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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	6917/1/25 REV 1; 6917/1/25 ADD 1; 6917/2/25 ADD 2
Subject:	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 - Preparation for the trilogue

Following the general approach on the Return Regulation reached at the end of the Danish Presidency, the incumbent Presidency has been working intensely with the EP rapporteur's team and the Commission in the interinstitutional negotiations, so as to have the new legal framework on returns in place as soon as possible. The Presidency considers the momentum to reach a deal on this important file is there.

On different occasions, the Parliament has indicated its willingness to come to a rapid conclusion of this file, ahead of the timetable initially foreseen. Against this background, the EP side has shown great flexibility in accepting the majority of the Council proposals. It is the Presidency's understanding that this flexibility is conditional on the willingness to wrap up the negotiations at an accelerated pace, and the rapporteur has now indicated his wish to finalise the interinstitutional negotiations at a final trilogue on 20 May 2026 in Strasbourg.

The negotiations are now at such an advanced stage that on most part of the draft Regulation the negotiators have provisionally agreed on compromise text[1] . The forthcoming ***trilogue will therefore be focused on*** the same key issues that have already been addressed at the last trilogue on 22 April, which are essential for an overall compromise between the co-legislators. These are the entry into application (Article 52), the mutual recognition of the return decisions issued by other Member States (Article 9), the communication with the authorities of the non-recognised entities (Article 37) and the external dimension of readmission (Article 37a).

Concerning ***Article 9 on mutual recognition***, the Presidency is cognisant of the fact that the opinions in the Council greatly diverge on this issue. At the same time, the Presidency has received an unequivocal message that ***this Article should be kept as in the Council general approach***, so as to ensure the support for the overall compromise on the Return Regulation. Some Member States were very clear that even cosmetic changes to this Article could jeopardise this support.

Article 37 on the communication with the authorities of the non-recognised entities was deleted in the Council general approach and the Presidency is convinced that in the context of an overall compromise ***the EP is willing to accept its deletion***.

[1] This text is set out in WK 6881/2026.

Article 37a is a new Article proposed by the Parliament on which the rapporteur has consistently insisted during the interinstitutional negotiations. While Member States had sympathy for the ideas outlined within this Article, they also had legal concerns about the possibility to include such provisions in a Schengen-related instrument. At the last trilogue, the legal services of three institutions were mandated to find a legally sound solution. Article 37a, as redrafted by the three legal services, does not create new legal obligations for the Member States and the exchange of information referred to in this Article is already taking place, including at Mocadem and Coreper meetings, inter alia through discussions on the country fiches.

The redrafted Article 37a has been discussed at the JHA counsellors meeting on 11 May 2026. Based on some comments from Member States, the Presidency made some amendments to this redrafted Article, as set out in the annex to this note. Bearing in mind that this article is key to an overall agreement with the Parliament, ***the Presidency considers that this Article should thus be acceptable*** without any further changes.

As regards ***Article 52 on entry into force and application*** of the provisions of the Return Regulation, the Parliament continues to argue that the implementation period of 2 years provided in the Council general approach is too long, does not respond to the political urgency of this file, and would be difficult to explain to the EU citizens. The Parliament has continuously argued that the Commission proposal should be followed, and the provisions of the Regulation should become applicable immediately after the Regulation enters into force, i.e. 20 days after its publication.

The Presidency understands the practical difficulties that Member States have in reducing this deadline for implementation due to the necessity to change national legislation, amend national practices, train staff and adapt IT systems. The Presidency is grateful for the flexibility shown to reduce this deadline to 18 months. However, this still does not meet the Parliament's expectations. Other solutions, which we discussed at the JHA counsellors' meetings on 4-5 and 11 May, i.e. frontloading or backloading also do not seem to be viable options.

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Keeping the overall implementation period at 18 or 24 months and frontloading some articles was viewed with great caution and is not considered to be a legally sound way to proceed, as the prolonged coexistence of the Return directive and the Return Regulation rules could lead to more litigation[2]. Moreover, there is clearly no agreement among Member States as to which articles could be frontloaded. Politically, the Parliament has not shown any enthusiasm for this idea. Therefore, the Presidency invites Member States ***to demonstrate maximum flexibility and agree that we could offer Parliament that the Return Regulation be implemented 12 months after its entry into force.***

Finally, in addition to these key issues, during the drafting sessions and technical negotiations, the co-legislators did not reach an agreement on the ***definition of voluntary return (Article 4)***. Under the Council mandate, the concept also covers illegally staying third-country nationals against whom a return decision has not yet been issued. The Parliament opposes this, arguing that it creates a vacuum within the Regulation which may lead to the fragmentation of the implementation of the legal framework, and lack of monitoring of the actual departure of the third country national or his/her possible movements to other Member States. The Parliament insists that a return decision should always be issued.

Efforts to identify a compromise text have so far been unsuccessful, with the Parliament maintaining its position. In light of this, ***the Presidency invites Member States to show flexibility regarding the demand of the Parliament***, taking into account the provisions of Articles 7 and 8, regarding the issuance of the return decision and exceptions from issuing a return decision.

In the preparation for the forthcoming final trilogue, provisionally planned on 20 May, Permanent Representatives are invited to agree on the above four elements for a final agreement on this key file as well as show flexibility regarding the definition of voluntary return.

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[2] This does not apply to Article 17 on the return hubs as such provisions did not exist under the Return directive

ANNEX

Article 37a

Recital XX

"(XX) External dimension of return policy is an integral part of the comprehensive approach to migration management. Effective cooperation on return and readmission is a core external component of balanced and comprehensive partnerships with third countries in line with the objectives referred to in Regulation (EU) No 2024/1351 of the European Parliament and of the Council [Article 5 of the AMMR]. The European Council, among others, in its October 2024 Conclusions, called for swift action to ensure effective returns using as leverage all EU relevant policies and tools, including visa policy, trade, development and diplomacy.
A 'whole-of-government' approach is needed both within Member States and within EU institutions."

Recital XY

"(XY) As cooperation of third countries in the area of return and readmission of illegally staying third-country nationals may prove challenging in practice, and without prejudice to the assessment of third countries' cooperation on readmission provided for in Article 25a of Regulation (EU) No 810/2009 of the European Parliament and of the Council , where one or several Member States encounter difficulties in third country cooperation on readmission, including for confirmation of nationality, obtaining the necessary travel documents from the relevant third country authorities and organising return operations, those requesting Member States should be able to raise the issue with other Member States and the relevant EU institutions and bodies to get assistance in obtaining the cooperation needed from the third country concerned, using the available tools within their respective powers , as appropriate. Member States should inform the other Member States as well as the relevant EU institutions and bodies about the implementation of their respective partnerships with third countries, the challenges they encounter as well as the measures that have been taken to obtain cooperation."

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Article XZ

Mutual assistance on the external dimension of readmission"

Where one or several Member States encounter difficulties concerning third country cooperation on readmission of the third country's own nationals, including for confirmation of nationality, obtaining the necessary travel documents and for organising return operations, such Member States may request other Member States or the relevant EU institutions and bodies to assist them in obtaining the cooperation needed from the third country concerned. Those Member States and the relevant EU institutions, using the available tools within their respective powers , shall explore with the requesting Member States the assistance necessary to obtain the cooperation needed from the third country concerned and provide it as appropriate. Member States***, where applicable/relevant,*** shall keep the other Member States and the EU regularly informed about the implementation of their respective [***migration-related]*** partnerships with third countries, the challenges they encounter as well as the measures that have been taken to obtain cooperation.

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