Ad Hoc Committee on Migration
Policy Briefing on Effective and Humane Returns
(Brussels, 1-2 April 2019)

CONCEPT NOTE
(draft, as of 7 March 2019)

BACKGROUND

Introduction

In 2016, 45,8% of non-EU citizens that were ordered to leave the EU were effectively returned, whereas in 2017 it was only 36,6%. In his State of the Union address in 2017, Jean-Claude Juncker emphasized that the EU needs to significantly step up its efforts in this regard, as this is "the only way that Europe will be able to show solidary with refugees in real need of protection."

An effective and humane return policy is an essential part of the EU's comprehensive approach to better managing migration and reducing the incentives for irregular migration. Showing generosity and solidarity towards those genuinely in need of protection is an important aspect of this. However, returning those who are not fleeing war or persecution and who do not have the right to stay in the EU, in full respect of their fundamental rights, is equally important for a well- functioning asylum system. It can also send a strong signal against undertaking dangerous irregular journeys to the EU in the first place.

The EU Return Directive

The effective return of third-country nationals who do not have a right to stay in the EU is an essential component of the European Agenda on Migration. At EU level, return policy is **regulated by Directive 2008/115/EC of the European Parliament and of the Council (the "Return Directive")** which lays down common standards and procedures to be applied in Member States for returning illegally staying third-country nationals in full respect of the principle of *non-refoulement*. Since the entry into force of the Return Directive in 2010, migratory pressure on EU Member States as a whole has increased.

There are **two main challenges**:

- Firstly, Member States encounter difficulties and **obstacles in return procedures to successfully enforce return decision**s. National practices implementing the EU framework vary between Member States and are **not as effective as they should be**. Among others, inconsistent definitions and interpretations of the risk of absconding and of the use of detention result in the absconding of irregular migrants and in secondary movements. Lack of co-operation on the part of the third-country nationals also leads to obstructing return procedures. Member States are not sufficiently equipped to enable competent authorities to exchange necessary information promptly in view of carrying out returns.

- Secondly, the efficiency of the EU's return policy **depends also on the cooperation of countries of origin**. Over the last three years, the EU sustained efforts in engaging the main countries of origin on cooperation in migration management resulted in good progress and several legally non-binding arrangements for return and readmission have been put in place. Implementation of these arrangements has started and it is now important that all Member States capitalise on these results and make full use of the arrangements to increase returns to the countries concerned. Additionally, the Commission has also proposed to strengthen the use of EU visa policy as a tool to achieve progress in cooperation on return and readmission with third countries. Once it becomes law, this will significantly improve the EU leverage in its relations to countries of origin.

Proposal for a recast Return Directive

As a **follow up to the European Council of 28 June 2018**, which recalled the need for Member States to ensure the effective control of the EU's external borders and underlined the necessity to significantly step up the effective return of irregular migrants, the Commission made a proposal for a "**Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals".** The proposal was a contribution to the Leader's Meeting in Salzburg on 19-20 September and welcomed the intention of the Commission to make legislative proposals for a more effective and coherent return policy.

The proposal to recast Directive 2008/115/EC aims to address the key shortcomings and obstacles encountered by Member States when carrying out returns, notably to reduce the length of return procedures, secure a better link between asylum and return procedures and ensure a more effective use of measures to prevent absconding. The proposed amendments do not affect the rights of the migrants and ensure full respect of fundamental rights, in particular the principle of *non-refoulement*.

Specifically, the **proposal for recast**:

- Establishes a new border procedure for the rapid return of applicants for international protections whose application was rejected following an asylum border procedure. The proposal provides for specific, simplified rules applicable to third-country nationals who were subject to asylum border procedures: *(i)* issuance of a decision through a simplified form; *(ii)* no period for voluntary return granted as a rule (except if the third-country national holds a valid travel document and cooperates with the national authorities); *(iii)* shorter time-limit for lodging an appeal, and specific grounds for detention. This border procedure for return will follow up the asylum border procedure;
- Sets out a common, non-exhaustive, list of objective criteria to determine the existence of a risk of absconding as part of an overall assessment of the specific circumstances of the individual case;
- Introduces an explicit obligation for third-country nationals to cooperate with national authorities at all stages of the return procedures, in particular for establishing and verifying their identity in view of obtaining a valid travel document and ensuring the successful enforcement of a return decision;
- Clarifies the need to issue a return decision immediately after a decision rejecting or terminating the legal stay is taken;

- Adapts the rules for granting a period for voluntary departure, which should not be longer than 30 days. However, the proposal deletes the obligation to grant a minimum of seven days when determining the duration of the period for voluntary departure;
- Introduces the possibility for Member States to impose an entry ban without issuing a return decision on an illegally staying third-country national who is detected for the first time while leaving the Union in certain cases and taking into account the principle of proportionality;
- Establishes the obligation to have national return management systems providing timely information on the identity and legal situation of the third-country nationals that are relevant for monitoring and following upon individual cases. These are to be linked to a central system established by the European Border and Coast Guard Agency in accordance with the new Regulation that is part of this package;
- Sets an obligation for Member States to establish voluntary return programmes that may also include reintegration support;
- Provides for a specific time-limit (five days) for lodging appeals against return decisions issued in cases where the return decision is the consequence of a decision rejecting an application for international protection that became final. If the risk of a breach of the principle of non-refoulement has not been already assessed by a judicial authority in asylum procedures, an automatic suspensive effect of the appeal against a return decision must be granted. A decision on temporary suspension shall be made quickly, within 48 hours as a rule;
- Sets out clear time-limits for detention: while the maximum period for detention of 6 months and the possibility of extension in specific circumstances are not modified, the proposal requires that national legislation provide for not less than 3 months as an initial minimum period of detention, in order to more appropriately reflect the period of time needed to successfully carry out return and readmission procedures with third countries. In addition, Member States may now also detain returnees when they pose a threat to public order or national security.[1]

Timeline

The proposal has entered the **ordinary legislative procedure** in the **European Parliament** and the **Council of the EU**.

- **European Parliament:** the **Civil Liberties, Justice and Home Affairs Committee (LIBE Committee)** will be responsible for the proposal, and the Legal Affairs Committee will give an Opinion on the recast technique (the Foreign Affairs and the Development Committees decided not to give an Opinion). Judith Sargentini (MEP, The Netherlands) was appointed Rapporteur. She presented her draft report, containing 120 amendments, on 16 January 2019.[2]

- **Council:** the Justice and Home Affairs configuration welcomed the proposal in its meeting of 12 October 2018. The text is now being discussed at technical level. At the Justice and Home Affairs Council meeting on 6-7 December 2018, the presidency reported on progress regarding the Commission proposal to reform the return directive,

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[1] https://oeil.secure.europarl.europa.eu/oeil/popups/printficheglobal.pdf?id=695902&l=en
[2] See draft report and amendments here: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-632.950+01+DOC+PDF+V0//EN&language=EN

on which intensive discussions have been held in different Council bodies. The Presidency said that the discussions held so far indicate a consensus on the direction of the revised return directive towards having a more stringent approach to returns. Significant progress has been achieved in moving towards an agreement as regards the list of factors indicating the risk of absconding, the obligation for third country nationals to cooperate with national authorities as well as the consequences of non-cooperation, the adoption of the return decision, granting of voluntary departure, the possibility to issue the entry ban without issuing a return decision, the design of and modalities for the return management system as well as national voluntary return and reintegration programmes.[3]

At the same time, a number of issues require further in-depth discussion with a view to moving towards consensus. Debate should still take place on the possibility to return a third-country national to any safe third country and not only the country of origin or transit.

Another possibility not provided in the Commission proposal for a revised return directive, but which has been addressed by some delegations, is the principle of mutual recognition of return decisions issued by other Member States. Article 16 on remedies and Article 22 on border procedures also require further in-depth discussions.[4]

Useful links

Factsheet Return Policy: https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-factsheet-returns-policy_en.pdf

Factsheet Reforming the Common European Asylum System:
https://ec.europa.eu/commission/sites/beta-political/files/factsheet_-_european_border_and_coast_guard.pdf

Proposal 2018/0329 (COD): https://eur-lex.europa.eu/resource.html?uri=cellar:829fbece-b661-11e8-99ee-01aa75ed71a1.0001.02/DOC_1&format=PDF

European Parliament: Legislative Observatory:
https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2018/0329(COD)

European Parliament- Legislative Train Schedule:
http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-proposal-for-a-recast-of-the-return-directive

State of the Union 2018- Press Release:
http://europa.eu/rapid/press-release_MEMO-18-5713_en.htm

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[3] https://www.consilium.europa.eu/media/37476/st15252-en18-v2.pdf
[4] https://www.consilium.europa.eu/media/37476/st15252-en18-v2.pdf

POLICY BRIEFING ON "EFFECTIVE AND HUMANE RETURNS"

As part of its mandate to promote discussion within the OSCE Parliamentary Assembly on issues related to migration, and to develop policy recommendations aimed at enhancing OSCE work in the field of migration and improving the treatment of migrants in OSCE countries, the OSCE PA Ad Hoc Committee on Migration has been following current proposals to reform EU return policy.

Given the key importance of effective returns for a comprehensive and effective migration policy, and the complexity of the proposals to reform EU return policy, the OSCE PA Ad Hoc Committee on Migration has decided to travel to Brussels in order to meet with key officials from the European Commission and representatives of the European Parliament in order to better understand the main elements of the proposals and proposed modifications, and how these aim to make return policy more effective.

The Committee would also like to obtain the expert views of representatives of main international organisations and non-governmental organisations, notably with respect to the issue of detention as well as procedures foreseen for vulnerable categories of migrants, with a special focus on children (both accompanied and unaccompanied).

The format proposed is that of a panel discussion at the Belgian House of Representatives (see draft **Programme** below). The working language will be English. A delegation size of about eight members is foreseen.

As part of its visit, the Committee also plans to visit a number of return facilities in the vicinity of Brussels, with a view to assessing the effectiveness of the Belgian framework as well as the impact of recent changes in Belgian legislation (law of 1 August 2018 authorising the detention of families with children in special family units).

Issues to be addressed:
- What are the main challenges regarding EU returns policy and how can the return policy be more efficient? ´
- How does the Recast Directive address these challenges?
- What are the expectations about the next steps in the ordinary legislative procedure?
- What is foreseen for vulnerable categories of migrants, notably pregnant women and women with young children, unaccompanied minors, victims of trafficking? (vulnerability assessment of persons facing return procedures, accommodation, etc)
- Recommendations re. type of accommodation / facilities for persons facing return procedures: detention as a measure of last resort
- Protecting the best interests of the child, access to education
- Funding for assisted voluntary return and reintegration programmes
- Ensuring adequate conditions for third-country nationals staying illegally but who cannot yet be removed
- What is the current practice in EU Member States? Examples of 'good practice'?

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Draft Programme
(as of 7 March 2019)

<u>**Monday, 1 April**</u>

13:45   *Transfer by bus from Brussels Zaventem airport to Steenokkerzeel (8km/15 minutes from Zaventem airport)*

14:00-17:00   **Belgium Field visits**

- Overview of Belgian return policy and measures to promote voluntary return
  - Representative of the Federal Agency for the Reception of Asylum-Seekers (FEDASIL)
  - Representative of the Belgian Federal Migration Centre (MYRIA)
  - Representative of the Jesuit Refugee Service (JRS)

- Visit to the Steenokkerzeel repatriation centre 127bis (near Zaventem airport)
The Steenokkerzeel centre is one of five Belgian immigration detention centres (total capacity: 559 places), all managed by the Belgian Immigration Office. The centre has 80 places, plus 28 places in four new family units, in use since August 2018.

- Additional visits foreseen to
  - Caricole transit centre (closed facility)
  - A return house (open facility)
  - An open facility for unaccompanied minors

18:00   Check in at Thon Hotel EU (*Rue de la Loi/Wetstraat 75, Tel. <u>+32 2 204 3911</u>*)

<u>**Tuesday, 2 April**</u>

10:00-12:00   <u>**Panel discussion on "Promoting an effective and humane return policy"**</u>
          (venue: Belgian House of Representatives, Salle Magritte, Forum Building).

- <u>Chair/Moderator</u>: Ms. Nahima LANJRI (MP, Belgium), Chair of the OSCE PA Ad Hoc Committee on Migration
- Mr. Ioan-Dragos TUDORACHE - Head of Unit, Irregular Migration and Return Policy, European Commission Directorate-General Migration and Home Affairs (DG-HOME) - *The recast EU Return Directive: Towards a stronger and more effective European return policy*
- Ms. Judith SARGENTINI (MEP, The Netherlands), Committee on Civil Liberties, Justice and Home Affairs Committee, European Parliament – *The proposals of the LIBE Committee for the recast directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals*
- Ms. Laurence HUNZINGER, Senior Regional Migrant Assistance Specialist, IOM

Regional Office for the EU, Norway and Switzerland – *Promoting Voluntary Returns*
- Mr. Alexander de Chalus, Policy Officer, UNHCR Brussels - *Alternatives to detention*
- A representative of UNICEF – *Protecting the best interests of the child*
- Mr. Tamas MOLNAR, legal research officer on asylum, migration and borders, European Union Agency for Fundamental Rights

12:00-13:30 Debriefing lunch hosted by the Head of the Delegation of Belgium to the OSCE PA Ms. Nahima Lanjri

(*Salle Simenon, Moniteur Restaurant, Forum Building*)

Guided tour of the Federal Parliament (optional)

Departures

OSCE PA Ad Hoc Committee on Migration

Membership

(as of 15 February 2019)

1. Ms. Nahima Lanjri (Belgium), Chair
2. Mr. Laurynas Kasciunas (Lithuania), Vice-Chair
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19. Mr. Henk Overbeek (The Netherlands)
20. Mr. Georgios Varemenos (Greece)