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Voluntary return and the limits of individual responsibility in the EU Returns Directive

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Propositions related to the dissertation

VOLUNTARY RETURN AND THE LIMITS OF INDIVIDUAL RESPONSIBILITY IN THE EU RETURNS DIRECTIVE

by Christian Mommers

1. While the individual responsibility inherent in voluntary return in the EU Returns Directive comprises several clear obligations on third-country nationals, the key to a fair and transparent application of the Directive's rules lies in the recognition of the limits on such obligations.
2. Rather than implying an obligation to go 'embassy shopping,' the definition of obligatory destinations in the Directive only requires third-country nationals to focus their return efforts towards a very limited number of specific countries.
3. The lack of a sufficiently narrow circumscription of the risk of absconding, in the current Directive and the recast proposal, presents a huge threat to the effective enjoyment of the right to a voluntary departure period by third-country nationals.
4. Despite frequent resort to these concepts by EU member states, questions of non-compliance, non-cooperation and non-return should at most play a very marginal role in decisions on the granting and length of voluntary departure periods, and in most cases are immaterial.
5. The mere fact that a return is 'voluntary' within the meaning of the Directive is neither a guarantee that such a return is compliant with EU fundamental rights, nor that it is experienced by third-country nationals as more humane and dignified than removal.
6. The adage 'no rights without obligations' can only have meaning if the reverse is also true: no obligations without rights.
7. The fact that third-country nationals are allocated primary responsibility for return should not mask the fact that effective voluntary return remains dependent on a cooperative and negotiated approach between the individual and the EU member state.
8. EU member states' broad appeals to individual responsibility are a poor substitute for addressing the problems arising out of the Directive's structural gaps in relation to the treatment and status of persons whose return cannot be effectively enforced, including many stateless persons.

9. When EU member states talk about 'individual responsibility' for return, they mainly seek to use it as a tool to circumvent potential problems arising out of their own obligations, or the failure of countries of return to meet their obligations.
10. Increasing reliance on informal arrangements for return and readmission may be a useful tool for EU institutions and member states, but constitutes a significant threat to legal certainty and the effective protection of fundamental rights in return procedures.
11. The priority of voluntary return may be reshaping not only international cooperation with countries of return, but also the understanding of the customary legal obligation to readmit nationals, which could have considerable unintended negative effects for EU return policy.
12. The Commission's soft law guidance in recent years, as well as its recast proposals, contain several contradictions which should be addressed, especially as regards the limiting of access to a voluntary departure period, while simultaneously seeking to expand voluntary return assistance.