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NOTE

From:	Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship
On:	9 June 2015
To:	Ministers

Subject:	Increasing the effectiveness of the EU system to return irregular migrants
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Ministers will find attached a copy of a letter sent by Commissioner Avramopoulos on the above subject.

Dimitris AVRAMOPOULOS
Member of the European Commission

Brussels, 09. 06. 2015
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Dear Ministers,

The *European Agenda on Migration* and *EU Action Plan against migrant smuggling* highlight that one of the incentives for irregular migration is the knowledge that the EU's system to return irregular migrants, or those whose asylum applications are rejected, is not sufficiently fast and effective.

The overall record on enforcing return decisions speaks for itself - only 39% in 2014. Economic migrants pay high prices to smugglers to bring them to Europe, no matter how hazardous the journey is, knowing that once they are in the EU they have a good chance to stay here, even if they are ordered to leave. And often their home countries do not cooperate on the readmission of their nationals present irregularly on EU territory.

The relatively low rate of return of irregular migrants and of those whose asylum applications were rejected undermines the credibility of our efforts to reduce irregular migration. The effectiveness of the EU system to return irregular migrants must be enhanced, in full respect of the standards and safeguards that ensure a dignified and humane return. In order to do that, we must make sure that the countries of origin of these irregular migrants cooperate and take them back.

An effective return policy is also important to maintain public support for protecting persons in need. Efforts to increase the rate of return of irregular migrants should therefore be seen in conjunction with our renewed efforts to protect those in need, including the initiatives taken by the Commission on relocation and resettlement.

I am open to exploring, with you, all options for increasing rates of return, in full respect of fundamental rights and the *principle of non-refoulement*. The paper in annex offers a number of measures in line with those announced in the *European Agenda on Migration* and the *EU Action Plan against migrant smuggling*.

I look forward to having a rich debate with you in the JHA Council about ways to improve the effectiveness of our return system.

Yours sincerely,



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Increasing the effectiveness of the EU system to return irregular migrants

The *European Agenda on Migration* and *EU Action Plan against migrant smuggling* announce a set of measures to reduce the incentives for irregular migration. The present paper elaborates further these proposals to explore all options for increasing rates of return.

The main reasons for the gap between return decisions issued in the EU and the number of irregular migrants who actually leave (39% in 2014) are lack of cooperation from the individuals concerned (they conceal their identity or abscond) or from their countries of origin (for instance problems in obtaining the necessary documentation from consular authorities). This leads to a **wide number of return decisions which are issued and not enforced**.

Statistical data show that certain Member States are more effective than others in returning irregular migrants (the return rates of EU Member States range between 15% and 95%, according to Eurostat data). Some enjoy better practical cooperation with certain countries of origin than others. **Best practices** in overcoming obstacles to efficient returns in national laws, regulations and administrative practices should be systematically identified and shared. A 'Return Handbook' will be presented by the Commission in September and will support Member States with guidelines, best practices and recommendations.

The EU should seek to further **increase the rates of voluntary return** of irregular migrants. The Commission supports assisted voluntary return programmes through the Asylum, Migration and Integration Fund (AMIF), in cooperation with governmental and non-governmental actors, in particular the International Organization for Migration (IOM).

But the attractiveness of voluntary return also depends on how credible the prospect of forced return is for the migrants. Irregular migrants who sometimes paid significant amounts of money to smugglers to bring them to Europe may not be inclined to accept assisted voluntary return packages, unless they believe that they will be returned otherwise.

Support for **reintegration** of irregular migrants who returned to their home countries is crucial for the sustainability of return. The Commission is providing funding for reintegration under development cooperation and neighbourhood instruments, as well as under the AMIF.

All options must be explored to enhance the effectiveness of the EU system to return irregular migrants, in full respect of fundamental rights. Several steps could be taken to increase rates of return. Some of these steps can be taken already. But others require the revision of EU legislation, or the launch of negotiations on new readmission agreements with third countries.

1. Enforcing return in full respect of fundamental rights

The Return Directive¹ allows for determined action. This Directive imposes an obligation on Member States to **issue a return decision to any illegally staying third country national** and – if necessary – to enforce this obligation. It provides Member States with tools, such as the possibility to use coercive measures², including detention, to make sure that migrants do not abscond and do not move on to other Member States, and that return can be carried out. It also sets out safeguards and procedures to protect the rights of returnees, and to enable return to be enforced in an effective and proportionate manner.

¹ Directive 2008/115/EC, of 16 December 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348 98, 24.12.2008, p. 98–107.

² Coercive measures may include detention, regular reporting, deposit of a guarantee, submission of documents, the obligation to stay at a certain place, escorting, proportionate use of coercion in the conduct of removal and imposition of entry bans.

But in reality various obstacles may hinder return. On a practical level we need first to concentrate on the immediate **identification of migrants** upon arrival. Fingerprinting migrants is crucial for identification, and for preventing absconding and secondary movements to other Member States. This is essential both to conduct a proper return procedure as well as for the eventual asylum procedure. Resources should be focusing on this essential phase of the migration process.

The **Hotspot**³ approach, launched by the European Agenda on Migration, should enable Frontex to provide substantial assistance on the ground to frontline Member States, at several stages. Frontex screening/interviewing teams, deployed usually in the course of Joint Operations and following the Hotspot approach, can provide significant support on identification.

Following identification, Frontex can also provide assistance for obtaining documents for readmission, by taking the necessary steps with the authorities of the countries of origin, on behalf of EU Member States. **This should enable frontline states to return irregular migrants swifter.** Information on assisted voluntary return should be provided immediately and systematically upon arrival and at all stages of the identification and preparation of return.

During and after the process of identification, to make sure that irregular migrants are effectively returned, **detention should be applied, as a legitimate measure of last resort**, where it is necessary to avoid that the irregular migrants abscond. For as long as there is a reasonable likelihood of removal, prospects of removal should not be undermined by premature ending of detention. The Return Directive allows maintaining returnees in detention for up to six months (18 months in case of non-cooperation).

If Member States are confronted with large numbers of irregular migrants arriving and do not have available sufficient places in closed detention facilities, they can apply the **emergency clause** of the Return Directive (Article 18). This provides Member States more flexibility regarding the conditions of closed detention of irregular migrants, by enabling them to derogate from the detention-related requirements of the Directive temporarily⁴. Financial support may be granted to Member States that are confronted with such large numbers of irregular migrants, including for funding detention facilities, under the AMIF.

The implementation of EU rules on the return of irregular migrants is now being assessed thoroughly in the framework of the **Schengen Evaluation Mechanism**. This should enable the sharing of best-practices and the identification of deficiencies, in order to enhance the effectiveness of the system.

In addition, Member States should use more systematically the possibility to return irregular migrants through **Joint Return Operations organised/coordinated by Frontex**, which enable the pooling of resources. Currently, Frontex can only coordinate Joint Return Operations involving several Member States, but not initiate them or support purely national return operations. On the basis of the current evaluation, to be concluded this year, the Commission will propose to amend the Frontex legal basis to strengthen its role on return.

³ Under the 'Hotspot' approach, EU agencies provide operational and information sharing support to frontline Member States, which experience migratory pressures.

⁴ This clause offers a possibility for Member States not to apply three detention related provisions of the Directive, namely: the obligation to provide for a speedy initial judicial review of detention; the obligation to detain only in specialised facilities and the obligation to provide separate accommodation guaranteeing adequate privacy to families.

2. Cooperation with third countries on readmission

To increase the rates of return of irregular migrants, we must make sure that third countries take back their nationals that have no right to stay in the EU. There are three main ways to enhance cooperation on return with the countries of origin of irregular migrants.

- **Launching negotiations on readmission agreements with the main countries of origin of irregular migrants**

The EU has developed, over the past decades, cooperation on readmission with a number of relevant countries. 17 readmission agreements are in force, several others are under negotiation. But while the EU's eastern flank is now well covered - through readmission agreements with Russia, Ukraine, Moldova, Georgia, Armenia, Azerbaijan, Turkey, the Western Balkan countries - its southern flank, which is subject to strong migratory pressure, is not. The EU has no readmission agreements in force with the North African countries. It is not for lack of trying. The EU is still entangled in protracted negotiations on a readmission agreement with Morocco - based on a negotiation mandate given back in 2000. With Algeria, for which a negotiation mandate was issued in 2002, negotiations have not even started yet.

The main stumbling block in the negotiation of readmission agreements with North African countries is the **'third countries' nationals' clause**, under which the countries would commit to readmitting third country nationals that have transited through their territory on their way towards the EU. Sometimes, these countries are even reluctant to cooperate in taking back their own nationals.

To address this problem and reassure the North African countries that their position as transit countries on the migratory route will not pose a massive burden on them as regards the readmission of third country nationals, **negotiations with the main countries of origin of irregular migrants from Sub-Saharan Africa should be launched to allow an effective implementation of Article 13 of the Cotonou Agreement.**⁵ African countries have already made clear commitments to negotiate readmission agreements, in the framework of the Cotonou Agreement. We should move now to the operational phase. The aim is to ensure the return of irregular migrants to their countries of origin, and thus ease the pressure on transit countries. This should help increase the rates of return to Sub-Saharan Africa, as well as facilitating the conclusion of readmission agreements with the transit countries in North Africa.

- **Operational and political cooperation on readmission**

In the meantime, **operational and political cooperation on readmission** with countries of origin should be stepped up. The EU-ACP dialogue on migration and development – which contains, since 2014, a workshop on return and readmission – should be intensified.

To **enhance cooperation with countries not covered by readmission agreements**, full use should be made of the networks and projects funded at the EU level focusing on the readmission of irregular migrants and on their reintegration in their home countries, which is crucial for the sustainability of return. The Commission will seek to step up the synergies between the European Integrated Approach on Return Towards Third Countries (EURINT), the European Reintegration Instrument Network (ERIN) and the European Return Liaison

⁵ In accordance with Article 13 of the Cotonou Agreement, each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State's request and without further formalities. Each Member State of the European Union shall accept the return of and readmission of any of its nationals who are illegally present on the territory of an ACP State, at that State's request, without further formalities.

Officers network (EURLO)⁶. These should work in a mutually reinforcing way, to achieve, together with Frontex, an **integrated system of return management**.

The Commission will provide substantial support for cooperation on readmission with key third countries – including **support for the conclusion and implementation of readmission agreements** – through a new facility of EUR 5 million under the AMIF. The facility, which will be launched in 2015, will provide a flexible mechanism to respond effectively to the requests and needs regarding readmission of partner countries.

The EU should integrate systematically readmission issues in its bilateral dialogues with key third countries. Return policy should continue being consistently included in implementing and developing the **Global Approach to Migration and Mobility (GAMM)**, including the Mobility Partnerships and Common Agendas on Migration and Mobility with non-EU countries.

- **Increasing EU leverage on readmission of irregular migrants**

Starting negotiations is no guarantee of successful conclusion of readmission agreements, as the lengthy and so far unsuccessful negotiations with certain countries have shown. The EU needs to increase its leverage in these negotiations, if it is to achieve results. Negotiating at the EU level, as opposed to having each EU Member State negotiating bilateral agreements, already provides stronger leverage. But this is clearly not sufficient. Additional clout must be found.

Visa policy provides, in general, useful leverage in negotiations on readmission that should be further explored. Negotiating a Visa Facilitation Agreement (VFA) in parallel with a readmission agreement provides tangible incentives to third countries to engage and cooperate on readmission. However, the possibility to use this instrument is limited, as the EU is unlikely to offer VFAs to certain African countries, which pose currently a migratory risk. Besides, even when the EU does offer the parallel negotiation of VFAs, these may not be sufficient.

Trade policy and development aid should be used to gain leverage in the area of readmission, building on the “more for more” principle, which was applied in relation with countries in the EU’s neighbourhood.

The **pilot project on return**, which was launched following the June 2014 Council Conclusions⁷, provides an example of the difficulties faced to mobilise tools at EU or national level. Leverage at EU level outside Justice and Home Affairs is very difficult to activate due to political reluctance and legal constraints. Other areas of cooperation with third countries are often prioritized over readmission.

Therefore, the EU and its Member States should agree on and stick to a **clear political message** to countries of origin and transit of irregular migrants about the necessity to cooperate on readmission. The issue of readmission should be prioritized and addressed in all contacts at political level between the EU and countries with low return rates.

Member States are encouraged to make full use of the possibilities contained in the Asylum Procedures Directive, including in particular the ‘**safe country of origin**’ concept, in order to accelerate the treatment of asylum claims which are likely to be unfounded. In this regard, the Commission and EASO have been discussing best practice and a common approach with

⁶ The **EURINT** network aims at developing and sharing best-practices on return from identification to the obtaining of travel documents, and at developing a common strategy for operational cooperation with third countries. The **ERIN** project focuses on sustainable return and reintegration of third country nationals. **EURLO** aims at increasing the number of joint return operations and improving them by stimulating country of origin-focused operational cooperation – notably through Return Liaison Officers and networks in key third countries.

⁷ Council Conclusions on EU return policies adopted at the Justice and Home Affairs Council meeting on 5-6 June 2014.

Member State experts. In the European Agenda on Migration, the Commission has indicated that it would propose to strengthen the 'safe country of origin' provisions in the Asylum Procedures Directive; this might in particular take the form of a proposal to provide for a common EU list of safe countries of origin. Acceleration of the asylum procedure means that return procedures can more swiftly be initiated for persons whose claim has been rejected.

3. **Enhanced use of IT-systems to enforce return**

The Schengen Information System (SIS) could be better used to enforce return decisions. The Commission announced that, in the context of the evaluation of the SIS (2015-2016), it will explore the possibility and proportionality to **introduce return decisions issued by the Member States in SIS**, to enhance their traceability. Similarly, we could explore synergies between the use of SIS and the upcoming development of Smart Borders, which could potentially help trace visa overstayers.

Efficient use of these technologies would make it possible for Member States' authorities to see if an apprehended irregular migrant is subject to a return decision in another Member State or if an irregular migrant has complied with the return decision and actually has left the territory of the Union. Currently, both are impossible. In the absence of an EU-wide tool it is not possible to trace an individual subject to a return order who absconds by moving to another Member State. If apprehended, a new procedure will have to be engaged against the individual concerned, delaying further his or her return.

The Commission will also consider making it obligatory for Member States' authorities to **introduce all entry bans in SIS**, to enable their enforcement within the Schengen area⁸—under the current SIS legal framework this is optional. Having all entry bans introduced in SIS would help prevent the re-entry into the Schengen area of irregular migrants that were subject to an entry ban issued by a Member State through another Member State.

These changes would give a stronger European dimension to national return measures and thereby help to prevent secondary movements of irregular migrants to other Member States.

4. **Communication and awareness raising**

Efforts to return irregular migrants must be matched with effective prevention, to dissuade prospective migrants from seeking to reach the EU through irregular channels in the first place. Information and awareness raising campaigns in the countries of origin or transit are crucial for dissuading potential migrants from embarking on hazardous journeys bound for the EU. It is, therefore, important to develop a convincing **communication strategy** to expose the risks of irregular migration.

The Commission will launch **information and prevention campaigns** in key countries of origin and transit for migrants, also taking into account the impacts of the campaigns that it finances currently in Ethiopia and Niger. These should make it clear to prospective migrants that they would be returned swiftly home if they do not have the right to stay in the EU legally. They should also inform migrants about opportunities to enter the EU legally.

The information campaigns in transit countries

should also include information on assisted voluntary return and on potential reintegration support. At that stage, migrants might not have yet invested significant sums of money in their journey and could consider the prospect of returning voluntarily to their countries more attractive - in view of the difficulties faced to reach Europe.

⁸ The UK, IE, RO, BG, CY and HR are not part of the Schengen area.