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**NOTE**

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From:	Presidency
To:	Delegations
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Subject:	Presidency progress report: Outcome of IMEX Working Party discussions on return sponsorship

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Delegations will find attached the outcome of the discussion on return sponsorships held at the informal VTC meeting of the IMEX (Expulsion) Working Party on 26 January 2021, which will further inform the discussions on return sponsorship to be held at the Asylum Working Party on 3 February 2021.

## **ANNEX**

### **Presidency progress report: Outcome of IMEX Working Party discussions on return sponsorship**

At its meeting of 26 January 2021, IMEX discussed the Return Sponsorship - one of solidarity measures foreseen in Article 55 of the Commission proposal for Asylum and Migration Management Regulation (AMMR). The discussion was held on the four below-mentioned aspects of the return sponsorship.

#### **I. THE ROLE OF THE RETURN COORDINATOR AND FRONTEX**

The Return Coordinator, with support from Frontex, will play a crucial intermediary role in supporting return in general, and sponsorship in particular. In this exercise, the return coordinator can facilitate the cooperation among Member States and the identification of possible sponsorship measures. In this way, she or he can contribute to increasing the chances of returns from the benefitting Member State and to reducing the risk that the sponsoring Member State will have to transfer irregular migrants who cannot be returned within the 8 month period.

Frontex can play a very important role in supporting both the benefitting and sponsoring Member States. It is important to clarify the possibility that the Agency put in practice the relevant measures mentioned in Article 55(4) of the Commission proposal for the Asylum and Migration Management Regulation (AMMR) and, in that case, explain how Frontex, sponsoring Member State and benefitting Member State should interact.

At the IMEX meeting the Commission was asked to further explain the foreseen role for Return Coordinator and delegations were invited to share their views on the above-mentioned issues.

##### **1. Return Coordinator**

The Commission informed the delegations that it was still working on the mandate of the return coordinator, and further explained what role was envisaged for this post. The return coordinator will chair the high level return network and will work closely with the deputy executive director of Frontex. She or he will be part of the Commission.

EEAS (Global 4) stressed that the EU should be careful with the narrative on action with third countries. It should not be too EU-focused and transactional. Even in the specific context of return sponsorship, the EU should still pursue a partnership and dialogue-based approach. The EU and Member States should take their responsibility and work together with third countries in order to improve cooperation on return and readmission. With regard to coordination of EU action as regards measures to improve cooperation of third countries on readmission, we should avoid duplication and work on one strand.

EEAS also underlined the importance of reintegration. Considering that sponsoring EU Member States will have a few months deadline for irregular migrants to be returned, reintegration should not be de-prioritised.

In general, the majority of delegations welcomed the establishment of this new position and agreed that the return coordinator should have a key role in the return sponsorship procedure, including by supporting the participating Member States, mapping the necessary activities, facilitating the relationship between Member States and Frontex, and also by acting as a mediator between the benefitting Member State and the sponsoring Member State.

However, one delegation was not sure whether the establishments of a new high level position was justified and whether the efforts should not be better focused on reinforcing Frontex's role in returns. The majority of delegations which intervened believed that the return coordinator should also work on the external dimension, with some of them requesting that she or he would also deal directly with third countries, so as to facilitate identification or issuance of travel document. As the Commission explained, and EEAS agreed, while the return coordinator will play a certain role in supporting the proper implementation of readmission agreements and arrangements, it was not envisaged that she or he enters into direct contact with the authorities of third countries. One delegation believed that the role of the return coordinator should be limited to an internal dimension, and she or he should not engage in any contacts with the authorities of third countries.

Some delegations considered that more information was needed on the role of the return coordinator, namely as regards the relationship with third countries and the situations of migratory pressure.

## 2. Frontex

Delegations considered that Frontex should have an important complementary role in the return sponsorship, supporting Member States in operational, technical and financial terms. Frontex should put in practice the measures referred to in article 55(4) of AMMR, which are compatible with the Frontex mandate.

In reply to the concerns of some delegations as regards possible duplication of efforts, the Commission explained that there will be no overlap among the role of the return coordinator, Frontex and Member States, because they have a complementary role and should all work together.

Some delegations made a call to fully use the extended Frontex mandate in the field of returns. The Commission noted that Frontex support was not always fully used, as Member States might not be aware that Frontex could help in one or another situation. The new return coordinator could also help in such situations.

## **II. SUBSEQUENT APPLICATIONS FOR INTERNATIONAL PROTECTION**

The AMMR proposal does not explicitly regulate the responsibility of the sponsoring Member State as regards subsequent applications for international protection following the possible transfer.

The delegations were invited to share their views as to whom the responsibility belongs for examining subsequent applications for international protection, in the event that an irregular migrant submits such an application, before the expiry of the 8-month sponsorship period and after the transfer to the sponsoring Member State.

Most delegations considered that this issue should be clearly regulated in AMMR.

Some delegations saw the need for the 8-month period to be suspended if a subsequent application for international protection is submitted.

The majority of delegations considered that a subsequent application should be examined by the benefitting Member State, if it is submitted before the transfer, as regulated by the AMMR. However, if a subsequent application is made after the transfer, then the responsibility for the examination should shift to the sponsoring Member State.

In this second scenario, this implies that the sponsoring Member State needs to get all the relevant information and documents as regards the original request for international protection. For some delegations this would pose a serious challenge as the documents will be in the language of the benefitting Member State, and this could lead to a substantial administrative burden or make the whole mechanism of the return sponsorship very complicated and therefore less attractive to use.

Some delegations believed that in case the subsequent application for international protection is made after the transfer, it should still be the benefitting Member State that is responsible for the examination of the application.

A few delegations pointed out that such a subsequent application must be considered as inadmissible, if there are no new relevant facts, bearing in mind that a previous decision was already taken by the benefitting Member State.

The Commission clarified that the provisions regulating subsequent applications are to be set in the Asylum Procedure Regulation (APR), while the rules concerning the shift of responsibility needs to be specified in the AMMR. The rules for the last minute applications, which are made to only delay the return process are part of the amended APR. If then the application is submitted for the first time after the transfer, the sponsoring Member State should apply Part III of AMR and determine the Member State responsible for examining the application.

### **III. ABSCONDING OF MIGRANTS**

It is the responsibility of the benefitting Member State to ensure that irregular migrants subject to return sponsorship are available during the whole return procedure. However, the proposal for AMMR does not specify what happens in a situation in which an irregular migrant absconds, notably how the 8-month period would be counted in such case.

Delegations were asked to share their views on such situations.

Most delegations felt that further clarification was needed in AMMR as regards the consequences of absconding of irregular migrant.

Some delegations recalled the importance of preventing absconding, either by applying detention or alternatives to detention.

Some delegations believed that in case of absconding the counting of the period of 8 months must be suspended, given that the third country national is not available for return procedures, and therefore the responsibility for return must remain with the benefitting Member State.

One delegation believed that in such a scenario, the counting of the 8-month deadline should be in general abolished. A few delegations questioned whether, in cases of long absconding, a rule should be introduced to terminate return sponsorship.

On the other hand, one delegation argued that absconding was no reason to suspend the 8-month period, which was already too long.

Some delegations also questioned what action should be taken in case the irregular migrant reappears in another Member State, whether the returns should take place from that Member State, or the person should be brought back for the return to the Member State from which she or he absconded.

The Commission explained that, according to the current legislation, where an irregular migrant absconds, and does not apply for international protection, the Member States where the migrant is apprehended should apply the Return Directive. However, where the irregular migrant applies for international protection, the Dublin Regulation applies. Nevertheless, clear rules are needed to establish what happens in case of absconding during sponsorship.

#### **IV. DURATION OF RETURN SPONSORSHIP**

According to the AMMR proposal, if the persons concerned are not removed within 8 months, the sponsoring Member State shall transfer them onto its own territory. Delegations were asked to indicate whether they considered that 8 months is a reasonable period for carrying out returns.

Some Member States considered 8 months as an appropriate period, which allows for a certain flexibility for both sponsoring and benefitting Member State to cooperate and implement returns.

However, the frontline Member States considered that 8 months was too long. Irregular migrants cannot be detained for such a long time, and only a shorter deadline can guarantee that they do not abscond.

For one delegation this period should be reduced to 4 months, while another delegation considered that it should be not longer than 5-6 weeks. This delegation considered that while calculating this deadline, one should also take into account the time necessary to draft the Migration report and the solidarity plans, and also to implement the transfer itself - all this would add much more time to the deadline of 8 months.

During the discussion on this point, some delegations reiterated their criticism as regards the transfer after 8 months (or any other period), considering this proposed element of the return sponsorship not to be acceptable. In their view, this practice will be a pull factor and will lead to secondary movements. Also, returns were most efficient from the first country of entry. Therefore for them, this proposal was equal to a delayed form of relocation.

The Commission reiterated that 8 months was a right period, taking into account the general duration of the return procedures. According to them, the deadlines for migration report do not interfere in the counting of the 8 months period and there is no hidden relocation in the return sponsorship procedure.

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