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Delegations will find attached the outcomes of the discussion on return sponsorships held at the informal VTC meeting of the IMEX (expulsion) Working Party on 30 November 2020, on the basis of the Presidency Paper "Requirements for functioning return sponsorships in practice".

**Presidency progress report: Outcome of IMEX Working Party discussions on return sponsorship**

On the basis of the discussions held among Member States in the IMEX Working Party meetings on 26 October 2020 and on 30 November 2020, the Asylum Working Party meeting on 9 November and the clarifications provided by the European Commission in those circumstances, the German Presidency presents this progress report to contribute to Member States' understanding of the new concept of return sponsorship as proposed by the Commission and its possible *modus operandi* at the national and European levels. These discussions show that a majority of Member States welcome return sponsorship as a new concept while additional examination of the details of the legislative proposals and of the actual functioning of the system is needed.

This progress report is of course without prejudice to any possible future changes by Member States to the text proposed by the Commission. The German Presidency is looking forward to continuing the discussion on the new concept of return sponsorship and its possible operational implementation during the Portuguese presidency.

## PROGRESS REPORT ON THE OF DISCUSSIONS ON RETURN SPONSORSHIP

1. On 23 September 2020, the European Commission presented a New Pact on Migration and Asylum, accompanied by several legislative proposals. The Pact and the legislative proposals include elements on further developing and strengthening return procedures in the Member States, and fostering cooperation on readmission among Member States and with third countries, aiming at the establishment of a common European system for return. A key element is that of return sponsorship, as set out in the proposal for an Asylum and Migration Management Regulation (AMR).

Return sponsorship is one of the solidarity contributions specified in Article 45(1) (b) AMR. Its main purpose is to increase the Member States' capacity to return and to ensure that returns take place as swiftly as possible. It is also intended as a measure to make returns more effective through mutual support and increased cooperation, especially to the benefit of Member States under migratory pressure according to Article 53 AMR and of those in a situation of crisis according to Article 2(1) of the Crisis Regulation which is also part of the new reform proposals. Return sponsorship can also play a role to the benefit of Member States affected by disembarkations following Search and Rescue operations in accordance with Article 48(2) AMR.

Article 55 AMR establishes that a Member State may support another Member State to return illegally staying third-country nationals. In such cases, the sponsoring Member State, acting in close coordination with the benefitting Member State, is supposed to make every effort to carry out the return of those illegally staying third-country nationals directly from the territory of the benefitting Member State. If (and only if), despite the common efforts and the support provided by Frontex, the Commission and the Return Coordinator, the persons concerned do not return or are not removed within eight months (or within four months in crisis situations under Article 2(7) of the Regulation on Crisis Management), the benefitting Member State transfers those persons onto the territory of the sponsoring Member State to finalise the return procedures from there.

For such situations, the sponsoring Member State will receive a contribution of EUR 10,000 from the EU AMIF as set out in Article 72 AMR. In addition, the sponsoring and benefitting Member States can be supported through AMIF national programmes and, if needed, may be supported through the thematic facility.

During the return sponsorship procedures, all parties involved must make the best interests of the child a primary consideration and take due account of family unity and the rights and special needs of vulnerable people.

At the IMEX meeting on 30 November, the Commission provided in-depth clarifications about the concept of return sponsorship, including on the following aspects:

- **Choice of nationalities:**

Article 51 AMR, as proposed by the Commission, provides that, if the Commission after a thorough assessment of the migratory situation concludes that a Member State is under migratory pressure, the Commission submits a report on migratory pressure where it identifies the capacity of the Member State and the measures that are appropriate to address the situation as well as the expected timeframe for their implementation. The report would therefore also include the nationalities of irregular migrants for whom the Member State under pressure needs support.

On the basis of this report, and taking into account the measures indicated therein, Member States willing to act as sponsors could indicate it in their Solidarity Response Plans and, according to Article 52(3) AMR, must indicate the nationalities that they intend to sponsor (“framed choice”). This is done by the sponsoring Member State, based on considerations such as the good level of cooperation with certain third countries or the presence of embassies or consulates of specific third countries on their territory. The Commission expressed confidence that – on the basis of an analysis of Member States’ returns during the last years - Member States would be able to provide some form of support as part of the return sponsorship in all situations. At the same time, the Commission stressed that several measures are being taken in the context of the implementation of the new Pact to foster cooperation by uncooperative third countries and improve the overall EU performance on return.

Where the Commission considers that the solidarity contributions indicated in the Solidarity Response Plans by the Member States do not correspond to the needs identified in the report on migratory pressure provided for in Article 51, it shall convene the Solidarity Forum according to Article 52(4) and invite the Member States to adjust the type of measures proposed.

The Commission, and particularly the Return Coordinator, with the support of Frontex, will play a crucial intermediary role in this context by matching supply and demand on return support. In this exercise, the Return Coordinator could contribute to reducing the risk that the sponsoring Member State has to deal with migrants whom it will not be able to return. This would help Member States in identifying the measures that they could offer and differentiate as much as possible (in terms of nationalities) the return sponsorship offers that Member States may make. However, in principle and where appropriate, it is possible (and may even be desirable) that

several Member States provide sponsorship for a specific nationality, as long as it is clear how the obligation of each of these Member States translates into the solidarity mechanism.

Within two weeks from the submission of the Solidarity Response Plans referred to in Article 52(3) or, where the Solidarity Forum is convened pursuant to Article 52(4), within two weeks from the end of the Solidarity Forum, the Commission shall adopt an implementing act laying down the solidarity contributions, including where necessary return sponsorships. The return sponsorship contributions will be the ones set by the Member States in their Solidarity Response Plans (where relevant adjusted during the Solidarity Forum).

The choice of the individuals to be allocated to the sponsoring Member State (respecting the nationalities previously identified) lies with the benefitting Member State, that is required to respect the obligation stemming from the implementing act. However, the transfer shall not take place when the individual concerned represents a danger to national security or public order.

- **Start of the 8 months period (Article 55 (2) AMR):**

The 8 months period starts as a rule on the day of adoption of the implementing act referred to in Article 53 AMR. This is going to be the case for those irregular migrants who are already subject to a return decision when the implementing act is adopted.

However, the 8-month period will start counting from the moment in which the irregular migrant receives a return decision when the person concerned is not yet subject to it on the day in which the implementing act is adopted.

In the specific case of an irregular migrant concerned by sponsorship who is subject to a return decision but who still has a right to remain in the context of an examination of an application for international protection (e.g. due to an appeal against a negative decision), the 8-month period will start counting when the return decision becomes enforceable – i.e. when the person concerned no longer has a right to remain and is no longer allowed by a court to remain (Article 54 of the amended proposal for an Asylum Procedure Regulation).

In the Commission's view, 8 months is an appropriate and sufficient period for the return of irregular migrants of the nationalities chosen by the sponsoring Member State, taking into account the general duration of the return procedure in such cases.

- **Transfer after 8 months:**

The procedural provisions applicable for relocation of persons as referred to in Article 45 (1) (a) and (c) AMR are also applicable in case of transfer of returnees to the sponsoring Member States after 8 months of sponsorship, if return has not taken place.

When the 8-month period expires in each individual case, the benefitting Member State shall immediately inform the sponsoring Member State that the procedure set out in Article 57(5) to (10) shall be applied (Article 57 (4)).

Where there are no reasonable grounds to consider the person concerned a danger to national security or public order pursuant to Article 57(2), the benefitting Member State shall transmit to the Member State of relocation as quickly as possible the relevant information and documents on the identified returnee. The sponsoring Member State shall verify that there are no reasonable grounds to consider the person concerned a danger to its national security or public order and confirm within one week that it will receive the person concerned (Articles 57 (6) and (7)). Persons who are for reasonable grounds considered a danger to national security or public order must not be relocated. In that case, another individual from the same nationality has to be allocated to the sponsor.

Within one week from that confirmation, the benefitting Member State shall take a transfer decision (Article 57 (8)).

The benefitting Member States notifies the person concerned in writing without delay of the decision to transfer him or her to that Member State. The person concerned can challenge the transfer decision pursuant to Article 33 AMR (which is referred to in Article 57(10) AMR). If the court grants suspensive effect pending the outcome of the appeal or review, the implementation of the transfer shall be suspended until the final decision.

The benefitting Member State has to carry out the transfer within 4 weeks (Article 57 (9) AMR) of the confirmation by the sponsoring Member State or of the final decision on an appeal or review where suspensive effect was granted. To cover the transfer, the benefitting Member State shall receive a contribution of 500 EUR for each person subject to relocation, as set out in Art. 72 (2) AMR.

Once transferred to the sponsoring Member State, the migrant will continue to be in a situation of illegal stay, except if this Member State decides to grant a permit or authorisation to stay in accordance with its national law. Moreover, it will be a decision of the sponsoring Member State of whether to mutually recognise the return decision issued by the benefitting Member States or to issue a new one.

The rules on information on the status of transfer of the third-country national transferred in line with the procedure set out in Articles 57 and 58 AMR have not been specified in the amended proposal for the Eurodac Regulation. These elements will need to be reflected in the negotiations.

The Commission will, by means of implementing acts, adopt uniform conditions for the preparation and submission of information and documents for the purpose of the transfer.

- **(Subsequent) asylum applications:**

The Commission proposal does not explicitly regulate the responsibility of the sponsoring Member State in regards to applications for international protection. These elements will need to be clarified during the negotiations.

It is however understood that, if an irregular migrant submits a subsequent application before the 8-month sponsorship period expires, the period would stop to run. The subsequent application should be dealt with by the Member State responsible (in principle the benefitting Member State) in accordance with the rules set out in APR.

If the irregular migrant submits a subsequent application after transfer to the sponsoring Member State, with or without new grounds, the sponsoring Member State should be responsible for the processing of the subsequent application in accordance with the rules set out in APR. This is not contrary to the principle that the application shall be examined by a single Member State, as it is only the subsequent application that must be examined.

If the irregular migrant makes a first application for international protection on the territory of the Member States after being transferred to the sponsoring Member State, the sponsoring Member State should determine responsibility for examining that application pursuant to the criteria set out in Part III of AMR. If no Member State can be designated as responsible pursuant to those criteria, the sponsoring Member State should be the Member State responsible and must examine the application pursuant to the rules set out in APR.

The responsibility of the sponsoring Member State ends with the actual return of the migrant concerned.

- **Availability of the migrants for the purpose of sponsorship (detention and alternatives to detention):**

For return sponsorship to work smoothly, it is necessary that the irregular migrants concerned are available during the whole return procedure and that their absconding is successfully prevented. It is therefore the responsibility of the benefitting Member State to take all necessary measures to ensure that irregular migrants are available during the whole return procedure, including during the 8-month period of sponsorship.

The grounds and maximum duration for detaining an irregular migrant are those outlined in the Return Directive. In the context of the return border procedure the grounds and duration of detention are those set out in Article 41a (5) and (6) APR, which in the Commission's view represent a *lex specialis* in relation to the provisions of the Return Directive. After the end of the 12-week period for the return border procedure, the provisions of the (recast) Return Directive apply.

The AMR does not specify what would happen in a situation in which an irregular migrant subject to sponsorship absconds, notably how the 8-month period would be counted. This element will need to be clarified during the negotiations.

If the returnee has been transferred to the sponsoring Member State after the end of the 8-month period set out in Article 55(2) AMR, a new detention decision is necessary if the sponsoring Member State intends to keep the migrant in detention and provided the conditions set out in the Return Directive are met. The maximum period of detention as set out in the Return Directive (6 months + 12 months) and possible national provisions setting out a shorter detention period have to be respected. Any detention having taken place during the return border procedure is part of the maximum period of detention set out in the Return Directive.



- **Third country cooperation:**

Return sponsorship can only achieve its full potential within the 8 months period set out in Article 55(2) AMR if Member States improve their national return procedures where necessary (including by closing loopholes with asylum procedures) and if they are implemented in close cooperation between countries of origin, the sponsoring MS and the benefitting MS.

The Commission and the Member States must be aware of their responsibility for making sure that third country cooperation improves substantially. In order to improve cooperation with third countries, all relevant and available instruments should be used in a situation-appropriate manner and tailored to the relevant third country, namely:

- Diplomatic contacts by the Commission and Member States in the framework of comprehensive, mutually beneficial partnerships with third countries;
- Existing and future readmission agreements and arrangements;
- the visa leverage mechanism set in Article 25a Visa Code;
- Article 7 AMR that outlines that measures from relevant EU- policy areas can be taken to improve the readmission cooperation of a specific third country;
- the comprehensive coordination mechanism adopted by Coreper (doc. 8954/1/20).

The Commission's report on third countries' cooperation in the area of return, pursuant to Article 25a of the Visa Code, is an important basis for any possible measures from relevant EU-policy areas adopted by the Commission according to Article 7 AMR or as part of the comprehensive coordination mechanism adopted by Coreper in June 2020.

2. On the basis of the Presidency's discussion paper doc. 13261/20, the following specific questions were discussed with Member States and Schengen associated countries at the IMEX meeting on 30 November 2020:

- a) how contributions by sponsoring Member States can best be organised in the benefitting Member State;
- b) how sponsoring Member States and benefitting Member States can best coordinate their contributions with one another;
- c) which steps should be taken in the benefitting Member States to ensure that the eight-month deadline for returns can be met;

d) which contribution can be made by the Commission – especially the new Return Coordinator and the High Level Network – and Frontex to ensure that return sponsorship succeeds in practice.

#### **a) Possible support measures by sponsoring Member States**

In its Report on Migratory Pressure, the Commission will identify, based on Article 51 (3) AMR, the needs of Member States under migratory pressure. It will also identify appropriate measures that could be taken by contributing Member States. In the Solidarity Response Plan referred to in Article 52 AMR, Member States willing to be return sponsors indicate the number and nationalities of the migrants to sponsor.

According to Article 55(4), sponsoring Member States can help with the following return activities (non-exclusive list): counselling on return and reintegration; support with voluntary return – being a priority also under return sponsorship – and reintegration through national programmes and resources; dialogue and exchanges with relevant third countries for the purpose of facilitating readmission; support in verifying identity and obtaining valid travel documents; and practical arrangements for the actual return of irregular migrants.

Sponsorship measures are complementary to the ones carried out by Frontex in accordance with its mandate (e.g. the deployment of return counsellors from Frontex’ Standing Corps) and notably cover measures that the Agency cannot implement.

##### **aa) Voluntary return (Article 55 (4) (a) and (b) AMR)**

In the area of voluntary return, it would be conceivable, for instance, that a sponsoring Member State, in consultation with the benefitting Member State, might send a mobile return-counselling team (with interpreters) onto the territory of the benefitting Member State. This team would advise persons (from previously agreed countries of origin) who are obliged to return about the option to do so voluntarily. An alternative would be to conduct return counselling remotely through videoconferencing. Benefits provided by the sponsoring Member States in their national Assisted Voluntary Return and Reintegration (AVRR) programmes could also be offered (with adjustments as necessary) to third-country nationals in the benefitting Member States. Another option is putting the national AVRR programme of the sponsoring Member State – as a whole - at disposal.

Depending on the sponsoring Member State and country of destination, the AVRR support could range from payment of travel costs, financial assistance or benefits in kind before and after arrival, to payment of medical costs, support with looking for accommodation and work,

or with starting up a business in the country of origin. Persons required to return who agree to do so voluntarily could potentially be entitled to the same benefits as persons returning there from the sponsoring Member State. Support could be offered in relation to one specific country of origin – e.g. one in which the sponsoring Member State has an especially successful reintegration programme – or in relation to numerous countries of origin or particular regions.

**bb) Supporting policy dialogue with third countries and verifying identity or obtaining travel documents (Article 55 (4) (c) and (d) AMR)**

Fostering cooperation by third countries on readmission is a key element to make return sponsorship work.

In practical terms, a sponsoring Member State may support the dialogue and bilateral negotiations with specific third countries that are relevant for the implementation of sponsorship from the benefitting Member State, to facilitate the cooperation on identification and readmission of irregular migrants. The support that may be provided largely depends on the Member States and third countries concerned. Joined Member States' contacts or visits at senior level with relevant third countries may be organised and led by the sponsoring Member States for this purpose, for instance building on well-functioning bilateral agreements or arrangements.

Member States that have a substantial and long-standing experience with a particular third country and have developed successful cooperation practices should share their contacts and knowledge, e.g. on procedures in that third country, with the benefitting Member State. To ensure that return sponsorship can work smoothly, it should be explored how the identification and re-documentation processes for an irregular migrant on the territory of a Member State can be carried out by different Member States, within the framework of existing agreements and how the issue should be approached with each third country concerned in order not to jeopardise the established practices and current level of cooperation. Mandates for new negotiations of such instruments should factor in the return sponsorship operational requirements.

In addition to supporting policy dialogue with third countries, sponsoring Member States could also help further with facilitating the verification of identity and the issuance of travel documents with the authorities of third countries. The sponsoring Member State could, for

example, organise an identification mission from a third country, with the support of Frontex if necessary, in the benefitting Member State, or help the benefitting Member State to engage in political consultations with the third country. Alternatively, personnel of the sponsoring Member State could be sent to help identify third-country nationals in the benefitting Member State. This of course depends on the third country being prepared to engage in three-way cooperation. This in turn should be accompanied by the firm support of the Commission.

Sponsoring Member States could also help by checking the authenticity of documents, or by sharing experiences and knowledge with the benefitting Member States in this area.

When identification based on documentary evidence (copies of passports, fingerprints) can be carried out directly by the third country central authorities, the sponsoring Member States can support the benefitting Member States in preparing and presenting the evidence through established channels, including via the benefitting Member State central authorities, ILOs or diplomatic representation, and ensure the follow up to obtain the confirmation of identity. In this regard, it could also be explored how the sponsoring Member State may utilize digital solutions it has access to, such as the readmission case management systems in use for some countries of origin.

#### **cc) Help with arranging the enforcement of returns (Article 55 (4) (e) AMR)**

Various kinds of support are also conceivable when it comes to enforcing returns from the territory of a benefitting Member State. For instance, the sponsoring Member States could help organise return operations, for instance by taking the role of the organising Member State for a (joint) Frontex return operation, possibly starting in the sponsoring Member State with a stopover in the benefitting Member State. Further support could be provided by additional personnel from the sponsoring Member State, e.g. doctors and interpreters, notably when and if these are not available through Frontex. In the case of unescorted returns, logistical support can be provided by the sponsoring Member State, for instance by liaising with Frontex for the organisation of those flights or, where necessary, by providing a financial contribution.

## **b) Cooperation between sponsoring Member States and benefitting Member States**

It is essential that the sponsoring and benefitting Member States cooperate as early as possible and share information closely, with the support of the Commission, the Return Coordinator and the High Level Network for Return.

It is up to the sponsoring and benefitting Member States to decide on the appropriate type of cooperation for the case in question, based on the actual needs of the benefitting Member State as outlined in the report on migratory pressure, and insofar as this assists with the effective return of the person from the territory of the benefitting Member State.

In this context, it is a key question how best to coordinate such measures between Member States to ensure effective cooperation.

Article 42 AMR provides for the possibility of concluding administrative arrangements in relation to solidarity contributions. Such arrangements are not strictly necessary, but highly recommendable, e.g. in order to agree on the establishment of contact points in the sponsoring and benefitting Member States, secure communication channels, language and translation issues, access to the relevant records and/or the relevant return electronic case management system of the benefitting Member State etc.

It is not strictly necessary that personnel from the sponsoring state operates on the territory of the benefitting Member State, but if the two parties agree on this form of support measure, such provisions could also be part of their written arrangement, e.g. identification and return counselling missions of personnel from the sponsoring Member State to the benefitting Member State, access to detention centres etc.

The Commission offered to consider preparing a model arrangement to be concluded between the sponsoring and the benefitting Member States on their cooperation during the return sponsorship and/or to establish a practical manual defining the operational procedure for their cooperation (e.g. by means of an implementing act).

## **c) Steps to be taken by the benefitting Member State**

It is important that conditions in the benefitting Member State are such that return sponsorship can generally be successful within eight months. For Member States to accept or be willing to offer return sponsorship, it is important that the benefitting Member States quickly take all the necessary steps and measures for which they are responsible.

For instance, the sponsoring Member State needs to know as early as possible the identity of third-country nationals for whom the sponsorship is required. The Commission's legislative acts therefore provide for early registration and/or screening in accordance with the proposed Screening Regulation and amended proposal for a EURODAC Regulation, including the registration of third-country nationals in accordance with EURODAC. Moreover, return decisions need to be registered in the SIS return system as set out in Article 3 SIS Return Regulation (EU 2018/1860). The collection of necessary data and evidence is also extremely important, as is the documentation and secure archiving of relevant documents of the returnee including data storage media, as required by the legal provisions, insofar as this is necessary for verifying identity.

Applications to be made in accordance with readmission agreements or arrangements should be submitted by the benefitting Member State within the time limit set out in the agreement/arrangement, without prejudice to the measures possibly taken by the sponsoring Member State.

#### **d) Role of the Commission, the new Return Coordinator and Frontex**

To make sponsorship work successfully, sponsoring and benefitting Member States will need the support of the Commission, Frontex and other Member States (collective solidarity). The Commission, the new Return Coordinator, the High Level Network for Return and Frontex all play a key role in supporting and coordinating Member States' return sponsorship activities.

The **Return Coordinator** is expected to make sure that the Member States involved receive sufficient support. He/she could, for example, map the needs of the benefitting Member States and potential offers of help from sponsoring Member States, provide contacts, coordinate the supply and demand of Member States and the support of Frontex, and share / promote best practices. The Return Coordinator's work should also feed into the Commission's stepped up engagement with third states.

It is also important for the Commission to take into account any agreements reached between Member States and third countries at national and European level, to identify possible gaps with

regard to certain third countries and, where necessary, to coordinate the approaches of Member States.

In the context of return sponsorship, **Frontex** is another main actor alongside national authorities in implementing coordinated return operations and other measures in accordance with its mandate, supported by the Commission, the new Return Coordinator and the High Level Network for Return that will also be attended by a high level Frontex representative.

The support provided to the benefitting Member State by the sponsoring Member State and by Frontex should be complementary and avoid duplication. Some of the sponsor's tasks listed in Article 55 (4) AMR can also be supported by Frontex, so coordination is necessary. However, several other possible contributions that a sponsoring Member State can provide are beyond Frontex' mandate, e.g. contacts with third country diplomatic representations.

Frontex' IRMA information exchange platform could help MS share information with one another. Moreover, national Case Management Systems should be interlinked and also be connected with Frontex according to Art. 48 para (1) lit. d, Art. 49 para (1) Frontex-Regulation. A module for return sponsorships needs to be added to the Case Management Systems.

Frontex' enhanced return activities need adequate resources and must also be visible in its structure. It is therefore welcomed that Frontex intends to appoint a Deputy Executive Director for Returns and to establish a new division for returns.

**3.** The discussion of return sponsorship in the IMEX Working Party meetings on 26 October and 30 November 2020 and at the Asylum Working Party meeting on 9 November showed that the Commission's proposals were welcomed and supported by a majority of Member States as a new concept.

At the same time, some Member States were still examining the technical aspects and implications of the Commission's proposals and other Member States had concrete questions regarding their practical implementation, to which the Commission provided detailed responses during the meetings. Just very few Member States expressed objections of principle against the concept of return sponsorship, while several Member States objected to the mandatory transfer after the 8 month period, which by some of them was considered a pull-factor. The Commission, however, stressed that effective returns are the best way to deter irregular migrants. Few other Member States considered the 8 month period set out in Article 55 (2) AMR as too long.

As regards cooperation between the sponsoring Member State and the country of destination, some Member States pointed out that care should be taken to ensure that good relations are not compromised by taking on a return sponsorship. Almost all Member States, as well as the Commission, highlighted the importance of strengthening the third country cooperation to ensure for the good functioning of return sponsorship.

Several Member States saw the need to establish secure communication channels for the communication between sponsoring Member States and benefitting Member States.

Some Member States considered that the support measures mentioned in Article 55(4) may be covered also by Frontex' mandate and that further clarity on the interactions between the two is needed.

Some Member States already specified which support measures they would be able to offer as sponsors to the benefitting Member State:

- contact the embassies on their territory with a view to identification and travel document acquisition;
- send delegations to benefitting Member States;
- organise a joint identification mission from the TC to the sponsoring and the benefitting Member State.
- organise Joint Return Operations with a stopover in the benefitting Member State;
- share experience and knowhow in the areas of IT, remote activities, identification and travel documents, third country information;
- provide support through liaison officers;
- provide remote return counselling;
- provide reintegration support;
- provide logistic support;
- arrange interviews;
- facilitate dialogues and diplomatic relations with third countries inter alia by sharing contacts in third countries;
- support in voluntary return and/or opening their assisted voluntary return and reintegration schemes for returnees from the benefitting Member State.