



Council of the European Union
General Secretariat

Brussels, 18 August 2024

WK 10475/2024 INIT

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NOTE

From:	Presidency
To:	Working Party on Integration, Migration and Expulsion (IMEX Expulsion)
Subject:	Information from the Presidency regarding a pilot project on mutual recognition of return decisions

As announced at the Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 24 July 2024, delegations will find below a more detailed presentation of the Presidency's pilot project on mutual recognition.

Information from the Presidency regarding a pilot project on mutual recognition of return decisions

I. On mutual recognition of return decisions in general

As mentioned at the last meeting of the Integration, Migration and Expulsion (IMEX Expulsion) Working Party under the Hungarian Presidency on 24 July 2024, we would like to invite Member States to participate in the pilot project on mutual recognition of return decisions.

Recital 27 of Commission Recommendation (EU) 2017/432 on making returns more effective when implementing Directive 2008/115/EC of the European Parliament and of the Council states that **Member States should instruct their national authorities competent for carrying out return-related tasks to apply this Recommendation when performing their duties.**

Article 7 of that recommendation states that Member States should systematically introduce in return decisions the information that third-country nationals must leave the territory of the Member State to reach a third country, to deter and prevent unauthorised secondary movements.

An effective Union return policy requires efficient and proportionate measures to apprehend and identify illegally staying third-country nationals, **swift processing of their cases**, and adequate capacity to ensure their presence with a view to their return.

According to the Commission recommendation, for the purpose of ensuring the swift return of illegally staying third-country nationals, Member States should make use, among other things, of the instrument of mutual recognition of return decisions to **accelerate the return process** and deter unauthorised secondary movements within the Union.

Up to 7 March 2023, the lack of a Union-wide database indicating whether an apprehended third-country national was already subject to a return decision issued by another Member State had hampered the use of mutual recognition.

Since 7 March 2023, the renewed Schengen Information System (SIS) has allowed Member States to see immediately whether a third-country national subject to examination by the competent authority is already subject to a return decision issued by another Member State.

For the purpose of speeding up return procedures, Member States should establish close cooperation between the authorities responsible for decisions ending legal stay and those responsible for issuing return decisions, including the regular exchange of information and operational cooperation, based on the **integrated and coordinated approach** recommended in the Commission recommendation.

With the introduction of the alert on return in the SIS, the exchange of supplementary information provided by the competent national authorities on third-country nationals subject to such alerts is carried out by the SIRENE Bureaux. Several Member States have decided to assign the task of information exchange directly to the migration authorities responsible for issuing the return decision and alert. The two approaches have meant that the exchange of information on return alerts, while effective in general terms, is still wanting in terms of timeliness and adequacy in some cases.

Commission Recommendation (EU) 2023/682 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council **invited Member States to recognise each other's return decisions**.¹ This can significantly speed up the return process and make it more efficient, in particular when the return can be enforced immediately, including in cases where the period for voluntary departure granted in the return decision by the issuing Member State has expired and where all remedies against such a return decision have been exhausted.

The Commission Recommendation clearly stated that 'with a view to facilitating and speeding up the return process, the Member State responsible for the return of an illegally staying third-country national should mutually recognise any return decision previously issued to the same person by another Member State **unless** the effect of such return decision **has been suspended**'.

The main tools for the application of mutual recognition (alert on return, effective information exchange and information flow) have been in place since 7 March 2023, with a clear legal obligation² for Member States to apply them. While a dedicated Commission recommendation and various fora have addressed the mutual recognition of return decisions with the intention of promoting such recognition, a number of Member States are still not applying this instrument in practice.

When giving reasons for their refusal to apply the mutual recognition of return decisions, some Member States point to the failure to transpose the relevant EU legislation into their respective national legislation, difficulties relating to data protection and obstacles in principle, while others face practical difficulties, mainly due to a lack of timely information or the inadequate handling of the relevant alerts. Taking those negative factors into account, further efforts need to be made to support the wider use of mutual recognition and overcome the associated challenges.

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

² Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of non-EU nationals aims to ensure that a decision by a European Union (EU) country to expel a non-EU national present in another EU country is respected and complied with.

II. Invitation to Member States to participate in a pilot project

In order to identify and remove any obstacles to the mutual enforcement of return decisions, and thus to ensure a more effective return system, **the Presidency would like to:**

Invite Member States whose national legal environment supports the mutual recognition of return decisions to participate in a pilot project and to report on the effectiveness of mutual recognition and the best practices identified so far in using that instrument.

a) Within the framework of the pilot project, between **18 August and 18 November**, the participating Member States will be invited to compile data on the number of cases where mutual recognition was applicable and the number of cases where return decisions issued by another Member State were actually recognised. At the same time, data will also be collected on the reasons why recognition has failed in other cases, with a view to identifying any further obstacles or factors that might hamper mutual recognition. The Presidency will then summarise the outcome and present it at the last IMEX meeting under the Hungarian Presidency. **The data should be collected on the basis of a standard template, as set out in Annex 1 to this document.**

While Member States may choose to complete the following form anonymously, we would encourage participants to share as much detailed information as possible.

b) It would also be helpful to know **how many cases of mutual recognition of return decisions in relation to TCNs have arisen**, in how many cases Member State have taken action to recognise return decisions issued by other Member States during the period covered by the pilot project and how many procedures have resulted in an actual removal.

Naturally, Member States which already apply mutual recognition but which do not wish to participate in the project will also have an opportunity to present their experiences either beforehand in writing or directly at the High-Level Network (HLN) meeting in Budapest in September.

III. Gaining a better understanding of Member States' points of view

The Presidency would like to **give all Member States** – *irrespective of whether their national law or practice allows for the mutual recognition of return decisions, and whether or not they have completed the table contained in Annex 1* – **the opportunity to share their views** on the legal instrument on mutual recognition of return decisions, including as regards any aspects that may discourage its application, **by completing the questionnaire contained in Section V**, which is also going to be circulated at the HLN meeting.

It would also be useful to explore whether those Member States which do not apply mutual recognition would still be able to support – by carrying out the necessary information exchange – those Member States which do apply it in enforcing the return decisions issued by the non-applying Member States.

The Presidency believes that this could provide the Commission with valuable insights into the effectiveness of mutual recognition and any legal or practical obstacles to it. The Commission could then, through Union-level legislation, provide a further basis for Member States to adapt mutual recognition to their own respective national systems, thus contributing to the effectiveness of the common European return system.

IV. The main obstacles and difficulties as regards the mutual recognition of return decisions

In the list below, the Presidency sets out some of the various obstacles and difficulties relating to mutual recognition which have been already identified during discussions in various fora³, as well as in practice.

- ***Member States should ensure that they enter high-quality data into the SIS and enter alerts on return into the SIS without delay as soon as a return decision has been issued in order to increase mutual trust among Member States as regards the accuracy of the alerts on return.***

Any update to the underlying return decision (e.g. whether the decision has been suspended or postponed, or whether the period for voluntary departure has been extended, etc.) should be reflected immediately in the respective alert on return in order to help increase the level of trust between the Member States.

- ***The national data protection legislation prevents return decisions issued in respect of former asylum seekers from being shared.***⁴

In this case, it would be useful to know whether the issuing Member State could share basic information regarding the return decision, on the basis of a separate request for information by another Member State, including the last day of appeal, the destination country of return and the main reasons for issuing a return decision.

In addition, the issuing Member States could inform the other Member States whether the latter may forward the return decision without providing any details of the asylum case concerned.

- ***Due to the different national rules governing appeals, the Member State executing a return decision issued by another Member State might consider that the immediate enforcement of the return decision is impossible, or that the return decision will be enforceable only after a significant period of time.***

Given that the executing Member State has no control over the appeal procedure⁵, this may have a negative impact on the recognition of a return decision taken by another

³ For a full list of the challenges identified, please see the minutes of the last three meetings of the Return Contact Group and the non-paper prepared by DE, FR, NL, AT, CH, DK and LI.

⁴ Please note that this was discussed in the combined SIS-return contact group of 7 March 2024, and that Member States mentioned that redacting the sensitive parts of the decision could be a solution.

⁵ Please note that not all appeals have a suspensive effect.

Member State, in particular as regards cases where detention is ordered by the executing Member State.

- ***The Member State executing a return decision issued by another Member State is unable to take the lead on that case; while its procedure depends on another Member State, the detention or alternatives to detention fall under the responsibility of the executing Member State.***

In some cases in the later stages of the return process, the issuing Member State – without informing the executing Member State – has taken measures that have blocked the ongoing procedure (for example, it has deleted the alert on return).

- ***Different content of return decisions, in particular the absence of any indication of the country of return in the return decisions***

V. Questionnaire

The aim of the questionnaire is to better understand Member States' interpretation of Union law and to identify the steps to be taken in order to facilitate the mutual recognition of return decisions.

In order to support those Member States which apply the mutual recognition of return orders and at the same time provide the Commission with some insights **into the desirability of any further Union legislation in this field**, Member States are kindly invited to complete this questionnaire.

1. ***In order to clarify the legal term of 'enforcement' as regards the mutual recognition of return decisions, do you consider that the enforcement of return decisions covers those cases where the period for voluntary departure has already expired and/or where the issuing Member State has ordered the removal of the third-country national (TCN) present on the territory of another Member State?***

1a. In order to support voluntary departures – assuming an update to the alert on return is technically possible – do you think the extension of the period for voluntary departure by the executing MS should also be allowed and regarded as 'enforcement' of the issuing MS's return decision?⁶

2. ***If so, do you think that the TCN's return ordered by the issuing Member State should not be enforced by another Member State within the period of voluntary departure unless that TCN poses a threat to the public order, public security or national security of another Member State?⁷***

⁶ The SIS return alert must be updated by the issuing MS after being informed by the executing MS of the extension of the period for voluntary departure.

⁷ In view of the fact that the issuing Member State will not grant the period for voluntary departure if the TCN poses a threat to that Member State's public order, public security or national security.

3. ***Although the TCN subject to a return decision is not entitled to enter the territory of another Member State, do you think that the TCN's presence in another Member State should be tolerated within the period for voluntary departure if the TCN can prove (by means of, for example, a flight, train or bus ticket, or if he or she has arrived overland by car) that he or she will travel back to their country of origin or to any other third country within the prescribed period?***
4. ***If so, do you think that the period for voluntary departure should be extended by another Member State at the request of the TCN if he or she presents a flight, train or bus ticket for a specific day that is after the last day of the period of voluntary departure granted by the issuing Member State?***

How would you resolve a situation in which a TCN has failed to comply with the period for voluntary departure and your Member State – applying the principle of mutual recognition of return decisions – has therefore ordered the removal of that TCN? In such cases, an entry ban must follow the removal order. Should the issuing or the executing Member State issue that entry ban? How would you ensure that the entry ban is entered into SIS?

5. ***Does your Member State agree that the 'standard form for recognising a return decision for the purpose of transit by land'⁸ should be used in order to facilitate compliance with the obligation of voluntary departure through another Member State, and the mutual recognition of return decisions?***

In practice, flight ticket prices are sometimes more favourable when travelling from a Member State other than that which has issued the return decision, while in the case of certain destinations, flights are available only from another Member State.

During the return procedure, the TCN may inform the issuing Member State that he or she will leave the EU and the Schengen area overland either from or through one or more other Member States, or that he or she wishes to travel by land to another Member State in order to use its airport to leave the EU and the Schengen area.

In such cases, it would seem obvious to enter the territory of another Member State in order to comply with the obligation for voluntary departure, but this is not feasible if other Member States do not agree to such transit. The issuing of a return decision and the instrument of mutual recognition do not in themselves entitle a TCN to enter the territory of another Member State.

⁸ 39th Annex to the Practical Handbook for Border Guards (Schengen Handbook).

6. ***Do you see any added value in establishing a common – uploadable – return decision template, to be completed by the issuing Member State and containing the following details relating to the return decision:***
- ***the main reasons for issuing a return decision (irregular stay, threat to public order, etc.);***
 - ***the destination country of return;***
 - ***the last day of appeal;***
 - ***whether an appeal has already been denied by the court;***
 - ***whether the decision is final and executable;***
 - ***whether an entry ban has been issued;***
 - ***the period of the entry ban, if issued.***

This template could be uploaded to SIS in addition to the returnee's photo/facial images and fingerprints, and a copy of their travel document. Although this could raise several legal and technical questions, it could have added value overall, and could assist with the provision of adequate information about the return decision.

7. **If you have any concerns – other than those relating to national data protection rules – that prevent mutual recognition of return decisions from being applied by your respective Member State, please share those concerns.**
8. **Please share any further comments on the mutual recognition of return decisions and best practices or bilateral cooperation which could serve as an example for other Member States.**

We would invite Member States to forward the relevant information (the completed annex, a summary of mutual recognition cases and/or the questionnaire) to HU2024.IMEXexp@bm.gov.hu no later than **19 November 2024**.

We would like to thank those Member States which have already indicated their support for and willingness to join in the pilot project; we would also like to express our thanks in advance for the efforts undertaken by those Member States which decide to join in the pilot project, since we believe that this project could contribute to the development of mutual recognition and hence to a more effective EU return policy.

Of course, we are also grateful to those Member States which contribute to the success of the pilot project by completing the questionnaire.

If you have any questions, please email them to HU2024.IMEXexp@bm.gov.hu, with the Council Secretariat (jurga.valanciute@consilium.europa.eu) in copy.

Issuing MS	Executing MS	Citizenship of TCN	Was the SIS alert clear? ⁹	Has the deadline for voluntary departure already expired?	Was any additional information – such as acquiring the return decision – necessary? ¹⁰	Measures taken by executing MS	Issues arising during execution ¹¹	Successful execution? ¹²	Any additional comments

⁹ Did it include all the information necessary for the mutual recognition of the return decision, e.g. the deadline for voluntary departure, appeal with a suspensive effect, entry ban, etc.?

¹⁰ Was it necessary to gather more information via the Sirene Bureau or through any bilateral cooperation? Please answer 'Yes' or 'No'.

¹¹ E.g. the executing MS did not receive the necessary information, difficulties in connection with informing the TCN about the procedure, difficulties arising during the appeal procedure, difficulties regarding the authorities of the country of return, difficulties regarding any modification of the SIS alert, etc.

¹² Please answer 'Yes' or 'No'.