



Council of the  
European Union

**Brussels, 25 November 2020  
(OR. en)**

**13261/20**

**LIMITE**

**JAI 1020  
MIGR 160  
RELEX 927  
COMIX 548  
ASILE 21**

**NOTE**

---

From: Presidency  
To: Working Party on Integration, Migration and Expulsion (Expulsion)  
Subject: Presidency discussion paper: Requirements for functioning return sponsorships in practice

---

With a view to the discussion at the upcoming informal VTC meeting of the IMEX (expulsion) Working Party on 30 November, delegations will find attached a Presidency Paper regarding the Requirements for functioning return sponsorships in practice.

**Presidency discussion paper: Requirements for functioning return sponsorships in practice**

On 23 September 2020, the European Commission presented proposals for a New Pact on Migration and Asylum. The reform proposals include elements on how to further develop the return procedure. A key element is that of return sponsorship, as set out in the draft of the Asylum and Migration Management Regulation (draft AMR).

Return sponsorship is one of the solidarity contributions specified in Article 45 (1) (b) of the draft AMR. In addition, it is also a measure to increase coordination and cooperation in the area of returns, especially to the benefit of Member States under migratory pressure according to Article 53 draft AMR and of Member States in a situation of crisis according to Article 2(1) of the crisis Regulation.

Article 55 draft AMR establishes that a Member State may support another Member State to return irregular staying third-country nationals. In such cases, the sponsoring Member State, acting in close coordination with the benefitting Member State, makes every effort to carry out the return of those irregular staying third-country nationals directly from the territory of the benefitting Member State. According to the Commission's statements in the IMEX Working Party on 26 October 2020, the benefitting Member State is responsible for taking appropriate measures to prevent persons required to return from absconding, in accordance with the Return Directive and the Asylum Procedures Regulation if applicable. If (and only if) 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 draft 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 10,000 euros from the EU Budget as foreseen in Article 72 of draft AMR. All parties must take sufficient account of the best interests of the child, the family unit and the rights and special needs of vulnerable groups, and also take due account of the circumstances prevailing in the third country.

Sponsoring Member States can help with the following return activities (among others): counselling on return and reintegration; support with voluntary return – including under return sponsorship priorities – 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 return. Sponsorship measures are additional to the ones carried out by Frontex in accordance with its mandate and notably include measures that the Agency cannot implement.

The Commission's new Return Coordinator, Frontex and other Member States should support the sponsoring and benefitting Member States. During its presentation of return-related aspects of the Pact on Migration and Asylum at the IMEX Working Party on 26 October 2020, the Commission explained that, in addition to being a solidarity measure, return sponsorship aims at promoting cooperation among Member States in the area of 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, which are also identified in the Report on Migration Pressure (article 51 draft AMR), and insofar as this assists with the effective return of the person from the territory of the benefitting Member State.

The discussion of return sponsorship in the IMEX Working Party showed that the Commission's proposals were welcomed by several Member States as a new concept, but that many Member States still had questions regarding the practical implementation. Germany's Council Presidency wants to take up this discussion with the Member States and explore shared approaches to making return sponsorship succeed in practice. This should contribute to our understanding of the new provisions as well as allowing an initial exchange of ideas on the framework required for this novel instrument, and on possible contributions by the Member States and the role of the actors involved.

In the German Presidency's view, this raises some practical questions. First, there is the question of how contributions by sponsoring Member States can best be organised in the benefitting Member State (see 1 below). Then, there is the question of how sponsoring Member States and benefitting Member States can best coordinate their contributions with one another (see 2 below). Another key question is to determine which steps should be taken in the benefitting Member States to ensure that the eight-month deadline for returns can be met (see 3 below). And finally, it should be discussed 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 (see 4 below). The Presidency wants to focus on these issues more closely.

## **1. Potential support measures outlined in Article 55 (4) of the draft AMR**

### **a) Voluntary return (Article 55 (4) (a) and (b) of the draft 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 use a mobile return-counselling team (with interpreters). 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 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, or 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.

### **b) Supporting policy dialogue with third countries and verifying identity or obtaining travel documents (Article 55 (4) (c) and (d) of the draft AMR)**

In order to persuade third countries to engage in dialogue with additional Member States, as envisaged by the return sponsorship policy, it will be important to involve third countries at all levels of return sponsorship policy. 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, can also share their contacts and knowledge, e.g. on procedures in that third country, with the benefitting Member State. However, if a sponsoring Member State has well established relations with a third country, care should be taken to ensure that those relations remain in place and are not compromised by taking on a return sponsorship. 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 arrangements 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 teaching benefitting Member States how to do so themselves.

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 sponsored Member States in preparing and presenting the evidence through established channels, including via the sponsored 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.

In practice, when it comes to support in verifying the identity of third-country nationals who are required to return, a number of questions are likely to require clarification – including legal questions: in order for the identity of such persons to be verified, the authorities must be able to ensure that those persons attend interviews (which means the benefitting Member State still carries the risk of such persons absconding); furthermore, regarding documentary evidence, access to the relevant records and/or the relevant return electronic case management system of the benefitting Member State is required in order to support identification effectively.

### **c) Help with arranging the enforcement of returns (Article 55 (4) (e) of the draft 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 organising Member State for a (joint) Frontex return operation. 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.

## **2. Types of cooperation between sponsoring Member States and benefitting Member States**

Apart from the question of which types of support a sponsoring Member State can provide, another key question is how best to coordinate such measures with benefitting Member States to ensure effective cooperation.

One type of cooperation framework between sponsoring and benefitting Member States is the bilateral agreement. Some Member States at the IMEX Working Party on 26 October 2020 pointed out that it might be worth including a provision on types of cooperation directly in the draft AMR; article 42 draft AMR provides for the possibility of concluding administrative arrangements, including in relation to solidarity contributions.

In its report on migratory pressure, the Commission identifies, based on Article 51 (3) of the draft AMR, the needs of Member States under migratory pressure. It also identifies appropriate measures that could be taken by contributing Member States. In the Solidarity Response Plan referred to in Article 52 of the draft AMR, contributing Member States that are also potential sponsoring Member

States could also specify which type of support they want to provide (e.g. return sponsorship) and the nationalities that would be covered.

In addition, the needs of the benefitting Member States and potential offers of help from sponsoring Member States could be regularly recorded and mapped at an early stage. Member States willing to act as sponsors could submit an outline of what they may offer (showing, for instance, which third countries they have good relations with, which third countries' embassies or consulates they have in their country, or what kind of tools they have at their disposal). The Commission, and particularly the Return Coordinator, will play a crucial intermediary role in this context by matching supply and demand. Frontex should support this activity.

Another form of cooperation could be joint offers of sponsorship from several Member States acting together as long as it is clear how the obligation of each of these Member States translates into the solidarity mechanism.

In the field of capacity building measures, Member States could also offer cooperation in the form of twinning projects, for instance, in which liaison officers or advisors are sent on secondment from sponsoring Member States to work in benefitting Member States.

### **3. Steps to be taken in the benefitting Member State**

From the perspective of the sponsoring Member State, it is important that conditions in the benefitting Member State are such that return sponsorship can generally be successful within eight months. Key to this is that the sponsoring and benefitting Member States cooperate as early as possible and share information closely, with the support of the Commission and the Return Coordinator. For Member States to accept or be willing to offer return sponsorship, it is important that the benefitting Member State quickly takes all the necessary steps and measures for which it is 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 EURODAC Regulation, including the registration of third-country nationals in EURODAC. The collection of necessary data and evidence is also extremely important,

as is the documentation and secure archiving of relevant carried documents and 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, without prejudice to the measures possibly taken by the sponsoring Member State. The benefitting Member State should also ensure, within the framework of its national law and in accordance with the relevant EU legal provisions, that persons required to return do not abscond and remain available for return. In this context, according to the Commission's statements in the IMEX Working Party on 26 October 2020, it is still necessary to clearly define the consequences that absconding have on sponsorship, notably on the calculation of the 8-month period.

Within the framework of their cooperation, the sponsoring Member State and the benefitting Member State should agree at an early stage on how language and translation issues are handled among the Member States and what access or powers are to be granted in establishments on the territory of the benefitting Member State.

#### **4. Role of the Commission and the new Return Coordinator, and role of Frontex**

The European Commission, the new Return Coordinator and the High Level Network for Return all play a key role in supporting, managing and coordinating Member States' return sponsorship activities. In this context, the Return Coordinator could, for example, provide contacts, coordinate the supply and demand of Member States and the support of Frontex, and potentially share best practice examples (e.g. drawing up a model agreement or SOP between sponsoring and benefitting Member States). The Return Coordinator's work could also feed into the Commission's stepped up engagement with partner countries.

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, to make recommendations on selection and procedures for selecting appropriate categories of people and, where necessary, to coordinate the approaches of Member States.



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, so to ensure that, generally speaking, return can be carried out within the eight-month period. The Commission's report on cooperation with third countries in the area of return, pursuant to Article 25a of the Visa Code, is an important first step in this regard. Furthermore, Article 7 of the draft AMR will work together with the comprehensive coordination mechanism adopted by the COREPER in June 2020.

Frontex could also provide complementary support for return sponsorship within the scope of its mandate, e.g. by helping Member States to share information with one another; in this context, the IRMA information exchange platform could be helpful.

Germany's Council Presidency invites the European Commission and Frontex to explain in greater detail what role they can play in supporting return sponsorship.

## **5. Questions to the Member States**

In view of the above, we invite the delegations to express their opinion on the following questions:

- (a) What specific contributions can sponsoring Member States usefully make in terms of the support measures listed in Article 55 of the draft AMR? What contributions can be made remotely and what kind of support can be given on the ground?
- (b) How can sponsoring Member States and benefitting Member States cooperate in practical terms, and how can they best coordinate their respective contributions to ensure effective returns?
- (c) What steps and measures should benefitting Member States take so that sponsoring Member States can facilitate successful returns within the eight-month period?
- d) What contributions can the Commission, in particular the new Return Coordinator, and Frontex make to ensure that return sponsorship works in practice?