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From:	Presidency
To:	Delegations
Subject:	Presidency discussion paper on the issuance of return decisions

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Delegations will find below the above-mentioned Presidency discussion paper for the forthcoming Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 16 November 2022.

## **PRESIDENCY DISCUSSION PAPER ON THE ISSUANCE OF RETURN DECISIONS**

The Return Directive defines a ‘return decision’ as an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return. It outlines an obligation for Member States and Schengen Associated States to issue a return decision to any third country national staying illegally on their territory, unless some exceptions defined in the Directive apply. It provides some guidance as regards the process of issuing such decisions, but in practice the process differs according to national legislation. National legislation determines the institutions involved in the process, as well as exceptions or any other non-standard situations.

Divergent practices in the issuance of return decisions across the Member States and Schengen Associated States represent one of the challenges to the common EU return system. The first State of Schengen Report 2022<sup>1</sup> highlighted that not all Member States systematically issue return decisions to third-country nationals with no legal right to stay, as well as entry bans to third-country nationals who did not comply with an obligation to return. Moreover, decisions terminating the legal stay are sometimes issued separately and/or at different times than the return decision.

Systematic issuance of return decisions to third country nationals with no legal right to stay and closing procedural loopholes (notably between asylum and return procedures) is of key importance for a well-functioning return system. A more coherent approach to issuing return decisions can improve the collection of return-related statistics, notably in terms of comparability of data which can lead to better informed policy-making. For example, the number of issued return decisions is a key indicator for the annual assessment of the visa-bound third countries’ cooperation on returns, as outlined in the Visa Code Article 25a. Analyses and decisions which follow are largely based on the quality data collection.

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<sup>1</sup> doc. 9478/22

In June 2019, in the Council's partial general approach of the Recast Return Directive, it was agreed that it is necessary to ensure that a return decision is issued without undue delay after the decision rejecting or terminating the legal stay, or ideally in the same act or decision. The Member States also agreed to address diverging practices in the issuance of entry bans. Article 13 of the Recast Return Directive states that return decisions shall be accompanied by an entry ban if no period for voluntary departure has been granted, or if the obligation to return has not been complied with.

Moreover, closing the procedural loophole between asylum and return is also a key objective of the New Pact on Migration Asylum adopted by the Commission in September 2020. The Commission's amended proposal on the Asylum Procedures Regulation foresees the issuance of negative asylum decision and return decision in the same act, or, if in separate acts, at the same time and together, and subject to the same effective remedy.

Given the different practices in the issuance of return decisions and the importance of closing procedural loopholes for a well-functioning return system, it is relevant to have an overview of the different practices across the Member States and Schengen Associated States while identifying the most frequent challenges. Therefore, at the forthcoming Integration, Migration and Expulsion (IMEX Expulsion) Working Party meeting on 16 November 2022, delegations are invited to answer the following questions:

1. *In your national practice, which institutions engage in the issuance of decisions related to return? Are those decisions issued in the same administrative document as those terminating legal stay? If not, how do you ensure that a decision terminating legal stay is swiftly followed up with a return decision?*
2. *How is the issuance of return decisions related to the issuance of entry bans in your country? In which types of situations do you refrain from issuing an entry ban together with the return decision?*
3. *What do you see as the main challenges concerning the issuance of return decisions? How could these challenges be addressed at the EU level?*
4. *Could you share good practices regarding the issuance of return decisions?*