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NOTE

From: Presidency
To: Delegations

Subject: Outcomes of the discussion on preventing the risk of absconding and determining effective alternatives to detention

Delegations will find in annex the outcomes of the discussion on preventing the risk of absconding and determining effective alternatives to detention to be presented at the forthcoming Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 20 September 2022.

Presentation of the outcomes of the discussion on preventing the risk of absconding and determining effective alternatives to detention

Summary of the written contributions

I. Introduction

At the last session of the Integration, Migration and Expulsion (IMEX Expulsion) Working Party meeting under the French Presidency, held on 30 June 2022, the discussion on the prevention of the risk of absconding and the alternatives to detention was initiated. Prior to the meeting, the French Presidency circulated a discussion document (WK 9137/2022 INIT) presenting the current legislative definition of the risk of absconding and the adjustments contained in the 2018 recast of the Return Directive. The paper underlines that in order to improve prior assessment, the recast of the Return Directive aims, unlike the legislation currently in force, to establish common criteria for defining the risk of absconding, with room for manoeuvre for the Member States to outline additional criteria in their national legislation. Furthermore, the discussion paper links the notion of the risk of absconding to the alternatives to detention recalling the study by the European Migration Network (EMN), which addresses the alternative means to prevent absconding used in the different Member States. In the ensuing debate, the delegations were invited to reflect on a number of questions (please see below).

Additionally, the French Presidency asked delegations for written answers to these questions.

II. Main outcomes

Based on the written contributions of the Member States, the Presidency draws the following conclusions.

Question 1: Which of the criteria for assessing the risk of absconding envisaged in the recast of the Return Directive (Article 6) are already included in your legislation? Which ones do you find to be most relevant?

Concerning the first question, the majority of the Member States noted that they have some of the criteria for assessing the risk of absconding already incorporated in their national legislation. For most of the Member States, non-compliance with a valid entry ban, providing false information and forgery of the documents and third country nationals' reluctance to cooperate are the most relevant criteria.

Question 2: Do you consider that you have sufficient means to prevent illegally staying third-country nationals from absconding, and what would be your needs, if any (human resources, detention capacities, development of alternatives to detention)? What support in your view Frontex could provide?

As regards the second question, most of the Member States, with some exceptions, consider the means to prevent illegally staying third-country nationals from absconding already in place to be sufficient. Nevertheless, the Member States identify some shortcomings in terms of human resources and capacity-building needs related to the development of alternatives to detention. Concerning the potential support of Frontex in this respect, the exact possibilities for cooperation have yet to be further explored.

Question 3: When the third-country national is not granted a period of voluntary departure or when this period has expired, do you implement alternatives to detention?

In relation to the third question, most of the Member States generally implement alternatives to detention when the third-country national is not granted a period of voluntary departure or when this period has expired. However, the prevailing approach is to implement the alternatives to detention on a case by case basis based on an individual assessment of the third country national's situation.

Question 4: Could you describe the modalities and added value of your national alternatives to detention, especially as regards ensuring that such alternatives correspond to the specific profiles of migrants (e.g. deposit of a financial guarantee, method of calculation of the amount of the guarantee and modalities; criminal or financial sanctions; house arrest; digital devices). Do you experience specific difficulties as regards the application of such measures?

Regarding the last question, a variety of modalities of Member States' alternatives to detention exist. The most prevalent national measures include the obligation to reside in a designated place, regular reporting to the local authorities, and the obligation to lodge a valid passport or another identity document. Although alternatives to detention are generally less costly, they are deemed by the Member States as less effective than detention.

III. Conclusions

The success of return procedures depends, to a large extent, on the Member States' capacity to prevent the risk of absconding. The recast Return directive also recognises the importance of preventing illegally staying third-country nationals from absconding. The establishment of common criteria for the prior assessment and the possibility for the Member States to outline additional criteria in their national legislation represent a refined approach to the problem of absconding. The discussions among the Member States help to further harmonise the criteria and highlight their pertinacity for each State. Both the exchanges of views during the last IMEX (Expulsion) meeting and the provided written contributions underline the commonalities between the Member States and their approaches to the risk of absconding and alternatives to detention and distinguish specific needs and room for improvement.