

Brussels, 14 January 2025
(OR. en)

5244/25

LIMITE

JAI 32
MIGR 12
COMIX 12

NOTE

From: Presidency
To: Integration, Migration and Expulsion (IMEX Expulsion) Working Party
Subject: Presidency paper on increasing the effectiveness of returns in view of future legal framework for returns

Delegations will find in annex a discussion paper on the above-mentioned topic for the Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 21 January 2025.

The discussion on the necessity to significantly change the return legislation in order to make it more effective and coherent started almost a decade ago. In 2018 the proposal for a recast Return Directive was presented¹, on which the Council reached a partial general approach in June 2019². However, interinstitutional negotiations have never started as the European Parliament has not adopted its position on this proposal.

During the Schengen Council on 5 December 2023 several Member States hinted about the need to review the provisions of the recast Return Directive, given the significant changes in the field of return that happened after the adoption of the Council mandate in 2019.

At the beginning of October 2024, 19 Member States submitted a non-paper to the European Commission, setting out objectives to help the Commission prepare a new legislative proposal. They recognized the need for additional legislative changes to those already included in the recast Return Directive.

The President of the European Commission in her last letter before the European Council on 16 December 2024 indicated that “*a stronger legislative framework in the area of returns will be one of the first major proposals of the new College*”.

Before the new legal framework is proposed, at the forthcoming Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 21 January 2025 the Presidency would like to give Member States the opportunity to provide further input as regards the forthcoming legal framework on returns.

¹ 12099/18+ADD1

² 10144/19

The previous Presidencies already initiated a number of discussions, including on the return of third country nationals posing a security threat, mutual recognition of return decisions and innovative solutions. At the forthcoming IMEX Expulsion meeting the Polish Presidency would like to focus and provide input on the following issues that have not been discussed in depth so far:

- harmonization of the procedures;
- rights and obligations of the returnee;
- incentives to cooperate in the return process and consequence of non-cooperation.

1. Harmonization of the procedures

An effective EU return policy to remove third-country nationals who do not have the right to stay on EU territory requires common rules and procedures in Member States. However, the current fragmentation of the return-related procedures places a burden on national systems, affecting their length and effectiveness, and prevents the full development of a genuine EU common system for returns. The new legislation should represent a fresh and renewed approach to return, with a view to making the return procedures more coherent. Over the last years, there has already been a number of initiatives going into this direction, including the appointment of the EU Return Coordinator and establishment of the High Level Network for Returns, the implementation of the Operational Strategy for More Effective Returns, the extension of the Frontex mandate to cover also voluntary return and reintegration, the establishment of the visa leverage (Article 25a of the Visa Code), the introduction of return alert into the Schengen Information System (SIS) as well as the establishment of the border procedure for returns and other legislative changes brought through the new Asylum and Migration Pact.

The topic of harmonisation of procedures was raised during several previous Presidencies. While the majority of delegations were concerned about improving the effectiveness of the return procedure, some Member States stressed the need in the new legal framework to seek for greater harmonisation in the areas of issuing return decisions, mutual recognition of return decisions, or even moving towards a common European decision. Therefore, our discussion should focus on addressing fragmentation, improving effectiveness and harmonisation of return procedure.

Introduction of common time limits could be considered as one of ways of improving the effectiveness of return procedure. The current Return Directive does not regulate the time limits for appealing against a return decision and Member States have adopted different (and sometimes multiple) time limits depending on the reason for return. Article 16(4) of the proposal for a recast Return Directive imposes a general obligation on Member States to establish 'reasonable' time limits.

A partial harmonisation of procedures has been proposed in the regulation on the border procedure for return, introducing time limits for the completion of the whole procedure and time limits for appeals. At the same time, when it comes to the standard return procedure, we should carefully assess whether and in what cases the introduction of time limits and steps that would bring added value, rather than additional burden on administrative and/or judicial authorities.

Therefore, at the forthcoming IMEX Expulsion meeting, the Presidency invites Member States to share their views and expectations regarding the harmonisation of procedures in the context of new legal framework on returns and answer the following questions.

1. *Which aspects of the return process could benefit from more streamlined timelines, for instance: time limits for issuing return decisions, time limits for lodging an appeal against return decision and/or time limits for considering the appeal, steps in the readmission process? (noting that these deadlines will depend on whether the return decision is a consequence of negative asylum application/ended legal stay).*
2. *Do you have some good practises from the national law that could inspire the new EU legal framework on return?*

The long experience of the SIS, which has been operational since 1995, shows that a structured form of information exchange in a simple and standardized manner promotes the efficient and speedy transfer of necessary data, and therefore ultimately promotes harmonisation of procedures. Therefore, we would like to refer to the discussion initiated by Spanish Presidency regarding the consideration of a ***uniform and harmonized template for a return decision***, that would comprise all necessary fields (to be filled in as relevant, depending on the situation) and would be possibly attached to the SIS alert (as is the case for the European Arrest Warrant form).

3. *Would the introduction of a uniform template for a return decision comprising possible elements/fields to be filled in according to the circumstances, help to make the procedures more coherent, also in the context of facilitating the digitalisation of returns? If positive, should such form be attached to the SIS?*
4. *If positive, which option would you prefer: (a) a standard return decision for all, or (b) a standard form to be used in addition to the return decision as an attachment to the SIS return alert?*

The issue of the ***mutual recognition of return decisions*** issued by other Member States has been touched upon in a number of previous discussions. Establishing mandatory elements of the return decision would contribute to setting up a feasible procedure for mutual recognition of return decisions for both the Member State issuing the return decision and the Member State recognizing it. When it comes to mutual recognition, cooperation and mutual trust, in line with the Team Europe approach, play a central role.

5. *What essential elements should the return decision contain to facilitate mutual recognition of return decisions issued by other Member States?*

2. Rights and obligations of the returnees

Procedural and substantive safeguards play a primary role in the current Return Directive that includes a wide range of rights of third country nationals and procedural safeguards in the return procedure, notably the respect for fundamental rights and the principle of non-refoulement.

At the same time the Return Directive does not outline any obligations for persons who do not have a right or no longer have a right to stay on the EU territory. The new legal framework on returns should address this disbalance and should include some obligations for illegally staying third country nationals as well. An effective return policy relies on the cooperation of the returnees and their countries of origin and contradictory statements about nationality, fraudulent declarations about lost documents or absconding of returnees should be addressed as examples of non-cooperation and have specific consequences.

The Council's partial general approach on the recast Return Directive already went into this direction and included an obligation for third-country nationals subject to return procedures to cooperate. According to Article 7, such persons should at least have a duty: a) to provide all elements necessary to establish and verify identity; b) to provide information on third countries of transit; c) to remain available during the procedure; and d) to request a valid travel document when necessary.

The obligation to cooperate with the examining authorities throughout the procedure and linking it to severe consequences for non-compliance is already provided for in Article 9 of the Asylum Procedure Regulation³.

For the purposes of the new return legal framework, it is important to determine what rights and obligations can be granted/imposed on a third country national in order to ensure an appropriate balance.

³ Regulation 2024/1348 of 14 May 2024 on the establishment of a common procedure for applying for international protection in the Union and repealing Directive 2013/32/EU

In the forthcoming IMEX Expulsion meeting the Presidency invites delegations to share their views on the following questions:

6. *In addition to the obligations for a third country national to cooperate with authorities set forth in the 2019 Council general approach on the recast Return directive, should any other obligations be included? Do you have examples of such other obligations in national law which could contribute to more effective return process?*
7. *Could the solutions proposed in Articles 8 and 9 of the Asylum Procedure Regulation be a starting point for reflecting on to achieve the right balance in the area of return, what other suggestions can there be for maintaining such a balance?*

3. Incentives for returnee to cooperate and consequences of non-cooperation

In recent years, the strategy of using incentives and sanctions in different policy areas to encourage cooperation on returns has been included in a number of EU instruments beyond migration partnerships. However, these are mainly tools in relations with third countries.

In April 2021 the European Commission adopted the European Union Strategy on Voluntary Return and Reintegration. This Strategy promotes voluntary return and reintegration as an integral part of a common EU system for returns, setting out measures to strengthen the European return framework and to improve the management of return processes. Member States are implementing the Strategy in different ways (have different programmes with a varying level of incentives for returnees to cooperate, resources and capacities) due to the lack of a uniform legal framework, including for return counselling.

This fragmentation might be exploited by third country nationals who try to take the advantage of more “generous” systems, which hampers the effectiveness of return policy and lead to unauthorised movements of irregular migrants seeking to choose the national package that better fits their individual interests. Thus, the future legislation on returns could outline some action in this area. A common approach on those that do not cooperate could also be conducive to more returns.

A new legal framework should also include provisions to improve migrants' cooperation and reduce absconding, as this is one of the important reasons behind the low return numbers. The new legal framework should outline consequences for non-cooperation in order to send a clear signal to third country nationals that lack of cooperation will not be tolerated.

As for the sanctions in cases of lack of cooperation, Article 6(1)(j) of the recast Return Directive identifies lack of cooperation as one of the criteria possibly leading to the detention of the returnee, however, it does not provide for other consequences, giving Member States the freedom to establish their own system of sanctions.

Additionally, the strategic use of an entry ban could also serve to incentivise cooperation or sanction non-cooperation. The duration of an entry ban could be shortened when the third country national is cooperating, while it could be extended in case of non-cooperation. In some specific cases, an entry ban for an indefinite period of time could also be considered in the context of the future legal framework on returns.

At the forthcoming IMEX Expulsion meeting, the Presidency invites delegations to share their views the following questions:

8. *What incentives to cooperate could be included in a future legislative act? What consequences for failing to cooperate with the authorities in the return process, could the new legal framework introduce? Are the consequences as outlined in the Council general approach on the recast Return directive sufficient, or should some additional elements be added?*
9. *Should access to incentives depend on the stage of the return proceedings (i.e. the sooner the third country national agrees to return, the more incentives will be provided)?*
10. *Do you consider it appropriate to lay down in law the possibility of imposing an entry ban without time limit in a situation where a third-country national represents a serious threat to public order, public security or national security?*