**Follow up to the European Parliament non-legislative resolution****on the implementation of the Return Directive**

1. **Rapporteur:** Tineke STRIK (Greens/EFA / NL)
2. **Reference numbers:** 2019/2208 (INI) / A9-0238/2020 / P9\_TA-PROV(2020)0362
3. **Date of adoption of the resolution:** 17 December 2020
4. **Competent Parliamentary Committee:** Committee on Civil Liberties, Justice and Home Affairs (LIBE)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The resolution assesses the implementation of the Return Directive (2008/115/EC) and calls upon the Commission to address certain elements related to it. In particular, the resolution asks to prioritise voluntary returns over forced returns and that return decisions should be based on an individual assessment, subject to an appeal with automatic suspensive effect. The resolution also underlines that detention must remain a measure of last resort, which should be proportionate and last for the shortest possible time, and calls on Member States to offer effective community based alternatives to detention. The report highlights that the best interests of the child should always be the first consideration and that detention for migration purposes cannot account as being in the child’s best interests. The resolution insists on the importance of fostering cooperation with third countries and between Member States and of establishing a monitoring system following the return of irregular migrants in the country of origin. It recommends dismissing the existing derogations applicable at the EU external borders allowed by the directive as well as to review the approach to the issuance and withdrawal of entry bans.

The Commission considers return to be a key component of a comprehensive, credible and sustainable approach to migration. The New Pact on Migration and Asylum (COM(2020)609 final) addresses many of the challenges identified in the resolution. The Commission acknowledges the primacy of voluntary returns and, for this purpose, will present a new Strategy on Voluntary Return and Reintegration in 2021. This Strategy will strengthen the consistency of national approaches on return and reintegration assistance and will also be part of a broader effort to strengthen cooperation with third countries, which is also a priority of the Pact. The proposal on a recast Return Directive (COM(2018)634 final) and the amendments to the proposed Asylum Procedures Regulation further harmonise the appeal procedures in order to provide the necessary degree of uniformity and effectiveness in the Member States, while ensuring full respect of fundamental rights. To foster a more coherent approach on the granting of a period for voluntary departure and the use of detention in the Member States, the Commission proposed a common list of criteria in the recast Return Directive to assess the risk of absconding. The Commission acknowledges the importance of effective alternatives to detention and is committed to developing this area.

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

The resolution calls upon the Commission to carry out an implementation assessment (paragraph 1). The first report on the application of the Return Directive was adopted on 28 March 2014 in the context of the Communication to the Council and to the Parliament on EU Return Policy (COM(2014)199 final). The second report on the application of the directive was not published due to the adoption of the Commission proposal for a recast of the Return Directive in September 2018. The Commission continuously assesses the implementation of this directive through studies (including those carried out in the context of the European Migration Network) and Schengen evaluations (EU 1053/2013). The Commission remains committed to carrying out and publishing an implementation assessment in 2022 if the recast Return Directive will not have been adopted by then.

The Commission will continue to collect and publish qualitative and quantitative data on the implementation of the directive, notably the statistical data collected through the Regulation on statistics on migration and international protection (EC 862/2007) and the Schengen Information System for return (EU 2018/1860), and to provide guidance and support to the Member States in this respect (paragraph 2). The revision of the Regulation on Migration Statistics (EU 2020/851), adopted in 2020, will help improve data collection on returns (i.e. apprehensions and voluntary returns). The European Migration Network (Return Expert Group) will continue to collect and publish quantitative and qualitative data on a range of return related topics (i.e. on detention and alternatives to detention).

The Commission continues to consider voluntary returns as the primary option for the return of irregular migrants, having primacy over forced returns (paragraph 10). As part of the implementation of the new Pact on Migration and Asylum, the Commission will present a new Strategy on Voluntary Return and Reintegration in 2021. The Commission also remains committed to encouraging Member States to develop effective frameworks for access to voluntary return programmes and reinforcing the effectiveness, attractiveness and accessibility of the voluntary return programmes set up in the Member States. The Commission will promote complementarities with EU-funded actions in the countries of return. In line with this objective, the Commission remains committed to continue providing funding for assisted voluntary return programmes, notably in the context of the implementation of the new Asylum, Migration and Integration Fund for the period 2021-2027 (paragraph 11). The Commission recognises the importance of monitoring and assessing voluntary return and reintegration programmes and their effectiveness and will further develop these points in the upcoming Strategy on Voluntary Return and Reintegration (paragraph 35). The Commission is promoting the exchange of good practices on reintegration, including on the monitoring, in several fora, including the European Migration Network.

The Commission regularly verifies and monitors the application of return rules by means of exchanges with Member States’ competent authorities and Schengen evaluations carried out also with the support of the European Union Agency for Fundamental Rights. In its activities, the Commission is focussing on the respect of fundamental rights in return procedures, including on the availability and effectiveness of forced-return monitoring systems. The Commission remains committed to continue monitoring the implementation of the directive and, as the guardian of the Treaties, to commencing infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union whenever it considers it necessary (paragraphs 4 and 36).

Frontex is reinforcing its internal mechanism for fundamental rights monitoring, ensuring the availability of additional resources to the Fundamental Rights Officer (including a deputy Fundamental Rights Officer and at least 40 fundamental rights monitors). The Management Board of Frontex adopted a decision on 20 January 2021 setting out special rules for ensuring their full independence in the performance of their duties (paragraph 35).

The Commission will continue to work closely with the European Parliament and with the Council to promote an effective return policy that respects fundamental rights and guarantees adequate procedural safeguards.