

RETURN DIRECTIVE (2005/0167 (COD))

Commission proposal (COM 2005(0391))	latest Council text (14783/07)	Amendments adopted by LIBE (A6-0339/2007)	Comments
<p>Proposal for a</p> <p style="text-align: center;">DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>on common standards and procedures in Member States for returning illegally staying third-country nationals</p>	<p>Proposal for a</p> <p style="text-align: center;">DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p>on common standards and procedures in Member States for returning illegally staying third-country nationals</p>		
<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p>	<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p>		
<p>Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,</p>	<p>Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,</p>		

Having regard to the proposal from the Commission ¹ ,	Having regard to the proposal from the Commission,		
		<i>Having regard to the 20 guidelines on forced return adopted by the Council of Europe Committee of Ministers on 4 May 2005 (CM(2005)40),</i> (AM 1)	<i>AM 1 is similar to recital 1b of the Council text</i>
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 Tampere European Council of 15 and 16 October 1999 established a coherent approach in the field of immigration and asylum, dealing together with the creation of a common asylum system, a legal immigration policy and the fight against illegal immigration.	<i>(-1) The Tampere European Council of 15 and 16 October 1999 established a coherent approach in the field of immigration and asylum, dealing together with the creation of a common asylum system, a legal immigration policy and the fight against illegal immigration.</i> (AM 2)	<i>Council text and AM 2 are identical</i>
		<i>(-1a) In order to facilitate the return process, the need for bilateral and multilateral</i>	<i>AM 3 is almost identical to the first sentence of recital 5 of the Council text</i>

¹ OJ C [...], p. [...].

		<i>readmission agreements between the EU and third countries is underlined.</i> (AM 3)	
(1) 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.	(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.		
	(1b) The Council of Europe Committee of Ministers adopted on 4 May 2005 "20 guidelines on forced return" (CM(2005)40).		
		<i>(1a) It is recognised that it is legitimate for States to return people. The pre-requisite for this assumption is that fair and efficient asylum systems are in place, which fully respect the principle of non-refoulement.</i> (AM 4)	AM 4 is almost identical to recital 5a of the Council text
		<i>(1b) According to Article 33 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, Member States shall not expel or return a</i>	

		<p><i>refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened. The principle of non-refoulement also applies to persons placed in transit zones.</i></p> <p>(AM 5)</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.		
		<p><i>(2a) International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.</i></p> <p>(AM 6)</p>	AM 6 is identical to the second sentence of recital 5 of the Council text
		<p><i>(2b) 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 and provide European added value.</i></p> <p>(AM 7)</p>	AM 7 is identical to the recital 15a of the Council text

(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.	(4) Member States should ensure that the ending of illegal stay <i>of third-country nationals in the EU</i> is carried out through a fair and transparent procedure; <i>according to general principles of EU law, decisions taken under this Directive should be taken on a case-by-case basis and should take individual and objective criteria into account.</i> (AM 8)	<i>Council text and AM 8 are almost identical</i>
	(5) The need for EC and bilateral readmission agreements with third countries to facilitate the return process is <u>underlined</u> . International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.		<i>first sentence of the Council text is almost identical to AM 3</i> <i>second sentence of the Council text is identical to AM 6</i>
	(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-		<i>Council text is almost identical to AM 4</i>

	refoulement.		
(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.	deleted		
(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.	(6) <i>Voluntary</i> return should be preferred over forced return and a period for voluntary departure should be granted. (AM 9)	
(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 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	(8) The situation of persons who are staying illegally but who cannot (yet) be removed should be addressed and standards of living capable of ensuring their basic subsistence should be provided.		

standards for the reception of asylum seekers ² .			
(9) The use of coercive measures 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 ³ .	(9) The use of coercive measures 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) 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 an entry ban preventing 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 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 " deleted) threat to public policy or public security, Member States should be allowed to impose a longer entry ban.		
(11) The use of temporary custody should be limited and bound to the principle of	(11) The use of detention should be limited and bound to the principle of	(11) The use of <i>detention</i> should be limited and bound to the	

² OJ L 31, 6.2.2003, p. 18.

³ OJ L 261, 6.8.2004. p. 28.

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.	proportionality. Detention should only be used if necessary to prepare return or carry out the removal and if the application of less coercive measures would not be sufficient.	principle of proportionality. Detention should only be used if necessary to prevent the risk of absconding and if the application of less coercive measures would not be sufficient. <i>(This change applies throughout the text.)</i> (AM 10)	
	(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.	<i>(11a) All possibilities for giving prospects or a useful occupation to a third-country national who is in temporary custody should be considered.</i> (AM 11)	<i>(see Article 15)</i>
(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.	deleted		
(13) This Directive includes provisions on the recognition of return decisions or removal orders which supersede Council Directive 2001/40/EC on mutual recognition	deleted		

of decisions on the expulsion of third-country nationals ⁴ . That Directive should therefore be repealed.			
(14) Council Decision 2004/191/EC ⁵ 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.	deleted		
(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)] ⁶	(15) Member States should have rapid access to information on entry bans issued by other Member States. This information sharing should take place in accordance with 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)]		
	(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 and provide European added value.		<i>Council text is identical to AM 7</i>

⁴ OJ L 149, 2.6.2001, p. 34.

⁵ OJ L 60, 27.2.2004, p. 55.

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(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, detention and 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, respect for family life should be a primary consideration of Member States when implementing this Directive.	(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 and		

	Member States shall therefore 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.		<i>elements of AM 23 (Article 5) are taken over in the Council text</i>
(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	(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 ⁷ - upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the 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.	with the Schengen Borders Code - upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the 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 ⁸ 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 Schengen 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) This Directive constitutes a development of the provisions of the	(23) This Directive constitutes a development of the provisions of the		

⁷ OJ L 239, 22.9.2000, p. 19.

⁸ OJ L 176, 10.7.1999, p. 31.

Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 4(1) of Council Decision 2004/860/EC ⁹ on the provisional application of certain provisions of that Agreement.	Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 4(1) of Council Decision 2004/860/EC on the provisional application of certain provisions of that Agreement.		
(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 acquis or otherwise related to it within the meaning of Article 3(2) of the Act of Accession,			
HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:		

⁹ OJ L 370, 17.12.2004, p. 78.

Chapter I GENERAL PROVISIONS	Chapter I GENERAL PROVISIONS		
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 obligations.	This Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.	This Directive sets out common standards and procedures to be applied in Member States for returning <i>third-country nationals who do not fulfil, or who no longer fulfil, the conditions of legal stay</i> , in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations. (AM 12)	
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.		

(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	(a) deleted (moved to Article 3b)		<i>see Article 3 point b</i>
(b) who are otherwise illegally staying in the territory of a Member State.	(b) deleted (moved to Article 3b)	(b) who <i>for other reasons do not fulfil, or no longer fulfil, the conditions of legal stay</i> in the territory of a Member State. (AM 13)	<i>see Article 3 point b</i>
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 who: (a) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law (b) are subject to extradition procedures, (c) are subject to a refusal of entry, in accordance with Article 13 of the Schengen Borders Code, <u>or who are intercepted at, or in the vicinity of the external border of the Member States while trying to enter or are apprehended in circumstances where are reasons to believe that they have illegally entered within a period of no more than 72 hours the territory of the Member States.</u>	2. Member States may decide not to apply this Directive to third-country nationals who have been refused entry <i>at a border or</i> in a transit zone of a Member State <i>in accordance with Article 35 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status¹</i> . 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 <i>of this Directive</i> . ¹ OJ L 326, 13.12.2005, p. 13.	

		(AM 14)	
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.		
(a) who are family members of citizens of the Union who have exercised their right to free movement within the Community or	(a) deleted		
(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.	(b) deleted		
		<i>3a. Re-entry bans which have been issued prior to its entry into force shall not be affected by this Directive.</i> (AM 15)	
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:		
(a) ‘third-country national’ means any person who is not a citizen of the Union within the	(a) ‘third-country national’ means any person who is not a citizen of the Union		

meaning of Article 17(1) of the Treaty;	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.		
		<p><i>(aa) 'transit zone' means a clearly designated and limited area located in an airport, in a port or at the external land borders on the territory of a Member State, where a third-country national, who has not crossed a border control and has not yet passed a checkpoint, is temporarily placed until a decision concerning the entry or the refusal of entry into the territory of the Member State in question is taken by the competent authorities of that State;</i></p> <p>(AM 16)</p>	
(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;	<p>(b) 'illegal stay' means the presence on the territory of a Member State of third-country <i>nationals</i> who <i>do</i> not fulfil, or <i>who</i> no longer <i>fulfil</i>, the conditions for <i>legal</i> stay in that Member State;</p> <p>(AM 17)</p>	

(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 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;	(c) 'return' means the process of going back to one's country of origin <i>or to a country of transit in which the third-country national has solid established ties</i> ; (AM 18)	
(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' means the process of going back to one's country of origin, transit or another third country, in which the third-country national concerned will be accepted , whether in voluntary compliance with an obligation to return, or enforced;		
(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;		
(f) 'removal order' means an administrative or judicial decision or act ordering the removal;	(f) deleted [addressed in Article 7(3)]		
(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 .		
	(h) "risk of absconding" means the existence of particular reasons to believe that a third-country national who is	(ga) 'risk of absconding' means <i>the existence of serious reasons, defined by individual and</i>	

	<p>subject to return procedures will abscond, for example:</p> <ul style="list-style-type: none"> - if the person has illegally entered the territory of a Member State and has not subsequently obtained an authorisation to stay in that Member State; - if the person was intercepted at, or <u>in the vicinity of the external border</u> while trying to enter illegally the territory of a Member State; - if during the period of voluntary <u>departure</u> the person has changed place of residence without notifying the authorities of a change of address; - if the person has not complied with the measures adopted to ensure that he/she will not abscond; - if the person has in the past evaded removal or frustrated removal efforts; 	<p><i>objective criteria, to believe that a third-country national who is already subject to a return decision or a removal order might 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></p> <p>(AM 19)</p>	
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		<p><i>(gb) 'temporary custody facilities' means specialised facilities where third-country nationals who are or will be the subject of a return decision or a removal order are kept in temporary custody with the objective of preventing them from absconding during the preparation of their removal;</i></p> <p>(AM 20)</p>	
	<p>(i) "voluntary departure" means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision.</p>		
	<p>(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, found to have special needs after an individual evaluation of their situation.</p>	<p><i>(gc) '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.</i></p> <p>(AM 21)</p>	<p><i>Council text and AM 21 are identical except for the last three lines of the Council text</i></p>

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:		
(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.		
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.		
(a) Council Directive 2003/86/EC on the right to family reunification ¹⁰ ,	(a) deleted		
(b) Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents ¹¹ ,	(b) deleted		
(c) Council Directive 2004/81/EC on the residence permit issued to third-country	(c) deleted		

¹⁰ OJ L 251, 3.10.2003, p. 12.

¹¹ OJ L 16, 23.1.2004, p. 44.

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 ¹² ,			
(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 ¹³ ,			
(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 ¹⁴ ,	(e) deleted		
(f) Council Directive 2005/XX/EC on a specific procedure for admitting third-country nationals for purposes of scientific research ¹⁵ .	(f) deleted		
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.		

¹² OJ L 261, 6.8.2004, p. 19.

¹³ OJ L 304, 30.9.2004, p. 12.

¹⁴ OJ L 375, 23.12.2004, p. 12.

¹⁵ OJ L XX

Article 5 Family relationships and best interest of the child	Article 5 Non-refoulement , family relationships and best interest of the child	Article 5 <i>Non-refoulement</i> , family relationships, best interest of the child <i>and state of health</i> (AM 22)	
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.	<u>moved to recital 18</u>	When implementing this Directive, Member States shall take due account of: <i>(a) the principle of non-refoulement;</i> <i>(b) family relationships, in accordance with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as concerns the nature and solidity of the third-country national's family relationship and the existence of family ties with his/her country of origin and the duration of his/her stay in the Member State; families accompanied by one or more minors should not be subject of any coercive measure and alternatives to temporary custody shall be given priority;</i> <i>(c) the best interest of the child: the interest of the child shall be</i>	

		<p><i>safeguarded by the appropriate social services department or an advocate appointed no later than at the time of the issuing of the temporary custody or removal order; unaccompanied minors should not be removed or detained; this point shall not apply to convicted criminals;</i></p> <p><i>(d) the state of health: Member States shall grant a person suffering from a serious illness an autonomous residence permit or another authorisation conferring a right to stay so as to have adequate access to healthcare, unless it can be proved that the person in question can receive appropriate treatment and medical care in his/her country of origin.</i></p> <p>(AM 23)</p>	
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Chapter II TERMINATION OF ILLEGAL STAY	Chapter II TERMINATION OF ILLEGAL STAY		
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 and 4 of this Article.	1. <i>Without prejudice to the exceptions provided for in paragraphs 1a, 4 and 5,</i> Member States shall issue a return decision to any third-country national staying illegally on their territory. (AM 24)	
		<i>1a. 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 such a case Member States may refrain from issuing a return decision.</i>	<i>first sentence of AM 25 is identical to first sentence of paragraph 2 of this Article of the Council text</i>

		(AM 25)	
<p>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.</p>	<p>Deleted (new Article 6a)</p> <p>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, <u>or where it may be assumed that the third country national will not comply with the requirement or where the third country national's immediate departure is required for reasons of national security or public policy</u>, paragraph 1 shall apply.</p>	<p>2. <i>As a matter of principle, the return decision shall provide for an appropriate period for voluntary departure of at least four weeks, unless a competent administrative or judicial body has objective reasons to believe that the person concerned might abscond during such a period or that such a person poses a threat to public order, public security or national security.</i></p> <p><i>Member States may extend the period for voluntary departure for an appropriate period or refrain from setting any time limit, taking into account the specific circumstances of the individual case.</i></p> <p>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. <i>To guarantee effective return, Member States should provide material assistance and</i></p>	<p><i>first sentence of the Council text is identical to first sentence of AM 25</i></p>

		<i>counselling following a decision taken under national law on a case-by-case basis.</i> (AM 26)	
		<i>2a. Persons benefiting from Directive 2003/9/EC prior to a return decision should be able to continue benefiting from all the reception conditions to which they are entitled under that Directive.</i> (AM 27)	
3. The return decision shall be issued as a separate act or decision or together with a removal order.	Deleted		
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-refoulement, 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.	Deleted	<i>4. 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 or where a return decision has already been issued, it shall be withdrawn. Member States</i>	<i>first sentence of AM 28 is almost identical to paragraph 3 of this Article of the Council text</i>

		<p><i>should communicate any such withdrawal through the mutual information mechanism provided for in Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration¹.</i></p> <p>¹ OJ L 283, 14.10.2006, p. 40.</p> <p>(AM 28)</p>	
<p>5. 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 or where a return decision has already been issued, it shall be withdrawn.</p>	<p>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.</p>	<p><i>5. 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, a Member State shall refrain from issuing a return decision until the pending procedure is concluded.</i></p> <p>(AM 29)</p>	<p>AM 29 is almost identical to paragraph 4 of this Article of the Council text (main difference "may" and "shall")</p>
		<p><i>If a Member State grants a permit to a third-country national it shall be valid on the territory of that Member State only.</i></p>	

		(AM 30)	
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.	Deleted [replaced by Art. 6(2)]	<i>deleted</i> (AM 31)	
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.	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 may 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.	Deleted	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 shall refrain from issuing a return decision, until the pending procedure is finished. (AM 32)	

	5. The present Directive does not prevent Member States from adopting a decision on the ending of legal stay together with a return decision and/or a decision on removal within one administrative or judicial act as provided for in their national legislation.		
	Article 6a Voluntary departure		
	1. The return decision shall provide for an appropriate period for voluntary departure of up to 30 days, 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.		<i>first part of the Council text has been moved from Article 6 paragraph 2</i>
	2. Member States may extend the period for voluntary departure for an appropriate period, taking into account the specific circumstances of the individual case.		<i>Council text is partly identical to the second subparagraph of AM 26</i>
	3. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting		<i>Council text has been moved from Article 6</i>

	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.		<i>paragraph 2</i>
	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 no period of voluntary departure shall be granted.		<i>see first subparagraph of AM 26</i>
Article 7 Removal order	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 execute 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 this period.	1. Member States shall issue a removal order concerning a third-country national who is subject of a return decision, if <i>no period for voluntary departure has been granted because the person concerned might abscond or poses a threat to public order, public security or national security</i> or if the obligation to return has not been complied with within the period <i>for</i> voluntary departure granted in accordance with Article 6(2). (AM 33)	
2. The removal order shall specify the delay	2. If the Member State has granted a	<i>2. A Member State may issue,</i>	

within which the removal will be enforced and the country of return.	period of voluntary departure in accordance with Article 6a the return decision can be executed only after the period has ended, unless during this period, a risk, as defined in Article 6a, paragraph 4, arises.	<i>together with the return decision, a removal order concerning a third-country national who is subject of a return decision. If the Member State has granted a period for voluntary departure in accordance with Article 6(2) the removal order may be enforced only after the period has ended.</i> (AM 34)	
3. The removal order shall be issued as a separate act or decision or together with the return decision.	3. Member States may adopt a separate administrative or judicial decision or act ordering the removal.	<i>3. A Member State which does not follow the procedure specified in paragraph 2 shall issue a removal order as a separate act or decision.</i> (AM 35)	
	4. 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, as provided for in national legislation.		<i>except for the reference to national legislation Council text has been moved from Article 10 paragraph 1</i>

	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.		<i>except for the addition of "by air" Council text has been moved from Article 10 paragraph 2</i>
Article 8 Postponement	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 may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. These circumstances may include_in particular: - the person's physical state or mental capacity; - lack of assurance that accompanied minors can be handed over, at the point of departure of 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; - technical reasons, such as lack of transport capacity, <u>failure of the removal due to the refusal of acceptance</u> by a third-country or lack of identification.		<i>second indent of the Council text has been moved from paragraph 2 point c of this Article</i>
2. Member States shall postpone the execution of a removal order in the following	2. Member States shall postpone removal when this would violate the principle of		

circumstances, for as long as those circumstances prevail:	non-refoulement.		
(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;		(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, <i>following a medical report</i> ; (AM 36)	
(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.			
		<i>(ca) existence of serious reasons to believe that removal would lead to a collective expulsion, in contravention of Article 4 of Protocol 4 to the European Convention for the Protection</i>	

		<i>of Human Rights and Fundamental Freedoms, which prohibits collective expulsion of aliens.</i> (AM 37)	
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 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.	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.		
Article 9 Re-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.	1. Removal orders <i>may</i> include a re-entry ban of a maximum of 5 years. (AM 38)	
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	2. The length of the entry ban shall be determined with due regard to all		

circumstances of the individual case, and in particular if the third-country national concerned:	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 <u>serious</u> threat to public policy or public security or to national security.		<i>see second part of AM 39</i>
(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.		(d) constitutes a proven threat to public <i>order</i> , public security <i>or national security</i> . (first part of AM 39)	
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.	Deleted	The re-entry ban may be issued for a period exceeding 5 years where the third-country national concerned constitutes a proven serious threat to public <i>order</i> , public security <i>or national security</i> . (second part of AM 39)	
3. The re-entry ban may be withdrawn, in particular in cases in which the third-country	Deleted	3. The re-entry ban may be withdrawn at any time , in	

national concerned :		particular in cases in which the third-country national concerned: (AM 40)	
(a) is the subject of a return decision or a removal order for the first time;	Deleted		
(b) has reported back to a consular post of a Member State;	Deleted		
		<i>(ba) has his or her life threatened owing to changes in his or her country of return entailing a risk of persecution; a withdrawal decision taken by a Member State shall be effective throughout the Union.</i> (AM 41)	
(c) has reimbursed all costs of his previous return procedure.	Deleted	<i>deleted</i> (AM 42)	
		<i>A re-entry ban may also be withdrawn where there are other positive reasons for its withdrawal.</i> (AM 43)	
4. The re-entry ban may be suspended on an	3. Member States may refrain from	4. The re-entry ban may be	

exceptional and temporary basis in appropriate individual cases.	adopting the entry ban, withdraw it or suspend it, in individual cases for humanitarian or other reasons such as voluntary departure in full compliance with a return decision or arising from co-operation with a police or judicial investigation, notably related to trafficking in human beings.	suspended on an exceptional and temporary basis <i>or revoked in its entirety</i> in appropriate individual cases. (AM 44)	
	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 3 apply without prejudice to the right to international protection in one of the Member States.	5. Paragraphs 1 to 4 apply without prejudice to the right to seek asylum <i>or international protection</i> in one of the Member States. (AM 45)	
		<i>5a. In the event of a human disaster, the re-entry ban may be withdrawn for a group of persons or a region pursuant to a Council decision to that effect.</i>	

		(AM 46)	
Article 10 Removal	Article 10 Removal - moved to article 7		
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.	Deleted [moved to Article 7(4)]	1. Where Member States <i>are obliged, as a last resort, to</i> 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. <i>In the best interests of a third-country national who is the subject of a removal procedure and in those of the security agents carrying out the removal, such coercive measures</i> shall be implemented in accordance with fundamental rights and with due respect for the dignity of the third-country national concerned <i>and the 20 guidelines on forced return adopted by the Council of Europe Committee of Ministers on 4 May 2005. They should be open to independent scrutiny. Coercive measures should be avoided when removing vulnerable persons.</i>	

		(AM 47)	
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.	Deleted [moved to Article 7(5)]		
		<i>2a. Member States shall ensure that relevant international and non-governmental organisations are involved during removal procedures in order to guarantee compliance with proper legal procedure.</i> (AM 48)	
Chapter III PROCEDURAL SAFEGUARDS	Chapter III PROCEDURAL SAFEGUARDS		
Article 11 Form	Article 11 Form		
1. Return decisions and removal orders shall be issued in writing.	1. Return decisions, and if applicable 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		<i>see next subparagraph</i>

	remedies.		
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.		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 <i>in a language the third-country national understands or is reasonably presumed to understand.</i> (AM 49)	
	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 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 a written or oral translation of the main elements of the return decision and/or removal order in a language the third-country national <i>understands or is reasonably presumed</i> to understand.	

		(AM 50)	
Article 12 Judicial 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 before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.	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, removal order, <i>temporary custody order or re-entry ban.</i> (AM 51)	
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.		
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	3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.	3. Member States shall ensure that the third-country national concerned has the possibility to obtain legal advice, representation and linguistic	

available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.		assistance. Legal aid shall be available to those who lack sufficient resources <i>in accordance with Article 3 of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes¹.</i> (AM 52)	
	4. Legal aid shall be made available in accordance with national legislation.		
Article 13 Safeguards pending return	Article 13 Safeguards pending return		
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.	1. Member States shall 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 as far as possible ;	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. <i>The same conditions</i>	

	<ul style="list-style-type: none"> - ... Basic standards of living capable of ensuring their basic subsistence are provided; (moved to recital 8) - ...Necessary health care, including at least emergency care and essential treatment of illness is provided; - ... Minors access to the basic education system subject to the length of their stay; - ... Special needs of vulnerable persons 	<p><i>shall be granted to third-country nationals during the period for voluntary departure and to third-country nationals awaiting the outcome of appeal proceedings.</i></p> <p>(AM 53)</p>	
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 executed.	2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation <i>in a language they understand or are reasonably presumed to understand</i> that the enforcement of the return decision has been postponed for a specified period or that the removal order will temporarily not be executed.	
	<p align="center">Article 13a Accelerated procedure following illegal entry</p>		

	<p>1. Member States may provide for an accelerated procedure. This procedure shall be applicable to persons who are intercepted at, or <u>the vicinity of</u>, the <u>external</u> border while trying to enter illegally the territory of <u>the</u> Member States or who are apprehended within fourteen days after their illegal entry to the territory of a Member State.</p>		
	<p>2. Return decisions and entry bans issued <u>with regard</u> to this category of persons shall be given by means of a standard form as set out in Annex I.</p>		
	<p>3. <u>To decisions taken in accordance</u> with paragraphs 1 and 2, Article 11 par. 2 does not apply. 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 this Member State.</p>		
	<p>4. <u>To decisions taken in accordance</u> with paragraphs 1 and 2, Article 12 does not apply. The legal remedies shall be determined in accordance with national legislation.</p>		

Chapter IV TEMPORARY CUSTODY FOR THE PURPOSE OF REMOVAL	Chapter IV DETENTION FOR THE PURPOSE OF REMOVAL		
Article 14 Temporary custody	Article 14 Detention		
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,	1. Member States shall keep in detention a third-country national, who is subject of return procedures, where this is necessary to prepare return and/or carry out the removal process unless other sufficient but less coercive measures can be applied in the concrete case.	1. Where <i>a judicial authority or competent body has</i> serious grounds to believe that there is a risk of absconding, <i>a proven threat to public order, public security or national security</i> 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 <i>may</i> keep under temporary custody a third-country national, who is or will be subject of a <i>return decision</i> or a <i>removal order</i> . (AM 55)	
2. Temporary custody orders shall be issued	2. Detention shall be ordered by	2. Temporary custody orders	

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 authorities within 72 hours from the beginning of the temporary custody.	administrative or judicial authorities. A third-country national kept in detention shall be entitled to take proceedings by which the lawfulness of his/her detention shall be subject to a speedy judicial review, <u>in accordance with national law.</u>	shall be issued by <i>administrative or</i> judicial authorities. <i>If they have been</i> issued by administrative authorities temporary custody <i>orders</i> shall be <i>subject to review</i> by judicial authorities within 48 hours from the beginning of the temporary custody. (AM 56)	
		<i>2a. Temporary custody orders shall state the reasons in fact and law and be issued as an act separate from the return and removal decision.</i> (AM 57)	
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.		
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. <u>The maximum period of detention, subject to paragraph 5, may not exceed a period of six months. In the case of prolonged detention periods, reviews undertaken in accordance with paragraph 3 should be subject to the</u>	<i>deleted</i> (AM 58)	

	<u>supervision of a judicial authority.</u>		
		<p><i>4a. Temporary custody shall be maintained for as long a period as necessary to ensure successful removal. Temporary custody shall be justified only for as long as removal arrangements are in progress. When it appears that removal within a reasonable period is unrealistic for legal or other considerations, temporary custody shall cease to be justified.</i></p> <p>(AM 59)</p>	<p><i>see paragraph 6 of this Article of the Council text</i></p>
		<p><i>4b. Member States shall provide for a period of three months after which temporary custody shall cease to be justified. Member States may shorten this period or extend this period up to 18 months in cases in which in spite of all reasonable efforts the removal operation is likely to last longer due to a lack of co-operation on the part of the third-country national concerned or due to delays in obtaining the necessary documentation from third countries or if the person</i></p>	

		<p><i>concerned represents a proven threat to public order, public security or national security.</i></p> <p>(AM 60)</p>	
		<p><i>4c. Temporary custody shall cease in the event of removal becoming impossible. This paragraph shall not apply to convicted criminals.</i></p> <p>(AM 61)</p>	
	<p>5. Member States may extend this period 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.</p>		
	<p>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.</p>		

Article 15 Conditions of temporary custody	Article 15 Conditions of detention		
<p>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.</p>	<p><u>moved to recital 11a</u></p>	<p>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. <i>On arrival in temporary custody facilities,</i> they shall be <i>informed that they may</i> without delay establish contact with legal representatives, family members and competent consular authorities as well as with relevant international and non-governmental organisations. <i>The conditions of temporary custody shall be supervised by the judicial authorities.</i></p> <p>(AM 62)</p>	<p><i>see recital 11a of the Council text</i></p> <p><i>see paragraph 2 of this Article of the Council text</i></p>
		<p><i>1a. Member States shall ensure that the conditions of stay of third-country nationals in temporary custody are not less favourable than those set out in Articles 8 to 10, 15 and 17 to 20</i></p>	

		<i>of Directive 2003/9/EC.</i> (AM 63)	
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 should be separated from ordinary prisoners.	2. Detention shall be carried out in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and has to resort to prison accommodation, it shall ensure that third-country nationals under detention are permanently physically separated from ordinary prisoners. (AM 64)	
	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 international and non-governmental organisations <u>and bodies</u>, such as the United Nations High Commissioner on Refugees (UNHCR), the International Red Cross (IRC) and the International Organisation on Migration (IOM).		
3. Particular attention shall be paid to the situation of vulnerable persons. Member States shall ensure that minors are not kept in	3. Particular attention shall be paid to the situation of vulnerable persons. If unaccompanied minors are 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.	detention, they shall be separated from adults unless it is considered in the child's best interest not to do so. Member States shall ensure that minors are kept in specialised detention facilities.		
4. Member States shall ensure that international and non-governmental organisations have the possibility to visit temporary custody facilities in order to assess the adequacy of the temporary custody conditions. Such visits may be subject to authorisation.	4. Relevant international and non-governmental organisations <u>and bodies,</u> such as UNCHR, IRC and IOM shall have the possibility to visit detention facilities in order to assess the adequacy of the detention conditions. Such visits <u>may</u> be subject to authorisation.	4. Member States shall ensure that <i>relevant national,</i> international and non-governmental organisations <i>such as the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM)</i> are granted <i>access</i> to visit temporary custody facilities in order to assess the adequacy of the temporary custody conditions <i>and assist persons kept in temporary custody, in accordance with international and national rules.</i> (AM 65)	
		<i>4a. Member States shall define and publish minimum standards at national level for a common code of practice concerning procedures in temporary custody facilities.</i> (AM 66)	

		(AM 67)	
		<i>Article 15a Conditions of temporary custody for children and families</i>	
		<i>1. Children with families shall be kept in temporary custody only as a measure of last resort and for the shortest appropriate period of time.</i>	
		<i>2. Children with families kept in temporary custody pending removal shall be provided with separate accommodation guaranteeing adequate privacy.</i>	
		<i>3. Children, whether in temporary custody facilities or not, shall have a right to education and a right to leisure, including a right to engage in play and recreational activities appropriate to their age. The provision of education should be subject to the length of their stay.</i>	
		<i>4. Unaccompanied children should be provided with accommodation in institutions</i>	

		<i>equipped with the personnel and facilities which take into account the needs of persons of their age.</i>	
		<i>5. The best interest of the child shall be a primary consideration in the context of the keeping in temporary custody of children pending removal.</i>	
Chapter V APPREHENSION IN OTHER MEMBER STATES	Chapter V APPREHENSION IN OTHER MEMBER STATES		
Article 16 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:	Deleted		

(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;	Deleted		
(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;	Deleted		
(c) launch the return procedure under its national legislation;	Deleted		
(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.	Deleted		
		(AM 68)	
		Chapter Va <i>EUROPEAN</i>	

		PARLIAMENT OMBUDSMAN FOR RETURN	
		(AM 69) <i>Article 16a Establishment of a European Parliament Ombudsman for Return</i>	
		<i>1. In order to secure efficient return with full respect for human rights, a European Parliament Ombudsman for Return shall be established.</i>	
		<i>2. The European Parliament Ombudsman for Return shall have the following rights and tasks:</i>	
		<i>(a) to conduct unannounced inspections at any time; (b) to collect information and reports on joint removals and where appropriate to make recommendations; (c) to ask Member States at any time for information or clarification on the return process.</i>	

Chapter VI FINAL PROVISIONS	Chapter VI FINAL PROVISIONS		
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 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 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 four years after the date referred to in Article 18(1) at the latest.	The Commission shall report for the first time <i>two years</i> after the date referred to in Article 18(1) at the latest, <i>and thereafter at two-yearly intervals.</i> (AM 70)	
		<i>The European Agency for Fundamental Rights should pay special attention to compliance with the provisions of this Directive when implemented by Member States.</i> (AM 71)	
		<i>For the purposes of evaluating the impact of the return policy</i>	

		<p><i>on the persons concerned as well as on the country or society to which they are returned, all returns shall be registered and monitored with a view to drawing up statistics in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection¹.</i></p> <p>(AM 72)</p>	
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, <i>(24 months from the date of publication in the Official Journal of the European Union)</i> 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, <i>(24 months from the date of publication in the Official Journal of the European Union)</i> at the latest. They shall forthwith communicate to the Commission the text of those provisions.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by, <i>(18 months)</i> 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.	

		(AM 73)	
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.		
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.		
Article 20 Repeal	Article 20 Repeal		
Directive 2001/40/EC is repealed.	Deleted		

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 <i>Official Journal of the European Union</i> .		
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.		
Done at Brussels, [...]	Done at Brussels, [...]		

<i>For the European Parliament The President</i> <i>For the Council The President</i>	<i>For the European Parliament The President</i> <i>For the Council The President</i>		
	<i>ANNEX 1 below</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

