

Common standards and procedures for returning illegally staying third-country nationals. "Return Directive"

2005/0167(COD) - 12/09/2007

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Manfred **WEBER** (EPP-ED, DE) amending, under the 1st reading of the codecision procedure, the proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals.

The main amendments are as follows:

Purpose and scope: it is clearly stated that the Directive aims to set out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals. Therefore, the Directive does not concern the refoulement of refugees, in terms of Council Directive 2005/85/EC on procedures for granting and withdrawing refugee status.

Definitions of 'transit zones': new definitions have been introduced in the provision on the 'risk of absconding', 'temporary custody facilities' and 'vulnerable persons'. In addition to these, there is also the definition of 'transit zones' as a clearly designated and limited area located in an airport, in a port or at the external land borders on the territory of a Member State, where a third-country national, who has not crossed a border control and has not yet passed a checkpoint, is temporarily placed until a decision concerning the entry or the refusal of entry into the territory of the Member State in question is taken by the competent authorities of that State.

Non-refoulement, family relationships, best interest of the child and state of health: it is specified in an amended article that, when implementing this Directive, due account should be taken of: (a) the principle of non-refoulement; (b) family relationships, in accordance with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as concerns the nature of the third-country national's family relationship and the existence of family ties with his/her country of origin; (c) the best interest of the child; and (d) the state of health: a person suffering from a serious illness shall be granted an autonomous residence permit conferring a right to stay so as to have adequate access to healthcare in a Member State.

Voluntary return policy: it is planned that, in principle, the return decision shall provide for an appropriate period for voluntary departure of at least four weeks, unless a competent administrative or judicial body has objective reasons to believe that the person concerned might abscond during such a period or that such a person poses a threat to public order, public security or national security. This period can be extended if specific circumstances arise. In addition, it is planned that to ensure effective return, Member States should provide material assistance and counselling.

Humanitarian stay: Member States may, at any moment, decide to grant an autonomous residence permit or another authorisation offering a right to stay for humanitarian reasons to a third-country national staying illegally on their territory. In this event no return decision shall be issued or where a return decision has already been issued, it shall be withdrawn. Moreover, only an authorised doctor should be authorised to establish the inability of a third-country national to travel or be transported owing to his or her physical or mental condition.

Collective expulsions: all return measures must be based on a decision taken in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits the collective expulsion of foreigners.

Detention of people staying illegally: the 'temporary custody' planned in the initial proposal of the Directive should be changed to 'detention', given the deprivation of freedom it entails and its duration. This proposal for a change of terminology also applies to the whole of Chapter IV. It is also requested that all possibilities for giving prospects or a useful occupation to a third-country national who is in temporary custody should be considered. Temporary custody shall be maintained for as long a period as necessary to ensure successful removal and shall be justified only for as long as removal arrangements are in progress. When it appears that removal within a reasonable period is unrealistic for legal or other considerations, temporary custody shall cease to be justified. Member States shall provide for a period of three months after which temporary custody shall cease to be justified. Member States may shorten this period or extend this period up to 18 months in cases in which, in spite of all reasonable efforts, the removal operation is likely to last longer due to a lack of cooperation on the part of the third-country national concerned or due to administrative delays or if the person concerned represents a proven threat to public order or national security. Temporary custody shall cease in the event of removal becoming impossible.

Temporary custody orders shall be subject to review by judicial authorities within 48 hours from the beginning of the temporary custody (not 72 hours as initialled suggested). Furthermore, it is specified that temporary custody orders must state the reasons in fact and law and must be issued as an act separate from the return and removal decision. The conditions of temporary custody shall be supervised by the judicial authorities.

Additional safeguards in the event of detention: MEPs believe that safeguards must be offered to people in temporary custody: the right of family unity, the right to medical assistance and the right to education for children. It is also included that victims of torture are cared for and treated properly. Moreover, Member States are called to define and publish minimum standards at national level for a common code of practice concerning procedures in temporary custody facilities. In this respect, a new article is included detailing the conditions of temporary custody for children and families (particularly, children with families shall be kept in temporary custody only as a measure of last resort and for the shortest appropriate period of time; children with families kept in temporary custody pending removal shall be provided with separate accommodation guaranteeing adequate privacy etc., and in any case, the best interest of the child shall remain a primary consideration).

Changes in the situation of the country of origin of the person to be returned: the re-entry ban may be withdrawn at any time, in particular in cases in which the third-country national concerned has his or her life threatened owing to changes in his or her country of return entailing a risk of persecution. In addition, a withdrawal decision taken by a Member State shall be effective throughout the Union.

Re-entry ban: a re-entry ban may also be withdrawn where there are other positive reasons for its withdrawal (e.g. in the event of a humanitarian catastrophe in the country of origin and following a specific decision by the Council, in particular).

Coercive measures: these measures are much more clearly managed to avoid any excess in their application (particularly in terms of vulnerable persons).

Remedies: Member States shall also ensure that the third-country national concerned has the right to an effective judicial remedy before a court or tribunal to appeal against or to seek review of a return decision, removal order, temporary custody order or re-entry ban. The legal remedies must be communicated to the person concerned in a language that they can understand.

European Parliament Ombudsman for return: a Parliament Ombudsman has been established with clearly defined duties, and he is given powers making him a full partner in the return process, this is to ensure respect for human rights during the return procedure.

NGOs: Member States shall ensure that relevant international and non-governmental organisations are involved during removal procedures in order to guarantee compliance with proper legal procedure.

Lastly, it should be noted that with this Directive, this is the first time that the codecision procedure has applied to the European Parliament's consideration of a draft common return procedure directive.