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ANNEX 2

ANNEX

to the

Commission Implementing Decision

establishing the 2024 thematic Schengen evaluation report 'Bridging national gaps: towards an effective EU return system through common solutions and innovative practices'

EVALUATION REPORT OF THE 2024 THEMATIC SCHENGEN EVALUATION 'BRIDGING NATIONAL GAPS: TOWARDS AN EFFECTIVE EU RETURN SYSTEM THROUGH COMMON SOLUTIONS AND INNOVATIVE PRACTICES'

Executive summary

Hundreds of millions of people enter the Schengen area every year, making it the most visited destination in the world. Although the vast majority of third-country nationals arrive to the Schengen area in an authorised manner, irregular migration continues to be a challenge, with significant impact on Member States' migration and security systems. This is why a well-functioning return system is crucial for effective migration management and security, safeguarding a well-functioning Schengen area of freedom, security and justice without internal frontiers.

The European Council conclusions of October 2024 recall the importance of a comprehensive approach to migration to best address the current challenges, and call for determined action at all levels to facilitate, increase and speed up returns, using all relevant EU policies, instruments and tools, including diplomacy, development, trade and visas.

It is therefore crucial that all necessary measures are taken to enforce return decisions issued by Member States and Schengen Associated Countries, while respecting fundamental rights safeguards in line with the EU Charter of Fundamental Rights and EU migration and asylum law. In this context, this report identifies a number of key challenges and best practices under the current return systems in the EU. It addresses key common obstacles that Member States and Schengen Associated Countries face in taking all necessary measures to enforce return decisions. These often stem from the complexity of the process of returning third-country nationals with no legal right to stay, where a high number of actors, authorities and stakeholders are involved.

The report is structured in three main chapters: (1) a well-functioning Schengen system requires effective returns, (2) ensuring effectiveness at key stages of the return process between national authorities and (3) maximising national efficiency through stronger European cooperation. These chapters take into consideration the need for effective planning, including for adequate capabilities, and effective coordination both at national and EU level. They also look at streamlined procedures to enhance effectiveness and coordination throughout key stages of the return process, including through the use of technology. Where relevant, the report includes descriptions of best practices observed in some Member States that can help address the key challenges identified in other Member States.

The thematic Schengen evaluation report emphasises the importance of return as a key part of the national strategies for European Integrated Border Management. To achieve this, effective interagency cooperation at national level is crucial, and enhanced information exchange is necessary for efficient and informed decision-making. This can be facilitated through the Schengen Information System and other large-scale EU information systems.

The thematic evaluation reveals that a well-functioning return system relies on ensuring a clear link between the initiation of the return process and different procedures relating to the end of legal stay. This allows issuing return decisions to illegally staying third-country nationals without delay, including the possibility to do this within a single decision. Additionally, effective remedy mechanisms must be in place to safeguard the fundamental rights of these individuals. The Schengen *acquis* on return gives Member States a margin for establishing

effective operational procedures and modalities that respect fundamental rights.

The evaluation also confirmed that the identification of third-country nationals is also a critical step for the effective implementation of the return procedure, including through the best use of available information at national and EU level. Effective identification can include measures to encourage third-country nationals to cooperate to facilitate the process, including through the use of incentives, or disincentives.

At the same time, a credible return system should prioritise dignified and sustainable voluntary return, supported by effective return counselling and reintegration assistance. Another important element of a credible return system is the effective monitoring of those ordered to leave to ensure that they comply with their return obligations in order to prevent absconding and secondary movements. This is facilitated through the functionalities of the Schengen Information System introduced in March 2023, but should be complemented with effective measures at national level. Furthermore, cooperation between authorities at national and EU levels is essential for prioritising the returns of third-country nationals posing a security threat.

The thematic evaluation paid particular attention to the contribution of the upgraded Schengen Information System (return alerts) to improving various aspects of return procedures, including the sharing of biometric data and the exchange of supplementary information. The Schengen Information System has also facilitated the possibility for Member States to mutually recognise return decisions issued by other Member States to increase the efficiency of returns. Finally, making best use of technical and operational support available through Frontex to complement the national return systems leads to gains in efficiency and resources.

The report concludes that, to maximise the impact of the Schengen system and existing European tools, Member States and Schengen Associated Countries must adopt additional measures and practices.

The outcomes of this evaluation report will contribute to and complement relevant policy and operational initiatives, ultimately supporting the development of a more effective common EU return system.

The thematic Schengen Evaluation – towards an effective EU return system

The process of returning third-country nationals with no legal right to stay in the Schengen area is complex, sensitive and involves a high number of actors, authorities and stakeholders. Although significant efforts with concrete results have been made over the last years to build a well-functioning EU return system, there is still a fragmented approach undermining the full extent of EU potential. In October 2023, the Schengen Council urged to look into operational solutions that enhance the effective and swift return of third-country nationals with no right to stay, in particular those who are considered a security threat. It called for urgent European solutions with common tools and increased coordination.

Against this background, the 2024 thematic Schengen Evaluation[1] towards an effective EU return system was considered a key initiative to achieve this objective. In accordance with Article 4(4) of the Schengen Evaluation Regulation, this thematic evaluation had a twofold objective: on the one hand, to identify the key common obstacles limiting authorities' ability to carry out the return of third-county nationals without a legal right to stay and, on the other hand, to build on common issues where common EU solutions and innovative practices would bring

[1] Commission Implementing Decision C(2023) 5300.

added value. The main goal is to reinforce the capacity of Member States and Schengen Associated Countries (collectively referred to as 'Member States' for the purpose of this report) in fulfilling their legal obligations with regard to those with no legal right to stay, taking into account that return is an essential tool to ensure the effectiveness and credibility of EU migration management, including by limiting secondary movements and addressing some key threats for the internal security of the Schengen area.

In line with these objectives, the thematic evaluation analysed the main bottlenecks and possible solutions in the national return systems, focusing on the **key stages of the return process**:

- Initiation of the return process.
- Identification of third-country nationals.
- National and European interagency cooperation.
- Voluntary return and enforcement of returns.

Considering that the effective return of third-country nationals with no right to stay in the EU requires planning, including for the development of adequate capabilities, and efficient coordination as an essential element of a well-functioning Schengen area, the thematic evaluation paid particular attention to **strategic and horizontal processes,** in view of ensuring an EU coordinated approach to returns.

In line with the 2024 Annual Programme for Schengen evaluations, an evaluation team was established by the Commission in December 2023, composed of 15 Member State experts, 2 Commission experts, as well as observers from the European Union Agency for Fundamental Rights and the European Border and Coast Guard Agency (Frontex). The evaluation team developed a dedicated questionnaire, which was shared with all Member States and Schengen Associated countries that fully implement the Schengen *acquis*, to identify similar challenges and best practices at national and EU level with the above-mentioned key stages of return, that could contribute to a well-functioning Schengen area. The evaluation team also looked at the past periodic Schengen evaluation reports to identify common challenges or best practices which fall under the scope of the thematic evaluation. Similarly, the evaluation team considered European Migration Network queries of relevance[2]. Furthermore, five focus group discussions were held between the evaluation team and Frontex to further understand from the EU Agency's perspective where key challenges may lie and where good practices have been observed.

Based on the answers to the questionnaire that the evaluation team received at the end of June 2024, three Member States (Italy, Norway and the Netherlands) were identified for visits during September-October 2024, taking into account practices that due to their nature cannot be effectively assessed remotely, as well as considering the need to avoid an additional burden on those Member States recently having been evaluated and those subject to periodic evaluations in 2024-2025, while ensuring a balanced and representative approach. Furthermore, videoconferences were carried out on specific topics to seek further information and clarifications with Austria and Denmark.

Best practices

Throughout the report, the evaluation team refers to best practices observed in Member States, either through the answers provided to the questionnaire, or through the visits and

[2] Ad-Hoc Query on 2024.10 Link between of asylum and return procedures and last-minute asylum applications (LMAs) and Ad-Hoc Query on 2024.51 Conditions and Practice of Mutual Recognition of return decisions in EU Member States.

videoconferences that were carried out[3]. This does not preclude that similar or other best practices do not also exist in other Member States. The aim is to provide Member States' authorities with additional tools when implementing the Schengen rules. Against this background, Member States are encouraged to assess the added value and feasibility of these best practices when developing remedial measures so as to build on proven approaches and techniques.

These best practices can be summarised as follows:

I. A WELL-FUNCTIONING SCHENGEN SYSTEM REQUIRES EFFECTIVE RETURNS

Return as a key part of Schengen governance

1. In line with the return component of the national European Integrated Border Management Strategy, adoption of a national return strategy that fosters coordination, collaboration, and a shared vision among key stakeholders, including the setting of periodic targets to ensure a coherent and holistic approach to shared common objectives.
2. Establishment of effective cooperation between different actors at strategic, operational, tactical, and international levels, supported by IT systems to enhance efficiency and to facilitate information exchange. Building on existing migration forecast products to further estimate the return caseload for the coming one to one and a half years.
3. Strategic processes on return build on existing migration forecast products that allow planning considering the estimated return caseload for the coming one to one and a half years.
4. Implementation of a resource allocation monitoring system to effectively plan the use of resources for the estimated return caseload, ensuring optimal resource utilisation.
5. Oversight of policy and performance through periodic planning and control cycles, allowing for adjustments to objectives as necessary to ensure effective return management.
6. Utilisation of the national IT case management system for statistical monitoring of return caseload, enabling data-driven decision-making and performance evaluation.

II. ENSURING EFFECTIVENESS AT KEY STAGES OF THE RETURN PROCESS BETWEEN NATIONAL AUTHORITIES

Effectively initiating and managing return procedures

7. Streamlined legal framework enabling the issuance of return decisions and decisions ending legal stay in a single administrative act or simultaneously, simplifying procedures for national authorities and third-country nationals.
8. Establishment of commonly agreed deadlines between return authorities and appeal bodies, ensuring prompt and predictable decision-making for both third-country nationals and national authorities, while facilitating effective case management and guaranteeing effective access to remedy.

[3] These are practices considered by the Evaluation Team as improving the effectiveness of the EU return system. These have not undergone a compliance check with EU law, since Member States and Schengen Associated Countries remain fully responsible for ensuring compliance with the applicable rules.

9. Implementation of an efficient national procedure to deal with last-minute asylum applications that do not bring new facts or circumstances, lodged to hinder forced return, balancing the need for swift processing with the upholding of returnees' fundamental rights and in particular the respect of the non-refoulement principle (e.g. through a specialised unit or on-call duty within the immigration service).

10. Provision of specialised training for staff handling last-minute asylum applications that do not bring new fact or circumstances, lodged to hinder forced return, including those within appeal authorities, to ensure they are equipped to analyse complex cases while ensuring full respect of returnees' fundamental rights.

Digital Return Case Management System to ensure coordination between authorities (including large-scale IT systems)

11. Development of a national IT return case management system with automated interconnections to other national systems and relevant EU large-scale IT systems, facilitating data exchange and streamlined case management.

12. Conclusion of information-sharing agreements to enable real-time data exchange between relevant authorities in line with their legal mandates, ensuring a holistic and coordinated approach to return procedures and supporting the effective implementation of national return strategies.

13. Utilisation of automated translation tools to efficiently translate return-related decisions for third-country nationals, enhancing clarity and facilitating understanding.

14. Integration of EU-level tools, including the Frontex return platform operational module IRMA-FAR, into national procedures through the national IT case management system, simplifying requests for EU-level support and enhancing cooperation.

Identification procedures, including through the use of large-scale IT systems supporting the application of the Schengen *acquis*

15. Implementation of a balanced approach combining positive and negative incentives to guide the identification process and the return procedure, tailored to the level of cooperation exhibited by the third-country national, to encourage voluntary compliance and efficient return procedures.

16. Provision of tailored training for staff to account for individual case needs to handle complex and sensitive identification procedures, including through the involvement of return counsellors or psychologists as required.

17. Utilisation of all relevant national databases and biometric identifiers to verify identities and supplement with other national databases (e.g. visa, asylum, police) as needed.

18. Leveraging available EU databases (e.g. SIS, VIS, Eurodac) and international partners (e.g. Interpol) to supplement national databases and facilitate identification.

19. Integration of innovative mobile solutions into return-related procedures, such as during identification, to increase efficiency and streamline processes.

20. Consideration of open-source intelligence as potential sources of information, including from social media platforms for identification purposes, while acknowledging the need for adequately trained staff and addressing data reliability.

21. Investigation of electronic devices (e.g. personal computers, smartphones, tablets) with written consent from a magistrate or the concerned person, as a means to gather information for identification purposes, where legally permissible.

22. Development of protocols between various authorities involved with relevant immigration processes of third-country nationals to create a legal and operational framework for cooperation, outlining ways of working together on identification procedures.

23. Utilisation of tools, such as through the IT return case management system, to inform stakeholders of steps taken in the identification and return process, ensuring timely and efficient information exchange.

Credible return systems: coherence between voluntary and forced returns

24. Provision of return counselling to all returnees, which is adapted to the level of cooperation of the returnee and the stage of the procedure, to promote coherence between voluntary and forced return procedures.

25. Establishing uniform quality standards for return counselling across all providers through adherence to practical guidelines or established methodologies.

26. Training specialised return counsellors to handle sensitive cases, including children, families and vulnerable groups of persons with psychological or medical issues, or a criminal background.

27. Offering degressive amounts of effective reintegration assistance to returnees once a final and enforceable removal measure has been issued, to encourage cooperation and swift return.

28. Adopting a holistic, whole-of-government approach to encourage returns of certain categories of third country nationals (e.g. when a larger caseload is pending from specific third countries), temporarily activating multiple stakeholders simultaneously to increase the overall impact of measures.

29. Implementing mandatory return counselling, to effectively guide third-country nationals through relevant procedures and to the monitor returnees' level of cooperation, whereabouts and obligation to leave, and facilitate information exchange on these aspects through the national IT case management system.

30. Establishing a categorisation of third-country nationals subject to return based on their readiness to return, to enable targeted follow-up by authorities and ensure the effectiveness and sustainability of return procedures.

31. Creation of a user-friendly, semi-automated system for reporting hits from external borders on alerts on return, facilitating the deletion of these alerts or their conversion into alerts on refusal of entry following confirmed exit, enabling a 24/7 service for this purpose, and streamlining return procedures.

Prioritised return of criminals and those who pose a security threat

32. Establishing legal provisions and procedures for cooperation between relevant authorities (e.g. authorities responsible for return, penitentiary services and judiciary) to commence return preparations as early as possible for third-country nationals subject to return who are serving a prison sentence, thus contributing to the effective enforcement of the return before the prison sentence expires, avoiding the need for further administrative detention.

33. Consideration of incentives to encourage cooperation from illegally staying third-country nationals serving prison sentences, facilitating effective and sustainable return (e.g. partial reduction or suspension of prison sentence in certain cases if removal can be enforced, or provision of vocational training to aid reintegration).

34. Adoption of a multidisciplinary approach involving various authorities to rapidly identify and assess potential security threats posed by third-country nationals with no right to stay, ensuring timely intervention and action as well as the introduction of the necessary information into the Schengen Information System.

35. Prioritisation of return case management for third-country nationals with no right to stay who pose a security threat, through coordinated inter-agency efforts (e.g. inter-ministerial coordination, dedicated teams or operative groups, intensive case management, and training for concerned authorities) to ensure effective and efficient return procedures.

III. MAXIMISING NATIONAL EFFICIENCY THROUGH STRONGER EUROPEAN COOPERATION

Enhancing exchange of information for more efficient and effective decision-making

36. Establishment of a seamless interconnection between return case management systems and the Schengen Information System, enabling effective decision-making and automated exchange of critical information (e.g. biometric data, security flags, travel documents) at national and EU levels.

37. Development of semi-automated procedures for SIRENE Bureaux to share supplementary information with return authorities, enhancing the efficiency of information exchange and decision-making in return procedures.

38. Insertion of alerts on return in the Schengen Information System corresponding to return decisions issued by Member States prior to the March 2023 entry into operation of the renewed SIS, ensuring information sharing and coordination between Member States on all return decisions.

Enhancing trust towards a common European system – Mutual recognition

39. Establishment of a procedure to maximise the information contained in alerts on return included in the Schengen Information System for mutual recognition of other Member States return decisions, enhancing return efficiency by eliminating unnecessary procedures for the issuance of a separate return decision and building on the reliable nature of information contained in SIS, its availability in each national language, and the possibility to verify the identity of the addressee of the return decision through biometrics, travel document copies or other relevant information.

Operational support through Frontex

40. Adaptation of national legal framework to fully utilise Frontex support and optimise the use of available resources, enhancing the effectiveness of returns through measures, such as deploying Forced Return Escorts at the airport for the departure process, as well as facilitating land transfers where necessary.