup>15</sup> Currently, Member States introduce only certain entry bans in SIS systematically but not those that are taken under the Returns Directive.

<sup>16</sup> As announced by the EU Action Plan against migrant smuggling and following the call from the European Council of 25-26 June 2015.

<sup>17</sup> Article 38 of Council Decision 2007/533/JHA of 12 June 2007.

<sup>18</sup> As announced by the European Agenda on Migration.

<sup>19</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a

enable Member States' authorities in charge of return to obtain information whether an apprehended irregular migrant had previously been apprehended and/or fingerprinted in another Member State. Such information can help identify irregular migrants and thus facilitate their return.

The **VIS Regulation**, which foresees that the biometric data of third country nationals who apply for a visa are stored in the VIS, facilitates the identification of visa holders. It also allows, under strict conditions, the transfer and sharing of certain data with the authorities of third countries, to help confirm the identity of their nationals. This can facilitate the issuing of travel documents for return. The Commission is currently evaluating the implementation of the VIS, including the use of this provision, and will report on the outcome.

<b><i>Immediate actions</i></b>	<ul style="list-style-type: none"> <li>• Evaluation of the SIS (ongoing)</li> <li>• Setting up a network of national contact points on withdrawal of residence permits</li> </ul>
<b><i>Mid-term actions</i></b>	<ul style="list-style-type: none"> <li>• Legislative proposals on compulsory introduction of entry bans and return decisions in the SIS (2016)</li> <li>• Revised proposal on Smart Borders (2016)</li> <li>• Explore the possible extension of the Eurodac Regulation</li> <li>• Evaluation of the implementation of the VIS (2016)</li> </ul>

**4. Strengthening the role and mandate of Frontex**

**Frontex has a crucial role to play** in enhancing practical cooperation on return, which should be further scaled up. Currently, the Agency has the task of providing assistance to Member States on the return of irregular migrants, without entering into the merits of the return decision, in particular by organising joint return operations, and by identifying best practices on the acquisition of travel documents and on the removal of migrants.

Member States are encouraged to use more systematically the possibility to return irregular migrants through **Joint Return Operations** organised and coordinated by Frontex, which enable the pooling of resources. They should regularly inform Frontex about their need for return assistance and coordination.

**Identification of migrants and delivery of travel documents** for their return is a major challenge. Frontex should facilitate contacts and cooperation between the Member States and third countries, especially of those that have no consular representation in the Member States concerned. And it should further assist Member States with the chartering of aircraft for return operations, including by chartering it itself. Monitors from the pool established under the project Forced Return Monitoring<sup>20</sup> may be made available, to provide neutral reporting of return operations; Frontex can finance the costs of providing monitors. It can also help Member States establish pools of escorts that can be swiftly deployed on return flights, by providing **training**.

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stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. OJ L 180, 29.6.2013.

<sup>20</sup> The FReM project, managed by the International Centre for Migration Policy Development (ICMPD) with funding from the EU Return Fund, aims to create a European pool of forced return monitors available to the countries in need of implementing a forced return monitoring system.

### ***Enhanced support to frontline Member States, under the 'Hotspot' approach***

The 'Hotspot' approach launched by the European Agenda on Migration enables a substantial **scaling up of the operational support** provided to Member States that are under migratory pressure. Under this approach, Frontex can deploy mobile teams to provide on-the-spot operational and information support on return to these frontline States, at several stages.

First, it can assist with the **identification of migrants**. Experts coordinated by Frontex can help Member States register apprehended and arriving migrants, both documented and undocumented. They can screen newly arrived migrants, to establish their presumed nationality and avoid nationality swapping. This would help quickly identify those who are returnable and those who are likely to be in need of international protection. This should enable the Member States concerned to carry out a systematic screening of all migrants who are not properly documented intercepted after crossing the border illegally.

To confirm the presumed nationality of migrants, Frontex can ensure close cooperation with the embassies or consular services of their countries of origin. It could invite and facilitate the work of task forces gathering immigration/consular officers from these countries to carry out interviews for identification and speed up the **issuing of travel documents** for return. It could involve, as appropriate, networks working on return.

Frontex can also assist with the organisation, and can coordinate and co-finance **return operations** to countries of origin or transit. Frontex should envisage a systematic stop-over of joint return flights from other Member States in the frontline Member States.

To enable identification to take place, it is important that the Member States, especially those in the frontline, take the **appropriate measures to avoid that the migrants abscond** and embark upon secondary movements to other Member States.

As announced in the European Agenda on Migration, the Commission will make, in 2016, **legislative proposals to strengthen the mandate of Frontex on return**. Without prejudging the results of the evaluation of the Agency, to be completed in 2015, and the impact assessment accompanying the proposals, the Commission will explore ways to give the Agency a stronger mandate covering both coordination of operational cooperation of management of the external borders and return of irregular migrants. It will propose setting up a dedicated **Frontex Return Office**, to better reflect the role of the agency on return.

In particular, building on the experience with the hotspots, it will consider the setting up of **Frontex Rapid Return Intervention Teams**, offering support on identification, consular cooperation with third countries, and organizing return operations for Member States. It will also consider enabling the Agency to launch return operations - currently, only Member States can initiate such operations - and to coordinate and organise return operations from just one Member State.

The Commission will also explore ways to expand the support that Frontex provides to **countries in the EU's neighbourhood**<sup>21</sup> in the return of irregular migrants, through technical support and capacity building.

In addition to scaling up the ability of Frontex to provide operational support, its **analytical capacities on return and readmission** should be expanded. In particular, the mandate of the Agency in relation to risk analysis should be extended to collecting and analysing data on irregular secondary movements of third country nationals within the EU, to help enforce the

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<sup>21</sup> In accordance with Article 15 of the Frontex Regulation, the Agency and the Member States need to comply with norms and standards at least equivalent to those set by Union legislation also when cooperation with third countries takes place on the territory of those states.

return of those third country nationals who have no legal right to stay in the EU. Its position as EU hub for exchanging operational experience and knowledge in return matters, through the network of Direct Contact Points on Return, should be consolidated.

Frontex should be allocated **adequate resources** to perform its tasks on return. The Commission has proposed an additional EUR 5 million for Frontex in the 2016 budget specifically for return activities. This should enable it to allocate EUR 15 million in 2016 for this purpose. The legislative proposals to reinforce the mandate of Frontex will be accompanied by provisions to allocate it appropriate financial resources to carry out its tasks.

<b>Immediate actions</b>	<ul style="list-style-type: none"> <li>• More systematic use of Joint Return Operations coordinated by Frontex</li> <li>• Training by Frontex for escort leaders and escorts (ongoing)</li> </ul>
<b>Mid-term actions</b>	<ul style="list-style-type: none"> <li>• Legislative proposals to expand the mandate of Frontex on return (2016)</li> </ul>

## 5. An integrated system of return management

The Commission will foster and steer the development of an **integrated system of return management** by connecting all EU-funded networks and programmes focusing on return and readmission. It will build synergies between the European Integrated Approach on Return towards Third Countries (EURINT), the ERIN and the European Return Liaison Officers network (EURLO)<sup>22</sup>.

These networks should work in a mutually reinforcing way, to achieve a coherent and effective system of return management together with Frontex, who will coordinate this integrated return management system at the operational level. In particular, they should briskly **deploy mobile task forces** to assist with the identification of migrants and the issuing of travel documents for their repatriation, test best practices and disseminate them for wider use. Such coordination should increase convergence of practice on return among the Member States and discourage secondary movements.

The Commission will explore ways to increase the acceptance by countries of origin of the **EU laissez-passer** for the return of irregular migrants, including by increasing the security features of the document.

The **European Migration Liaison Officers**<sup>23</sup> (EMLOs) that will be deployed in EU Delegations in key countries of origin or transit should facilitate cooperation with the authorities of those countries on the readmission of their nationals present irregularly in the EU. The EMLOs should work closely with the Immigration Liaison Officers' Network (ILOs) present in these countries and with EU Agencies – in particular Frontex liaison officers seconded to these countries – and networks focussing on return, such as EURLO. Following the evaluation of the **EU legislation on ILOs**<sup>24</sup>, planned for 2016, the Commission will explore whether it is necessary to revise it to enhance the added value of the ILOs network.

<sup>22</sup> EURINT aims at developing and sharing best practices on return and at developing a common strategy for operational cooperation with third countries. EURLO aims at stimulating country of origin-focused operational cooperation, notably through Return Liaison Officers in key countries.

<sup>23</sup> The European Council of 23 April 2015 has requested the deployment of European Migration Liaison Officers. This was further confirmed in the European Agenda on Migration and the EU Action Plan against Migrant Smuggling adopted on 27 May 2015.

<sup>24</sup> Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network. OJ L 64/1, 2.3.2004.

The Commission also intends to make full use of the possibilities offered by the EMN for enhancing analysis and sharing information on return. Reliable, comparable and consistent **statistical data** is crucial for enabling the development of adequate policy responses. While Member States provide statistical data on returns to Eurostat, inconsistencies have been identified. A dedicated quality working group including the Commission, Eurostat and relevant EU Agencies will address this issue.

<b><i>Immediate actions</i></b>	<ul style="list-style-type: none"> <li>• Setting up an integrated system of return management</li> <li>• Defining the tasks and the priority countries for deployment of EMLOs</li> <li>• Roadmap for improving the collection of statistical data on returns</li> </ul>
<b><i>Mid-term actions</i></b>	<ul style="list-style-type: none"> <li>• Deployment of EMLOs in key third countries</li> <li>• Evaluation of EU legislation on ILOs and possible legislative proposals to revise it</li> <li>• Explore ways to increase the recognition of EU <i>laissez-passer</i> by third-countries</li> </ul>

### **III. Enhancing cooperation on readmission with countries of origin and transit**

Boosting cooperation on return and readmission with the main countries of origin and transit of irregular migrants is **essential for increasing rates of return** and deterring further irregular migration. African countries, whence a large number of migrants arriving to, or staying irregularly in the EU originate, are a priority. The return rates to African countries are under 30% - well below the general rate of return from the EU, which, at 40%, is already insufficient. The forthcoming Valletta Summit on Migration provides a major opportunity for addressing readmission, as part of the broader discussion on cooperation on migration between the EU and Africa.

**Readmission of own nationals is an obligation** under customary international law. In relation to the African, Caribbean and Pacific (ACP) countries, this obligation is further stipulated in Article 13 of the Cotonou Agreement<sup>25</sup>.

The European Agenda on Migration already stressed the need for stronger action so that third countries fulfil their obligations to readmit their nationals. The European Council of 25-26 June 2015 required that **all tools be mobilised to increase cooperation on readmission**.

The Commission will seek to ensure, as a matter of priority, that **readmission commitments** are implemented effectively and without delay. In parallel, it will focus on the swift conclusion of on-going negotiations and, if necessary, the opening of negotiations on new readmission agreements with key countries of origin. The EU should, in addition, launch high-level political dialogues on readmission with relevant countries and enhance substantially operational cooperation. In order to achieve these objectives, the EU should muster **adequate leverage** in relation with the partner countries.

#### **1. Effective implementation of readmission commitments**

The Commission will strive to ensure the implementation of readmission commitments undertaken both under specific readmission agreements and the Cotonou Agreement.

<sup>25</sup> Under Article 13 of the Cotonou Agreement, the ACP countries have committed to accept the return of and readmission of their nationals who are illegally present on the territory of a Member State of the EU, at that Member State's request and without further formalities.

The EU has so far concluded 17 **readmission agreements**<sup>26</sup>. Overall, the return and readmission of irregular migrants to the countries having such an agreement with the EU is easier. Regular meetings under the Joint Readmission Committees enable the monitoring of the implementation of these agreements and provide a useful channel to discuss and address practical problems. The Commission will fully use these committees to further enhance practical cooperation and increase the rates of return to partner countries.

In addition, the Commission will focus on the **swift implementation of the commitment** undertaken by EU and ACP countries under Article 13 of the Cotonou Agreement to readmit their own nationals without further formalities. The Commission, together with the EEAS, Member States and Frontex will organise regular bilateral meetings on readmission with key countries of origin in Sub-Saharan Africa to operationalise this provision of the Cotonou Agreement. The aim is to enhance practical cooperation by establishing communication channels, identifying arrangements for the timely identification of irregular migrants and the issuing of travel documents or the use of the EU *laissez-passer* for their return.

The **priority countries** with which such meetings will be organised include Nigeria, Senegal, Mali, Ethiopia, the Democratic Republic of the Congo, Guinea, Ivory Coast, Ethiopia and the Gambia, taking into account the evolution of migration trends.

<b>Immediate actions</b>	<ul style="list-style-type: none"> <li>• Bilateral readmission meetings to be organised with Sub-Saharan countries of origin, starting with Nigeria and Senegal</li> </ul>
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**2. Concluding ongoing and opening new negotiations on readmission agreements**

While the EU's Eastern flank is now well covered through readmission agreements, its Southern side, which is currently subject to strong migratory pressure, is not, although several agreements are currently under negotiations<sup>27</sup>. One of the main stumbling blocks in the negotiation of readmission agreements with North African countries is the '**third-country nationals' clause**, which commits countries to readmitting third country nationals that have transited through their territory - although these countries are sometimes reluctant to even cooperate on taking back their own nationals.

The readmission by countries in Sub-Saharan Africa of their own nationals – as stipulated by the Cotonou Agreement - should ease the pressure on transit countries – as the irregular migrants would return directly to their home countries. This should, in turn, **facilitate the conclusion of agreements with North African countries**.

The Commission will also explore the need to **launch negotiations on readmission agreements** with other key countries of origin or transit of irregular migrants. For countries which are mainly countries of origin, and not of transit, the "third-country nationals" clause is less relevant in their case.

<b>Immediate actions</b>	<ul style="list-style-type: none"> <li>• Launch or re-launch of negotiations with North African countries</li> </ul>
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<sup>26</sup> The EU has readmission agreements with Russia, Ukraine, Moldova, Georgia, Armenia, Azerbaijan, Turkey, and the Western Balkan countries and also with Hong-Kong, Macao, Sri Lanka, Pakistan and Cape-Verde.

<sup>27</sup> The EU has no readmission agreements with North African countries. It is entangled in protracted negotiations on a readmission agreement with Morocco, based on a mandate dating back to 2000. With Algeria, for which the Council adopted a negotiation mandate in 2002, negotiations have not even started formally. With Tunisia, a mandate was adopted in December 2014 and negotiations are yet to start.

<b>Mid-term actions</b>	<ul style="list-style-type: none"> <li>• Explore the launch of negotiations on new readmission agreements with key countries of origin</li> </ul>
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### 3. High-level political dialogues on readmission

In addition, the EU will engage in high-level political dialogues with relevant countries of origin and transit for irregular migrants, as requested by the European Council of 25-26 June 2015. The **high-level dialogues**, which will be launched by the EU High-Representative for Foreign Affairs and Security Policy, should focus on countries where political engagement and leverage are needed, either for the implementation of existing commitments or for the conclusion or launch of negotiations on readmission agreements. They will ensure that the issue of return and readmission is prioritised in relations with these countries. EU assistance and policies should be used as incentives to stimulate the partner country's willingness to cooperate with the EU.

The High Representative should be accompanied by the relevant Members of the European Commission during these dialogues. The **EU Delegations** will play a crucial role in their preparation and follow up.

Taking into account the number of non-returned irregular migrants and the general state of relations with the EU, **possible priority countries** for high-level dialogues on readmission include Morocco, Algeria, Egypt, Nigeria, Senegal, Guinea, Mali, the Democratic Republic of the Congo, Ivory Coast, Ethiopia, the Gambia, Afghanistan, Bangladesh, Pakistan and Sri Lanka.

In parallel, the EU will fully use the fora established under the Global Approach to Migration and Mobility, such as the Rabat and Khartoum Processes, the Silk Route Partnership, mobility dialogues and partnerships, to enhance cooperation on readmission.

<b>Immediate actions</b>	<ul style="list-style-type: none"> <li>• Defining the list of priority countries and the timetable for high-level dialogues</li> </ul>
<b>Mid-term actions</b>	<ul style="list-style-type: none"> <li>• Launching and carrying-out high-level political dialogues</li> </ul>

### 4. Reintegration support and capacity building

To improve practical cooperation and the sustainability of returns, the Commission and Member States should invest additional efforts to support the **reintegration** of returnees and enhance the **capacity of their home countries to readmit them**.

**Support for reintegration** shall be provided at individual as well as state level - to equip both the returnee and the home country with means to reintegrate. Specific support should also be granted to transit countries to facilitate the return - both voluntary and forced - of third-country nationals who transit through their territory or assist them with the conclusion of readmission agreements with other third countries, where necessary and feasible.

**Readmission capacity building** should focus on improving the ability of the responsible authorities to respond in a timely manner to readmission requests and on facilitating and speeding up the identification of own nationals by countries of origin. Priorities include the development of centralised automated civil registers and of systems for issuing biometric passports and identity documents, launching automated means of transmitting and processing readmission requests (such as fingerprinting machines), or providing material resources

necessary for processing readmission requests and receiving returnees, such as means of transport or temporary accommodation facilities. Furthermore, technical support could be provided to third countries to assist their efforts to put in place readmission arrangements or agreements with other third countries.

To facilitate such measures, the Commission has set up a dedicated **Readmission Capacity Building Facility** (RCBF) of EUR 5 million under the AMIF<sup>28</sup>. This will be expanded through additional funding in the following years. Through the RCBF, funding will be provided to third countries that have concluded or are expected to conclude a readmission agreement with the EU, and to those countries with which the EU is seeking to improve cooperation on readmission. The RCBF will focus on capacity building, including on reintegration of returnees, and will enable the EU to cater for urgent needs in a timely manner.

The EU will also support **voluntary return programmes from the major transit countries**, as migrants are more likely to take up the opportunity to return voluntarily to their home countries from the transit countries, at a stage in their journey when they have not yet paid the full amount of money to smugglers and they can still avoid major risks – for instance crossing the Mediterranean Sea or the Sahara. Programmes on voluntary return from transit countries to countries of origin, in full respect of the principle of *non-refoulement*, should be supported under the Regional Development and Protection Programmes for North Africa and for the Horn of Africa, as well as under Mobility Partnerships and Common Agendas on Migration and Mobility. Such programmes should also be developed for third country nationals in transit through the Western Balkan countries.

**Sufficient funding should be devoted** from all relevant sources, notably from development assistance instruments, to support the reintegration of returnees in their countries of origin. Support for reintegration should be incorporated into existing schemes in the countries of origin, such as vocational and education programmes, microfinance and entrepreneurship support – which should be further expanded. The EU Trust Fund, which will be one of the main deliverables of the Valletta Summit on Migration, should make a significant contribution to reintegration and capacity building in third countries.

<b>Immediate actions</b>	<ul style="list-style-type: none"> <li>• Setting up of a dedicated Readmission Capacity Building Facility</li> <li>• Voluntary return programmes in third countries under Regional Development and Protection Programmes</li> <li>• Support voluntary return programmes from the Western Balkans</li> </ul>
<b>Mid-term actions</b>	<ul style="list-style-type: none"> <li>• Structural support to reintegration of returnees under the Trust Fund to be launched by the Valletta EU-Africa Summit on migration</li> </ul>

## 5. Increasing EU leverage on return and readmission

The EU needs to increase its leverage on readmission in relation with partner countries, to ensure the implementation of existing commitments and agreements, and to facilitate the negotiation and conclusion of new ones. The European Council of 25-26 June 2015 requested the Commission and Council to prepare “a global package to support the negotiations”.

**Tailor-made support packages** should be developed to help certain partner countries fulfil their readmission obligations in practice and support negotiations. These should draw on the lessons learnt from the pilot project on return<sup>29</sup> which seeks to stimulate selected third-

<sup>28</sup> See the Annual Work Programme for 2015 for support to Union Actions under the Asylum, Migration and Integration Fund.

<sup>29</sup> Council Conclusions on EU return policies adopted at the JHA Council meeting on 5-6 June 2014.

countries to cooperate on readmitting their own nationals. Return and readmission should be part of a balanced and consolidated EU package to a third country, drawing on all relevant policies – in particular home affairs, foreign policy, development assistance, trade, security – to achieve EU migration policy goals. Conditionality should be used where appropriate.

Member States' experience illustrates that a fine balance of **pressure and incentives** is needed to enhance cooperation on readmission. In the area of Home Affairs, Mobility Partnerships and visa policy provide, in general, useful leverage in cooperation on readmission. Negotiating a Visa Facilitation Agreement in parallel with a readmission agreement provides tangible incentives to third countries to cooperate on readmission.

However, the possibility to use this instrument is limited, as the EU is unlikely to offer visa facilitation to certain third countries which generate many irregular migrants and thus pose a migratory risk. And even when the EU does offer the parallel negotiation of a visa facilitation agreement, this may not be sufficient if the facilitations offered are not sufficiently attractive compared to the horizontal facilitation provided by the EU visa regulation. But **visa policy** – whether through the recast Visa Code, Visa Facilitation Agreements or the actual issuing of visas in practice – **has an impact on cooperation on readmission**. The potential to use it as leverage should be further explored.

Offering opportunities for **legal migration**, for highly skilled workers, but also for studies and research purposes, should be used as leverage to ensure cooperation on readmission. While determining the volume of admitted economic migrants is a Member State's competence, the approach could be coordinated at EU level so to have a more effective leverage for negotiating readmission agreements and arrangements with concerned third-countries.

But substantial leverage should also be identified outside the home affairs area to increase cooperation on readmission from third countries, in line with the request from the 25-26 June 2015 European Council that, *“building on the **“more-for-more” principle**, EU assistance and policies will be used to create incentives for implementing existing readmission agreements and concluding new ones”*.

**Additional elements of leverage** that should be used include development assistance, neighbourhood policy, trade agreements and trade preferences (with the possibility to link the conclusion of free trade agreements or the granting of preferential treatment for certain third countries to the parallel conclusion of a readmission agreement), education (Erasmus +) and culture. Member States are strongly encouraged to identify leverage in the areas that fall under their national competence, such as **access of third country nationals to their labour markets**.

The EU and its Member States need to agree on and adhere to a clear message to countries of origin and transit of irregular migrants about the necessity to cooperate on readmission. The issue of **readmission needs to be prioritised** and addressed in all relevant contacts at political level between the EU and third countries with low return rates, as well as in contacts between the Member States and these countries. It should, in particular, be raised in any encounter of the High Representative or Members of the Commission with representatives of relevant countries, including in international and multilateral events.

<b>Immediate actions</b>	<ul style="list-style-type: none"> <li>• Agreement on a global package to support negotiations on readmission and improved returns building on the 'more-for-more' principle;</li> <li>• Prioritising return and readmission and addressing it in all contacts with priority third-countries</li> </ul>
<b>Mid-term</b>	<ul style="list-style-type: none"> <li>• Development of tailor-made, country-specific packages</li> </ul>

#### IV. Conclusion

Improving the effectiveness of the EU system to return irregular migrants requires **political will and prioritisation**, full application of the EU rules as well as adequate administrative systems and resources at the national level. The Commission, with the support of relevant EU Agencies, will take all measures that are necessary to strengthen the EU return system, in full respect of fundamental rights and safeguards for a dignified return.

While the **EU Return Directive** enables effective action on return, its implementation by the Member States leaves room for improvement. The Commission will focus on ensuring its full application, including through infringement procedures. In parallel, it will use the assessment of national return systems under the Schengen Evaluation Mechanism to identify and help remedy deficiencies.

The Commission will step up support to Frontex and will make legislative proposals to expand its role on return substantially. The setting up of a **Frontex Return Office** should enable the Agency to scale up significantly its assistance on return. It will also make legislative proposals to enhance the EU information systems, to enable a swifter exchange of information on return decisions and facilitate their enforcement across the whole Schengen area.

An effective system of return requires the **prioritisation of readmission** of irregular migrants in relations with third countries. The Commission, together with the EEAS, will intensify efforts to enable countries of origin to implement their commitments to readmit their nationals, through political dialogues, capacity building and support for reintegration and, where necessary, by negotiating new readmission agreements.