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From: Presidency

To: Permanent Representatives Committee / Mixed Committee (EU/Iceland, Norway and Switzerland, Liechtenstein)

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Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC

- Provisions on return

The Presidency at an early stage decided to examine the above proposal on the basis of a thematic approach. The Working Party on Frontiers is entrusted with the leading role in these deliberations, but a number of other working parties as well as JHA Counsellors are also involved.

The part of the European Coast and Border Guard proposal which concerns the Return Office was examined by the Expulsion Working Party on 29 January and 2 March 2016 and by JHA Counsellors on 26 February 2016.

The Presidency on this basis submits the compromise text set out in the Annex to Coreper.

In parallel, the Presidency submits to Coreper the compromise text on Articles 13-25 and 33-49 of the proposal set out in 6652/16.

The Presidency believes that its compromise suggestions included in the Annex have a sufficient degree of support by delegations. It therefore invites the Committee to confirm this, with a view to attaining a general approach on the proposal as a whole and preparing the upcoming negotiations with the European Parliament.

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the European Border and Coast Guard
and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and
Council Decision 2005/267/EC

Provisions on return

Recitals 20-22:

- (20) On 8 October 2015, the European Council called for enlarging the mandate of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union to assist Member States in ensuring the effective return of illegally staying third-country nationals, including by organising return operations on its own initiative and enhancing its role regarding the acquisition of travel documents. For this purpose, the European Council called for the establishment of a Return Office within the European Border and Coast Guard Agency which should be tasked with the coordination of the Agency's activities in the field of return.
- (21) The European Border and Coast Guard Agency should step up its assistance to Member States for returning illegally staying third-country nationals, subject to the Union return policy and in compliance with Directive 2008/115/EC of the European Parliament and of the Council.¹ In particular, it should coordinate and organise return operations from one or more Member States and it should organise and conduct return interventions to reinforce the return system of Member States requiring increased technical and operational assistance when complying with their obligation to return illegally staying third-country nationals in accordance with that Directive.

¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals (OJ L 348, 21.12.2008, p. 98).

- (22) The European Border and Coast Guard Agency should establish pools of forced return monitors, forced return ~~experts-escorts~~ and return specialists made available by Member States, who should be deployed during return operations and that should form part of tailor-made European Return Intervention Teams deployed in return interventions. The European Border and Coast Guard Agency should provide them with the necessary training.

Article 2

Definitions

- (10) ‘return’ means return as defined in point 3 of Article 3 of Directive 2008/115/EC;
- (11) ‘return decision’ means 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 a ~~return as defined in point 4 of Article 3 of Directive 2008/115/EC;~~
- (11a) ‘third country return order’ means an administrative or judicial decision or act issued by a third country, stating or declaring the stay of a person who is a citizen of another third country to be illegal, and imposing or stating an obligation to leave;
- (12) ‘returnee’ means an illegally staying third-country national subject to a return decision or a return order;
- (13) ‘return operation’ means an operation ~~to return illegally staying third-country nationals,~~ that is coordinated by the Agency and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis ~~through forced return or in voluntary compliance with an obligation to return;~~
- (14) ‘return intervention’ means an activity of the Agency providing Member States with operation ~~to return illegally staying third-country nationals providing for~~ enhanced technical and operational assistance consisting of the deployment of European Return Intervention Teams to Member States and the organisation of return operations.

SECTION 4

RETURN

Article 26

Return Office

1. The Return Office shall be responsible for carrying out the return-related activities of the Agency, in accordance with the respect of fundamental rights and general principles of Union law as well as international law, including refugee protection and human rights obligations. The Return Office shall, in particular:
 - (a) coordinate at technical and operational level ~~the return-related~~ activities of the Member States, including voluntary departure, to achieve an integrated system of return management among competent authorities of the Member States, with the participation of relevant authorities of third countries and other relevant stakeholders;
 - (b) provide technical and operational support assistance to Member States subject to particular pressure on their return systems;
 - (c) coordinate the use of relevant IT systems and provide support ~~on consular cooperation~~ for the identification of third-country nationals and the acquisition of travel documents, organise and coordinate return operations and provide support to voluntary departure, in cooperation with Member States;
 - (d) coordinate the return-related activities of the Agency as set out in this Regulation;
 - (e) organise, promote and coordinate activities enabling the exchange of information and the identification and pooling of best practices in return matters between the Member States;
 - (f) finance or co-finance the operations, interventions and activities referred to in this Chapter ~~with grants~~ from its budget, in accordance with the financial rules applicable to the Agency.

2. The technical and operational support assistance referred to in point (b) of paragraph 1 shall include ~~action~~ activities to help Member States carry out return procedures by the competent national authorities by providing, in particular:
 - (a) interpreting services;
 - (b) information on third countries of return;
 - (c) advice on the handling implementation and management of return procedures in compliance with Articles 6 to 14 of Directive 2008/115/EC;
 - (d) advice and assistance on measures activities necessary to ensure the availability of returnees for return purposes and to avoid that returnees abscond, in accordance with Articles 7(3), 9(3) and 15 to 18 of the Directive 2008/115/EC.
3. The ~~Return Office~~ Agency shall aim at building synergies and connecting Union-funded networks and programmes in the field of return, in close cooperation with the European Commission and with the support of relevant stakeholders, including the European Migration Network.
4. The Agency may make use of the financial means of the Union which are available in the field of return. The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect for the Charter of Fundamental Rights.

Article 27

Return operations

1. Without entering into the merits of return decisions and in accordance with Directive 2008/115/EC, and without entering into the merits of return decisions, the Agency shall provide the necessary assistance and, at the request of one or several participating Member States, ensure the coordination or the organisation of return operations, including through the chartering of aircraft for the purpose of such operations. The Agency may, on its own initiative, propose to Member States to coordinate or organise return operations, including through the chartering of aircraft for the purpose of such operations.

2. Member States shall ~~at least~~ on a monthly basis inform the Agency of their indicative planning of the number of returnees and the third countries of return of relevant planned national forced return operations, as well as of their needs for assistance or coordination by the Agency. The Agency shall draw up a rolling operational plan to provide the requesting Member States with the necessary operational reinforcement, including technical equipment. The Agency may, on its own initiative or at the request of a Member State, include in the rolling operational plan the dates and destinations of return operations it considers necessary, based on a needs assessment. The Management Board shall decide, on a proposal of the Executive Director, on the *modus operandi* of the rolling operational plan.
3. The Agency may provide the necessary assistance and ensure, at the request of the participating Member State(s), or propose on its own initiative, the coordination or the organisation of return operations, for which the means of transport and/or forced return escorts are made available by a third country of return ('collecting return operations'). The participating Member State(s) and the Agency shall ensure that the respect of fundamental rights and the proportionate use of means of constraints are guaranteed during the entire return removal operation. At least a Member State representative and a forced return monitor from the pool established under Article 28 or from the national monitoring system of the participating Member State shall be present throughout the entire return operation until arrival at the third country of return.
4. The Agency may provide the necessary assistance and ensure, at the request of the participating Member State(s) or a third country, or propose on its own initiative, the coordination or the organisation of return operations, during which a number of returnees subject to a third-country return ~~decision~~ order are passed from this third country to another third country of return ('mixed return operations'), provided that the third country that issued the return ~~decision~~ order ensures the presence of forced return escorts and is bound by the European Convention on Human Rights. The participating Member State(s) and the Agency ~~must~~ shall ensure that the respect of fundamental rights and the proportionate use of means of constraints are guaranteed during the whole ~~removal~~ return operation, notably with the presence of forced return monitors ~~and of third-country forced return escorts~~.

- 4a. The Executive Director shall draw up an operational plan without delay for operations defined in paragraphs 3 and 4. The Executive Director and the participating Member State(s) shall agree on the operational plan detailing the organisational and procedural aspect of the return operation. Any amendment to or adaptation of this operational plan shall require the agreement of the aforementioned parties.
- 4b. The operational plan of operations defined in paragraphs 3 and 4 shall be binding on the Agency and the participating Member State(s). It shall cover all aspects that are necessary for carrying out the return operation.
5. Every Rreturn operations shall be monitored in accordance with Article 8(6) of Directive 2008/115/EC. The monitoring of return operations ~~shall be carried out on the basis of objective and transparent criteria~~ to be set out in the operational plan and in line with the Code of Conduct referred to in Article 34(2) and 34(3) of this Regulation shall cover the whole return operation from the pre-departure phase until the hand-over of the returnees in the third country of return.
6. The Agency shall finance or co-finance return operations ~~with grants~~ from its budget, in accordance with the financial rules applicable to the Agency, giving priority to those conducted by more than one Member State, or from hotspot areas.

Article 28

Pool of Forced Return Monitors

1. The Agency shall constitute a pool of forced return monitors from ~~national~~ competent bodies who carry out forced return monitoring activities in accordance with Article 8(6) of Directive 2008/115/EC and who have been trained in accordance with Article 35.
2. The Management Board, on a proposal of the Executive Director shall determine the profile and the number of the forced return monitors to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and overall numbers. Member States shall contribute, where possible, to the pool by nominating the forced return monitors corresponding to the defined profile.

- 2a. The contribution of Member States as regards their forced return monitors to specific return operations and interventions for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the forced return monitors available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a Rapid Return Intervention.
3. The Agency shall make available the forced return monitors, upon request, to participating Member States to monitor, on their behalf, the correct implementation throughout of the return operation and ~~to take part in~~ return interventions.

Article 29

Pool of Forced Return Escorts

1. The Agency shall constitute a pool of forced return escorts from national competent bodies who carry out return operations in accordance with the requirements referred to in Article 8(4) and (5) of Directive 2008/115/EC and who have been trained in accordance with Article 35.
2. The Management Board on a proposal of the Executive Director shall determine the profile and the number of the forced return escorts to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and ~~the~~ overall numbers. Member States shall contribute to the pool by nominating the forced return escorts corresponding to the defined profile.
- 2a. The contribution of Member States as regards their forced return escorts to specific return operations and interventions or the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the forced return escorts available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a Rapid Return Intervention.

3. The Agency shall make available the escorts, upon request, to participating Member States to escort returnees on their behalf and to take part in return operations and return interventions.

Article 30

Pool of Return Specialists

1. The Agency shall constitute a pool of return specialists from national competent bodies and from the staff of the Agency, who have the skills and expertise required for carrying out return-related activities and who have been trained in accordance with Article 35. Those specialists shall be made available to carry out specific tasks, such as identification of particular groups of third-country nationals, the acquisition of travel documents from third countries and facilitation of consular cooperation.
2. The Management Board, on a proposal of the Executive Director shall determine the profile and the number of the ~~forced return escorts~~ specialists to be made available to that pool. The same procedure shall apply with regard to any subsequent changes in the profile and overall numbers. Member States shall contribute to the pool by nominating the specialists corresponding to the defined profile.
- 2a. The contribution of Member States as regards their return specialists to specific return operations and interventions for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the return specialists available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment, or five working days in case of a Rapid Return Intervention.
3. The Agency shall make available the return specialists, upon request, to Member States participating in return operations, and to take part in return interventions.

Article 31

European Return Intervention Teams

1. The Agency shall constitute, from the pools set out in Articles 28, 29 and 30, tailor-made European Return Intervention Teams for deployment during return interventions.
2. Articles 20, 21, ~~and 23~~, 24 and 25 shall apply *mutatis mutandis* to the European Return Intervention Teams.

Article 32

Return Interventions

1. In circumstances where a Member States ~~are~~ is facing a heavy burden when implementing the obligation to return illegally staying third-country nationals in accordance with Directive 2008/115/EC, the Agency shall, upon request of ~~one or more~~ that Member States, provide the appropriate technical and operational assistance in the form of a return intervention. Such intervention may consist ~~in~~ of the deployment of European Return Intervention Teams to the host Member States and the organisation of return operations from the host Member State. ~~Member States concerned shall regularly inform the Agency of their needs for technical and operational assistance, and the Agency shall draw up a rolling plan for return interventions on this basis.~~
2. In circumstances where a Member States ~~are~~ is facing specific and disproportionate pressure when implementing ~~their~~ its obligation to return illegally staying third-country nationals in accordance with Directive 2008/115/EC, the Agency shall, upon the request of ~~one or more~~ that Member State, provide the appropriate technical and operational assistance in the form of a rapid return intervention. The Agency may propose on its own initiative to provide to ~~the~~ at Member States such technical and operational assistance. A rapid return intervention may consist in the rapid deployment of European Return Intervention Teams to the host Member States and the organisation of return operations from the host Member States.

3. The Executive Director shall draw up an operational plan without delay, in agreement with the host Member States and the participating Member States ~~willing to participate in a~~ on the return intervention.
4. The operational plan shall be binding on the Agency, the host Member States and the participating Member States. ~~and it~~ It shall cover all aspects that are necessary for carrying out the return intervention, in particular the description of the situation, objectives, the start and foreseeable duration of the intervention, geographical coverage and possible deployment to third countries, composition of the European Return Intervention Team, logistics, financial provisions, modalities of cooperation with third countries, other Union agencies and bodies, relevant international and non-governmental organisations.
 - 4a. Any amendment to or adaptation of the operational plan shall require the agreement of the Executive Director, the host Member State and the participating Member States. A copy of the amended or adapted operational plan shall be immediately sent by the Agency to the Member States concerned and the Management Board.
5. The Executive Director shall take a decision on the operational plan as soon as possible and, in the case referred to in paragraph 2, within five working days. The decision shall be immediately notified in writing to the Member States concerned and to the Management Board.
6. The Agency shall finance or co-finance return interventions ~~with grants~~ from its budget in accordance with the financial rules applicable to the Agency.