Council of the European Union

Brussels, 16 January 2025
(OR. en)

5243/25

LIMITE

SCH-EVAL 3
SCHENGEN 2
JAI 31
MIGR 11
COMIX 11

NOTE

From:	Presidency
To:	Working Party for Schengen Matters Working Party on Integration, Migration and Expulsion (IMEX Expulsion)
No. prev. doc.:	17015/24
Subject:	Ensuring effectiveness of return systems - Opportunities and challenges of the recommendations stemming from the 2024 thematic Schengen evaluation on returns

In 2024 the Commission carried out a thematic evaluation: "Bridging national gaps: towards an effective EU return system through common solutions and innovative practices" (the "thematic Schengen evaluation on returns"), on the basis of article 4(4) of Council Regulation (EU) 2022/922 ("Scheval Regulation"). The Commission adopted the evaluation report[1] on 16 December 2024, together with a proposal for a Council Implementing Decision setting out recommendations addressing identified common areas for improvement resulting from the thematic evaluation[2] in accordance with article 23(1) of the Scheval Regulation. A written consultation of the Working Party for Schengen Matters was launched on 18 December 2024.

The report of the thematic Schengen evaluation on returns highlights common challenges faced by Member States and Schengen Associated Countries[3] in effectively returning individuals with no legal right to stay in the Schengen area. These difficulties appear to mainly result from a fragmented approach, due to divergences among national systems, insufficient exchange of information and

---

[1] C(2024) 9171
[2] ST 17015/24
[3] Further referred to as 'Member States' in this note.

operational cooperation among relevant authorities and the suboptimal use of operational support tools available at EU level. As a result, the trust in the Schengen area and the EU are affected.

The resulting Commission proposal for a Council Implementing Decision sets out recommendations to address these identified areas for improvement and to ensure that the existing provisions of the Schengen *acquis* in the area of return are implemented correctly and effectively. The aim of the recommendations, and of the Schengen evaluation as a whole, is to enhance the overall functioning of the common EU system for returns, to the benefit of the Member States and of the Schengen area, by addressing key obstacles impacting its effectiveness and speed. The proposed recommendations also aim to support the objectives of the Pact on Migration and Asylum, aiming at strengthening the tools necessary for the effective enforcement of return decisions.

In their responses to the written consultation, while acknowledging the opportunities stemming from the implementation of the recommendations, delegations have identified some challenges regarding the implementation of the relevant *acquis* as reflected in the Commission proposal. Some of these challenges would benefit from an in-depth discussion by the return experts. To support the discussions on the proposal by the Working Party for Schengen Matters, the Presidency brings the issues below to the attention of the delegates of the IMEX Expulsion Working Party. Procedural aspects related to the implementation of the evaluation and those relating to the wording of the recommendations will be dealt with within the Working Party for Schengen Matters as part of its examination of the proposal.

1. **Enforcement of the return decisions**

Article 8(1) of the Return Directive[4] sets an obligation on Member States to take all necessary measures to enforce the return decision. As it comes out of the thematic evaluation, while Member States have made significant efforts, several legal and operational obstacles limit the effective enforcement of return decisions. These obstacles can include: the lack of a structured system in place to ensure that a person subject to an obligation to return has effectively departed within the period for voluntary departure; different practices when it comes to the stage at which the identification and return procedure starts for third-country nationals serving a prison sentence; a lengthy appeal procedure that can undermine an effective remedy as well as the effectiveness of returns; the absence of procedures to deal effectively with subsequent applications for international protection with no new facts/circumstances made with the sole purpose of hampering removal and difficulties in using all

---

[4] 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

available tools to identify third country nationals subject to a return decision. The Commission proposal includes several recommendations to address these obstacles. During the written consultation, several Member States raised comments in relation to those recommendations based on Article 8(1) of the Return Directive, notably recommendations 4, 5, 7, 9 and 11.

What are, in your views, the main challenges in implementing the proposed recommendations? How can they be addressed? Which measures would, in your views, address the shortcoming identified in the evaluation and ensure the effective enforcement of return decisions?

2. Operational support through Frontex

The report on the thematic evaluation indicated that, although operational and technical assistance can be provided by Frontex, some Member States are unable to use certain Frontex services to the full extent due to legal or administrative obstacles.

During the written consultation, several Member States considered that they should remain in a position to assess whether Frontex support is the most appropriate option, also taking into account a possible lack of resources, which would hinder the implementation of the proposed recommendations.

What are, in your views, the main challenges in implementing the proposed recommendations? How can they be addressed? How can Member States make the best use of Frontex support and ensure efficient use of available resources?