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NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Presidency paper on mutual recognition of return decisions issued by other Member States

Over the last few months, we have been working hard to make fast progress on the proposal for a Regulation establishing a common EU system for returns[1] to ensure that we have the up-to-date and effective legal framework as fast as possible. More than ever, also in the light of the forthcoming implementation of the new Migration and Asylum pact, the return policy is a key priority.

We have heard from the delegations that our compromise proposal on the proposal for a Regulation on return goes in the right direction, and we are determined, with the help of all Member States, to continue working hard to resolve the remaining issues and take advantage of the momentum and willingness to find the necessary compromises to be able to agree on a general approach in December. Our compromise proposal provides for a number of new tools that Member States highly need to increase the effectiveness of their return policies.

[1] Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, COM/2025/101 final.

Mutual recognition of the return decisions issued by other Member States remains one of the main outstanding issues where we need to reach a compromise. It is the impression of the Presidency that the way of the current compromise proposal[2] goes is the right direction to reach an agreement. We understand the wish of a number of delegations for mandatory mutual recognition to send a strong signal to illegally staying third country nationals, that absconding to another Member State does not prevent them from having their return decision enforced. At the same time, this strong signal should not come at the expense of efficiency. The enforcement of a return decision should not be more difficult with mutual recognition than without. At the same time, it is important to bear in mind that mutual recognition will not solve all the problems we are facing under the current return framework.

Therefore, in our new compromise proposal, mutual recognition is still mandatory. However, this compromise, compared to the previous one presented and discussed at the JHA Council on 14 October, has been modified so as to enhance flexibility for the enforcing Member State to choose the fastest and most efficient way to enforce a return decision – be it based on the return decision of the issuing Member State or rather on the issuing of its own return decision. The compromise also allows MS not to recognize return decisions issued by other Member States in order to take into account consideration public policy in a greater number of situations.

More specifically, the new compromise proposal allows Member States to proceed to issue their own return decision in a number of additional situations, including where the enforcement of a return decision issued by another Member State is contrary to the public policy of the enforcing Member State, in particular, when it comes to relations with third countries or to certain categories of third-country nationals, such as unaccompanied minors and victims of human trafficking, if the Member State provides for a higher protection, or if the enforcing member State has in place cooperation modalities with third countries which allow for faster and more effective return or removal.

[2] WK 15423/ 2025

The compromise text also allows Member States to issue a new return decision in case the third-country national has lodged an appeal against the return decision in the issuing Member State or the information available in the European Return Order or in the Schengen Information System is incomplete.

We have also provided that Member States might choose not to proceed to mutual recognition of return decisions in situations where the large number of third-country nationals to be returned places a heavy burden on the capacity of the detention facilities of the enforcing Member State or on its administrative or judicial staff. This should be allowed for as long as such exceptional situation persists. This comes in addition to other grounds for derogation foreseen in points (c), (d) and (e) of Article 9 (4)[3], already present in the previous compromise[4].

The new exceptions are based on objective criteria. This should facilitate the application of these exceptions and while providing for enhanced flexibility, remain coherent with the general principle of mandatory mutual recognition.

As in the previous compromise proposal, the use of the European Return Order, which is a form that should facilitate mutual recognition, remains voluntary in the new compromise proposal, so as to address the concerns of those Member States who believed that the use of such a form can result in an increased administrative burden.

Additionally, to respond to the concerns of many Member States, we have included a provision explaining that the appeal against the return decision can only be lodged in the Member State issuing the return decision, and not in the enforcing Member State. As mentioned above, one of the new exceptions to mutual recognition provides that, if such an appeal has been lodged, the enforcing Member State has an option to not recognize the return decision and rather proceed to issuing a its own return decision.

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[3] Article 9 (4) (c); the third-country national is transferred to another Member State in accordance with the procedure provided for in Article 23a of Regulation (EU) 2016/399;
Article 9 (4) (d): the third-country national is transferred to another Member State pursuant to bilateral agreements or arrangements existing on the date of application of this Regulation or based on cooperation between Member States in accordance with Article 44;
Article 9 (4) (e): the third-country national is to be removed to a different third country than stated in the removal order of the issuing Member State.

[4] WK 15114/2025 INIT.

Moreover, as requested by many Member States, a new provision has been inserted clearly stating that Member States shall not be required to take administrative decisions for the purpose of recognition and that the recognition need not take the form of an administrative procedure.

As a reminder, in our previous compromise proposal, we have already postponed the entry into application of the mandatory mutual recognition, and therefore it should be applicable only by mid-2029, i.e. three years after the application of the Pact on Migration and Asylum. A number of Member States considered that mutual recognition should be mandatory as soon as possible or as from the adoption of the Return regulation, however, the need for other Member States to take the necessary time to prepare for these changes is acknowledged.

The Commission proposed that mutual recognition will become mandatory through the Commission's adoption of an implementing decision. However, many Member States considered that such an important change should be decided not by the Commission, but rather by the Council. We have listened to these Member States and, in our new compromise proposal, we have foreseen that this decision should be taken through the adoption of a Council implementing decision.

To achieve more balance in the system, we have also reinstated an element from the Commission's initial proposal pertaining to compensation, in case a Member State is enforcing a return decision issued by another Member State and such returns are not supported by Frontex. Such compensation should only be provided on the request of the enforcing Member State. The purpose of this is to retain status quo as stipulated in the Council Decision EC 2004/191.

In addition, in a new recital, we clarified that neither the application of the mandatory mutual recognition, nor the other elements of the Return Regulation should affect the rules on asylum and migration management as agreed in the AMMR and APR.

We believe that this new compromise proposal will make clear to the illegally staying third country nationals that there is no point in trying to avoid returns by absconding to another Member State, while at the same time give the needed flexibility for the Member States to ensure fast returns.

At its forthcoming meeting, COREPER is invited to agree to the above-outlined solution for achieving a mandatory mutual recognition of return decisions issued by other Member States.

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