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DG MIGRATION AND HOME AFFAIRS

MIGRATION

Irregular Migration, return, readmission

Disclaimer: *These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union'*

Migration and Home Affairs

EUROPEAN AGENDA ON MIGRATION

May 2015

Four pillars to better manage migration:

- *Reducing incentives for irregular migration*

  root causes, ILOs/EMLOs, fighting smuggling, improve returns of rejected asylum applicants

- *Border Management (saving lives and securing borders)*

  reinforcement of EBCGA, use IT systems better, support third countries to manage borders

- *A strong common asylum policy*

  coherent implementation of CEAS, EASO as clearing house for Country of Origin Information, evaluation of Dublin system, systematic fingerprinting

- *A new policy on legal migration*

  new labour mobility package, directive on students and researchers, revision of blue card directive, effective integration

EU FRAMEWORKS
TO FIGHT IRREGULAR MIGRATION

Overview of the presentation

- **Facilitators package** (Directive 2002/90/EC and Framework Decision 2002/946/JHA on the facilitation of unauthorised entry, transit and residence)
- **Action Plan against Migrant Smuggling** (COM (2015) 285 final)
- **Regulation 377/2004** on the creation of an immigration liaison officers network
- **Directive 2004/81/EC** on residence permits to victims of trafficking
- **Employers sanctions Directive** (2009/52/EC)
- **Return Directive** (2008/115/EC), Action Plans on Return, Return Handbook,, Recommendation on Effective Returns
- **Readmission agreements**

FACILITATORS PACKAGE (1)

The **EU legal framework** concerning facilitation of unauthorised entry, stay and transit (smuggling of people) consists of the so-called **'Facilitators package'**.

It includes:

- ***Directive 2002/90/EC*** *of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence*

- ***Framework Decision (FD)*** *2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence*

FACILITATORS PACKAGE (2)

- *Directive 2002/90 provides a **common definition of the offence** and requires MS to adopt appropriate sanctions on anyone who intentionally assists another person who is not a national of a MS to enter or transit or, for financial gain, to reside in the territory of a MS in breach of its national law.*

- *Framework Decision 2002/946 specifies and to a certain extent harmonises rules on **sanctions for natural and legal persons and jurisdiction**.*

- *The Package does not target the migrants but only the **individuals/criminal networks who facilitate** irregular immigration.*

- *All facilitators are criminally liable and **not just those belonging to organised crime** networks.*

FACILITATORS PACKAGE (3)

- *Directive 2002/90 requires the **element of financial gain only for facilitation of unauthorised residence** but not for entry or transit.*

- *However, facilitation of irregular entry or transit for **humanitarian assistance can be exempted from criminalisation** (Art 1(2) directive 2002/90).*

- *This option does not regard **assistance to those in distress at sea**, which **is mandatory under international law***

FACILITATORS PACKAGE (4)

The ***implementation*** *of the* Facilitators Package has been subject to ***evaluation****, as set out in the* EU Action Plan against Migrant Smuggling*. The report was issued on 22 March 2017 [SWD (2017) 117 final]*

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EU ACTION PLAN AGAINST MIGRANT SMUGGLING (2015-2020)

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EU ACTION PLAN AGAINST MIGRANT SMUGGLING

'high risk, low profit'

- ***Aim of the Action Plan:***
  - **to prevent and combat the exploitation of migrants by criminal networks through a multidisciplinary approach**

- ***Four main priorities – areas of action:***
  1. **Stronger investigation capacity and prosecution**
  2. **Improved exchange of information and intelligence**
  3. **Enhanced prevention of smuggling and assistance to vulnerable migrants**
  4. **Stronger cooperation with third countries**

EU Action Plan against migrant smuggling

1. Stronger police and judicial response:

- *Evaluation of the EU legal framework on migrant smuggling (2017)*
- *Establishment of list of **risk criteria for monitoring of suspicious vessels***
- *Establishment of a **single point of contact** on migrant smuggling in each Member State*
- *Setting up of a **Contact group of EU Agencies** on migrant smuggling*
- *Creation of a **Eurojust thematic group** on migrant smuggling*
- *Capacity building – **mapping training needs** (CEPOL, Europol, EJTN)*

EU Action Plan against migrant smuggling

2. Improved gathering and sharing of information:

- *Deployment of **European Migration Liaison Officers** to the EU Delegations in key third countries (currently 13 deployed)*
- *Evaluation and **revised proposal** on Immigration Liaison Officers Networks – **new proposal presented in 2018***
- *Creation of an **information hub on migrant smuggling** (European Migrant Smuggling Centre in Europol) (2016)*
- ***Information Clearing House** (2017)*
- *Deployment of **mobile teams from EU agencies** to provide on-the-spot operational and information support ('hotspots' in Italy and Greece)*
- *Further development of **Africa Frontex Intelligence Community***

EU Action Plan against migrant smuggling

3. Enhanced prevention and assistance:

- *Development of a **prevention tool kit for the Road Haulage industry** to protect vulnerable migrants and enhance the security of vehicles (DG HOME & DG MOVE)*

- *Delivering **6 specialist anti visa-fraud training courses** for Consular Officials in third countries (2017-2018)*

- *Targeted **consultations** on the practical implementation of the EU Directive 2004/81/EC on residence permits*

- ***Information and awareness raising campaigns** in third countries on risks of smuggling*

- *Stepping up support for **detecting internet content** used by smugglers (EASO, IRU/Europol, Frontex)*

- *Proposals to **open negotiations on readmission** with main countries of origin of irregular migrants*

EU Action Plan against migrant smuggling

4. Cooperation with third countries:

- *Launching or enhancing **bilateral and regional cooperation frameworks***

- ***Funding of capacity building** projects to support third countries in:*
  - *setting up strategies on migrant smuggling*
  - *stepping up police and judicial responses*
  - *developing integrated border management*
  - *improving collection, sharing and analysis of data on migrant smuggling*

- *Setting up of **EU cooperation platforms on migrant smuggling** in relevant third countries and regions*

REGULATION 377/2004
ON THE CREATIONOF AN IMMIGRATION LAIISON OFFICERS NETWORK

Regulation 377/2004

- *Subject to a formal evaluation 2016/2017*
- *Final report published September 2017*
- *Recommended a Regulation is still required but needed amending to bring it up to date for current situation*
- *Commission adopted a recast proposal on 16 May 2018 – COM(2018) 303*
- *Currently under negotiation with Council and European Parliament*

Recast proposal of Regulation 377/2004

- *Renamed "on the creation of a European network of* immigration liaison *officers"*

- *Establishes a 'Steering Board' to strengthen coordination of* immigration liaison *officers* at *a* European *Level*

- *Acknowledges the existence of Commission and Union Agency immigration liaison officers for the first time*

- *Introduces a legal basis for the sharing and processing of personal data by immigration liaison officers*

DIRECTIVE 2004/81/EC
ON RESIDENCE PERMITS FOR NON-EU VICTIMS OF TRAFFICKING IN HUMAN BEINGS

Directive 2004/81/EC

- *Granting of a temporary residence permit to third-country national:*
  - victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration
  - who cooperate with the authorities for the investigation and prosecution of the alleged traffickers

- *COM reports:* COM(2010)493, COM(2014) 635 final

Directive 2004/81/EC

Scope:

- ***Non-EU citizens*** *victims of THB, even if entered irregularly*

- *Optionally: non-EU citizens subject to* ***smuggling****. Applied by ten MS (AT, BE, CZ, EL, EE, LU, MT, PT, RO, SE).*

- *Optionally:* ***children****. Applied by all MS except SK*

Directive 2004/81/EC

Three phases:

1. *Identification & provision of information*

2. *Reflection period*
   - ✓ No expulsion
   - ✓ Assistance and protection
   - ✓ Minimum duration and starting point by law

3. *Residence permit*
   - ✓ 3 conditions: - opportunity of stay
     - intention to cooperate
     - severed links with perpetrators
   - ✓ Minimum 6 months and renewable
   - ✓ Assistance and protection + access to education, labour
   - ✓ Unaccompanied Minors

DIRECTIVE 2009/52/EC PROVIDING FOR MINIMUM STANDARDS ON SANCTIONS AND MEASURES AGAINST EMPLOYERS OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS

Directive 2009/52/EC

Scope:

- *Prohibiting the employment of illegally staying third-country nationals in order to fight illegal immigration*
- *Tackle a "pull factor" of irregular migration, i.e. work on the "black market"*

Main rule:

- *employment of non-EU nationals who have no right to stay in the EU is prohibited; employers are sanctioned, not the employees (migrants)*

COM report: (2014) 286 final

Three levels:

- *Prevention*
- *Sanctions*
- *Protection*

Directive 2009/52/EC

Prevention

- *Third-country national to present to the employer a valid residence permit*
- *Employer to notify start of employment*
- *Bona fide clause (Article 4(3))*
- *Effective and adequate inspections to be carried out*

Directive 2009/52/EC

Sanctions

- *Financial sanctions (effective, proportionate and dissuasive) (Article 5)*

- *Payments of the cost of return (Article 5(2))*

- *Criminal offences and penalties*
  - ✓ Continue or persistent infringement
  - ✓ Significant number of employees
  - ✓ Particularly exploitative working conditions
  - ✓ When the third-country national is a victim of trafficking in human beings
  - ✓ Employment of a minor

- *Other measures (Article 7)*

Directive 2009/52/EC

Protection

- *Back payments to be made by employers (Article 6)*
- *Third parties (e.g. trade unions) might assist third-country nationals in any administrative or civil proceedings (Article 13(2))*
- *Effective mechanisms to lodge complaints against employers (Article 13(1))*
- *Granting on a case-by-case basis of permits of limited duration (Article 13(4))*

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RETURN DIRECTIVE (2008/115/EC)

ACTION PLANs ON RETURN

RETURN RECOMMENDATION

RETURN HANDBOOK

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EU Return Policy

- *Integral and necessary part of a comprehensive EU Migration Policy*

- *Effectively implemented and credible return policy is no contradiction to a fair asylum policy and open legal migration policy*

- *Return meant to enhance asylum and legal migration policies by making sure that admission channels and admission capacities are not unduly blocked by those who clearly don´t qualify for a stay in the EU.*

EU Return Policy

Since 2008, the key instruments of the EU return policy in place, are:

- *The Return Directive 2008/115/EC*

- *The European Return Fund (2008-2013) (Decision 575/2007/EC) succeeded by the Asylum, Migration and Integration Fund (AMIF) (Regulation No 516/2014)*

- *EU Readmission agreements (17) – co-existing with numerous bilateral readmission agreements between MS and third countries*

EU Return Policy

Return Directive 2008/115/EC

1. *Horizontal scope: Covers any third-country nationals staying illegally on MS territories*

2. *Common discipline on MSs – avoiding "grey areas": A return decision must be issued*

3. *Promoting voluntary departure: Period of voluntary departure to be granted, unless risk of absconding*

4. *Coercive measures as last resort: If less coercive measures don´t work, removal shall be enforced, taking into account proportionality*

EU Return Policy

Return Directive 2008/115/EC

5.EU entry ban as preventative tool in the fight against illegal immigration

6. Due process / effective legal remedies

7. Limitations on the use of detention

8.Special provisions regarding minors and families / general safeguards

9. Issues which are not covered by the Directive
- Harmonisation of reasons for ending legal stay
- Mutual recognition of return decisions
- Regularisation

EU Return Policy

Proposal for recast Return Directive 2008/115/EC - COM(2018) 634

Objectives

- *Faster procedures*
- *Prevent absconding and secondary movements*
- *Links with asylum legislation*
- *Controlled centres / border procedures*
- *Ultimately increase effectiveness of return*

EU Return Policy

Proposal for recast Return Directive 2008/115/EC - COM(2018) 634

Objectives

- *Faster procedures*
- *Prevent absconding and secondary movements*
- *Links with asylum legislation*
- *Maintain high standards of protection of fundamental* rights
- *Controlled centres / border procedures*
- *Increase effectiveness of return*

EU Return Policy

2015 EU Action Plan on return:

- *almost 40 measures that should be taken to increase the effectiveness of return*
- *significant boosting of the role of Frontex in return, through the creation of a Frontex Return Office -> see new European Border and Coast Guard Agency*
- *Enhanced use of relevant information systems – in particular the Schengen Information System and Eurodac – for return purposes -> see new SIS for return and revised Eurodac*

EU Return Policy

2015 EU Action Plan on return:

- *strategy for scaling up cooperation with countries of origin and transit for irregular migrants – through practical cooperation, political dialogues, the completion of negotiations and the launch of new negotiations with key countries*
- *swift implementation of the commitment undertaken by African countries under Article 13 of the Cotonou Agreement to readmit their nationals*

EU Return Policy

2015 EU Action Plan on return:

- *"building on the "more-for-more" principle, EU assistance and policies will be used to create incentives for implementing existing readmission agreements and concluding new ones" (+ Partnership Framework Communication , 7 June 2016)*

2017 Renewed Action Plan on Return

- ***Increased financial support to Member States*** *for national return efforts as well as for specific joint European return and reintegration activities*

- ***Improving information exchange to enforce return*** *by collecting real time information at national level and sharing it using the existing Integrated Return Management Application + speeding up work on adopting the proposals to reform the Schengen Information System and Eurodac and to establish an EU Entry-Exit System (EES) and a European Travel Information System (ETIAS)*

- *Exchanging best practices to* ***ensure reintegration packages are consistent*** *and coherent among all Member States to avoid countries of origin favouring returns from countries offering higher reintegration packages or assisted-voluntary return-shopping by irregular migrants*

2017 Renewed Action Plan on Return

- *Offering full support to Member States by the **European Border and Coast Guard Agency** with the Agency called on to step up pre-return assistance*

- *Overcoming the challenges of readmission by working to swiftly conclude the negotiations of **Readmission Agreements** with Nigeria, Tunisia and Jordan and striving to engage with Morocco and Algeria*

- *Within the Partnership Framework, employ collective leverage in a coordinated and effective manner through **tailor-made approaches with third countries** to jointly manage migration and further improve cooperation on return and readmission*

Return Recommendations 2017

- *Improve the **effectiveness of return legal framework** and **coordination** among all the services and authorities involved in the return process*

- *Remove inefficiencies by shortening deadlines for appeals, **systematically issuing return decisions** that do not have an expiry date and **combining decisions** on the ending of a legal stay with the issuance of a return decision to avoid duplicate work*

- ***Tackle abuses of the system** by making use of the possibility to assess asylum claims in accelerated or, where considered appropriate, border procedures when it is suspected asylum claims are made merely to delay the enforcement of a return decision*

- ***Prevent absconding** by using detention in relation to people who have received a return decision and who show signs they will not comply such as refusal to cooperate in the identification process or opposing a return operation violently or fraudulently*

Return Recommendations 2017

- ***Increase the effectiveness of return procedures and decisions*** *including by granting voluntary departure if necessary and if a request is made and giving the shortest possible periods for voluntary departure, taking into account individual circumstances*

- *Set up operational* ***assisted voluntary return programmes*** *and ensure proper dissemination of information on voluntary return and assisted voluntary return and reintegration programmes*

EU Return Policy

The Return Handbook

- *Detailed common guidelines, best practices and recommendations in the field of return, notably on all Articles of the Return Directive*

- *Provide concrete guidance for national authorities in charge of return.*

- *To be used by national authorities as a tool when carrying out return related tasks, for the purpose of training and as a point of reference for Schengen Evaluations on return*

EU Return Policy

The Return Handbook

- *Bases on the work conducted by Member States and the Commission within the "Contact Committee Return Directive"*

- *It does not create any legally binding obligations upon Member States. Only the legal acts on which it is based can be invoked before the courts*

- *Reviewed in 2017 to take into account Recommendations*

Additional measures

- *Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals*

- *Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air*

- *Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (2004/573/EC)*

- *Council Decision 2004/191/EC setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC*

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READMISSION AGREEMENTS

A key element of the overall EU immigration policy

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Readmission Agreements

- ***Readmission of own nationals:***

  an obligation under international law

- ***Rationale for readmission agreement:***

  setting swift administrative procedures for the identification of persons illegally staying and for the delivery of travel documents

Readmission Agreements

- ***EU Competence***
  - ✓ Article 79(3) of TFEU (explicit legal basis)

- ***Selection criteria set by the Council***
  - ✓ migration pressure exerted by third country
  - ✓ geographical position relative to EU
  - ✓ geographical balance and regional coherence
  - ✓ added value of EU agreement

Readmission Agreements

Content of EU readmission agreements:

- Fairly standard but each negotiation has its own dynamic
- Definitions and fundamental principles (non-affection)
- Readmission obligations of the other party (nationals, TCN)
- Readmission obligations of the EU (nationals, TCN)
- Procedure (principles, accelerated, readmission application, means of evidence, time limits, transfer modalities, readmission in error)
- Transit operations
- Costs

Readmission Agreements

Content of EU readmission agreements:

- Data protection and relation to other international obligations
- Joint readmission committee and implementing protocols
- Relations to bilateral agreements of Member States
- Territorial application
- Entry into force
- Annexes (common list of documents to be considered as proof or prima facie evidence of nationality or conditions for the readmission of TCN; readmission application; transit application)

Readmission agreements with the EU

Concluded: *Hong Kong, Macao, Sri Lanka, Albania, Russian Federation, Ukraine, FYROM, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey, Cape Verde, Belarus*

Under negotiations: *Tunisia, Jordan, Nigeria, Morocco, China*

Readmission arrangements

- Pragmatic approach to improving the cooperation on readmission in practice
- Legally non-binding instruments (joint way forward, Good practice, standard operating procedures), setting out a common understanding of the operational steps and timeline in the readmission process (identification, issuance of travel documents, return operations)

- *2016: Afghanistan*
- *2017: Guinea, Bangladesh*
- *2018: Ethiopia, The Gambia, Ivory Coast*

Thank you for your attention

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