

RETURN DIRECTIVE (2005/0167 (COD))

Part I - Articles

Commission proposal (COM 2005(0391))	Compromise envisaged in first round of informal trilogue (January 2008)	Changes to this compromise requested by Council (marked in bold and strikethrough)	Changes to this compromise requested by EP (marked in bold and strikethrough)	Envisaged final compromise
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third- country nationals	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third- country nationals	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third- country nationals	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third- country nationals	
Chapter I GENERAL PROVISIONS	Chapter I GENERAL PROVISIONS	Chapter I GENERAL PROVISIONS	Chapter I GENERAL PROVISIONS	
Article 1 Subject matter	Article 1 Subject matter	Article 1 Subject matter	Article 1 Subject matter	
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	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	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	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.	obligations.	obligations.	obligations.	
Article 2 Scope	Article 2 Scope	Article 2 Scope	Article 2 Scope	
1. This Directive applies to third-country nationals staying illegally in the territory of a Member State, i.e.	1. This Directive applies to third-country nationals staying illegally in the territory of a Member State.	1. This Directive applies to third-country nationals staying illegally in the territory of a Member State.	1. This Directive applies to third-country nationals staying illegally in the territory of a Member State.	
(a) who do not fulfil or who no longer fulfil the conditions of entry as set out in Article 5 of the Convention Implementing the Schengen Agreement, or				
(b) who are otherwise illegally staying in the territory of a Member State.				
2. Member States may decide not to apply this Directive to third-country nationals who have been refused entry in a transit zone of a Member State. However, they shall ensure that the treatment and the level of protection of such third-country nationals is not less favourable than set out in Articles 8, 10, 13 and 15.	2. Member States may decide not to apply this Directive to third-country nationals: (a) who are subject to a refusal of entry, in accordance with Article 13 of the Schengen Borders Code, or who are apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of a Member State having come from a third country and who have not subsequently obtained an authorisation to stay in that Member State; (b) who are subject to return as a criminal law sanction or as a consequence of a criminal law	2. Member States may decide not to apply this Directive to third-country nationals who : (a) are subject to a refusal of entry, in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent control authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State having come from a third country and who unless they have not subsequently obtained an authorisation to stay in that Member State; (b) who are subject to return as a criminal law sanction or as a	2. Member States may decide not to apply this Directive to third-country nationals: (a) who are subject to a refusal of entry, in accordance with Article 13 of the Schengen Borders Code, or who are apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of a Member State having come from a third country and who have had not subsequently obtained an authorisation a right to stay in that Member State; (b) who are subject to return as a criminal law sanction or as a consequence of a criminal law	

	sanction, according to national law, or who are subject to extradition procedures.	consequence of a criminal law sanction, according to national law, or who are subject to extradition procedures.	sanction, according to national law, or who are subject to extradition procedures.	
3. This Directive shall not apply to third-country nationals	3. This Directive shall not apply to persons enjoying the Community right of free movement as defined in Article 2(5) of the Schengen Borders Code.	3. This Directive shall not apply to persons enjoying the Community right of free movement as defined in Article 2(5) of the Schengen Borders Code.	3. This Directive shall not apply to persons enjoying the Community right of free movement as defined in Article 2(5) of the Schengen Borders Code.	
(a) who are family members of citizens of the Union who have exercised their right to free movement within the Community or				
(b) who, under agreements between the Community and its Member States, on the one hand, and the countries of which they are nationals, on the other, enjoy rights of free movement equivalent to those of citizens of the Union.				
Article 3 Definitions	Article 3 Definitions	Article 3 Definitions	Article 3 Definitions	
For the purpose of this Directive the following definitions shall apply:	For the purpose of this Directive the following definitions shall apply:	For the purpose of this Directive the following definitions shall apply:	For the purpose of this Directive the following definitions shall apply:	
(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;	(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code.	(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code.	(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code.	

(b) 'illegal stay' means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions for stay or residence in that Member State;	(b) 'illegal stay' means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;	(b) 'illegal stay' means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;	(b) 'illegal stay' means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;	
(c) 'return' means the process of going back to one's country of origin, transit or another third country, whether voluntary or enforced;	(c) 'return' means the process of going back - whether in voluntary compliance with an obligation to return, or enforced - to one's country of origin or, - a country of transit in accordance with Community or bilateral readmission agreements or arrangements or - another third country to which the third-country national has solid established ties or to which he/she voluntarily decides to return in which the third-country national concerned will be accepted;	(c) 'return' means the process of going back whether in voluntary compliance with an obligation to return, or enforced to one's country of origin or, a country of, transit in accordance with Community or bilateral readmission agreements or arrangements or another third country to which the third-country national has solid established ties or to which he/she voluntarily decides to return , in which the third-country national concerned will be accepted, whether in voluntary compliance with an obligation to return, or enforced;	(c) 'return' means the process of going back - whether in voluntary compliance with an obligation to return, or enforced - to one's country of origin or, - a country of transit in accordance with Community or bilateral readmission agreements or arrangements or - another third country to which the third-country national has solid established ties or to which he/she voluntarily decides to return in which the third-country national concerned will be accepted;	
(d) 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing an obligation to return;	(d) 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;	(d) 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;	(d) 'return decision' means an administrative or judicial decision or act based on an individual assessment of the case , stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;	
(e) 'removal' means the execution of the obligation to return, namely the physical transportation out of the country;	(e) 'removal' means the execution of the obligation to return, namely the physical transportation out of the country;	(e) 'removal' means the execution enforcement of the obligation to return, namely the physical transportation out of the country;	(e) 'removal' means the execution of the obligation to return, namely the physical transportation out of the country;	
(f) 'removal order' means an administrative or judicial decision or	-	-	-	

act ordering the removal;				
(g) “re-entry ban” means an administrative or judicial decision or act preventing re-entry into the territory of the Member States for a specified period.	(g) “entry ban” means an administrative or judicial decision or act preventing entry into and stay in the territory of the Member States for a specified period, accompanied by a return decision;	(g) “entry ban” means an administrative or judicial decision or act preventing prohibiting entry into and stay in the territory of the Member States for a specified period, accompanied by accompanying a return decision;	(g) “entry ban” means an administrative or judicial decision or act preventing entry into and stay in the territory of the Member States for a specified period, accompanied by a return decision;	
	(h) 'risk of absconding' means the existence of particular reasons defined by individual and objective criteria to believe that a third-country national who is subject to return procedures will abscond,	(h) "risk of absconding" means the existence of particular reasons defined by in an individual and case which are based on objective criteria defined in national law to believe that a third-country national who is subject to return procedures will may abscond;	(h) 'risk of absconding' means the existence of particular reasons defined by individual and objective criteria to believe that a third-country national who is subject to return procedures will abscond; the risk of absconding shall not automatically be deduced from the mere fact that a third-country national is illegally resident on the territory of a Member State;	
	(i) 'voluntary departure' means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision.	(i) 'voluntary departure' means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision;	(i) 'voluntary departure' means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision-;	
	(j) 'vulnerable persons' means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.	(j) "vulnerable persons" means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.	(j) 'vulnerable persons' means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.	
Article 4 More favourable provisions	Article 4 More favourable provisions	Article 4 More favourable provisions	Article 4 More favourable provisions	
1. This Directive shall be without prejudice to more favourable provisions of:	1. This Directive shall be without prejudice to more favourable provisions of:	1. This Directive shall be without prejudice to more favourable provisions of:	1. This Directive shall be without prejudice to more favourable provisions of:	

(a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries;	(a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries;	(a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries;	(a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries;	
(b) bilateral or multilateral agreements between one or more Member States and one or more third countries.	(b) bilateral or multilateral agreements between one or more Member States and one or more third countries.	(b) bilateral or multilateral agreements between one or more Member States and one or more third countries.	(b) bilateral or multilateral agreements between one or more Member States and one or more third countries.	
2. This Directive shall be without prejudice to any provision which may be more favourable for the third country national laid down in Community legislation in the field of immigration and asylum, in particular in:	2. This Directive shall be without prejudice to any provision which may be more favourable for the third country national laid down in Community acquis relating to immigration and asylum.	2. 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.	2. 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.	
(a) Council Directive 2003/86/EC on the right to family reunification ¹ ,	-	-	-	
(b) Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents ² ,	-	-	-	
(c) Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities ³ ,	-	-	-	

¹ OJ L 251, 3.10.2003, p. 12.

² OJ L 16, 23.1.2004, p. 44.

³ OJ L 261, 6.8.2004, p. 19.

(d) Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ⁴ ,	-	-	-	
(e) Council Directive 2004/114/EC on the conditions of admission of third country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service ⁵ ,	-	-		
(f) Council Directive 2005/XX/EC on a specific procedure for admitting third-country nationals for purposes of scientific research ⁶ .	-	-		
3. This Directive 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.	3. This Directive 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.	3. This Directive 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.	3. This Directive 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.	
	4. With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2 paragraph 2 lit.a Member States shall - ensure that the treatment and the level of protection is not less favourable than set out in Article 7	4. With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2 paragraph 2 lit.a Member States shall - ensure that the treatment and the level of protection is not less favourable than set out in Article 7	4. With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2(2)(a) paragraph 2 lit.a Member States shall - ensure that the their treatment and the level of protection is not less favourable than set out in Article 7	

⁴ OJ L 304, 30.9.2004, p. 12.
⁵ OJ L 375, 23.12.2004, p. 12.
⁶ OJ L XX

	paragraphs 4 and 5 (limitations on use of coercive measures), Article 8 paragraph 2 (postponement of removal), Article 13 second and fourth indent (emergency health care and taking into account needs of vulnerable persons) and Article 15 and 15a (detention conditions) and - respect the principle of non-refoulement.	paragraphs 4 and 5 (limitations on use of coercive measures), Article 8 paragraph 2, first indent (postponement of removal), Article 13 second and fourth indent (emergency health care and taking into account needs of vulnerable persons) and Articles 15 and 15a (detention conditions) and - respect the principle of non-refoulement.	paragraphs (4) and (5) (limitations on use of coercive measures), Article 8 paragraph (2) (postponement of removal), Article 13 second and fourth indent (emergency health care and taking into account needs of vulnerable persons) and Articles 15 and 15a (detention conditions) and - respect the principle of non-refoulement.	
Article 5 Family relationships and best interest of the child	Article 5 Best interest of the child, family relationships, state of health and non-refoulement	Article 5 Best interest of the child, family relationships, state of health and non-refoulement Non-refoulement, family life and best interest of the child	Article 5 Best interest of the child, family relationships, state of health and non-refoulement	
When implementing this Directive, Member States shall take due account of the nature and solidity of the third country national's family relationships, the duration of his stay in the Member State and of the existence of family, cultural and social ties with his country of origin. They shall also take account of the best interests of the child in accordance with the 1989 United Nations Convention on the Rights of the Child.	When implementing this Directive, Member States shall take due account of (a) the best interest of the child, (b) family relationships and (c) the state of health of the third country national concerned and respect the principle of non-refoulement.	When implementing this Directive, Member States shall take due account of (a) the best interest of the child, (b) family relationships and life (c) the state of health of the third country national concerned and respect the principle of non-refoulement.	When implementing this Directive, Member States shall take due account of (a) the best interest of the child, (b) family relationships and (c) the state of health of the third-country national concerned and respect the principle of non-refoulement.	

Chapter II TERMINATION OF ILLEGAL STAY	Chapter II TERMINATION OF ILLEGAL STAY	Chapter II TERMINATION OF ILLEGAL STAY	Chapter II TERMINATION OF ILLEGAL STAY	
Article 6 Return decision	Article 6 Return decision	Article 6 Return decision	Article 6 Return decision	
1. Member States shall issue a return decision to any third-country national staying illegally on their territory.	1. 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 paragraphs 2, 3 4 and 5 of this Article.	1. 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 paragraphs 2, 2a , 3 and 4 and 5 of this Article.	1. 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 paragraphs 2, 3 and 4 and 5 of this Article.	
2. The return decision shall provide for an appropriate period for voluntary departure of up to four weeks, unless there are reasons to believe that the person concerned might abscond during such a period. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of a financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of that period.	2. Third-country nationals staying illegally in the territory of a Member State and holding a valid residence permit or another authorisation offering a right to stay issued by another Member State, shall be required to go to the territory of that Member State immediately. In case of non-compliance by the third-country national concerned with this requirement, or where the third country national's immediate departure is required for reasons of national security or public policy, paragraph 1 shall apply.	2. Third-country nationals staying illegally in the territory of a Member State and holding a valid residence permit or another authorisation offering a right to stay issued by another Member State, shall be required to go to the territory of that Member State immediately. In case of non-compliance by the third-country national concerned with this requirement, or where the third country national's immediate departure is required for reasons of national security or public policy, paragraph 1 shall apply.	2. Third-country nationals staying illegally in the territory of a Member State and holding a valid residence permit or another authorisation offering a right to stay issued by another Member State, shall be required to go to the territory of that Member State immediately. In case of non-compliance by the third-country national concerned with this requirement, or where the third-country national's immediate departure is required for reasons of national security or public policy, paragraph 1 shall apply.	
		2a. Member States may refrain from issuing a return decision to a third-country national staying illegally on their territory, if the third-country national concerned is taken back by another Member State under		

		bilateral agreements or arrangements existing at the date of entry into force of this Directive. In this case the Member State which has taken back the third-country national concerned shall apply paragraph 1 of this Article.		
3. The return decision shall be issued as a separate act or decision or together with a removal order.	3. Member States may, at any moment decide to grant an autonomous residence permit or another authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In this event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn.	3. Member States may, at any moment decide to grant an autonomous residence permit or another authorization offering a right to of stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In this event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorization offering a right of stay.	3. Member States may, at any moment decide to grant an autonomous residence permit or another authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In this event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn.	
4. Where Member States are subject to obligations derived from fundamental rights as resulting, in particular, from the European Convention on Human Rights, such as the right to non-refoulment, the right to education and the right to family unity, no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn.	4. If a third-country national staying illegally in its territory is the subject of a pending procedure for renewing his residence permit or any other permit offering the right to stay, that Member State shall consider refraining from issuing a return decision, until the pending procedure is finished.	4. If a third-country national staying illegally in its territory is the subject of a pending procedure for renewing his residence permit or any other permit offering the right to stay, that Member State shall in accordance with paragraph 5 consider refraining from issuing a return decision, until the pending procedure is finished.	4. If a third-country national staying illegally in its territory is the subject of a pending procedure for renewing his residence permit or any other permit offering the right to stay, that Member State shall consider refraining from issuing a return decision, until the pending procedure is finished.	
5. Member States may, at any moment decide to grant an autonomous residence permit or	5. The present Directive does not prevent Member States from adopting a decision on the ending of	5. The present Directive does not prevent Member States from adopting a decision on the ending of	5. The present Directive does not prevent Member States from adopting a decision on the ending of	

another authorisation offering a right to stay for compassionate, humanitarian or other 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.	legal stay together with a return decision and/or a decision on removal within one administrative or judicial 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.	legal stay together with a return decision and/or a decision on removal and/or entry ban within one administrative or judicial 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.	legal stay together with a return decision and/or a decision on removal within one 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.	
6. Where a third-country national staying illegally in the territory of a Member State holds a valid residence permit issued by another Member State, the first Member State shall refrain from issuing a return decision where that person goes back voluntarily to the territory of the Member State which issued the residence permit.	-	-	-	
7. If a third-country national staying illegally in its territory is the subject of a pending procedure for renewing his residence permit or any other permit offering the right to stay, that Member State shall refrain from issuing a return decision, until the pending procedure is finished.	-	-	-	
8. If a third-country national staying illegally in its territory is the subject of a pending procedure for granting his residence permit or any other permit offering the right to stay, that Member State may refrain from issuing a return decision, until the pending procedure is finished.	-	-	-	

	Article 6a Voluntary departure	Article 6a Voluntary departure	Article 6a Voluntary departure	
	1. The return decision shall provide for an appropriate period for voluntary departure ranging between two weeks and one month, without prejudice to the exception referred to in paragraphs 2 and 4. (Member States may provide in their national legislation that such period shall only be granted following an application of the third-country national concerned. In this case, Member States shall inform the third-country nationals concerned about the possibility of submitting such an application.)	1. The return decision shall provide for an appropriate period for voluntary departure ranging between two weeks seven days and one month thirty days , without prejudice to the exceptions referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such period shall only be granted following an application of the third-country national concerned. In this case, Member States shall inform the third-country nationals concerned about the possibility of submitting such an application. The time period foreseen above does not exclude the possibility for the third-country nationals concerned to leave earlier.	1. The return decision shall provide for an appropriate period for voluntary departure ranging between two weeks and one month, without prejudice to the exceptions referred to in paragraphs 2 and 4. (Member States may provide in their national legislation that such period shall only be granted following an application of the third country national concerned. In this case, Member States shall inform the third country nationals concerned about the possibility of submitting such an application.)	
	2. Member States may 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.	2. Member States may 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.	2. Member States may shall extend the period for voluntary departure for an appropriate period, when this is necessary , 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.	
	3. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of an adequate	3. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of an adequate	3. 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.	financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of that period.	financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of that period.	
	4. If there is a risk of absconding, as defined in Article 3(h) or if the person concerned poses a risk to public security, public order or national security Member States may refrain from granting a period of voluntary departure.	4. If there is a risk of absconding, as defined in Article 3(h) or if an application for a legal stay has been found to be unfounded or based on fraud or if the person concerned poses a risk to public security, public order or national security Member States may refrain from granting a period of voluntary departure, or grant a period shorter than seven days.	4. If there is a risk of absconding, as defined in Article 3(h) or if the person concerned poses a risk to public security, public order or national security Member States may refrain from granting a period of voluntary departure.	
Article 7 Removal order	Article 7 Removal	Article 7 Removal	Article 7 Removal	
1. Member States shall issue a removal order concerning a third-country national who is subject of a return decision, if there is a risk of absconding or if the obligation to return has not been complied with within the period of voluntary departure granted in accordance with Article 6(2).	1. Member States shall enforce the return decision if no period for voluntary departure has been granted in accordance with Article 6a or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 6a.	1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 6a or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 6a.	1. Member States shall enforce the return decision if no period for voluntary departure has been granted in accordance with Article 6a or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 6a.	
2. The removal order shall specify the delay within which the removal will be enforced and the country of return.	2. If the Member State has granted a period of voluntary departure in accordance with Article 6a the return decision can be enforced only after the period has ended, unless during this period, a risk, as defined in Article 6a, paragraph 4, arises.	2. If the Member State has granted a period of voluntary departure in accordance with Article 6a the return decision can be enforced only after the period has ended, unless during this period, a risk, as defined in Article 6a, paragraph 4, arises.	2. If the Member State has granted a period of voluntary departure in accordance with Article 6a the return decision can may be enforced only after the period has ended, unless during this period, a risk, as defined referred to in Article 6a, paragraph (4) , arises.	
3. The removal order shall be issued	3. Member States may adopt a	3. Member States may adopt a	3. Member States may adopt a	

as a separate act or decision or together with the return decision.	separate administrative or judicial decision or act ordering the removal.	separate administrative or judicial decision or act ordering the removal.	separate administrative or judicial decision or act ordering the removal.	
	4. 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. 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.	4. 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. 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.	4. 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. 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.	
	5. In carrying out removals by air, Member States shall take into account the common Guidelines on security provisions for joint removal by air, attached to Decision 2004/573/EC.	5. In carrying out removals by air, Member States shall take into account the common Guidelines on security provisions for joint removal by air, attached to Decision 2004/573/EC.	5. In carrying out removals by air, Member States shall take into account the Common Guidelines on security provisions for joint removal by air, attached to Decision 2004/573/EC.	
	6. Relevant national, international and non-governmental organisations and bodies shall have the possibility to monitor forced return.	6. Relevant national, international and non-governmental organisations and bodies shall have the possibility to monitor forced return.	6. Relevant national, international and non-governmental organisations and bodies shall have the possibility to monitor forced return.	
Article 8 Postponement	Article 8 Postponement of removal	Article 8 Postponement of removal	Article 8 Postponement of removal	
1. Member States may postpone the enforcement of a return decision for an appropriate period, taking into account the specific circumstances of the individual case.	1. Member States shall postpone removal - when this would violate the principle of non-refoulement or - as long as suspensive effect is granted in accordance with Article 12 paragraph 2.	1. Member States shall postpone removal - when this would violate the principle of non-refoulement or - as long as suspensive effect is granted in accordance with Article 12 paragraph 2.	1. Member States shall postpone removal - when this it would violate the principle of non-refoulement or - as long as suspensive effect is granted in accordance with Article 12 paragraph (2).	
2. Member States shall postpone the	2. Member States may postpone	2. Member States may postpone	2. Member States may postpone	

execution of a removal order in the following circumstances, for as long as those circumstances prevail:	removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account: - the person's physical state or mental capacity; - technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.	removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account: - the person's physical state or mental capacity; - technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.	removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account: - the person's physical state or mental capacity; - technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.	
(a) inability of the third-country national to travel or to be transported to the country of return due to his or her physical state or mental capacity;	-	-	-	
(b) technical reasons, such as lack of transport capacity or other difficulties making it impossible to enforce the removal in a humane manner and with full respect for the third-country national's fundamental rights and dignity;	-	-	-	
(c) lack of assurance that unaccompanied minors can be handed over at the point of departure or upon arrival to a family member, an equivalent representative, a guardian of the minor or a competent official of the country of return, following an assessment of the conditions to which the minor will be returned.	-	-	-	
3. If enforcement of a return decision or execution of a removal order is postponed as provided for in paragraphs 1 and 2, certain obligations may be imposed on the third country national concerned, with a view to avoiding the risk of	3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations foreseen in Article 6a paragraph 3 may be imposed on the third country national concerned.	3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations foreseen in Article 6a paragraph 3 may be imposed on the third country national concerned.	3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations foreseen in Article 6a paragraph (3) may be imposed on the third-country national concerned.	

absconding, such as regular reporting to the authorities, deposit of a financial guarantee, submission of documents or the obligation to stay at a certain place.				
	Article 8a Return and removal of unaccompanied minors	Article 8a Return and removal of unaccompanied minors	Article 8a Return and removal of unaccompanied minors	
	(1) Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate social services shall be granted with due consideration given to the best interest of the child.	(1) Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate social services assistance shall be granted with due consideration given to the best interest of the child.	1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate social services shall be granted with due consideration given to the best interest of the child.	
	(2) 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.	(2) 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.	2. 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.	
Article 9 Re-entry ban	Article 9 Entry ban	Article 9 Entry ban	Article 9 Entry ban	
1. Removal orders shall include a re-entry ban of a maximum of 5 years.	1. Return decisions shall be accompanied by an entry ban - if no period for voluntary departure has been granted or, - if the obligation to return has not been complied with within the period granted in accordance with	1. Return decisions shall be accompanied by an entry ban - if no period for voluntary departure has been granted or, - if the obligation to return has not been complied with within the period granted in accordance with	1. Return decisions shall be accompanied by an entry ban - if no period for voluntary departure has been granted or, - if the obligation to return has not been complied with within the period granted in accordance with	

	Article 6a. In other cases return decisions may be accompanied by an entry ban.	Article 6a. In other cases return decisions may be accompanied by an entry ban.	Article 6a. In other cases return decisions may be accompanied by an entry ban.	
Return decisions may include such a re-entry ban.	-	-	-	
2. The length of the re-entry ban shall be determined with due regard to all relevant circumstances of the individual case, and in particular if the third-country national concerned:	2. 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 exceed five years if the third-country national represents a serious threat to public policy or public security or to national security.	2. 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 exceed five years if the third-country national represents a serious threat to public policy or , public security or , to national security, repeatedly and intentionally infringes national legislation or repeatedly and intentionally does not respect decisions of competent national authorities.	2. 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 exceed five years if the third-country national represents a serious threat to public policy or public security or to national security.	
(a) is the subject of a removal order for the first time;	-	-	-	
(b) has already been the subject of more than one removal order;	-	-	-	
(c) entered the Member State during a re-entry ban;	-	-	-	
(d) constitutes a threat to public policy or public security.	-	-	-	
The re-entry ban may be issued for a period exceeding 5 years where the third-country national concerned constitutes a serious threat to public policy or public security.	-	-	-	

3. The re-entry ban may be withdrawn, in particular in cases in which the third-country national concerned :	<p>3. Member States shall withdraw the entry ban, if a third-country national who is subject of an entry ban issued in accordance with paragraph 1 second subparagraph reports back to a consular post of the Member State in a third country following his/her voluntary departure in full compliance with the return decision.</p> <p>Third-country nationals co-operating within a police or judicial investigation, notably related to trafficking in human beings shall not be subject to an entry ban without prejudice to paragraph 1, first subparagraph, second indent.</p> <p>Member States may refrain from imposing the entry ban, withdraw it or suspend it, in individual cases or certain categories of cases for humanitarian or other reasons.</p>	<p>3. <i>(moved to the end of the paragraph)</i>: Member States shall withdraw upon request - consider withdrawing or suspending an the entry ban if where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1 second subparagraph reports back to a consular post of the Member State in a third country following his/her voluntary departure can demonstrate that he/she has left the territory of a Member State in full compliance with a return decision.</p> <p>Third-country nationals co-operating within a police or judicial investigation, notably related to trafficking in human beings Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC shall not be subject of an entry ban without prejudice to paragraph 1, first subparagraph, second indent and provided that the third-country national concerned does not represent a threat to public policy, public security or national security.</p> <p>Member States may refrain from imposing the entry ban issuing, withdraw it or suspend it, an entry ban in individual cases or certain categories of cases for humanitarian or other reasons.</p>	<p>3. Member States shall withdraw the entry ban, if a third-country national who is subject of an entry ban issued in accordance with paragraph 1 second subparagraph reports back to a consular post of the a Member State in a third country following his/her voluntary departure in full compliance with the return decision.</p> <p>Third-country nationals co-operating within a police or judicial investigation, notably related to trafficking in human beings shall not be subject to an entry ban without prejudice to paragraph 1, first subparagraph, second indent.</p> <p>Member States may refrain from imposing the entry ban, withdraw it or suspend it, in individual cases or certain categories of cases for humanitarian or other reasons.</p>	
(a) is the subject of a return decision	-	-	-	

or a removal order for the first time;				
(b) has reported back to a consular post of a Member State;	-	-	-	
(c) has reimbursed all costs of his previous return procedure.	-	-	-	
4. The re-entry ban may be suspended on an exceptional and temporary basis in appropriate individual cases.	4. Where a Member State considers issuing a residence permit or another authorisation offering a right to stay to a third-country national who is subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with the provisions of Article 25 of the Convention Implementing the Schengen Agreement.	4. Where a Member State considers issuing a residence permit or another authorisation offering a right to stay to a third-country national who is subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with the provisions of Article 25 of the Convention Implementing the Schengen Agreement.	4. Where a Member State considers issuing a residence permit or another authorisation offering a right to stay to a third-country national who is subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with the provisions of Article 25 of the Convention Implementing the Schengen Agreement.	
5. Paragraphs 1 to 4 apply without prejudice to the right to seek asylum in one of the Member States.	5. Paragraphs 1 to 4 apply without prejudice to the right to international protection as defined in Article 2(a) of Directive 2004/83/EC in the Member States.	5. Paragraphs 1 to 4 apply without prejudice to the right to international protection as defined in Article 2(a) of Directive 2004/83/EC in the Member States.	5. Paragraphs 1 to 4 apply without prejudice to the right to international protection as defined in Article 2(a) of Directive 2004/83/EC in the Member States.	
Article 10 Removal	-	-	-	
1. Where Member States use 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. They shall be implemented in accordance with fundamental rights and with due respect for the dignity of the third-country national concerned.	-	-	-	

2. In carrying out removals, Member States shall take into account the common Guidelines on security provisions for joint removal by air, attached to Decision 2004/573/EC.	-	-	-	
Chapter III PROCEDURAL SAFEGUARDS	Chapter III PROCEDURAL SAFEGUARDS	Chapter III PROCEDURAL SAFEGUARDS	Chapter III PROCEDURAL SAFEGUARDS	
Article 11 Form	Article 11 Form	Article 11 Form	Article 11 Form	
1. Return decisions and removal orders shall be issued in writing. Member States shall ensure that the reasons in fact and in law are stated in the decision and/or order and that the third-country national concerned is informed about the available legal remedies in writing.	1. Return decisions, and - when 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.	1. Return decisions and when 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.	1. Return decisions, and - when 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, detention and prosecution of criminal offences.	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, detention and prosecution of criminal offences.	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, detention and prosecution of criminal offences.	
2. Member States shall provide, upon request, a written or oral translation of the main elements of the return decision and/or removal order in a language the third-country national may reasonably be supposed to understand.	2. Member States shall provide, upon request, a written or oral translation of the main elements of decisions related to return as defined in paragraph 1, including information on the available legal remedies in a language the third-	2. Member States shall provide, upon request, a written or oral translation of the main elements of decisions related to return as defined in paragraph 1, including information on the available legal remedies in a language the third-	2. Member States shall provide, upon request, a written or oral translation of the main elements of decisions related to return, as defined referred to in paragraph 1, including information on the available legal remedies in a	

	country national understands or may reasonably be supposed to understand.	country national understands or may reasonably be supposed to understand.	language the third-country national understands or may reasonably be supposed to understand.	
	<p>3. With regard to persons who have illegally entered the territory of a Member State and who have not subsequently obtained an authorisation to stay in that Member State paragraph 2 does not apply.</p> <p>In those cases decisions related to return, as defined in paragraph 1, shall be given by means of a standard form as set out in Annex I.</p> <p>Member States shall make available generalised information sheets explaining the main elements of the standard form in at least five of those languages, which are most frequently used or understood by illegal migrants entering the Member State concerned.</p>	<p>3. With regard to persons who have illegally entered the territory of a Member State and who have not subsequently obtained an authorisation to stay in that Member State paragraph 2 does not apply.</p> <p>In those cases decisions related to return, as defined in paragraph 1, shall be given by means of a standard form as set out in Annex I.</p> <p>Member States shall make available generalised information sheets explaining the main elements of the standard form in at least five of those languages, which are most frequently used or understood by illegal migrants entering the Member State concerned.</p>	<p>3. With regard to persons who have illegally entered the territory of a Member State and who have not subsequently obtained an authorisation a right to stay in that Member State paragraph 2 does not apply.</p> <p>In those cases decisions related to return, as defined referred to in paragraph 1, shall be given by means of a standard form as set out in Annex I. The personal circumstances of the individual third-country national are taken into account at all times.</p> <p>Member States shall make available generalised information sheets explaining the main elements of the standard form in at least five of those languages, which are most frequently used or understood by illegal migrants entering the Member State concerned.</p>	
Article 12 Judicial remedies	Article 12 Remedies	Article 12 Remedies	Article 12 Remedies	
1. Member States shall 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 and/or removal order.	1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as defined in Article 11(1) before a competent judicial or administrative authority or a	1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as defined in Article 11(1) before a competent judicial or administrative authority or a	1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as defined referred to in Article 11(1), before a competent judicial or administrative authority	

	competent body composed of members who are impartial and who enjoy safeguards of independence.	competent body composed of members who are impartial and who enjoy safeguards of independence.	or a tribunal competent body composed of members who are impartial and who enjoy safeguards of independence.	
2. 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.	2. The above mentioned authority or body shall have the power to review decisions related to return, as defined in Article 11(1) including the possibility of temporarily suspending its execution.	2. The above mentioned authority or body shall have the power to review decisions related to return, as defined in Article 11(1) including the possibility of temporarily suspending its execution, unless temporary suspension is already applicable under national legislation.	2. The above mentioned authority or body shall have the power to review decisions related to return, as defined referred to in Article 11(1), including the possibility of temporarily suspending its execution.	
3. Member States shall ensure that the third-country national concerned has the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.	3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.	3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.	3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.	
	4. If the third-country national concerned does not have sufficient means to pay for necessary legal assistance, he/she shall be given it free of charge, in accordance with procedures established under national legislation.	4. If the third-country national concerned does not have sufficient means to pay for necessary legal assistance aid , he/she shall be given it free of charge, in accordance with procedures established under national legislation the relevant national rules regarding legal aid.	4. If the third-country national concerned does not have sufficient means to pay for necessary legal assistance, he/she shall be given it free of charge, in accordance with procedures established under national legislation.	
Article 13 Safeguards pending return	Article 13 Safeguards pending return	Article 13 Safeguards pending return	Article 13 Safeguards pending return	
1. Member States shall ensure that	1. Member States shall ensure that	1. Member States shall, with the	1. Member States shall ensure that	

the conditions of stay of third-country nationals for whom the enforcement of a return decision has been postponed or who cannot be removed for the reasons referred to in Article 8 of this Directive are not less favourable than those set out in Articles 7 to 10, Article 15 and Articles 17 to 20 of Directive 2003/9/EC.	the following principles are taken into account as far as possible in relation to third-country nationals during the period of voluntary departure granted in accordance with Article 6a and during periods for which removal has been postponed in accordance with Article 8: - family unity with family members present in their territory is maintained; - emergency health care and essential treatment of illness is provided; - minors are granted access to the basic education system subject to the length of their stay; - special needs of vulnerable persons are taken into account.	exception of the situation covered in Articles 15 and 15a ensure that the following principles are taken into account as far as possible in relation to third-country nationals during the period of voluntary departure granted in accordance with Article 6a and during periods for which removal has been postponed in accordance with Article 8: - Family unity with family members present in their territory is maintained; - Emergency health care and essential treatment of illness is provided; - Minors are granted access to the basic education system subject to the length of their stay; - Special needs of vulnerable persons are taken into account.	the following principles are taken into account as far as possible in relation to third-country nationals during the period of voluntary departure granted in accordance with Article 6a and during periods for which removal has been postponed in accordance with Article 8: - family unity with family members present in their territory is maintained; - emergency health care and essential treatment of illness is provided; - minors are granted access to the basic education system subject to the length of their stay; - special needs of vulnerable persons are taken into account.	
2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation that the enforcement of the return decision has been postponed for a specified period or that the removal order will temporarily not be executed.	2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation in accordance with national legislation that the period for voluntary departure has been extended in accordance with Article 6a or that the return decision will temporarily not be enforced.	2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation in accordance with national legislation that the period for voluntary departure has been extended in accordance with Article 6a or that the return decision will temporarily not be enforced.	2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation in accordance with national legislation that the period for voluntary departure has been extended in accordance with Article 6a(2) or that the return decision will temporarily not be enforced.	

Chapter IV TEMPORARY CUSTODY FOR THE PURPOSE OF REMOVAL	Chapter IV DETENTION FOR THE PURPOSE OF REMOVAL	Chapter IV DETENTION FOR THE PURPOSE OF REMOVAL	Chapter IV DETENTION FOR THE PURPOSE OF REMOVAL	
Article 14 Temporary custody	Article 14 Detention	Article 14 Detention	Article 14 Detention	
<p>1. Where there are serious grounds to believe that there is a risk of absconding and where it would not be sufficient to apply less coercive measures, such as regular reporting to the authorities, the deposit of a financial guarantee, the handing over of documents, an obligation to stay at a designated place or other measures to prevent that risk, Member States shall keep under temporary custody a third-country national, who is or will be subject of a removal order or a return decision,</p>	<p>1. Unless other sufficient but less coercive measures can be applied in the concrete case, Member States shall keep in detention a third-country national, who is subject of return procedures, when this is necessary to prepare return and/or carry out the removal process and</p> <ul style="list-style-type: none"> - there are serious grounds to believe that there is a risk of absconding or - the third country national concerned avoids or hampers the preparation of return or the removal process. <p>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.</p>	<p>1. Unless other sufficient but less coercive measures can be applied effectively in the concrete case, Member States shall may keep in detention a third-country national, who is subject of return procedures, when this is necessary in order to prepare return and/or carry out the removal process and, in particular when there are serious grounds to believe that</p> <ul style="list-style-type: none"> - there is a risk of absconding or - the third country national concerned avoids or hampers the preparation of return or the removal process. <p>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.</p>	<p>1. Unless other sufficient but less coercive measures can be applied in the concrete case, Member States shall keep in detention a third-country national, who is subject of return procedures, when this is necessary to prepare return and/or carry out the removal process and</p> <ul style="list-style-type: none"> - there are serious grounds to believe that there is a risk of absconding or - the third-country national concerned avoids or hampers the preparation of return or the removal process. <p>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.</p>	
<p>2. Temporary custody orders shall be issued by judicial authorities. In urgent cases they may be issued by administrative authorities, in which case the temporary custody order shall be confirmed by judicial</p>	<p>2. Detention shall be ordered by administrative or judicial authorities. When detention has been ordered by administrative authorities, Member States shall</p> <ul style="list-style-type: none"> - either provide for a judicial review 	<p>2. Detention shall be ordered by administrative or judicial authorities. When detention has been ordered by administrative authorities, Member States shall</p> <ul style="list-style-type: none"> - either provide for a judicial review 	<p>2. Detention shall be ordered by administrative or judicial authorities. Detention orders shall be issued in writing and give reasons in fact and in law. When detention has been ordered by</p>	

authorities within 72 hours from the beginning of the temporary custody.	of the lawfulness of detention to be decided on within 72 hours from the beginning of detention, - 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 within 72 hours 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.	of the lawfulness of detention to be decided on within 72 hours speedily from the beginning of detention, - 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 within 72 hours speedily 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.	administrative authorities, Member States shall - either provide for a judicial review of the lawfulness of detention to be decided on within 72 hours from the beginning of detention, - 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 within 72 hours 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.	
3. Temporary custody orders shall be subject to review by judicial authorities at least once a month.	3. In every case, detention shall be reviewed at reasonable intervals of time. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.	3. In every case, detention shall be reviewed at reasonable intervals of time. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority. The Member States may, inter alia, start this procedure commensurate with the application by the third country national concerned.	3. In every case, detention shall be reviewed at reasonable intervals of time, at least every month. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.	
4. Temporary custody may be extended by judicial authorities to a maximum of six months.	4. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. The maximum period of detention, subject to paragraph 5, may not exceed a	4. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. The Without prejudice to paragraph 5, the maximum period of detentionsubject	4. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. The maximum period of detention, subject to paragraph 5, may not exceed a	

	period of XX months.	to paragraph 5, as set out by national legislation, may not exceed a period of XX six months.	period of XX months.	
	5. Member States may exceptionally extend this period up to XX 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, or - due to pending appeal procedures.	5. Member States may exceptionally without prejudice to paragraph 6 extend this period up to XX eighteen 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, or - due to pending appeal procedures.	5. Member States may exceptionally extend this period up to XX 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 caused by the third-country national concerned, or - due to pending appeal procedures.	
	6. 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.	6. 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.	6. 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.	
Article 15 Conditions of temporary custody	Article 15 Conditions of detention	Article 15 Conditions of detention	Article 15 Conditions of detention	
1. Member States shall ensure that third-country nationals under temporary custody are treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Upon request they shall be allowed without delay to establish contact with legal representatives, family members and	-	-	-	

competent consular authorities as well as with relevant international and non-governmental organisations.				
2. Temporary custody shall be carried out in specialised temporary custody facilities. Where a Member State cannot provide accommodation in a specialised temporary custody facility and has to resort to prison accommodation, it shall ensure that third-country nationals under temporary custody are permanently physically separated from ordinary prisoners.	1. 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.	1. 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.	1. 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.	
	2. 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 as well as with relevant national, international and non-governmental organisations and bodies.	2. 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 as well as with relevant national, international and non-governmental organisations and bodies.	2. 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 as well as with relevant national, international and non-governmental organisations and bodies.	
3. Particular attention shall be paid to the situation of vulnerable persons. Member States shall ensure that minors are not kept in temporary custody in common prison accommodation. Unaccompanied minors shall be separated from adults unless it is considered in the child's best interest not to do so.	3. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.	3. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.	3. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.	
4. Member States shall ensure that international and non-governmental organisations have the possibility to visit temporary custody facilities in	4. Relevant national, international and non-governmental organisations and bodies shall have the possibility to visit detention facilities in order to	4. Relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit specialised	4. Relevant national, international and non-governmental organisations and bodies shall have the possibility to visit detention facilities in order to	

order to assess the adequacy of the temporary custody conditions. Such visits may be subject to authorisation.	assess the adequacy of the detention conditions. Such visits may be subject to authorisation.	detention facilities in order to assess the adequacy of the detention conditions. Such visits may be subject to authorisation.	assess the adequacy of the detention conditions. Such visits may be subject to authorisation.	
	5. Third-country nationals kept in detention shall be systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations.	5. Third-country nationals kept in detention shall be systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations. This includes the information on their entitlement under national law to contact organizations and bodies referred to in paragraph 4.	5. Third-country nationals kept in detention shall be systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations.	
	Article 15a Detention of minors and families	Article 15a Detention of minors and families	Article 15a Detention of minors and families	
	1. Minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.	1. Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.	1. Minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.	
	2. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.	2. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.	2. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.	
	3. 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.	3. 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.	3. 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.	

	4. 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.	4. 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.	4. 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.	
	5. The best interest of the child shall be a primary consideration in the context of the detention of minors pending removal.	5. The best interest of the child shall be a primary consideration in the context of the detention of minors pending removal.	5. The best interest of the child shall be a primary consideration in the context of the detention of minors pending removal.	
		Article 15b Emergency situations		
		1. 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, such a Member State may, as long as the exceptional situation persists, decide to allow for longer periods for judicial review that those set out in Article 14(2) and to take urgent measures in respect of the conditions of detention derogating from those set out in Articles 15(1) and 15a(2).		
		2. When resorting to such exceptional measures, the Member State concerned shall inform the Commission. It shall also inform the Commission as soon as the reasons for applying these exceptional measures have ceased to exist.		
		3. Nothing in this Article shall be interpreted as allowing		

		Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations arising out of this Directive.		
Chapter V APPREHENSION IN OTHER MEMBER STATES	-	-	-	
Article 16 Apprehension in other Member States	-	-	-	
Where a third-country national who does not fulfil or who no longer fulfil the conditions of entry as set out in Article 5 of the Convention Implementing the Schengen Agreement and who is the subject of a return decision or removal order issued in a Member State (“the first Member State”) is apprehended in the territory of another Member State (“the second Member State”), the second Member State may take one of the following steps:	-	-	-	
(a) recognise the return decision or removal order issued by the first Member State and carry out the removal, in which case Member States shall compensate each other for any financial imbalance which may caused, applying Council Decision 2004/191/EC mutatis mutandis;	-	-	-	

(b) request the first Member State to take back the third-country national concerned without delay, in which case the first Member State shall be obliged to comply with the request, unless it can demonstrate that the person concerned has left the territory of the Member States following the issuing of the return decision or removal order by the first Member State;	-	-	-	
(c) launch the return procedure under its national legislation;	-	-	-	
(d) maintain or issue a residence permit or another authorisation offering a right to stay for protection-related, compassionate, humanitarian or other reasons, after consultation with the first Member State in accordance with Article 25 of the Convention Implementing the Schengen Agreement.	-	-	-	
Chapter VI FINAL PROVISIONS	Chapter VI FINAL PROVISIONS	Chapter VI FINAL PROVISIONS	Chapter VI FINAL PROVISIONS	
Article 17 Reporting	Article 17 Reporting	Article 17 Reporting	Article 17 Reporting	
The Commission shall periodically report 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 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 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 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 four years after the date referred to in Article 18(1) at the latest.	The Commission shall report for the first time three years after the date referred to in Article 18(1) at the latest and focus at this occasion in particular on the application of Articles 9 and 14 in Member States.	The Commission shall report for the first time three years after the date referred to in Article 18(1) at the latest and focus at this occasion in particular on the application of Articles 9 and 14 in Member States.	The Commission shall report for the first time three years after the date referred to in Article 18(1) at the latest and focus at this occasion in particular on the application of Articles 9 and 14 in Member States.	
Article 18 Transposition	Article 18 Transposition	Article 18 Transposition	Article 18 Transposition	
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by, (24 months from the date of publication in the Official Journal of the European Union) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by, (24 months from the date of publication in the Official Journal of the European Union) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by, (24 months from the date of publication in the Official Journal of the European Union) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by, (24 months from the date of publication in the Official Journal of the European Union) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.	
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	

Article 19 Relationship with Schengen Convention	Article 19 Relationship with Schengen Convention	Article 19 Relationship with Schengen Convention	Article 19 Relationship with Schengen Convention	
This Directive replaces Articles 23 and 24 of the Convention implementing the Schengen Agreement.	This Directive replaces the provisions of Articles 23 and 24 of the Convention implementing the Schengen Agreement.	This Directive replaces the provisions of Articles 23 and 24 of the Convention implementing the Schengen Agreement.	This Directive replaces the provisions of Articles 23 and 24 of the Convention implementing the Schengen Agreement.	
Article 20 Repeal	-	-	-	
Directive 2001/40/EC is repealed.	-	-	-	
Article 21 Entry into force	Article 21 Entry into force	Article 21 Entry into force	Article 21 Entry into force	
This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	
Article 22 Addressees	Article 22 Addressees	Article 22 Addressees	Article 22 Addressees	
This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.	This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.	This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.	This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.	

Done at Brussels, [...]	Done at Brussels, [...]	Done at Brussels, [...]	Done at Brussels, [...]	
<i>For the European Parliament</i> <i>The President</i> <i>For the Council</i> <i>The President</i>	For the European Parliament The President For the Council The President	For the European Parliament The President For the Council The President	For the European Parliament The President For the Council The President	

RETURN DIRECTIVE (2005/0167 (COD))

Part II – Recitals

Commission proposal (COM 2005(0391))	Compromise envisaged in first round of informal trilogue (January 2008) (only recitals 6 and 9 were discussed)	Changes vis-à-vis COM text requested by Council (marked in bold and strikethrough)	Changes vis-à-vis COM text requested by EP (marked in bold and strikethrough)	Envisaged final compromise
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,		Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,		
Having regard to the proposal from the Commission ⁷ ,		Having regard to the proposal from the Commission ⁸ ,		
Acting in accordance with the procedure laid down in Article 251 of the Treaty,		Acting in accordance with the procedure laid down in Article 251 of the Treaty,		
Whereas:		Whereas:		
(1) The Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy,		(1) The Tampere European Council of 15 and 16 October 1999 established a coherent approach in the field of immigration and		

⁷ OJ C [...], p. [...].

⁸ OJ C [...], p. [...].

based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.		<p>asylum, dealing together with the creation of a common asylum system, a legal immigration policy and the fight against illegal immigration.</p> <p>(1a) 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.</p> <p>(1b) The Council of Europe Committee of Ministers adopted on 4 May 2005 "20 guidelines on forced return" (CM(2005)40).</p>		
(2) Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well managed migration policy.		(2) Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well managed migration policy.		
(3) This Directive should establish a horizontal set of rules, applicable to all third-country nationals who do not or who no longer fulfil the conditions for stay in a Member State.		(3) This Directive should establish a horizontal set of rules, 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.		
(4) Member States should ensure that the ending of illegal stay is carried out through a fair and transparent procedure.		(4) Member States should ensure that the ending of illegal stay of third-country nationals is carried out through a fair and transparent procedure. According to general principles of EU law, decisions taken under this Directive should		

		be adopted on a case-by-case basis and based on objective criteria.		
(5) As a general principle, a harmonised two-step procedure should be applied, involving a return decision as a first step and, where necessary, the issuing of a removal order as a second step. However, in order to avoid possible procedural delays, Member States should be allowed to issue both a return decision and a removal order within a single act or decision.		<p>(5) As a general principle, a harmonised two-step procedure should be applied, involving a return decision as a first step and, where necessary, the issuing of a removal order as a second step. However, in order to avoid possible procedural delays, Member States should be allowed to issue both a return decision and a removal order within a single act or decision.</p> <p>(5) The need for EC and bilateral readmission agreements with third countries to facilitate the return process is underlined. International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.</p>		
		<p>(5a) It is recognised that it is legitimate for Member States to return illegally staying third-country nationals. The prerequisite for this assumption is that fair and efficient asylum systems are in place, which fully respect the principle of non-refoulement.</p> <p>(5b) A third country-national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of the Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum</p>		

		seeker has entered into force.		
(6) Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and a period for voluntary departure should be granted.	(6) Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and a period for voluntary departure should be granted. In order to promote voluntary return, Member States should provide for enhanced return assistance and counselling and make best use of the relevant funding possibilities offered under the European Return Fund.	(6) Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and a period for voluntary departure should be granted. In order to promote voluntary return, Member States should provide for enhanced return assistance and counselling and make best use of the relevant funding possibilities offered under the European Return Fund.		
(7) A common minimum set of legal safeguards on return and removal decisions should be established to guarantee effective protection of the interests of the individuals concerned.		(7) A common minimum set of legal safeguards on return and removal decisions decisions related to return should be established to guarantee effective protection of the interests of the individuals concerned		
(8) The situation of persons who are staying illegally but who cannot (yet) be removed should be addressed. Minimum standards for the conditions of stay of these persons should be established, with reference to the provisions of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ⁹ .		(8) The situation of persons third-country nationals who are staying illegally but who cannot yet be removed should be addressed Minimum standards for the regarding their basic conditions of stay of these persons should be established, with reference to the provisions of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers subsistence according to national legislation.		
(9) The use of coercive measures	(9) The use of coercive measures	(9) The use of coercive measures		

⁹ OJ L 31, 6.2.2003, p. 18.

should be expressly bound to the principle of proportionality and minimum safeguards for the conduct of forced return should be established, taking into account Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subject of individual removal orders ¹⁰ .	should be expressly bound to the principle of proportionality and minimum safeguards for the conduct of forced return should be established, taking into account Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subject of individual removal orders ¹¹ and the 20 guidelines on forced return adopted by the Council of Europe Committee of Ministers on 4 May 2005.	should be expressly bound subject to the principle of proportionality and effectiveness with regard to means taken and minimum objectives pursued. Minimum safeguards for the conduct of forced return should be established, taking into account Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subject of individual removal orders.		
(10) The effects of national return measures should be given a European dimension by establishing a re-entry ban preventing re-entry into the territory of all the Member States.		(10) The effects of national return measures should be given a European dimension by establishing a re-an entry ban preventing re-entry into and stay in the territory of all the Member States.		
The length of the re-entry ban should be determined with due regard to all relevant circumstances of an individual case and should not normally exceed 5 years. In cases of serious threat to public policy or public security, Member States should be allowed to impose a longer re-entry ban.		The length of the re -entry ban should be determined with due regard to all relevant circumstances of an individual case and should not normally exceed 5 years. In cases of serious -threat to public policy or public security, Member States should be allowed to impose a longer re -entry ban.		
		(10a) It should be for the Member States to decide whether or not review decisions related to return imply the power for the reviewing authority or body to		

¹⁰ OJ L 261, 6.8.2004. p. 28.

¹¹ OJ L 261, 6.8.2004. p. 28.

		take its own decision related to the return, in substitution for the earlier decision.		
(11) The use of temporary custody should be limited and bound to the principle of proportionality. Temporary custody should only be used if necessary to prevent the risk of absconding and if the application of less coercive measures would not be sufficient.		(11) The use of temporary custody detention for the purpose of removal should be limited and bound subject to the principle of proportionality. Temporary custody with regard to means taken and objectives pursued. Detention should be justified only to only be used if necessary to prevent the risk of absconding and prepare return or carry out the removal and if the application of less coercive measures would not be sufficient.		
		(11a) Third-country nationals under detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Without prejudice to the initial apprehension by law enforcement authorities, regulated by national legislation, detention should be as a rule carried out in specialized detention facilities.		
(12) Provision should be made to deal with the situation of a third-country national who is the subject of a removal order or return decision issued by a Member State and is apprehended in the territory of another Member State.		(12) Provision should be made to deal with the situation of a third-country national who is the subject of a removal order or return decision issued by a Member State and is apprehended in the territory of another Member State.		
(13) This Directive includes provisions on the recognition of return decisions or removal orders which supersede Council Directive		(13) This Directive includes provisions on the recognition of return decisions or removal orders which supersede Council Directive		

2001/40/EC on mutual recognition of decisions on the expulsion of third-country nationals ¹² . That Directive should therefore be repealed.		2001/40/EC on mutual recognition of decisions on the expulsion of third country nationals . That Directive should therefore be repealed.		
(14) Council Decision 2004/191/EC ¹³ sets out criteria and practical arrangements for the compensation of financial imbalances resulting from mutual recognition of expulsion decisions, which should be applied mutatis mutandis when recognising return decisions or removal orders according to this Directive.		(14) Council Decision 2004/191/EC sets out criteria and practical arrangements for the compensation of financial imbalances resulting from mutual recognition of expulsion decisions, which should be applied mutatis mutandis when recognising return decisions or removal orders according to this Directive.		
(15) Member States should have rapid access to information on return decisions, removal orders and re-entry bans issued by other Member States. This information sharing should take place in accordance with [Decision/Regulation ... on the establishment, operation and use of the Second Generation Schengen Information System (SIS II)] ¹⁴		(15) Member States should have rapid access to information on return decisions, removal orders and re- entry bans issued by other Member States. This information sharing should take place in accordance with [Decision/Regulation (EC) No 1987/2006 of the European Parliament and of the Council on the establishment, operation and use of the Second Generation Schengen Information System (SIS II) ¹⁵		
		(15a) Cooperation between the institutions involved at all levels in the return process and the exchange and promotion of best practices should accompany the implementation of this Directive		

¹² OJ L 149, 2.6.2001, p. 34.

¹³ OJ L 60, 27.2.2004, p. 55.

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¹⁵ OJ L 381, 28.12.2006, p. 4.

		and provide European added value.		
(16) Since the objective of this Directive, namely to establish common rules concerning return, removal, use of coercive measures, temporary custody and re-entry, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.		(16) Since the objective of this Directive, namely to establish common rules concerning return, removal, use of coercive measures, temporary custody detention and re-entry bans , cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.		
(17) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.		(17) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.		
(18) In line with the 1989 United Nations Convention on the Rights of the Child, the “best interests of the child” should be a primary consideration of Member States when implementing this Directive. In line with the European Convention on Human Rights,		(18) In line with the 1989 United Nations Convention on the Rights of the Child, the “best interests of the child” should be a primary consideration of Member States when implementing this Directive. In line with the European Convention on Human Rights,		

respect for family life should be a primary consideration of Member States when implementing this Directive.		respect for family life should be a primary consideration of Member States when implementing this Directive.		
(19) Application of this Directive is without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.		(19) Application of this Directive is without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.		
(20) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.		(20) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.		
(21) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Given that this Directive builds - to the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Convention Implementing the Schengen Agreement ¹⁶ - upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European		(21) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Given that this Directive builds - to the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Convention Implementing the Schengen Agreement Borders Code ¹⁷ - upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the		

¹⁶ OJ L 239, 22.9.2000, p. 19.

¹⁷ OJ L 105, 13.4.2006, p. 1.

Community, Denmark should, in accordance with Article 5 of the said Protocol, decide, within a period of six months after the adoption of this Directive, whether it will implement it in its national law.		European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide, within a period of six months after the adoption of this Directive, whether it will implement it in its national law.		
(22) This Directive constitutes - to the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Convention Implementing the Schengen Agreement - a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point C of Council Decision 1999/437/EC ¹⁸ on certain arrangements for the application of that Agreement.		(22) This Directive constitutes - to the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Convention Implementing the Schengen Agreement Borders Code - a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point C of Council Decision 1999/437/EC on certain arrangements for the application of that Agreement.		
		(23) As regards Switzerland, this Directive constitutes a development of provisions of the Schengen <i>acquis</i> within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the		

¹⁸ OJ L 176, 10.7.1999, p. 31.

		implementation, application and development of the Schengen <i>acquis</i> ¹⁹ , which fall within the area referred to in Article 1, point [X], of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/146/EC ²⁰ and 2008/149/JHA ²¹ ;		
(24) This Directive constitutes - to the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Convention Implementing the Schengen Agreement - an act building on the Schengen <i>acquis</i> or otherwise related to it within the meaning of Article 3(2) of the Act of Accession,		(24) As regards Liechtenstein, this Directive constitutes a development of provisions of the Schengen <i>acquis</i> within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen <i>acquis</i>²², which fall within the area referred to in Article 1, point [C], of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/[XXX]/EC²³ and 2008/[XXX]/JHA²⁴;		
		(25) This Directive constitutes - to		

¹⁹ OJ L 53 of 27.2.08, p. 52.

²⁰ OJ L 53 of 27.2.08, p. 1.

²¹ OJ L 53 of 27.2.08, p. 50.

²² The text of this instrument is available on <http://www.consilium.europa.eu/docCenter.asp?lang=en&cmsid=245> under the reference Doc. 16462/06.

²³ Not yet published.

²⁴ OJ L 83 of 26.3.08, p.3.

		the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Convention Implementing the Schengen Agreement - an act building on the Schengen acquis or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession,		
		(26) This Directive constitutes - to the extent that it applies to third country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Convention Implementing the Schengen Agreement - an act building on the Schengen acquis or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession,		

Part III - Annex

ANNEX I

Standard form for return decision in cases of apprehension within seven days after illegal entry

(in accordance with Article 13a of Directive 2008/xxx/Ec of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals)

Name of State

LOGO OF STATE (Name of Office)

RETURN DECISION

On _____ at (time) _____ at (place) _____

We, the undersigned, _____ have before us:

Surname _____

First name _____

Date of birth _____

Place of birth _____ Sex: _____

Nationality _____

Resident in _____

Type of identity document _____

number _____

Issued in _____

on _____

Apprehended following illegal entry coming from _____

on _____ *(a maximum period of 1 week may have elapsed between illegal entry and the issuing of this decision)*

by means of _____

(indicate circumstances of illegal entry).

He/she is hereby informed that he/she does not fulfil the conditions for entry, stay or residence in _____ pursuant to _____ *(indicate references to the national legislation in force), for the following reasons:*

☐ (A) Has no valid travel document(s)

☐ (B) Has a false/counterfeit/forged travel document

☐ (C) Has no valid visa

☐ (D) Has a false/counterfeit/forged visa

☐ (E) Has no appropriate documentation justifying the purpose and conditions of stay

☐ (F) Does not have sufficient means of subsistence in relation to the period and form of stay, or the means to return to the country of origin or transit

☐ (G) Is a person for whom an alert has been issued for the purposes of refusing entry

☐ in the SIS

☐ in the national register

and is therefore obliged to return.

Taking into account the fact the he/she entered illegally and did not subsequently obtain an authorisation to stay, this return decision is executable immediately and he/she is hereby placed under detention for the purpose of removal.

Entry-ban: In accordance with Article 9 of Directive 2008/xxx/EC he/she is not allowed to enter into and stay in the territory of the Member States for a period of _____ (*normally five years*).

Comments

The person concerned may appeal against the decision as provided for in national law. The person concerned receives a copy of this document (*each State must indicate the possibilities under national legislation to appeal*).

Person concerned

Officer responsible

DRAFT STATEMENT TO THE COUNCIL MINUTES

The Commission states that the review of the SIS II (envisaged under the review clause of Article 24(5) of Regulation (EC) No 1987/2006, will be an opportunity to propose an obligation to register in the SIS entry bans issued under this Directive.