Basic information

2005/0167(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Common standards and procedures for returning illegally staying third-country nationals. "Return Directive" Repealed by 2025/0059(COD) See also 2014/2701(RSP) See also 2016/0407(COD) **Subject** 7.10.04 External borders crossing and controls, visas 7.10.08 Migration policy	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	WEBER Manfred (PPE-DE)	14/09/2005

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	BEGLITIS Panayiotis (PSE)	19/10/2005
DEVE Development	CARLOTTI Marie-Arlette (PSE)	27/03/2007
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2863	2008-04-18
Justice and Home Affairs (JHA)	2783	2008-06-05
Justice and Home Affairs (JHA)	2853	2008-02-28
Justice and Home Affairs (JHA)	2838	2007-12-06
Justice and Home Affairs (JHA)	2827	2007-11-08
Transport, Telecommunications and Energy	2913	2008-12-08

European Commission

Commission DG	Commissioner
Justice and Consumers	BARROT Jacques

Key events

Date	Event	Reference	Summary
01/09/2005	Legislative proposal published	COM(2005)0391	Summary
29/09/2005	Committee referral announced in Parliament, 1st reading		
12/09/2007	Vote in committee, 1st reading		Summary
20/09/2007	Committee report tabled for plenary, 1st reading	A6-0339/2007	
08/11/2007	Debate in Council		
06/12/2007	Debate in Council		Summary
28/02/2008	Debate in Council		Summary
18/04/2008	Debate in Council		Summary
17/06/2008	Debate in Parliament		
18/06/2008	Decision by Parliament, 1st reading	T6-0293/2008	Summary
18/06/2008	Results of vote in Parliament		
08/12/2008	Act adopted by Council after Parliament's 1st reading		
16/12/2008	Final act signed		
16/12/2008	End of procedure in Parliament		
24/12/2008	Final act published in Official Journal		

Technical information

Procedure reference	2005/0167(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealed by 2025/0059(COD) See also 2014/2701(RSP) See also 2016/0407(COD)
Legal basis	EC Treaty (after Amsterdam) EC 063-p1
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/30095

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary

Committee opinion	AFET	PE367.949	28/04/2006	
Committee draft report		PE374.321	13/06/2006	
Amendments tabled in committee		PE378.672	27/09/2006	
Amendments tabled in committee		PE388.561	12/06/2007	
Committee opinion	DEVE	PE386.728	22/06/2007	
Committee report tabled for plenary, 1st reading/single reading		A6-0339/2007	20/09/2007	
Text adopted by Parliament, 1st reading/single reading		T6-0293/2008	18/06/2008	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	03653/2008/LEX	16/12/2008	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2005)0391	01/09/2005	Summary
Document attached to the procedure	SEC(2005)1057	01/09/2005	Summary
Document attached to the procedure	SEC(2005)1175	04/10/2005	Summary
Commission response to text adopted in plenary	SP(2008)4439	16/07/2008	
For information	C(2017)1600	07/03/2017	
For information	C(2023)1763	16/03/2023	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2008/0115
OJ L 348 24.12.2008, p. 0098 Summary

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

2005/0167(COD) - 16/12/2008 - Final act

PURPOSE: to lay down a common set of rules applicable to thirdcountry nationals staying illegally within the territory of any Member State.

LEGISLATIVE ACT:Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals.

CONTENT: the Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.

To respond to this request, the European Parliament and the Council have adopted, following an agreement reached at first reading, a Directive setting out clear, transparent and fair rules to provide for an effective return policy as a necessary element of a well managed migration policy. A horizontal set of rules are established which are applicable to all third-country nationals who do not or who no longer fulfil the conditions for entry, stay or residence in a Member State. This Directive promotes and encourages the **voluntary return** of illegal immigrants. The rules can be summarised as follows:

I. Scope and objective: this Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations. This Directive shall not prevent Member States from adopting a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation, without prejudice to the procedural safeguards available under Chapter III of this Directive and under other relevant provisions of Community and national law.

II. Termination of illegal stay: the principle of this Directive is to provide **a 2-step procedure**: firstly a “return decision” which opens up a “voluntary return” period, which may be followed by a “removal decision” ending in “explusion”.

1) Return decision: Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in the Directive. Third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State immediately. Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In that event no return decision shall be issued. If a third-country national staying illegally on the territory of a Member State is the subject of a pending procedure for renewing his or her residence permit or other authorisation offering a right to stay, that Member State shall consider refraining from issuing a return decision, until the pending procedure is finished.

The length of the **entry ban** shall be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed **five years**. It may however exceed five years if the third-country national represents a serious threat to public policy, public security or national security. Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons. Member States may withdraw or suspend an entry ban in individual cases or certain categories of cases for other reasons.

Voluntary departure: a return decision shall provide for an appropriate period for **voluntary departure** of between seven and thirty days. The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to leave earlier. The period for voluntary departure may be extended by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links. If there is a risk of **absconding**, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days.

2) Removal: **w**here Member States use - as a last resort – coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportionate and shall not exceed reasonable force. They shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned. In carrying out removals by air, Member States shall take into account the Common Guidelines on security provisions for joint removals by air annexed to Decision 2004/573/EC. Member States shall provide for an effective forced-return monitoring system. Moreover, Member States may **postpone** removal for an appropriate period taking into account the specific circumstances of the individual case.

Return and removal of unaccompanied minors: before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

More favourable provisions: this Directive shall be without prejudice to any provision which may be more favourable for the third-country national, laid down in the Community acquis relating to immigration and asylum. It shall be without prejudice to the right of the Member States to adopt or maintain provisions that are more favourable to persons to whom it applies provided that such provisions are compatible with this Directive.

Non-refoulement, best interests of the child, family life and state of health: provisions are introduced so that the Directive shall take due account of the best interests of the child; family life; the state of health of the third-country national concerned, and respect the principle of non-refoulement.

III. Procedural safeguards:the Directive sets out a number of procedural safeguards such as:

- the right to have a written or oral translation of the main elements of decisions related to return including information on the available legal remedies in a language the third-country national understands or may reasonably be presumed to understand;

- the right to be afforded an effective remedy to appeal against or seek review of decisions related to return. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge (Member States have until 24 December 2011 to comply with this provision);

- the right to family unity, emergency medical care, basic education to minors, ….pending their voluntary return or their removal.

IV. Detention for the purpose of removal: unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when there is a **risk of absconding** or the third-country national concerned avoids or hampers the preparation of return or the removal process. Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence. Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered, Member States shall either provide for a speedy judicial review of the lawfulness of detention. The third-country national concerned shall be **released immediately if the detention is not lawful**. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

Duration of the detention period: the maximum duration of detention shall **not exceed a limited period of six months**. This period may be extended for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to a lack of cooperation by the third-country national concerned, or delays in obtaining the necessary documentation from third countries.

Conditions of detention: detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.Relevant and competent national, international and nongovernmental organisations and bodies shall have the possibility to visit detention facilities. Such visits shall be subject to authorisation.Third-country nationals in detention shall be allowed - on request - to establish in due time contact with legal representatives, family members and competent consular authorities.

Detention of minors and families: unaccompanied minors and families with minors shall only be detained as a measure of **last resort** and for the **shortest appropriate period of time**. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy. Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.

Emergency situation: in situations where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff, such a Member State may, as long as the exceptional situation persists, decide to allow for periods for judicial review longer than those provided for in this Directive. These specific situations shall not be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures to ensure fulfilment of their obligations under this Directive.

Reporting: the Commission shall report every three years to the European Parliament and the Council on the application of this Directive in the Member States and, if appropriate, propose amendments.The Commission shall report for the first time by 24 December 2013 focusing in particular on the additional financial and administrative impact in Member States.

Territorial application: Norway, Iceland, Switzerland and Liechtenstein are associated with the implementation of this Directive in accordance with the bilateral agreements concluded with the EU on the Schengen Acquis. The United Kingdom and Ireland shall not participate in the adoption or the implementation of the text, in accordance with the Protocol annexed to the Treaty on the European Union. Denmark will not participate either in the adoption of this text but may decide within a period of six months after the adoption of this Directive, whether it will implement it in its national law.

ENTRY INTO FORCE: 13.01.2009.This Directive replaces the provisions of Articles 23 and 24 of the Convention implementing the Schengen Agreement.

TRANSPOSITION: 24.12.2010.

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

2005/0167(COD) - 28/02/2008

The Council took note of the state of play on a draft proposal on common standards and procedures in Member States for returning illegally staying non-EU nationals and Ministers had a full exchange of views on outstanding issues.

Since December 2007, significant progress has been made both in the discussions with Parliament and within the competent Council bodies.

The European Council has instructed the Council and the Parliament to continue their efforts to find a basis for agreement on this directive. The European Council has also pointed to the need for effective readmission and return policies. The Slovenian Presidency, in taking forward work on the directive, will continue to emphasise the need for an effective and efficient return policy. The Presidency is counting on the full support of the Member States in taking this work forward.

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

2005/0167(COD) - 01/09/2005 - Legislative proposal

PURPOSE: to provide common rules concerning return, removal, use of coercive measures, temporary custody and re-entry for illegally staying third-country nationals.

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTENT: An effective return policy is a necessary component of a well managed and credible policy on migration. Clear, transparent and fair rules have to be agreed which take into account this need, whilst respecting the human rights and fundamental freedoms of the person concerned.

This proposal seeks to achieve these aims as follows:

-establishing a rule that illegal stay should be ended through a fair and transparent procedure;

-promoting the principle of voluntary return by establishing a general rule that a "period for departure" should normally be granted;

-establishing – as a general principle – a harmonised two-step procedure: involving a return decision as a first step and – if necessary – the issuing of a removal order as a second step, thus aligning to a certain extent the currently divergent Member States systems.

-addressing the situation of persons who are staying illegally but who cannot (as yet) be removed;

-providing for a minimum set of procedural safeguards;

-limiting the use of coercive measures, binding it to the principle of proportionality and establishing minimum safeguards for the conduct of forced return;

-giving a European dimension to the effects of national return measures by establishing a re-entry ban valid throughout the EU;

-rewarding good compliance (including an option to withdraw any re-entry ban) and penalising non-compliance (including an option to extend any re-entry ban).

-protecting the interests of the state in cases of serious threat to national and public security (including an option to extend any re-entry ban);

-limiting the use of temporary custody and binding it to the principle of proportionality;

-establishing minimum safeguards for the conduct of temporary custody;

-addressing situations where a third-country national who is the subject of a removal order or return decision issued by a Member State is apprehended in the territory of another Member State.

The proposal does not contain an express provision on the issue of expulsion/removal for reasons of national and public security.

The most critical aspects are as follows:

Chapter I

The starting point for applying the Directive is "illegal stay". The proposal aims to establish a horizontal set of rules, applicable to any illegally staying third-country national, whatever the reason of the illegality of the stay (e.g. expiry of a visa, expiry of a residence permit, revocation or withdrawal of a residence permit, negative final decision on an asylum application, withdrawal of refugee status, illegal entrance) This proposal for a Directive does not address the reasons or procedures for ending legal residence.

Chapter II

The proposal provides for a two-step procedure, leading to the ending of illegal stay. A return decision must be issued to any third-country national staying illegally. Priority must be given to voluntary return. If the third-country national concerned does not return voluntarily, Member States shall execute the obligation to return by means of a removal order. In consultations, many Member States expressed concern that the two-step procedure could lead to procedural delays. In response to this concern, the proposal expressly clarifies that Member States are free to issue both the return decision and the removal order within one act or decision. The substantive provisions of this chapter, in particular concerning protection against removal and the possibility for voluntary return will have to be respected by Member States, notwithstanding their choice of whether to issue the return decision and removal order as two separate or one joint act or decision. The proposal provides for the introduction of a "re-entry ban", preventing re-entry into the territory of all the Member States, to accompany removal orders. The length of the re-entry ban will be determined with due consideration of all relevant circumstances of the individual case. Normally, the ban should not exceed 5 years. Only in cases of serious threat to public policy or public security, may the re-entry ban be issued for a longer period.

Chapter III

The proposal provides for a right to an effective judicial remedy against return decisions and removal orders. The judicial remedy shall either have suspensive effect or comprise the right of the third country national to apply for the suspension of the enforcement of the return decision or removal order in which case the return decision or removal order shall be postponed until it is confirmed or is no longer subject to a remedy which has suspensive effects.

Chapter IV

This chapter seeks to limit the use of temporary custody and to bind it to the principle of proportionality. Temporary custody shall only be used if this is necessary to prevent the risk of absconding and if the application of less coercive measures is not sufficient. The reasons for maintaining a person in temporary custody must be regularly reviewed by a judicial authority. Maximum time limits shall ensure that temporary custody cannot be unduly extended. This harmonisation of national rules on temporary custody is also aimed at preventing secondary movements between Member States of illegally staying persons subject to measures under this Directive.

Chapter V

This chapter provides for a flexible set of rules, applicable if a third-country national who is the subject of a removal order or return decision issued in a Member State ("the first Member State") is apprehended in the territory of another Member State ("the second Member State"). Member States may select different options, depending on the circumstances of the particular case. On the one hand, the second Member State may recognise the return decision or removal order issued by the first Member State. The financial compensation mechanism agreed upon in Decision 2004/191/EC is made applicable to these cases. Alternatively, a second Member State may ask the first Member State to take back an illegally staying third-country national or decide to launch a new/autonomous return procedure under its national legislation.

Finally, information sharing between Member states will take place in accordance with the rules concerning the establishment, operation and use of the Second Generation Schengen Information System (SIS II).

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

2005/0167(COD) - 18/04/2008

The Mixed Committee/Council took account of the latest developments in connection with a proposal for a directive on common standards and procedures in Member States for returning illegally staying third-country nationals.

In particular, it took note of the discussions held between the Presidency and the European Parliament on 9 April 2008.

The Presidency emphasised that negotiations both at Council level and with the Parliament had advanced significantly and would require compromise on the part of all. It indicated that more work was still required and whether agreement proved possible would depend in particular on the forthcoming final negotiations with the Parliament.

The Mixed Committee/Council broadly supported the Presidency's position in favour of concluding the negotiations with the Parliament.

The draft directive deals with key issues in the policy of return such as the voluntary departure of returnees, the implementation of a return decision through a removal procedure, the postponement of removal, the imposition of entry bans as a measure accompanying a return decision, the form of the return decision, the remedies against a return decision and the safeguards for a returnee pending return, the possibility of an accelerated procedure for return in certain cases and the detention of returnees and the conditions for this.

The most contentious provisions in the draft directive concern its **scope, voluntary departure, entry ban, detention of illegal nationals and their condition of detention**.

The Mixed Committee/Council committed itself to pursuing work in close contact with the European Parliament with a view to reaching agreement on the draft directive. The Slovenian Presidency has therefore prioritised work on the proposal at Council level and maintained close contact with Parliament. A trialogue at political level took place on 9 April to discuss the most contentious provisions. Another meeting at political level with the Parliament will take place on 23 April 2008.

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

2005/0167(COD) - 06/12/2007

The Presidency updated the members of the Mixed Committee on the latest developments concerning a proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals, and in particular on the outcome of the recent discussion with the European Parliament.

This proposal was submitted by the Commission in 2005 and has been examined at length under successive Presidencies. It sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.

The draft Directive deals with key issues in the policy of return such as the voluntary departure of the returnees, the execution of a return decision through a removal procedure, the postponement of removal, the imposition of entry bans as accompanying measure to a return decision, the form of the return decision, the remedies against a return decision and the safeguards for a returnee pending return, the possibility of accelerated procedure of return in certain cases and the detention of returnees and its conditions.

The Council had committed itself to pursuing work in close contact with the European Parliament with a view to reaching agreement for the draft Directive. The Portuguese Presidency has therefore prioritised work on the proposal at the level of the Council and continues to maintain close contact with the Parliament with a view to achieving agreement on the proposal.

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

2005/0167(COD) - 18/06/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 369 votes to 197, with 106 abstentions, a legislative resolution amending, under 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 report had been tabled for consideration in plenary by Manfred **WEBER** (EPP-ED, DE) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

The amendments adopted by 367 votes to 206, with 109 abstentions are the result of the outcome of a compromise reached with the Council at 1st reading. This vote opened the way for an agreement with the Council at 1st reading.

The main amendments are as follows:

Purpose: the Directive, as amended by the European Parliament and the Council, aims to encourage the “voluntary return” of illegal immigrants by harmonising the return conditions and by establishing certain safeguards. The Directive sets out a two-stage approach: firstly, a return decision which lays down a period of “voluntary return” which may be followed by a “removal decision” which leads to expulsion. If the removal order is issued by a judicial authority which believes the individual in question might abscond, the person can be placed in custody.

In this context, the Directive lays down a maximum period of detention (6 months in general) and detention conditions which guarantee, notably, the right to medical assistance and the right to education for children.

More favourable provisions: new provisions are laid down so that the Directive does not diminish the level of protection of those covered by the scope of the Directive.

Non-refoulement, best interest of the child, family life and state of health: provisions areintroduced with a view to taking due account of the best interest of the child; family life; the state of health of the third-country national concerned, and respect the principle of non-refoulement.

Return decision: clarifications have been made to this section. In principle, Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in the Directive (e.g. if a Member States issues the right to stay for humanitarian reasons). The Parliament adds a new paragraph which states this Directive does not prevent Member States from adopting a decision on the ending of legal stay together with a return decision and/or a decision on removal and/or entry ban within one administrative or judicial decision or act in accordance with the relevant provisions of Community and national law.

Entry ban: return decisions shall be accompanied by an **entry ban**. The length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed five years. In principle, it may not exceed **5 years**. Member States shall consider withdrawing or suspending an entry ban where a third-country national who is the subject of an entry ban can demonstrate that he/she has left the territory of a Member State in full compliance with a return decision. Victims of trafficking in human beings who have been granted a residence permit shall not be subject of an entry ban provided that they do not represent a threat to public policy, public security or national security. Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons. Member States may withdraw or suspend an entry ban in individual cases or certain categories of cases for other reasons.

Voluntary return: the return decision shall provide for an appropriate period for **voluntary departure** ranging between 7 and 30 days. Member States may provide in their national legislation that such period shall only be granted following an application of the third-country national concerned. The time period foreseen above does not exclude the possibility for the third-country nationals concerned to leave earlier. Member States shall, when this is necessary, extend the period for voluntary departure for an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of that period. If there is a risk of **absconding**, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent or if the person concerned poses a risk to public security, public order or national security Member States may refrain from granting a period for voluntary departure, or grant a period shorter than 7 days.

Removal and coercive measures: where Member States use - as a last resort - coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportional and shall not exceed reasonable force.

Return and removal of unaccompanied minors: new measures are provided for the return and removal of unaccompanied minors. It is provided that before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing

return shall be granted with due consideration given to the best interest of the child. In addition, before removing an unaccompanied minor from its territory, the authorities of the Member State shall be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.

Procedural safeguards:Parliament provides that return decisions and - if issued - entry-ban decisions and decisions on removal, shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies. The information on reasons in fact may be limited where national law allows for the right of information to be restricted, in particular in order to safeguard national security, defence, public security and the prevention, investigation, detection and prosecution of criminal offences.

Remedies: the third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

Safeguards must be offered to people in temporary custody such as the right of family unity, the right to medical assistance and the right to education for children. Member States shall ensure that necessary **legal assistance and/or representation be granted on request free of charge**.

Detention: a number of amendments have been made to this section. It is now stipulated that Member States may only keep in detention a third-country national, who is subject to return procedures, in order to prepare return and/or carry out the removal process, in particular when:

- there is a **risk of absconding** or

- the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as **short a period as possible** and only maintained as long as removal arrangements are in progress and executed with due diligence. When detention has been ordered by administrative authorities, Member States shall: i) either provide for a speedy judicial review (and not in 48 hours as was proposed by the committee responsible) of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention, or ii) or grant the third-country national concerned the right to take proceedings by which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible from the launch of the relevant proceedings; in this case Member States shall immediately inform the third-country national concerned about the possibility of submitting such an application.

The third-country national concerned shall be released immediately if the detention is not lawful.

In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

When it appears that a **reasonable prospect of removal no longer exists** for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be **released immediately**.

Length of detention period: the maximum period of detention shall not exceed 6 months. This period could be extended for an additional limited period of 12 months in cases where, regardless of all their reasonable efforts, the removal operation is likely to last longer due to a lack of co-operation by the third-country national concerned, or due to delays in obtaining necessary documentation from third countries.

Conditions of detention: the Directive states that detention shall be carried out as a rule in **specialised detention facilities**. Where a Member State cannot provide accommodation in a specialised detention facility and has to resort to prison accommodation, the third-country nationals under detention shall be separated from ordinary prisoners. Third-country nationals under detention shall be allowed - upon request - to establish in due time contact with legal representatives, family members and competent consular authorities. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided. Relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit detention facilities. Such visits may be subject to authorisation.

Detention of minors and families: new measures are provided for the detention of unaccompanied minors and families with minors. They shall only be detained as a measure of **last resort** and for the **shortest appropriate period of time**. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy. Minors in detention shall have the possibility to engage in leisure-activities, including play- and recreational activities appropriate to their age, and shall have - depending on the length of their stay - access to education. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. The best interest of the child shall be a primary consideration in the context of the detention of minors pending removal.

Emergency situations: a new paragraph was inserted for emergency situations, that is, in cases where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff. In this case, such a Member State may derogate from the detention conditions set out in the Directive. Member States shall not interpret these situations as a means of derogating from their general obligation to take all appropriate measures to ensure fulfilment of their obligations arising out of this Directive.

Entry into force: the Directive should enter into force within 2 years. It shall be subjected to a report every 3 years and, if appropriate, amendments shall be proposed.

Lastly, it should be noted that the **Greens/EFA and the GUE/NGL** requested that the proposed Directive be rejected, however, the request was voted against by 114 votes to 538 with 11 abstentions.

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

2005/0167(COD) - 01/09/2005 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's initial proposal for a European Parliament and Council Directive on common standards on procedures in Member States for returning illegally staying third country nationals COM(2005)0391.

1- POLICY OPTIONS AND IMPACTS

The Commission has defined and assessedfour policy options.

1.1- Option 1 - No policy change: The first option is to maintain the status quo and not seek to develop common standards on return procedures. Member States may oblige third country nationals staying illegally on their territories to leave and enforce their return – including temporary custody measures – according to their national legislation and practice. Third country nationals subject to a return decision may potentially comply with their obligation to leave by moving to another Member State. The existing community legal framework provides only for a limited and optional possibility of mutual recognition of administrative expulsion (return) decisions issued by the competent administrative bodies of another Member States for certain reasons, meanwhile return decisions quite often are issued by judicial authorities for other reasons (i.e. as a criminal sanction).

1.2- Option 2 - Adoption of a non-binding legal instrument: This second option is for common standards on return procedures to be laid down in a non-binding legal instrument, namely in an EC Recommendation of the Council and of the European Parliament. Laying down common standards on return procedures by adopting a Recommendation would mean that Member States are called on, but not placed under any legal obligation, to reach the desired and necessary level of harmonisation in this field. In spite of the undoubted common interest to tackle illegal immigration and to develop an effective return policy, due to the complexity of this issue – different roles played by Member States, and different level of exposure to the consequences of illegal migratory movements as well as the above mentioned variety of legal and administrative framework of return procedures at national level, the outcome of this option would be difficult to anticipate and/or schedule in time.

1.3- Option 3 - Gradual harmonisation by adoption of a directive on common standards of return procedures: The third option is that common standards on return procedures are laid down in a European Parliament and Council Directive with a comprehensive approach covering all relevant key aspects of return, including the ending of illegal stay, the enforcement of the obligation to return, cases of temporary custody of third country nationals subject to a return decision, access to legal remedies, prevention of re-entry of third country nationals subject to return decisions or removal orders as well as the procedures to be followed in case of apprehension of those persons in another Member State. This Directive by definition would be binding on the Member States as regards the objectives to be achieved, but they could take into account their national legal and institutional circumstances when translating those common standards into their national legal and administrative system.

1.4- Option 4 - Full harmonisation by adoption of a regulation on return procedures: This option would provide for full harmonisation of return procedures by laying down detailed procedural rules for all the elements listed under Option 3 and by establishing a single forum for legal remedies in relation to return decisions, removal and temporary custody orders. This would take the legal form of a European Parliament and Council Regulation adopted by the co-decision procedure. As the Regulation would set out all provisions in a detailed manner, it would not be possible to take into account the given circumstances of national legal and administrative systems of the Member States and it would be very difficult to ensure consistency with other kinds of legislation and procedures.

CONCLUSION: Option 3 is the Commission's chosen option. This option would set out fair and transparent rules for return procedures. It would put special emphasis on those measures (including the temporary custody of third country nationals subject to a return procedure and the enforced return of the persons concerned) which, in the absence of binding legal standards, might pose a threat to fundamental rights.Furthermore, it would set out procedural safeguards regarding rights and obligations of third country nationals subject to return.

IMPACT

Laying down binding common standards on return procedures - including the procedure to be followed in the event of apprehending illegally present third country nationals subject to a return decision or a removal order - should reduce the possibility of absconding.

Impact on human rights, in particular the protection of privacy and personal data and the right to liberty: The adoption and the transposition of the directive by the Member States would necessarily lead to systematic sharing of data among Member States who fully apply the Schengen-acquis on return decisions and removal orders via the common database providing for such functionality - that is likely to be the second generation of the Schengen Information System (SIS II) – but it would be based on the agreed binding common standards in spite of the previous options. Administrative costs: Member States will probably have to modify their existing legal and administrative system and the distribution of competencies (i.e. to ensure regular judicial review of temporary custody measures) in order to provide for the requested level of harmonisation with the common standards set out in the directive within the given transposition deadline.

There would be a significant improvement regarding the efficiency of the implementation of a Common Return policy as well as for the further gradual development of that policy. Member States would be placed under a legal obligation to comply with the common standards laid down in the directive, being able to take into account any particularities of their national legal and administrative environment.

Reduced illegal immigration: The likely impact of the adoption of a binding legal instrument can be expected to be at medium level. Laying down binding common standards and firm application of them at both the national and community level accompanied by other measures such as enhanced

administrative cooperation of the competent national authorities of the Member States would result in a credible likelihood of return and of its subsequent enforcement, if the circumstances of a given case so require. Consequently, the clear message to illegal residents in the Member States and to potential illegal migrants outside the EU will be that illegal entry and residence do not lead to the stable form of residence they hope to achieve.

This option would develop binding common, fair and transparent rules on return procedures, to be transposed by Member States into their national law within a given deadline. Even if this option envisages gradual harmonisation, it sets out common standards regarding the most important aspects of return procedures.

An improvement on the present state of information exchange among Member States on return decisions could only be expected if the planned developments regarding IT tools in the field of migration permit storage and exchange of such data. However, the Commission's proposals to be tabled on this subject, notably the draft regulation on the establishment, operation and use of the Second Generation Schengen Information System (SIS II) in synergy with this policy option will lead to enhanced information exchange among Member States who fully apply the Schengen-acquis.

For achieving stable and mutual trust of Member States in each others' national systems responsible for issuing return decisions and removal orders as well as for dealing with legal remedies, it is vital that those systems operate according to common standards, ensuring an adequate and similar treatment of illegally staying third country nationals subject to return. The only way to provide for such mutual trust is that each national system is developed according to binding common standards.

2- FOLLOW UP

The effective monitoring of the chosen policy option would require regular evaluation of the implementation and of the state of play regarding the situation in the field of returning third country nationals. In order to facilitate the identification of possible problems and questions of interpretation at an early stage and to offer an opportunity for discussion between MS and the Commission with the establishment of an informal Contact Committee. This Contact Committee would offer a platform for the exchange of views on the interpretation of the provisions of the legal instrument as adopted according to the policy option chosen. In addition, in depth evaluation would not be possible without reliable statistical data on return procedures. Such data collection already takes place in the framework of the CIREFI and Member States also supply data for Eurostat.

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

2005/0167(COD) - 05/06/2008

The Council confirmed the support given by the Mixed Committee to an **overall compromise** on the proposal on common standards and procedures in Member States for returning illegally staying third-country nationals (the "Return Directive").

This Directive will establish a common set of rules applicable to third-country nationals staying illegally in the territory of Member States, irrespective of which Member State .

The Directive will ensure a more harmonised and effective approach to return procedures on the part of Member States while respecting the rights of third-country nationals in an illegal situation. It will leave unaffected the procedural and substantive safeguards for asylum seekers. The Directive makes special provision for vulnerable persons including, in particular,

unaccompanied minors.

Other important features of the Directive include the following:

- the ending of the illegal stay of non-EU nationals will be carried out through a **fair and transparent procedure** which sets out the rights for illegally staying persons facing return;
- the decisions taken under this Directive will be adopted on a case-by-case basis and will be based on objective criteria;
- the Directive provides for a **return decision** to be issued for any third-country national staying illegally in the territory of a Member State, subject to certain exceptions (e.g. where an autonomous residence permit or other authorisation to stay is granted for compassionate, humanitarian or other reasons);
- the return decision will impose an obligation on the third-country national staying illegally to **leave the territory of the Member State concerned**. Persons to whom a return decision has been issued will be allowed the opportunity to **leave voluntarily** unless there are specific grounds which preclude the granting of such a period, such as the risk that the third-county national concerned will abscond;
- detention will only be permitted where other less coercive measures cannot be applied in the case and will require a decision in writing with reasons in fact and in law. Detention will be for as short a period as possible and only maintained as long as removal arrangements are in progress. It will be subject to reviews by a judicial authority at reasonable intervals. The maximum period of detention will be limited to **six months** (with the possibility of extending it for a further twelve-month period in specified circumstances, e.g. lack of cooperation by the third-country national). When it appears that a reasonable prospect of removal no longer exists, detention will cease to be justified and the person concerned will be released. Detention will be carried out as a rule in specialised detention facilities.
- the draft Directive deals with key issues in the policy of return such as the voluntary departure of returnees, the execution of a return decision through a removal procedure, the postponement of removal, the imposition of entry bans as an accompanying measure to a return decision, the form of the return decision, the remedies against a return decision and the safeguards for a returnee pending return, the possibility of an accelerated procedure for return in certain cases and the detention of returnees and its conditions.

This proposal was submitted by the Commission in 2005 and has been examined at length, Under successive presidencies.

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

2005/0167(COD) - 04/10/2005 - Document attached to the procedure

This document, prepared by the European Commission, offers a detailed, point by point and Chapter by Chapter analysis, of the proposed Directive on common standards for returning illegally staying nationals. In summary, the Commission makes the following points:

Chapter 1: *Objectives, Scope, Definitions, More favourable provisions, Family relationships and best interest of the child.*

The purpose of the Directive is to establish common procedural standards for the Member States when returning illegally staying third country nationals. The Directive does not apply to procedures followed for ending legal residence. It will apply to all third-country nationals staying illegally in the territory of a Member States. Member States may decide not to apply the Directive to persons present in a “transit zone” – but must ensure that the level of protection for affected persons is not less favourable that that set out in this Directive. Third country nationals who are beneficiaries of Community law are excluded from the scope of this proposal. A number of terms have been defined in order to avoid any ambiguity. The terms are: third country national (based on existing legislative definitions), illegal stay (the reasons for an illegal stay are manifold; the Commission has tried to make them as broad as possible), return (based on existing definitions), return decision, removal and removal order (based on the 2002 Council Return Action Programme), re-entry ban and expulsion. The proposal suggests that more favourable provisions in existing international agreements, existing Community legal instruments and provisions adopted under national law should prevail. Lastly, the first Chapter states that two guiding principles must be taken into account by the Member States when applying the provisions of the proposed Directive, namely respect for family relationships and the best interest of the child.

Chapter II:*Termination of illegal stay.*

This particular Chapter addresses the different procedures Member States should follow when submitting return decisions, removal orders, re-entry bans and removal orders. The provisions spell out under what circumstances/conditions the procedures apply. Thus, for example, Article 6 stipulates that Member States must issue a return decision to any third-country national staying illegally in their territory and it must impose an obligation on them to return to their country of origin. Other articles specify that priority must be given to a voluntary return. Other provisions include, for example that Member States are free to issue both a return decision and a removal order within two separate acts/decisions or on act/decision. Under certain, specific conditions, (mainly for family reasons) Member States are allowed to postpone the enforcement of a return decision. As far as the question of removal is concerned, the provisions state clearly that the use of coercive force is inextricably linked to the principle of proportionality. Member States are obliged to respect the fundamental rights and the dignity of third-country nationals.

Chapter III:*Procedural safeguards*

This Chapter sets the minimum standards concerning the form of return decisions and removal orders. It also provides for a right to an effective judicial remedy against return decisions removal orders. Lastly safeguards have been inserted for those illegally staying national for whom the enforcement of the return decision has been postponed or who can not be removed.

Chapter IV:*Temporary custody for the purpose of removal*

Under this heading, the provisions seek to limit the use of temporary custody, linking it to the principle of proportionality. On the matter of custody conditions considerable effort has gone into providing provisions that offer minimum standards, whilst not being overly prescriptive.

Chapter V:*Apprehension in other Member States*

The provisions in this Chapter address the question of rules applicable to a third-country national who is the subject of a removal order or return decision from one Member State but who is apprehended in a second Member State. Under the terms of the proposal, Member States are given two options. On the one hand the second Member State may recognise the return decision or removal order issued by the first Member State . Alternatively, the second Member State may ask for the first Member State to take back an illegally staying third country national or decide to launch a new and autonomous procedure under its national legislation.

Chapter VI:*Final Provisions*

The proposed Directive concludes with provisions outlining Commission reporting commitments, transposition (at the latest 24 months from the date of publication in the Official Journal), relation with the Schengen Convention, repealing Directive 2001/40, which will become obsolete once the proposed Directive enters into law and lastly the entry into force of the Directive.