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From: Presidency
To: Strategic Committee on Immigration, Frontiers and Asylum
Subject: Making the return systems more effective: challenges linked to public safety and national security
- Presidency discussion paper

An effective and sustainable return system is an essential requirement of a common migration policy. In June 2019, the Council adopted a partial general approach¹ on the proposal for a recast Return Directive, but the legislative process has since stalled, and several elements have been identified that could contribute to building a more effective system based on the future legal framework.

According to Eurostat, 466,350 nationals were ordered to leave the EU in 2022, but only 72,400 returned (15.5%), while 484,160 return decisions were taken in 2023 with only 91,465 (18.9%) nationals returned to third countries². The top citizenships of third-country nationals ordered to leave in the past years were Algerian, Moroccan, Turkish, Afghans, Syrian and Georgian. Preliminary figures suggest that the tendency of only a proportion of third country nationals being returned to third countries will continue also in 2024 (103,515 return decisions and 26,305 returns in the first quarter), which underlines the need of Member States to significantly improve return rates.

¹ Which now amounts to a full general approach, given that the border procedure has been moved to Regulation EU 2024/1349.

² Eurostat data on enforcement of migration legislation, extracted on 19 September 2024

At the Integration, Migration and Expulsion (IMEX Expulsion) working party meeting in June 2024, elements were summarised (ST 10414/24) that could contribute to a more effective implementation of returns. During the first semester of 2024, some Member States have also specifically highlighted aspects that should be discussed in more depth (WK 3791/2024 REV1), and on 15 May 2024 fifteen Member States sent a letter to the Commission requesting that innovative solutions, including return hubs, should be explored. The issue of more effective return of persons posing a security threat³ was already on the agenda of the IMEX Expulsion meeting on 24 July 2024, where the non-automatic suspensive effect of appeals against return decisions was discussed.

Coreper exchanged views on the return policy on 16 September 2024 on the basis of a Presidency discussion paper (13129/24). During the discussion there was a broad agreement among Member States on the need to update the current legislative framework to be able to take into account the current realities and help to remove the operational barriers (such as non-cooperation of third country nationals subject to return decisions or challenges related to asylum applications lodged solely to obstruct returns). Delegations showed openness to explore innovative solutions, including return hubs in safe third countries, which have to be legally, operationally and diplomatically sound. At the same time, it was also highlighted that we have to work on improving the implementation of the instruments already at our disposal and focus on the establishment of those already agreed upon. Member States reaffirmed their commitment for enhancing EU action in the external dimension of migration, in particular by making a more strategic use of both positive and negative leverages under the mechanism of Article 25a of the Visa Code, and by maintaining the readmission conditionality of new GSP Regulation, on which negotiations should restart as soon as the European Parliament is ready. A number of Member States also favoured an option that Frontex would be able to support returns from third countries to third countries, which is not possible under the current EBCG Regulation. Finally, during the discussions there was a general agreement on the need to find a solution for the rapid return of third country nationals who pose a security threat.

³ In this paper, ‘security threat’ is used to cover a risk to public order, public security or national security, as referred to in the recast Return Directive

The recently adopted legislation and the Council general approach on the recast Return directive already contain important elements, that would allow us to speed up returns of those posing a security threat. Efforts on the accelerated procedure and the criteria for ordering detention are reflected in the new legal framework on the mandatory border procedure (Regulation (EU) No 2024/1349). In addition, the Council's general approach on the recast Return Directive foresees that no voluntary departure period shall be granted for such returnees. Furthermore, it establishes a threat to public order, public security, or national security as a new ground for detention in return procedures. These are two important elements that should be maintained in the future legal framework to ensure the European public security.

The Hungarian Presidency would like to continue the discussion on the return of those posing a security threat at the forthcoming Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 27 September 2024. At this meeting, we propose to narrow the discussion and focus on challenges linked to public safety and national security posed by persons who cannot be returned.

The principle of non-refoulement is an indispensable part of the return process and is taken into account and examined during the whole return procedure. A common challenge to the removal of persons posing a security threat is that a high number of these individuals come from a country of origin which is currently considered unsafe by most Member States. Despite the fact that individual solutions are explored, mainly by encouraging and supporting voluntary returns to these countries, these concepts need to be carefully examined, taking into account the primary aspects of sustainable return, and the active support of international organisations such as UNHCR and IOM is needed. An important aspect to be borne in mind are also the broader political implications of a diplomatic engagement with unrecognised authorities of certain third countries, necessary to facilitate identification, issuance of travel documents of returnees and organisation of return flights, esp. by charter. At the same time, it may be worth considering solutions which could enable the implementation of non-voluntary returns of criminals and those posing a security threat to such countries.

Another difficulty in implementing non-voluntary returns in such cases is that Member State authorities do not receive operational support for return from Frontex for certain countries, even if the competent authority of the Member State has carried out an individualised non-refoulement assessment and concluded that the third country national can be returned to that country. Naturally, due to the limited budget, Frontex has to focus on supporting returns to priority countries. However, in practise that means that when it comes to organising non-voluntary returns to non-priority countries (e.g. Syria or Afghanistan), which is already a major challenge per se, Member States have to count solely on their own resources and logistics.

At the forthcoming SCIFA meeting we would like to have a strategic discussion on possible ways forward as regards the above-identified challenges. Therefore, delegations are invited to share their views on the following questions:

- *Could you envisage EU level actions for the implementation of return of criminals and persons posing a security threat who come from sensitive third countries? What sequence of diplomatic, legal, operational steps could be considered?*
- *In what ways Agencies could be involved so as to best support Member States in this endeavour?*