



## Questions & Answers: Making return and readmission procedures more efficient

Brussels, 2 March 2017

An effective and humane return policy is an essential part of the EU's comprehensive approach to addressing migration and reducing the incentives for irregular migration as set out in [European Agenda on Migration](#) of May 2015. Whilst granting protection to those in need remains a priority, returning those who do not have the right to stay in the EU in accordance with the rules and procedures set out in EU legislation is equally important for a well-functioning asylum system.

The EU Return Directive, which entered into force in 2010, sets common standards and clear, transparent and fair common rules for the return of irregularly staying migrants, in full respect of fundamental and human rights. However, its inconsistent transposition in national legislation has had a negative impact on the effectiveness of EU return policy.

The European Council in its Conclusions of 20-21 October 2016 called for reinforcing national administrative processes for returns and the Malta Declaration of Heads of State or Government of 3 February 2017 highlighted the need for a critical review of European return policy with an analysis of how the tools available at national and at Union level are applied. Today's texts are the Commission's contribution to this process and seek to assist Member States in enhancing the efficiency of the national return systems, in compliance with the Return Directive.

### What has been adopted today?

The Commission today adopted a renewed Action Plan on Return and a Recommendation to better ensure the effective implementation of the existing EU legislation on return, setting out practical steps that can be implemented immediately under the Return Directive and without requiring further EU legislation. The measures proposed today complement and reinforce the actions presented in the Commission's first Action Plan on Return adopted in September 2015, which are in the process of being implemented (see Annex to the Renewed Action Plan on Return).

While the Recommendation provides guidance to Member States on how to step up return rates and to make full use of existing EU legislation in full compliance with the EU Return Directive, fundamental rights and the principle of *non-refoulement*, the renewed Action Plan on return sets a number of actions that should be undertaken by Member States, the Commission and the EU agencies to support an effective return policy.

### Why is the Commission adopting a Recommendation on return in addition to the Renewed Action Plan?

The Return Directive is establishing minimum standards for the return systems of EU Member States. However, the margins of discretion contained in the Directive have led to an inconsistent application in Member States with a negative impact on the overall effectiveness of the EU's return policy. The Commission has found, based inter alia on the results of the Schengen Evaluation Mechanism, that the legal framework provided for by the Directive has so far not been fully used by all Member States. A more rigorous and realistic interpretation of the Directive in full compliance with fundamental and human rights is even more necessary as the migratory challenges of the past two years have made an effective and efficient EU return policy of the European Union more important than ever.

### Are you proposing new legislative measures at EU level to step up return?

No. The Renewed Action Plan on Return and the Recommendation on making returns more effective when implementing the Return Directive focus on a better implementation of existing EU legislation. They show how faster procedures, stronger measures against absconding and better information exchange and coordination can lead to a higher return rate within the existing legal framework. That way, an immediate impact on the return rates can be achieved without compromising the fundamental and human rights of those being returned. The measures proposed by the Commission focus on a better implementation of the EU Return Directive and guidance on how to make better use of its provisions, no legal changes are being introduced.

## **Which migrants are subject to return?**

Third-country nationals who do not have the legal right to stay on the territory of a Member State ("irregular migrants") are subject to return, in full compliance with fundamental rights and international law. This includes persons whose claim for asylum has been rejected, persons who have stayed longer than the period allowed by their visa and who no longer fulfil the conditions for stay in the EU and those who are subject to return as a criminal law sanction.

## **How are migrants' rights protected when it comes to return?**

The EU's policy on return and readmission is fully in compliance with international human rights standards, in particular the EU Charter of Fundamental Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1951 UN Refugee Convention and its 1967 Protocol, and the principle of *non-refoulement*.

The EU Return Directive requires Member States to take all necessary measures to ensure the effective return of irregular migrants while setting out specific safeguards to guarantee the protection of returnees' rights during the whole return process. It notably contains a robust set of norms, including the possibility of effective remedy to challenge a return decision, respect for family unity and the best interests of the child and the special needs of vulnerable persons. The standards and procedures set out by the Return Directive respect fundamental rights and international law, in particular refugee protection and human rights obligations. The Return Directive sets minimum rules and common procedures for ensuring the respect of these rights.

The measures proposed today do not change these safeguards, which have to be upheld for every single return to be carried out.

## **What does the Commission recommend when it comes to the detention of irregular migrants in view of their return?**

Under the Return Directive, Member States can, under strict conditions and where considered necessary in individual circumstances, in particular when there is a risk of absconding, make use of pre-removal detention. Detention should only be used if no other sufficient but less coercive measures can be applied effectively.

Detention can be necessary for the successful preparation and organisation of return operations by ensuring that illegally staying third-country nationals do not abscond. The detention period should always be as short as possible and with a view to completing the return procedure successfully. However, the maximum period of detention used by several Member States is currently significantly shorter than the time needed to complete the return procedure. This has hindered the effective return of irregular migrants. The Commission therefore recommends that all Member States foresee the possibility to make use, in cases where it is necessary, of the maximum detention period allowed for by EU law, to be adapted in light of the individual circumstances of the case: a maximum initial period of detention of six months and the possibility to prolong detention up to a maximum of 18 months when necessary. The Commission also recommends that Member States bring detention capacity for return in line with actual needs.

The Commission also sets out a number of **criteria to assist Member States in assessing whether a risk of absconding exists**. Objective circumstances for a risk of absconding include for example the refusal to cooperate in the identification process (e.g. by using false or forged documents), violent or fraudulent opposition to a return operation, failure to comply with measures aimed at preventing absconding such as reporting to the competent authorities or staying at a certain place when required to do so and unauthorised secondary movements to another Member State. Indicative criteria to be taken into account by the relevant authorities should be an explicit expression to not comply with a return decision, non-compliance with a period for voluntary departure and an existing conviction for a serious criminal offence in an EU Member State.

## **Is the Commission recommending that Member States make use of detention for all irregular migrants and in all cases for the maximum detention period provided for in EU legislation?**

No. The Commission is recommending that Member States provide for the legal possibility, under national legislation, to make use of the detention periods allowed for by EU legislation in specific cases where it is necessary to allow for the completion of the return procedure. Detention should only be used if no other sufficient but less coercive measure can be applied effectively and when there is a risk of absconding. Detention periods should be adapted by judicial authorities in the light of the individual circumstances of the case.

## **What measures should Member States take to better link the asylum and**

## **return procedures?**

In order to avoid the duplication of procedures and assessments and ensure a more rapid and effective decision-making process on return, Member States should put in place a formal link between the two processes and provide for better coordination, communication and an increased exchange of information between asylum and return authorities. Member States should avoid the unnecessary duplication of assessments made along the different phases of the asylum and return procedures. For example, if the respect of the principle of *non-refoulement* has already been assessed during the asylum proceedings and there is no change in the individual situation of the third-country national concerned, repetitive assessments should be avoided in subsequent phases of the procedure. In addition, the issuance of decisions on the ending of a legal stay should be combined with the issuance of a return decision to avoid unnecessary delays.

## **What other measures should Member States take to reduce inefficiencies and prevent abuse of their asylum systems?**

To ensure that returns can be carried out effectively, Member State authorities need to be able to apprehend and identify irregular migrants without delay and to swiftly process their cases. For this purpose, return decisions should be issued systematically following a negative decision on an asylum claim or a residence permit, and should have unlimited duration. A return decision must then be followed immediately by a request for identity verification and delivery of a valid travel document to the third country in question.

While irregular migrants should be granted the right to be heard and have the right to appeal decisions regarding their stay, Member States need to make sure that timeframes for lodging appeals remain as short as possible while still allowing for effective remedy. To enhance voluntary returns, Member States should put in place assisted voluntary return programmes by June 2017 in line with the common standards on Assisted Voluntary Return and Reintegration Programmes developed by the Commission in cooperation with Member States and endorsed by the Council. For a credible return policy it is also important that the period for voluntary departure (preceding a forced return) remains limited and that the possibility for voluntary departure is only granted upon an application by the returnee (who must be informed of the possibility to do so).

Member States also need to ensure that a sufficient number of trained and competent staff from all relevant authorities in the return process can be mobilised and that all authorities participating in the return process coordinate their actions efficiently. Furthermore, it is essential that Member States make full use of the financial instruments put in place by the Commission to support returns.

## **What improvements are you proposing regarding the return of unaccompanied minors?**

The Return Directive provides for strong safeguards to guarantee that the fundamental rights of vulnerable persons, including unaccompanied minors, are fully respected throughout the return process. The Recommendation reconfirms that these standards have to be met by all Member States. The measures proposed by the Commission today aim at making sure that, when issuing return decisions, Member States always decide on the basis of an individual assessment of the best interests of the child. This assessment should also take into consideration whether return of an unaccompanied minor to the country of origin and reunification with their family is in their best interests. In addition, Member States should put in place targeted reintegration policies for unaccompanied minors.

What are the next steps to be taken as regards the implementation of the Return Directive?

The Commission will continue to monitor the implementation of the Return Directive into national law and will also monitor administrative practices in Member States, including through regular Schengen evaluations. The Commission also stands ready to launch a revision of the Return Directive if needed. Together with Member States, the Commission will continue to explore the best way to reduce administrative and legal bottlenecks that prevent effective return.

## **What is the role of the European Border and Coast Guard in return operations?**

Supporting Member States in the return of irregular migrants is one of the **priority tasks** of the European Border and Coast Guard. This role has been further strengthened since the Agency became operational under its new mandate on 6 October 2016. The Agency continues to coordinate forced return operations from Member States, but it now also has the possibility to propose the organisation of returns on its own initiative and to provide support to voluntary departures of migrants. Since January 2017, three return pools composed of escort, monitor and return specialists have been set up, and are available for deployment in the Member States, notably those facing particular pressure.

The renewed Action Plan on Return calls on the European Border and Coast Guard to make full use of its new mandate and develop new ways of supporting Member States, already this year. The Agency should step up 'pre-return' activities, including in supporting identification of irregular migrants and the delivery of travel documents for return. The Agency should also organise identification missions from key third countries with participating authorities issuing travel documents during or immediately after such missions.

The European Border and Coast Guard should also put in place a commercial flight mechanism to assist Member States in carrying out returns to financially support both voluntary and forced returns. In this regard the Agency should negotiate framework agreements with airline companies to set out the general conditions for the use of commercial flights and to ensure that a number of seats can be rapidly made available on board flights to key return destinations.

The role of the European Border and Coast Guard will however remain a supporting one. Member States are responsible for the issuing and enforcing of return decisions. The rights and obligations of migrants will always have to be assessed and determined individually, including against the risk of *non-refoulement*.

## **How does the EU contribute to the financing of return operations?**

The Commission is providing substantial financial assistance to support Member States in carrying out effective returns, mainly through its Asylum, Migration and Integration Fund (AMIF). For the 2014-2020 period, Member States allocated around EUR 806 million from AMIF funds to support their return and readmission activities. In 2017, the Commission will make available an additional EUR 200 million to further increase Member States' capacity to scale up returns. More EU funding will also be available to reinforce the cooperation between the EU and its partner countries in the field of readmission under the Readmission Capacity Building Facility.

## **What is being done to improve cooperation of countries of origin when it comes to readmission of their own nationals?**

Readmission of a country's own nationals is an obligation under international law. However, many countries do not cooperate on readmission in practice. Over the past two years, the Commission has intensified efforts to enable countries of origin to implement their legal obligation to readmit their nationals. Work is ongoing with countries that are the main source of irregular migration to establish frameworks for cooperation on migration but also conclude concrete agreements on readmission and enhance substantially operational cooperation.

- **EU readmission agreements:** The EU has so far concluded 17 readmission agreements (see full list [here](#)). Over the past two years the Commission, supported by the Member States, closely monitored the implementation of these agreements and will continue to do so. The Commission also advanced negotiations on new readmission agreements. Negotiations with Belarus are now almost finalised. New ones were launched in 2016 with a first reading of the proposed agreement with Nigeria, Tunisia and Jordan and the Commission will work towards swiftly concluding these negotiations and strive towards engaging further in the negotiations with Morocco and Algeria.
- **Migration Partnership Framework:** In June 2016, the Commission launched a new Migration Partnership Framework with third countries to better manage the external aspects of migration together. Within the new Framework, the European Union and its Member States will continue to employ their collective leverage in a coordinated and effective manner to agree tailor-made approaches with third countries to jointly manage migration and further improve cooperation on return and readmission. More information on the progress made in the implementation of the Migration Partnership Framework can be found in the third progress report published today.

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