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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Frontiers
Subject:	3. – Results of the Presidency's questionnaire on Article 4 of the proposed Screening Regulation.

Delegations will find enclosed the presentation made by the Presidency concerning "Results of the Presidency's questionnaire on Article 4 of the proposed Screening Regulation" at the Informal VTC meeting of the members of the Working Party on Frontiers on 18 December 2020.



18 December 2020

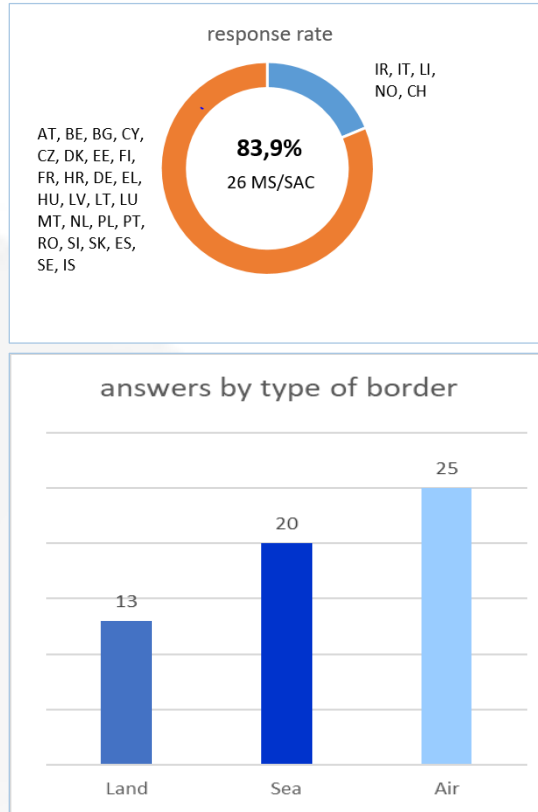
Working Party on Frontiers

Summary of the written consultation with
regard to the obligation to prevent
unauthorized entry according to Article 14 (4)
of the Schengen Borders Code (SBC)

Aim

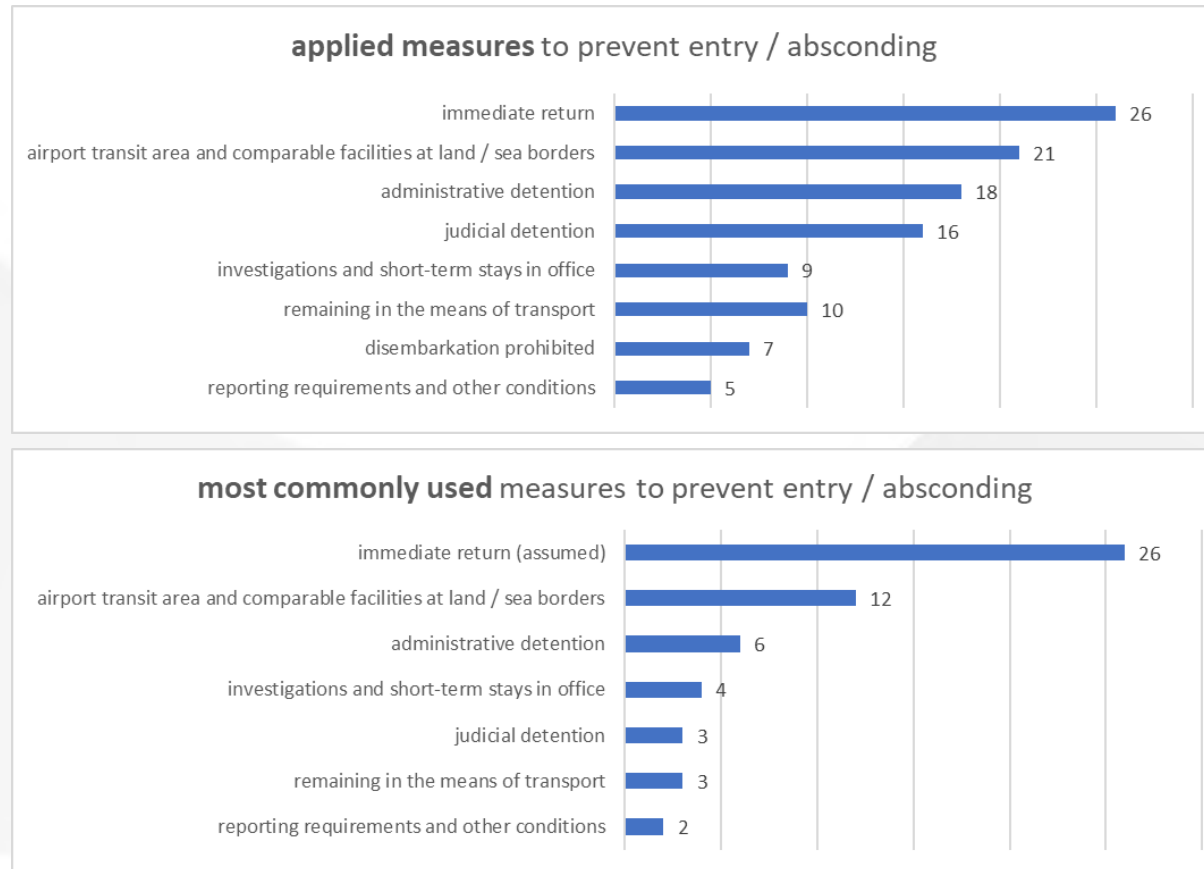
- How can a legally compliant and functional implementation of **the obligation to prevent entry and absconding during the screening phase** be achieved?
- How **do MS/SAC comply** with the obligation to prevent unauthorized entry according to Article 14 (4) of the Schengen Borders Code (SBC)?
- Are these practices applicable during the proposed screening phase?
- **Possibilities and potential limits** should be identified.

Response



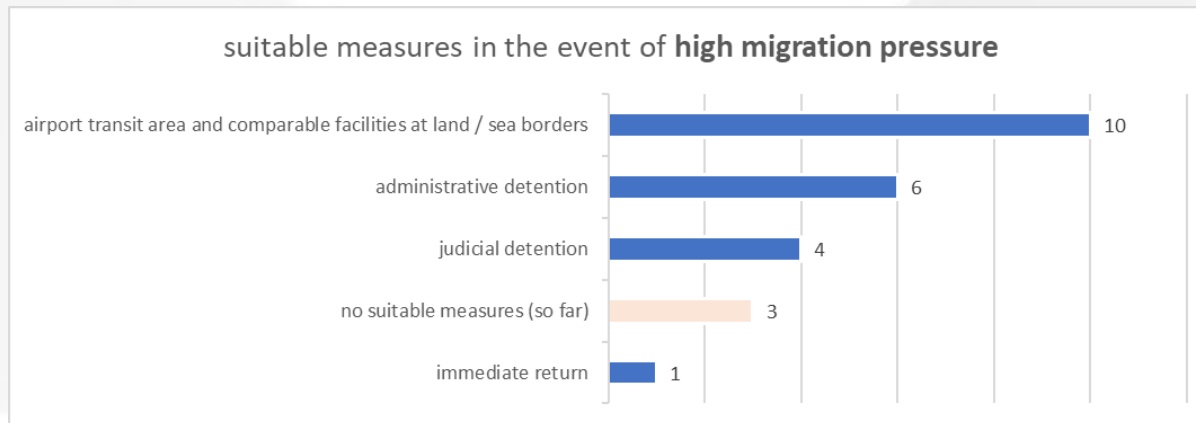
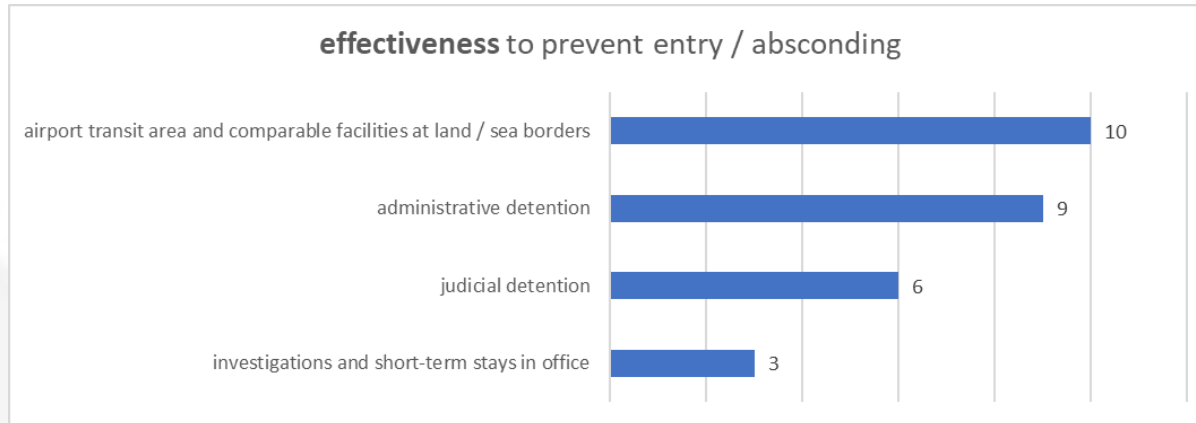
- A sufficiently large number of contributions have been received.
- Border-specific particularities are largely covered.
- Scope and level of detail of the answers differ.
- Due to the national legal and practical differences as well as the conceivable case constellations, a comparison between the contributions is possible only with reservation.
- In this respect, the analysis is not of sufficient statistical validity. Nevertheless, a first analysis can be made.

Measures



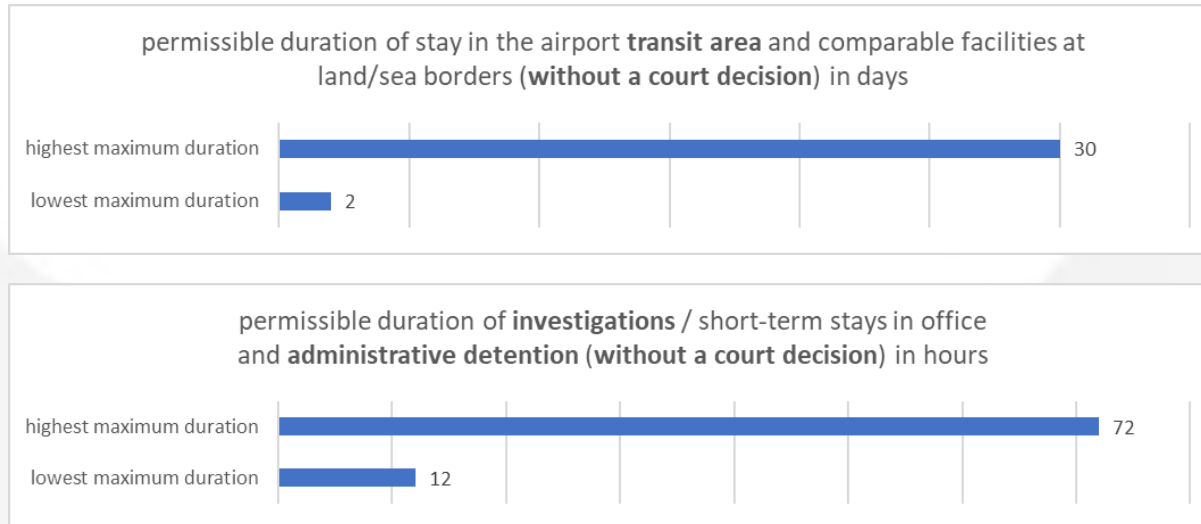
- Measures depend on the intended objective and the circumstances of the individual case.
- If a direct return is not applicable, affected third-country nationals are mainly accommodated in transit areas or comparable facilities for a short time.
- Furthermore, there does not seem to be much difference in terms of legal understanding of deprivation of liberty. However, differences became clear in connection with accommodations in airport transit areas for a longer duration.

Measures



- Delegations consider accommodation in transit areas or comparable facilities, deprivation of liberty as well as short-term stays in the office are the most effective ways.
- In the case of high migration pressure, accommodation in transit areas or comparable facilities and deprivation of liberty were mainly mentioned.
- It is assumed, that accommodation in transit areas or in comparable facilities is largely preferred.

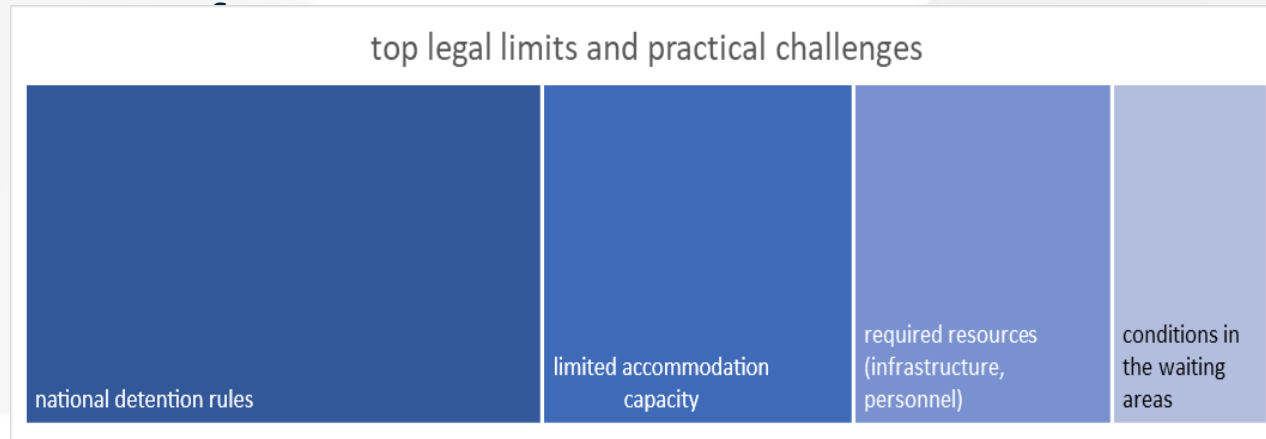
Maximum duration



- It is also highlighted, how long third-country nationals can be accommodated in transit areas or comparable facilities without the need for a court decision.
- In addition, it was examined which maximum duration of deprivation of liberty may be applied independently by enforcement authorities.
- There seems to be no harmonious provisions in the Schengen area that can be equally applied during the discussed screening phase and that allow the prevention of entry or abscondance for this entire period.

Challenges

- National detention rules are seen too restrictive in terms of duration and requirements.
- Practical challenges are limited accommodation capacities, the required resources as well as the conditions in waiting areas. Individual delegations referred to the challenges associated with secondary migration.
- It is assumed, that these challenges exist largely in almost all MS / SAC, but vary in



Requirements

- Need for further assessment with regard to effects on national law and practice.
- This primarily concerns suitable locations, the necessary infrastructure, cooperation between authorities and the necessary personnel.
- Some delegations also stressed the need to clarify the fiction of non-entry.
- A number of delegations also underlined that European rules are required. In this context, it was also emphasized that an individual decision by the authorities should not be necessary.

top requirements to implement the obligation
to prevent entry and absconding

further examination with regard to effects on national law / practice	european regulation on entry prevention / entry ban without individual decision on restriction of freedom	further examination of locations / infrastructure	further examination regarding personnel / cooperation between authorities	further examination regarding the fiction of non-entry
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Summary

- In general, the majority of delegations consider a limited accommodation in transit areas or comparable facilities as well as deprivation of liberty to be decisive.
- Differences in connection with accommodations in airport transit areas for a longer duration.
- **No harmonious regime that would allow the same application during the screening phase and prevent entry and absconding for the entire duration.**
- It is to be seen what impact this can have on the intended aim of the proposed regulation.



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Thank you for your
attention!