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Towards an operational strategy for more effective returns

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POLICY DOCUMENT

Towards an operational strategy for more effective returns

This policy document represents the Commission's contribution to the process of developing the operational strategy for more effective returns set out in the New Pact on Migration and Asylum. It is based on the contributions and the common views emerging from the discussions in the High-Level Network for Returns, under the steer of the EU Return Coordinator. It also seeks to inform the discussions in the European Parliament and in the Council on the operationalisation of the common EU system for returns. On this basis, the EU Return Coordinator and the High-Level Network for Returns will finalise shortly the operational strategy, ensure its implementation and regularly report on it.

Establishing an **effective and common EU system** for returns is a central pillar of well-functioning and credible migration and asylum systems, and of the comprehensive approach of the **New Pact on Migration and Asylum** ⁽¹⁾. It is also a component of the Strategy towards a fully functioning and **resilient Schengen area** ⁽²⁾ to compensate for the absence of controls at internal borders and thereby also an integral part of the Schengen policy cycle, as well as part of the European Integrated Border Management. An effective and common EU system for returns should also serve as a deterrent to help reduce **unsafe and irregular migration**, prevents exploitation of migrants by breaking the business model of criminal smuggling networks and can promote safe legal pathways.

The appointment of the EU **Return Coordinator**, bringing together the strands of EU return policy and facilitating a seamless and interlinked implementation of the return process, supported by a High-Level Network for Return ⁽³⁾, is one of the key innovations of the New Pact to achieve its overall objectives.

The New Pact foresees that a **strategic focus** to the work of the EU Return Coordinator and of the High-Level Network will be provided by an operational strategy on returns. Based on the in-depth discussions, useful contributions and common views emerging from the consultations with the High-Level Network for Return so far, the Commission sets out in this policy document the core **objectives and the concrete and practical four priority areas** of the operational strategy for addressing shortcomings and increasing mutual coherence in implementing the EU policy on return. The annex to this policy document sets out the specific actions that could be implemented in the four priority areas.

The **work on return has evolved considerably** over the past few years. Negotiations are ongoing to revise the EU legislative framework on asylum and migration, including also in the area of return (recast of the Return Directive ⁽⁴⁾, Asylum Procedures Regulation ⁽⁵⁾, Asylum and Migration Management Regulation ⁽⁶⁾) and should continue at full speed. There are currently 24 EU readmission agreements and arrangements in place with third countries, some working well, others with a need to step up their implementation. The mechanism put in place by Article 25a of the Visa Code ⁽⁷⁾

⁽¹⁾ COM(2020) 609 final.

⁽²⁾ COM(2021) 277 final.

⁽³⁾ The High-Level Network for Return is chaired by the EU Return Coordinator and composed of representatives of all Member States and Frontex.

⁽⁴⁾ COM(2018) 634 final.

⁽⁵⁾ COM(2020) 611 final.

⁽⁶⁾ COM(2020) 610 final.

⁽⁷⁾ Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code) as amended by Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019, OJ L 188 of 12.7.2019, p. 25.

established a formal link between visa policy and readmission cooperation. The Schengen Information System Regulation⁽⁸⁾ is in force and will enter into operation in March 2023. Progress also includes more structures and focus dedicated to return at national level, enhanced Frontex mandate and capacities and stronger efforts to move towards an effective and common EU system for returns. This signals positive direction, determination, and concrete elements of progress on which the EU should build.

In the process of developing the operational strategy on returns, it is important to **take a critical look at what works and what does not work**, to draw lessons from the work already done and design an operational strategy to further implement our common policy priorities in the area of return.

1. POSITIVE DEVELOPMENTS IN THE AREA OF RETURN

The **common EU system for returns** which combines stronger structures inside the EU with more effective cooperation with third countries, **is taking shape**. In parallel to strengthening the EU legislative framework on return, operational and practical tools have been put in place to better work together to increase returns from the EU.

Thanks to the **Schengen evaluation mechanism**⁽⁹⁾, Member States' national legislation and practices are now better aligned to the objectives and requirements of the revised Return Directive. The targeted recommendations and individual follow up with each Member State has led to a range of improvements, from more effective national procedures to enhanced fundamental rights protection. Moreover, good practices in Member States are flagged to other Member States.

On the external side, the **comprehensive approach to migration**, outlined in the New Pact on Migration and Asylum, focuses on building win-win partnerships with third countries including fostering better cooperation on readmission. The New Pact frames cooperation on migration with third countries as an integral part of the EU's overall relations. This is supported by Action Plans with priority countries of origin and transit, indicating objectives, support measures and expected timelines, including in the area of return.

The **process and mechanism established by Article 25a of the Visa Code**, linking readmission cooperation and visa policy, and the yearly assessment prepared by the Commission, have been instrumental to identify concrete challenges with specific countries and to address them, and has acted as a catalyst for strengthening the dialogue on readmission with third countries where cooperation needs to improve. Increased coordination between the EU and Member States on joint messages, including in the relevant Council groups, and identifying concrete tasks to improve co-operation on readmission are proving their effectiveness. The existing EU readmission agreements and arrangements facilitate practical cooperation. The processing of readmission cases by third countries has improved considerably, thanks to the digitalisation via Readmission Case Management Systems.

⁽⁸⁾ Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals, OJ L 312, 7.12.2018, p. 1.

⁽⁹⁾ Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013, OJ L 160, 15.6.2022, p. 1.

Frontex plays an important role in supporting Member States in all phases of voluntary and forced returns, including on reintegration. This is supported by a new dedicated Deputy Executive Director on return and a return division.

With the first **EU strategy on voluntary return and reintegration** ⁽¹⁰⁾, the EU is promoting wider and better use of voluntary return and reintegration to **ensure humane, effective, and sustainable return** of persons with no legal right to stay in the EU as part of the objective to increase returns overall. Its implementation is progressing well: since April 2022, Frontex is providing **EU-standardised reintegration packages** to third countries through the **Joint Reintegration Services** to further support a coherent approach; key tools for improving and enhancing return counselling are in place (dedicated IT tools, a quality framework for counselling, Frontex training modules used to train counsellors of the Standing Corps and to be used for Member States' counsellors as well). The EU continues to **support returns from transit countries**, notably Türkiye, North Africa and the Western Balkans, to countries of origin, with a view to relieve migratory pressure on partner countries and tackle irregular migration with a whole-of-route approach. In this context, work is focusing on strengthening partner countries' capacity to return migrants who do not qualify for international protection and support them in establishing readmission agreements with countries of origin. This is complemented by **EU funded initiatives** in third countries to strengthen migration management, support voluntary return of irregular migrants from transit countries, as well as individual and community-based reintegration initiatives. While it is still early to measure the effects of the strategy, Frontex reports a trend over the last two years of around 58% share of voluntary returns from the EU.

Strong **coordination at EU level and the use of Frontex's support** brings considerable results. As an example, thanks to the full coordination of all national actors, the Commission, Frontex and relevant EU Delegations through a specifically established working group, Cyprus has rapidly reached the top three of Member States in the number of Frontex assisted returns in 2022, with over 2000 third country nationals returned. Similarly, the work to support Member States most affected in the context of the instrumentalisation of irregular migration by the Belarusian regime shows the added value of all actors working coherently and hand in hand.

The Multiannual Financial Framework 2021-2027 significantly reinforces the financial support in the area of migration to implement the **New Pact on Migration and Asylum**. It is important that funding at both EU and Member States levels, notably under the Asylum Migration and Integration Fund, the Instrument for Pre-Accession and the Neighbourhood, Development and International Cooperation Instrument – Global Europe, is used alongside other objectives, to promote effective return and readmission and sustainable reintegration.

Finally, the new feature in the Schengen Information System on alerts on persons subject to return decisions, entering into operation in March 2023 is another important piece of the common EU system for return. It paves the way for closer cooperation, including with regard to the mutual recognition of return decisions issued by Member States for a quicker and more effective return process.

⁽¹⁰⁾ COM(2021) 120 final.

2. CHALLENGES AND OBSTACLES

The return policy is a complex area. One important weakness is the **lack of reliable data** on how EU return system is working. This in turn makes it difficult to pinpoint how to improve its effectiveness.

There is a need to **streamline and optimise procedures** in each Member State, in full compliance with fundamental rights, including protection of personal data, making returns swifter and more effective. While a lot of progress has been made, Member States still face important **bottlenecks** and lack of coordination among actors in the process. Decisions ending legal stay do not always result in a return decision and non-compliance with a period for voluntary return does not always result in forced return – a central aspect to improve effectiveness is to close these gaps. According to Eurostat out of the 340 515 number of return decisions issued in 2021, 21% were effectively carried out. In addition, only five Member States are responsible for 80% of the returns facilitated by Frontex. With repeated calls from Member States for enhancing Frontex support in the area of return, it is therefore important that full use is made of the support Frontex can provide, including by ensuring that returnees are available to authorities for being returned with flights organised by the Agency. As set out in the Commission Communication on enhancing cooperation on return and readmission⁽¹⁾ and as also identified in the Schengen evaluation process, the legal and administrative return frameworks of the Member States vary significantly, with **good practices and gaps** in each national system. Some of the key obstacles towards an effective return policy are the significant gaps between asylum and return procedures, lengthy administrative and judicial procedures, difficulties in preventing absconding, insufficient resources, infrastructures and limited administrative capacity to follow up on return decisions, including by requesting readmission to third countries as the number of readmission requests is currently very low compared to return orders issued (16% in 2021). Better use of the existing legal framework on mutual recognition of return decisions, would also have the potential to speed up the return process and can represent a further step towards a common EU system for return.

Insufficient **cooperation of countries of origin** is an additional challenge. The effectiveness and timeliness of identification and issuance of travel documents impact significantly on returns: lengthy and unclear procedures increase the risk of absconding and frustrate returns. Moreover, certain third countries reject non-voluntary returns or limit them only to specific categories (e.g., criminal offenders), or do not acknowledge readmission requests, reducing in practice the number of returns.

From an operational perspective, **identifying and tackling such gaps and challenges and promoting existing good practices** is the first step to make return procedures more effective and swifter. This will ensure **efficiency gains** in the overall process, and the protection of migrants' **fundamental rights**, in line with EU law and the Charter of Fundamental Rights.

The operational strategy should take account of the need for improvements in national procedures to be coherent with both national and EU efforts to improve cooperation on return and readmission with international partners.

⁽¹⁾ COM(2021) 56 final.

In a spirit of a **Team Europe approach**, a close interplay between internal and external policy, tools and stakeholders should be promoted. The operational strategy should be complemented by more consistent and coherent national approaches and by building closer cooperation and **solidarity** between all Member States, further reinforcing the support that **Frontex** provides and promote its use by Member States.

3. GUIDING PRINCIPLES AND OBJECTIVES OF THE OPERATIONAL STRATEGY

Based on a critical look at what works today and what does not, as well as the consultations with the High-Level Network members, the Commission considers that the strategy should be focused on seeking a **consistent and coherent approach between the Member State and EU levels**, to ensure effective returns as part of the overall objectives of the EU's comprehensive migration and asylum policy.

The EU Return Coordinator and the High-Level Network, with the support of Frontex, and in cooperation with other EU institutions as relevant, will **work to reinforce the coherence and efforts** of Member States, to join forces and provide mutual support to respond to immediate needs and obstacles, and to assist with operational activities the common efforts towards third countries in implementing returns.

The **operational strategy** must reflect the EU policy objectives on return⁽¹²⁾. The strategy also needs to be a flexible tool that is capable of continuously responding to changes in policy priorities and in circumstances.

The **key objective** of the operational strategy **should be to enhance the functioning of return so that:**

- the overall number of effective returns increases, with significant increased returns to third countries where there are no major political obstacles, based on targets set by Member States,
- returns are implemented more swiftly manner, supporting the integrity and credibility of Member States' asylum systems, and deterring irregular border crossings, and
- the returns are sustainable and in line with European values and fundamental rights.

This key objective could be further broken down into the following **operational goals:**

- streamline and optimise the return process in each Member State, in full compliance with fundamental rights including protection of personal data, making returns swifter and more effective,
- increase voluntary returns (both in absolute terms and as share of total returns) and reintegration, fostering more sustainable returns within the general objective of increasing returns overall,
- foster a more collaborative and coherent EU approach to return among Member States, the Commission and Frontex, in the spirit of a Team Europe approach, while taking account of the overall relations with third country partners, and

⁽¹²⁾ COM(2021) 56 final.

- improve the data and statistical evidence-based on return, building a more targeted, planned and efficient return policy and common operational response capability.

The operational objectives would require the joint work of Member States, the Commission and Frontex in cooperation with the European External Action Service (EEAS) and EU Delegations, as necessary on focus areas where collective actions are needed, in a spirit of solidarity and practical cooperation. The operational strategy should also give a clear direction to Frontex to concretely contribute to achieving these objectives.

4. FOUR FOCUS AREAS FOR MORE EFFECTIVE AND EFFICIENT RETURNS

Based on the discussions held in the first two High-Level Network meetings as well as bilateral consultations with Member States, the Commission has identified four focus areas, which can form the basis of the operational strategy:

- Targeted actions to respond to immediate needs and obstacles in a coordinated manner.
- Gain efficiency in the overall return system by accelerating the process and closing loopholes.
- Promote return counselling and reintegration as core elements in the EU return system, both for voluntary and forced returns.
- Digitalise return management and improve data analysis.

These areas represent a mix of work to address both immediate needs and obstacles for which coordination and joint action is needed, as well as longer-term structural work to improve the effectiveness of the EU return system. The Annex to this policy document sets out the main suggested actions for implementing the four focus areas and the targets and indicators that could be used to monitor progress.

The work should swiftly move into a genuinely operational phase. It should contribute to the realisation of a number of flagship workstreams.

Flagship workstreams

1. Targeted operational joint return operations to defined third countries, facilitated by the Commission and the European External Action Service and implemented by Member States as well as Frontex in the next weeks.
2. By the end of 2023, develop analyses and situational awareness on the functioning of return, to enable proactive planning and to develop a common understanding of good performance in the return domain, with the participation of all relevant stakeholders.
3. Doubling the number of third countries covered by the Frontex Joint Reintegration Services and its full use by all Member States by the end of 2023.
4. The expansion of the digitalisation efforts on readmission through the Readmission Case Management Systems' roll out for all relevant third countries and Member States.
5. Finalisation by Frontex of the digitalisation gap analysis for all Member States by the end of 2023.
6. Return counselling to be established as a professional competence in all Member States.

The complexity, sensitivity and high number of stakeholders and authorities involved in the area of return require better coordination, open and strategic discussions in a trusted space to bridge the gaps. The work of the EU Return Coordinator and High-Level Network provides the **opportunity to use a practical and hands-on approach, building on positive experiences of Member States, to foster closer practical cooperation and coherence** to further develop and bring forward the objectives of this operational strategy. There are different strengths and weaknesses both at EU-level and at Member State level, priorities and needs differ, and work will need to advance in parallel on the different aspects **towards a common and effective EU system for returns.**