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From:	Presidency
To:	Permanent Representatives Committee
Subject:	Towards a more assertive return policy

In the new EU Strategic Agenda leaders have agreed that *“through its comprehensive partnerships approach, the European Union will continue to cooperate in a mutually beneficial way with countries of origin and transit. Together, we will address the long-term challenges of irregular migration and its root causes and work on returns.”* Our leaders have also set out that *“we will consider new ways to prevent and counter irregular migration. We will find joint solutions to the security threat of instrumentalised migration.”* The Strategic Agenda also sets out that *“Ensuring that citizens can move freely within the EU is a fundamental achievement of the European Union and requires the proper functioning of the Schengen area. With this freedom comes the shared responsibility to fulfil and implement our common obligations and protect the EU’s external borders effectively. This is a prerequisite for guaranteeing security and upholding law and order, in line with our principles and values.”*

To achieve this goal, the Presidency emphasizes that without enhancing and coordinating our efforts in the external dimension, improving the effectiveness of returns, addressing hybrid threats to our external borders, – such as the instrumentalization of migration – and eliminating pull-factors, the reform of the Common European Asylum System (CEAS) will not be able to reduce the overall burden on Member States. The exceptional migratory situation we have faced for many years, caused by both long-standing and new challenges, requires exceptional responses with the necessary basis in law, while also considering innovative, “out of the box” solutions to address mixed migration flows in a timely, comprehensive and coordinated manner.

Despite the fact that the effectiveness of returns is a fundamental pillar of the comprehensive and credible EU migration policy, as well as a key component of European integrated border management under the European Border and Coast Guard Regulation, progress on the recast of the Return Directive has stalled for years, while the reform of the Common European Asylum System (CEAS) has been one of the most dominant topics on the EU political agenda. In June 2019, the Council adopted a partial general approach¹ on the proposal for a recast Return Directive, however it was not possible to start negotiations with the European Parliament. Moreover, the proposal for a recast Return Directive dating back 2018 does not take in to account the many developments and new challenges of the past years in the area of return. There is a somewhat narrowing, yet still very substantial gap between ordered and enforced returns, with EU-wide return figures remaining significantly below the expectations. According to Eurostat, while 484,160 third-country nationals were ordered to leave the EU in 2023, yet only 91,465 of them actually departed to third countries.² Despite the fact that according to Frontex data effective returns increased by 13% in January-June 2024 compared to the first half of 2023, thanks to the increased support by Frontex, there is still significant room for further improvement. Our response to the complex challenges leading to low effective return figures has mainly focused on improving the use of existing tools.

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

² <https://ec.europa.eu/eurostat/web/migration-asylum/managed-migration/database>, annual data extracted on 4 September 2024

Meanwhile, a large number of migrants arriving illegally is unlikely to be eligible and meet the conditions for receiving international protection in the EU, therefore leading to increased return challenges. Also, different internal obstacles that hamper the effectiveness of returns persist to some extent and, Member States continue to face significant challenges related to asylum applications lodged solely to obstruct returns.

On the external side, readmission agreements and arrangements with major countries of origin are often difficult to conclude and their implementation remains inconsistent. While we have some tools to incentivize readmission cooperation, the policy toolbox needs to be extended. This should include complementing the existing mechanism under Article 25a of the Visa Code with additional instruments such as readmission conditionality under the Generalised Scheme of Preferences (GSP) Regulation, more strategic use of EU external funding and creating links between migration and other EU external policies but also keeping return as part of overall relations with third countries. The Presidency would also like to highlight the consensus among Member States on the importance of increasing efforts in the external dimension of migration. As discussed during the recent Informal JHA Ministerial Meeting in Budapest, there is still room for improvement. We need to ensure that our engagement is effective and that we target results in a Team Europe spirit, especially in preventing illegal migration, addressing its root causes, and enhancing the effectiveness of returns. Consequently, we need to continuously enhance the effectiveness of our approach based on mutually beneficial comprehensive partnerships with third countries. This requires mobilising necessary incentives by utilizing all relevant EU policies, instruments and tools, including visa policy in a more strategic manner to improve the effectiveness of returns and ensure full implementation of readmission agreements and arrangements.

At the same time, the operational difficulties such as arranging the return of convicted criminals and persons posing a security threat remain a constant challenge, particularly when they originate from countries where executing return operations is generally difficult, such as Syria and Afghanistan. In this regard, the mediation by some third countries can also play a role in successful implementation.

Consequently, there is an urgent need to find appropriate and legally sound ways to strengthen the EU framework on the return system and thereby contribute to the well-functioning of the Schengen area, including enhanced internal security. To achieve this, we should swiftly decide on the next steps regarding the recast of the Return Directive, while taking into account the full potential of possible innovative solutions, such as the concept of “return hubs”. To this end, we need to explore the full potential of the safe third country concept and consider options for further enhancing the EU’s operational support for return operations in third countries.

At the same time, in line with the EUCO Conclusions of 18 April 2024, we must work swiftly towards achieving conditions for safe, voluntary and dignified returns of Syrian refugees, as defined by UNHCR. This could also be beneficial for the Syrian refugees residing in Türkiye.

Member States are invited to share their views on future possibilities on how we can close the legislative and operational gaps, in particular regarding the following questions:

- *What innovative elements could be considered as part of future legal solution linked to the return policy?*
- *Do you agree that we should start working on innovative solutions to deal with removal of those, posing a serious threat to public policy, public order and national security including persons from Syria and Afghanistan?*
- *Do you agree, that our toolbox for supporting third countries in the field of return should be enhanced by providing more EU operational support in return operations in third countries?*
- *Taking into account the results of using Article 25a of the Visa Code, which further instruments and incentives, including mobilising other policy areas, should be used in a more strategic manner?*