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From: Presidency

To: Integration, Migration and Expulsion (IMEX Expulsion) Working Party

Subject: Presidency paper on increasing the effectiveness of returns by improving operational arrangements for identification activities, including through the digitalisation of the third country nationals' identification process

Delegations will find in annex a discussion paper on the above-mentioned topic for the Integration, Migration and Expulsion (IMEX Expulsion) working party meeting on 18 February 2025.

Increasing the effectiveness of returns by improving operational arrangements for identification activities, including through the digitalisation of the third country nationals' identification process

A well-functioning return system ensuring effective returns of third country nationals with no right to stay in the EU is crucial for effective migration management and effective implementation of the Pact on Migration and Asylum. There have been challenges linked to irregular migration and security.

In this context the activities carried out by the EU Member States are of key importance for return, especially the initiation of the return and readmission process, the identification of third-country nationals without travel documents as well as the cooperation at national and European level in this respect. At this phase of the return process, there is a number of obstacles which directly affect the possibility of implementing the return decision.

The identification of a third-country nationals without travel documents is a complex and lengthy process and, above all, depends on the evidence collected (i.e. personal data of the third country national, information on his/her family, address of residence, any copies of the third country national's documents issued by the authorities of the relevant third country), as well as on the cooperation developed with diplomatic mission or central authorities of the relevant country of origin.

The cooperation with the relevant country of origin, its readiness to receive its national back and the third country national's readiness to cooperate in the identification process are key aspects of the process. Practice shows that third country nationals are more willing to cooperate with the authorities in the asylum procedure, while in the return procedure they often give false information or abstain from sharing any information. Several Member States are developing incentives to encourage third-country nationals to cooperate and to return voluntarily to their country of origin, thus overcoming the cumbersome identification process.

Comprehensive efforts are being made both at the European and national level to strengthen cooperation with countries of origin and transit. At a recent meeting of the Integration, Migration and Expulsion (IMEX Expulsion) working party, a wide-ranging discussion was held on the third country national's rights and obligations in the return procedure, as well as incentives for cooperation on return and the consequences of non-cooperation.

Additionally, the thematic Schengen evaluation carried out in 2024 with the aim of identifying obstacles limiting the ability of Member States to carry out returns and finding operational solutions to increase the effectiveness of returns, indicated that the area of pre-return should be harmonised in order to improve the functioning of the EU return system. It called for better coordination between authorities and the use of all available tools (such as national and EU databases) and incentives to facilitate the identification of third country nationals. The evaluation also highlighted best practices in this regard observed in some Member States.

Moreover, in October 2023, the Schengen Council called for operational solutions to explore improving the effective and speedy return of third country nationals.

Identification is essential for the effective implementation of return. Article 8(1) of the Return Directive obliges Member States to take all necessary measures to enforce the return decision. In turn, Article 9(2)(b) of the same Directive indicates that Member States may postpone removal for an appropriate period due to lack of identification. At the same time, the Return Directive left Member States free to decide on the specific measures to be introduced at national level. Different systems and approaches have emerged for the implementation of identification measures.

Current approach in Member States

The thematic Schengen evaluation showed a fragmented approach in Member States on identification and varying practises. In some Member States, identification activities are only initiated during the return procedure or even after the return decision has been issued, while others feed to the return procedure the information previously acquired in various procedures involving the third country national, including the procedure for granting international protection, as they already initiate the identification at this stage.

However, according to some Member States, legal, procedural and/or judicial issues prevent them from starting (pre-return) identification during the asylum application or earlier.

Sources used for identification and national cooperation

In terms of the sources used for identification, all Member States have a wide range of tools at their disposal to support the process. First of all, they use national immigration database. In some countries, the RECAMAS model developed by Frontex is the reference model for its set-up. Many countries also use information collected in other national databases (e.g. visa, asylum, police databases), although there is considerable variation here, due to possible limitations related to compliance with data protection legislation, national legislation, inter-agency cooperation and/or technical reasons.

Another challenge is the limitation of the period during which information useful for identification purposes is stored in databases, lack of satisfyingly linked EU systems, which contain selective information (VIS, SIS, EURODAC).

Member States also use Immigration Liaison Officers (ILOs), including European Return Liaison Officers (EURLOs), but to a varying degree. The EURLO network is developing tools such as pre-identification interviews or the use of evidence obtained by so-called “trusted lawyers”. It should also be mentioned that some Member States use material and information obtained by return counsellors already at the stage of the apprehension of the third country national.

The thematic Schengen evaluation identified several actions which can be taken to strengthen identification activities under the current legal framework even in the face of the current fragmentation of approaches to identification and the lack of an EU wide solution.

Transnational cooperation

Inflows of irregular migration into the EU are accompanied by the phenomenon of secondary movements between Member States which result in the duplication of identification efforts concerning the same undocumented third country nationals. This can lead to prolonged illegal stay of the third country nationals on the EU territory and extended length of the return process, therefore affecting the overall effectiveness of returns.

When implementing the return policy, Member States, in order to speed up the return procedure, have the possibility to recognise a return decision issued by another Member State. However, there are no dedicated basis and tools for exchanging information on the identification procedures and use of documents acquired by another Member State which confirm the identity or on the basis of which the identity of the third country national can be presumed. Regulation (EU) 2018/1860 provides some possibilities for using it for identification purposes as it provides a legal basis for entering alerts in the SIS regarding returns. Nevertheless, it does not include cases of third countries nationals who have not yet been issued a return decision. Therefore, using SIS in its current shape for identification purposes can only play a supportive role for undertaken actions. In addition, even when a Member State has information about a visa issued by another Member State (hit in the VIS), there might be practical problems with obtaining a copy of the document from diplomatic mission of that Member State.

To facilitate identification, Member States can benefit from operational support from Frontex during identification procedures, in particular when organising identification missions or using EURLO services. However, even information collected as a result of identification missions involving several EU countries, coordinated by Frontex, cannot be processed in EU-wide systems. Member States identify certain constraints to the further development of Frontex services in this area, related to the lack of access to third country nationals' personal data and the lack of adequate regulation in this area. Allowing such access could contribute to further developing the Agency's services, increase the effectiveness of returns and reduce the administrative burden on Member States. This problem has already been discussed many times in various fora on return.¹

¹ This also applies to Frontex self-organised return operations

Finally, there is an issue of cooperation with the relevant third country, and often the level of cooperation that different Member States can enjoy with the same third country varies greatly among Member States. Some of them receive replies to readmission applications within a very short timeframe, while others do not receive any replies at all. This also applies to some of the third countries which have Readmission Case Management System (RCMS) in place. As the current practice has shown, the mere exchange of experiences and best practices among Member States on how to effectively cooperate with a relevant third country does not necessarily translate into improved cooperation with that country, and often third countries prefer a bilateral approach.

The Political Guidelines defining the priorities of the European Commission for 2024-2029 commit to put forward a new common approach on returns and, as part of it, to digitalise case management in the area of return, readmission and reintegration. In preparation for the announcement of a new legal framework on digitisation, the Commission has launched a study which aims to inform and identify the way forward for a more comprehensive, integrated and digitised migration management system in the EU. It is therefore of major interest for Member States to contribute to the ongoing analyses, including through the ongoing consultation process in the framework of this study.

Taking into account all the above-mentioned challenges, during the IMEX Expulsion working party meeting on 18 February 2025, the Presidency would like to initiate a discussion on identification activities. This discussion could serve to identify the need for developing a common approach to identification procedures and common line of action, thus sending a clear message to third country nationals and third countries that Member States are determined to take all necessary actions to achieve effective returns.

In this regard the Presidency invites Member States to share their views on the following questions.

- 1. Is there a need to harmonise the approach on when to start the third country national's identification procedure? Do you see a need to define a legal framework concerning: the rules for identification, exchange of information and operational cooperation between Member States in relation to the identification procedures to be carried out as well as a legal basis to transfer relevant information to third countries for identification purposes?*

2. *Do you see a need to start discussions on amending the mandate of Frontex to allow Frontex to access the personal data of third country nationals for the purpose of supporting Member States in the identification and return procedures?*
3. *Do you see added value in the future interoperability of IT systems that currently contain fragmented information to support the identification process? How else can we optimise the use of existing IT systems for this purpose? Is the retention period for the data stored in the current systems sufficient? Do you see a need for a separate IT database specifically dedicated to return?*
4. *Should the future legislation on digitalisation of returns provide a legal basis for the establishment of an IT tool to facilitate the identification of third country nationals, allowing for the collection and exchange of information on identification activities, carried out by another Member State and the possibility to exchange such information with third countries to facilitate the identification process?*

If yes:

- a) *Do you see the need for such IT tool to have an EU component to facilitate the storage and sharing of relevant information among Member States?*
- b) *Should such an IT tool allow to retrieve available copies of the documents on the third country national's identity and/or presumed nationality, copies of the results of identification procedures already carried out, responses from diplomatic missions and consents received for transfers under readmission agreements as well as other relevant documents that may be used to confirm the returnee's nationality under readmission agreements (e.g. named tickets and/or passenger lists which show the presence and the itinerary of the person concerned on the territory of the third country of return, information related to the identity and/or stay of a person which has been provided by an international organisation, reports/confirmation of information by family members)?*

A separate, but closely related issue to effective returns, is the possibility of using the original travel documents (and obtained replacement travel documents) held by the competent authorities of Member States (e.g. in case a surrender of travel documents has been used as an alternative to detention in the return procedure). As a general rule, a passport document should be returned to its holder or to the authority of the country that issued the document. However, as a result of secondary movements, situations arise where the holder of a passport, deposited by an authority of one Member State, is present on the territory of another Member State.

The simplest solution for a smooth return procedure would be to organise return of such a third country national on the basis of a document in the possession of the authority of the first Member State. This would allow to have a short and rapid return procedure, instead of taking considerable time to do identification procedures and get a replacement travel document. However, it is essential to establish the legal basis and formal channels for the transfer of such documents between Member States for the purpose of implementing the return decision.

On the basis of the above, the Presidency invites Member States to share their views and expectations on the following questions:

5. *Do you have experience of getting travel documents or other relevant documents from another Member State for the implementation of return decisions against third country nationals, whose travel documents or other relevant documents have been deposited in another Member State for the purpose of return proceedings and who have later absconded? Did you transfer travel documents or other relevant documents to other Member States in such cases?*
6. *If positive what gaps and challenges do you see? Are the possibilities in the Schengen Information System to include identification documents sufficient or is there a need for a specific legal basis or a separate communication channel for these purposes?*