

Presidency paper on steps to effectively resume return operations, voluntary returns and move towards a more crisis-resistant return system

PRESIDENCY CONCLUSIONS¹

I. Introduction

1. The COVID-19 pandemic continues to have a huge impact on the entire return practice throughout the EU.
2. Although many Member States have been able to resume some voluntary and forced return measures in recent months, return numbers remain very low compared with the same period of the last years.
3. Against this background, Germany's Council Presidency still takes the view that – on a regular basis, but especially in the context of the COVID-19 pandemic – it is helpful for the Member States to hold dialogue with the Commission and Frontex on crisis management measures and strategies in the area of returns.
Recently, the Member States were invited to submit any relevant experience and suggestions in writing. The responses of the Member States were compiled in Working Paper (WK) 9008/2020² and presented and discussed in the Council Working Group IMEX on 18 September 2020.
4. The Member States' proposals are summarised below, in sections corresponding to different phases relevant in the context of returns. Each section also contains conclusions and recommendations by the Presidency on carrying out the measures described.

The focus is on measures to be taken in the short to medium term in times of crisis so that effective return operations, especially voluntary returns, can be resumed as soon as possible. Another goal is that the proposed measures should help to improve return

¹ Continuation of Presidency paper ST 9760/20 INIT

² Working Paper of the General Secretariat of the Council WK 9008/2020 of 4 September 2020

procedures even in crisis-free times. At all times, such measures must respect the principle of non-refoulement and take into due account the best interests of the child, the right to family life, the state of health of the irregular migrants, the principle of proportionality and special protection needs of vulnerable persons.

II. Identification procedures and procedures for obtaining passport substitutes or emergency travel certificates

5. The experience of the Member States during the COVID-19 pandemic has shown that digital solutions replacing in-person experiences are key to making return procedures more crisis-resistant, especially when it comes to identification.
6. In this context, some Member States reported good experiences with digital solutions such as Video Conferencing for Identification (VCI) – a tool provided by Frontex in cooperation with the EURLO network – and the Readmission Case Management Systems (RCMS) in use for some countries of return. Encouraged by the positive feedback from the Member States, Frontex has already recommended the VCI tool to more third countries. Furthermore, there was broad agreement that the current situation should be used to promote the RCMS at all levels and to expand its use, persuading additional relevant third countries of the system's benefits.
7. The Presidency **concludes** that Member States and the Commission should use the current situation as an opportunity to intensify their efforts to digitalise the returns procedure.
 - a. There is a need to show third countries the benefits of digital solutions and to persuade them that these systems are worth using. These efforts at persuasion should be carried out by the Member States at EU and bilateral level under the coordination of the Commission. The Commission and the Member States should bear in mind that the introduction of individual systems depends on the technical and administrative infrastructure available in the third countries in question.

- b. The Presidency welcomes the fact that Frontex is already advocating and supporting the use of digital solutions like the VCI tool among the Member States and countries of origin.
- c. The Presidency stresses that digital solutions cannot replace direct contact with the staff of the diplomatic missions of third countries. It is always necessary to have a trusted contact person to turn to in person in urgent cases.
- d. In preparation for a similar crisis in the future, Member States and the Commission, in negotiations with third countries for readmission agreements or arrangements, should continue to pursue agreement for the use of the European travel document for return agreements and other arrangements with third countries as it has proven to facilitate the carrying out of return by effectively setting limits to the duration of the identification procedure and reducing the administrative burdens on the administrations of Member States and third countries.

III. Detention

- 8. According to Article 15 (4) of the Return Directive (2008/115/EC), detention for the purpose of removal must end when it appears that a reasonable prospect of removal no longer exists in the case in question. Regarding detention, several Member States welcomed the view contained in the Guidance of the Commission³ that the temporary restrictions introduced by the Member States and third countries to prevent and contain the spread of COVID-19 “should not be interpreted as automatically leading to the conclusion that a reasonable prospect of removal no longer exists”. However, as the question of a “reasonable prospect of removal” must be determined for each case individually, some Member States reported that they had released persons detained for

³ COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, C(2020) 2516

the purpose of removal because it had not been possible to remove them in a reasonable period of time given the lack of return options.

9. In order to carry out a reliable assessment of “reasonable prospect of removal” in accordance with Article 15 (4) of the Return Directive, some Member States would find it helpful to have up-to-date information on entry requirements and return options with regard to specific countries of origin. They support the Presidency’s suggestion of using IRMA as an information hub and of reporting to Frontex any successfully completed return operations so that these can be recorded in IRMA. In the view of some Member States, IRMA should be used not simply to store information but as a platform for sharing best practices.
10. For cases where detention is not (or no longer) possible, effective alternatives to detention should be considered, in line with the Guidance of the Commission, but these should ensure compliance with return procedures and prevent absconding.
11. The Presidency **welcomes** the fact that Frontex already provides comprehensive information via IRMA, including information on entry requirements in countries of origin and scheduled flights. Frontex should also explore whether successful return measures can be recorded in IRMA and whether IRMA can be expanded as a platform for sharing best practices. It might also be useful to record information on transit routes in IRMA.

IV. Return operations to third countries

12. The return area that was initially hardest hit by the COVID-19 crisis, carrying out return operations, has slightly recovered in recent months. In spite of restrictions, numerous Member States have taken comprehensive measures to resume return operations. Acting alone or together with other Member States, they have organised chartered flights to some third countries. However, the situation remains unstable. The willingness of many third countries to accept returnees remains uncertain, and no single Member State is able to

prepare stable and reliable return schedules – partly due to frequent changes in the situation.

13. The Presidency **concludes** that return operations are especially vulnerable to crises, as they depend on the functioning cooperation of all parties involved. This makes it all the more important for action to be coordinated at European level.

- a. The Member States agree that it should be made clear to the countries of origin that they still have an obligation to readmit their own nationals despite the current crisis. This expectation should be clearly communicated by the EU and the Member States. It should also be made clear that the criteria to be met by returnees re-entering their country of origin should be no more stringent than those to be met by other nationals, including citizens, wishing to enter that country. The reaction of third countries to such demarches may be utilized as an indicator to assess their cooperation on readmission under Art. 25a of the Visa Code.
- b. The Presidency notes that at times when regular passenger flights are discontinued or reduced, an increased use of charter flights is a suitable way to carry out forced and voluntary returns with the agreement of the third country in question. In the future, Frontex should take on more of a coordinating role, especially in joint return operations. It should also help Member States with the financing of such operations.
- c. With regard to return operations, the Presidency notes that in several Member States and Schengen-associated states there is no legal basis for ordering compulsory COVID-19 tests. It may be an option for Member States to create such a legal basis in their national law. But in addition to this, the Commission and Member States should approach relevant third countries and persuade them (as an exception) to readmit returnees who refuse tests when a negative test is required; or alternatively to allow quarantine measures, preferably in the country of return, which could, as a last resort, be financed by the Member State arranging the return, including using EU funding (e.g. the Asylum and Migration Fund).

- d. The Presidency regards it useful for Member States to self-develop standards for protective measures to be activated in times of crisis for the smooth continuation of return operations. Where possible, Frontex could assist Member States in their implementation. To increase the willingness of third countries to receive returnees, such measures should be timely announced and fine-tuned with the responsible authority at the country of origin.

V. Resumption of return operations

- 14. In resuming return operations, some Member States have set priorities according to case categories. For some Member States, this is based on the level of threat posed to public or national security by the third-country nationals in question. For other Member States, the priority is to return third-country nationals who come from countries with favourable reception conditions for return operations.
- 15. To allow a quick and effective resumption of returns, the Presidency **stresses** once again the importance of taking preparatory measures for returns. This should be done to the greatest extent possible under the conditions that apply in the various Member States. To this end, it is important to actively maintain contacts with third countries. Member States should also continue to hold dialogue in the appropriate forums, sharing information on frameworks and potential approaches for carrying out return operations. Appropriate forums for confidential dialogue at operational level include the Frontex Direct Contact Points in Return Matters and Pre-Return Activities Network (DCP-PRAN) meeting, or the Readmission Experts Meeting (REM).

VI. Adapting voluntary return and reintegration/ return counselling programmes

- 16. The Presidency notes that there is much variation among Member States in adapting their programmes of voluntary returns and reintegration: some Member States leave the

structure of their programmes unchanged, with the simple addition of handing out hygiene kits. Other Member States have adopted new components in their programmes, in some cases increasing their support (both financial and non-financial) with a “COVID-19 supplement”.

17. The Presidency **stresses** that at a time when essential information on the return situation changes on a daily basis, electronic databases are a particularly helpful source of information; here there is a need for improvement.
18. The Presidency notes that in some Member States it is best practice to maintain waiting lists and/or pre-registration lists for voluntary returnees. This allows for voluntary returns at short notice, even during the pandemic. It also provides important information to the Member States about which third countries should currently be first in line to admit voluntary returnees.
19. The Presidency notes that the mutual trust and discretion required for return counselling are extremely difficult to achieve through purely digital interaction. In practice, many Member States seem to find a combination of online and in-person meetings to be useful and are trying to use as many communication channels as possible.
20. The charter flight option for voluntary returnees: Some Member States have pointed out that some persons who are obliged to return would be willing to do so voluntarily but are not able to due to a lack of available flights. Some Member States have had good experiences with charter flights – partly in cooperation with Frontex. This seems to the Presidency to be a possible way to ensure that voluntary returns continue, as long as other options remain limited during the pandemic.
21. Some Member States have established the best practice of using repatriation flights or authorising other kinds of charter flights organised by third countries (e.g. for business travellers or students) to carry voluntary returnees. This could be connected with the Commission's appeal to third countries to give the Member States advance notice of repatriation flights or other kinds of flights they may organise.