

Objectives for a New Legislative Proposal for More Effective Returns Non-Paper by AT and NL supported by XX

The current Return Directive, presented in 2005 and adopted in 2008, originally aimed to establish minimum guarantees, standards and procedures for returns. Furthermore, the new Pact with its border procedures necessitates improvement of the efficiency of returns.

Almost 20 years have passed since then and the situation has changed considerably. As a result, the current legal framework does not sufficiently reflect the needs of the Member States to ensure effective removals.

The legislative proposal for a recast of the Return Directive was presented by the Commission in 2018. Since then, several discussions with the MS/SAC on legislative reforms have taken place.

Ahead of the 12 March 2024 IMEX Working Party meeting, seven MS/SAC presented a non-paper highlighting the need for such reforms (see *A non-paper on the need for legislative reforms for more effective returns*, WK 3791/2024 INIT).

Discussions during the Belgian Presidency confirmed the general acceptance by the MS/SAC of the need to improve the legal framework and brought forward several first substantive ideas (see *Presidency summary of the discussions on making the return systems more effective: a reflection towards the future of EU return policy*, 10414/24).

There is a consensus among MS/SAC on the need to facilitate and speed up returns through a new legal framework, based on a new proposal from the Commission.

This paper sets out objectives to assist the Commission in preparing a “re-revised” legislative proposal:

1. A paradigm shift in the return process towards obligations and duties for the third-country national subject to a return decision is essential: People without the right to stay must be held accountable. A new legal basis must clearly define their obligations and duties. Non-cooperation must have consequences and be sanctioned.
2. A new legal basis is needed in the form of a state-of-the-art legal framework that responds to real challenges and developments and reflects the needs of the MS/SAC and the EU, taking full account of the MS/SAC flexibility to ensure effective returns. E.g., through further supporting digitalization and simplifying procedures.
3. In preparing the proposal, the Commission should consider the Council’s Partial General Approach of June 2019 and the ideas put forward by the MS/SAC under the discussions held during the Belgian Presidency, such as a clear list of grounds for detention.
4. The MS/SAC must be empowered to carry out effective returns of illegally staying migrants in full respect of fundamental rights. The new legislative framework should render extensive interpretation by the CJEU unnecessary.
5. In terms of process, we kindly request the Commission to expeditiously prioritize establishing a new legal basis. The Commission should take every opportunity to informally consult and involve the MS/SAC as partners, making best use of existing fora.

We, the MS/SAC, stand ready for an open and constructive exchange.