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OUTCOME OF PROCEEDINGS

of: The Strategic Committee on Immigration, Frontiers and Asylum / Mixed Committee (EU-Iceland/Norway and Switzerland)

on: 21 November 2007

No. prev. doc: 14783/07 MIGR 110 CODEC 1190 COMIX 944

No. Cion doc: 12125/05 MIGR 41 CODEC 750 COMIX 579 - SEC(2005) 1057

Subject: Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals

1. At its meeting on 21 November delegations were briefed by the Presidency on the latest developments concerning the above mentioned proposal.

The Presidency reported that an informal meeting with the European Parliament Rapporteur on the proposal and the Commission took place during which it was decided that the Parliament would postpone the vote at plenary on the proposal until January.

Furthermore, the Presidency underlined its intention to pursue intense discussions with the European Parliament in order to try to achieve a first-reading agreement on the proposal and presented its planning to this effect, which would involve a series of informal technical meetings among the Parliament, the Commission and the Presidency. These discussions are focusing on a number of specific issues where there are significant differences between the positions of Council and the Parliament.

These would, if necessary, be followed up by an informal political high-level meeting in late December, which will assess the progress until then and reflect upon further steps to take.

The Presidency stressed that during these talks with Parliament the release of the funds allocated for the European Return Fund would continue to be a priority. The outstanding reservations by the delegations on the proposal were reviewed.

2. The results of the discussions are set out in the Annex to this note, with delegations comments in the footnotes.

<p style="text-align: center;">ORIGINAL COMMISSION PROPOSAL</p> <p style="text-align: center;">Proposal for a</p> <p style="text-align: center;">DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p style="text-align: center;">on common standards and procedures in Member States for returning illegally staying third-country nationals</p>	<p style="text-align: center;">PRESIDENCY PROPOSAL¹</p> <p style="text-align: center;">Proposal for a</p> <p style="text-align: center;">DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</p> <p style="text-align: center;">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 proposal from the Commission²,</p> <p>Acting in accordance with the procedure laid down in Article 251 of the Treaty,</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 proposal from the Commission³,</p> <p>Acting in accordance with the procedure laid down in Article 251 of the Treaty,</p>

¹ DE entered linguistic reservations on editorial changes made to Articles 3(e) , 3(g), 3(h), 6a(1), 7(1), 7(2), 9(3), 12(2), 13(2), 13a(1), 15(1) and 15(3).

² OJ C [...], p. [...].

³ OJ C [...], p. [...].

	Treaty,
Whereas:	Whereas: ⁴
	(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.⁵
(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).⁶
(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.

⁴ SE suggested adding the following recital to the Preamble: *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 has entered into force.*

⁵ Source: EP-LIBE Amendment 2;

⁶ Source: EP-LIBE Amendment 1 (technically adapted);

<p>(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.</p>	<p>(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.</p>
<p>(4) Member States should ensure that the ending of illegal stay is carried out through a fair and transparent procedure.</p>	<p>(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.⁷</p>
	<p>(5) The need for EC and bilateral readmission agreements with third countries to facilitate the return process is underlined.⁸ International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.⁹</p>
	<p>(5a) It is recognised that it is legitimate for Member States to return illegally staying third-country nationals. The pre-requisite for this assumption is that fair and efficient asylum systems are in place, which fully respect the principle of non-refoulement.¹⁰</p>

⁷ Source: EP-LIBE Amendment 8 (technically adapted);

⁸ Source: EP-LIBE Amendment 3 (technically adapted);

⁹ Source: EP-LIBE Amendment 6;
FR entered a reservation to this recital.

¹⁰ Source: EP-LIBE Amendment 4 (technically adapted);

<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>deleted¹¹</p>
<p>(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.</p>	<p>(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.</p>
<p>(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.</p>	<p>(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</p>

¹¹ NL suggested reinserting in the Preamble the second sentence of the original **Cion** proposal for old recital 5, which corresponded to Article 6 paragraph 5): *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>(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 seekers¹².</p>	<p>(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.¹³</p>
<p>(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 orders¹⁴.</p>	<p>(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 orders¹⁵.</p>

¹² OJ L 31, 6.2.2003, p. 18.

BE, FR and NL entered a reservation on this recital.

¹³ **Source:** Article 13(1), 2nd indent of Presidency compromise text (doc 13658/07)

¹⁴ OJ L 261, 6.8.2004. p. 28.

¹⁵ OJ L 261, 6.8.2004. p. 28.

FR entered a reservation on this recital.

<p>(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.</p> <p>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.</p>	<p>(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.</p> <p>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.¹⁶</p>
<p>(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.</p>	<p>(11) The use of detention should be limited and bound to the principle of 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.¹⁷</p>
	<p>(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.¹⁸</p>

¹⁶ DE and NO entered reservations on this recital.

¹⁷ FR entered a reservation on this recital.

¹⁸ Source: first sentence of Article 15(1) of COM proposal

<p>(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.</p>	<p>deleted</p>
<p>(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 nationals¹⁹. That Directive should therefore be repealed.</p>	<p>Deleted</p>
<p>(14) Council Decision 2004/191/EC²⁰ 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.</p>	<p>Deleted</p>

¹⁹ OJ L 149, 2.6.2001, p. 34.

²⁰ OJ L 60, 27.2.2004, p. 55.

<p>(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)]</p>	<p>(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)]²¹</p>
	<p>(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.²²</p>
<p>(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.</p>	<p>(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.</p>

²¹ OJ L 381, 28.12.2006, p. 4.

²² Source: EP-LIBE Amendment 7;

<p>(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.</p>	<p>(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.</p>
<p>(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.</p>	<p>(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.²³</p>
<p>(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.</p>	<p>(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.</p>

²³ **Source:** First part of Article 5 of the COM proposal.
BE and **NL** entered reservations on this recital.

<p>(20) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.</p>	<p>(20) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.</p>
<p>(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 Agreement²⁴ - 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.</p>	<p>(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 Schengen Borders Code²⁵ - 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.</p>

²⁴ OJ L 239, 22.9.2000, p. 19.

²⁵ OJ L 105, 13.4.2006, p. 1,.

<p>(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/EC²⁶ on certain arrangements for the application of that Agreement.</p>	<p>(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/EC²⁷ on certain arrangements for the application of that Agreement.</p>
<p>(23) This Directive constitutes a development of the provisions of the Schengen <i>acquis</i> 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 <i>acquis</i> which fall within the area referred to in Article 4(1) of Council Decision 2004/860/EC²⁸ on the provisional application of certain provisions of that Agreement.</p>	<p>(23) This Directive constitutes a development of the provisions of the Schengen <i>acquis</i> 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 <i>acquis</i> which fall within the area referred to in Article 4(1) of Council Decision 2004/860/EC²⁹ on the provisional application of certain provisions of that Agreement.</p>

²⁶ OJ L 176, 10.7.1999, p. 31.
²⁷ OJ L 176, 10.7.1999, p. 31.
²⁸ OJ L 370, 17.12.2004, p. 78.
²⁹ OJ L 370, 17.12.2004, p. 78.

<p>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,</p>	<p>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,</p>
<p>HAVE ADOPTED THIS DIRECTIVE:</p>	<p>HAVE ADOPTED THIS DIRECTIVE:</p>
<p style="text-align: center;">Chapter I GENERAL PROVISIONS</p>	<p style="text-align: center;">Chapter I GENERAL PROVISIONS</p>
<p style="text-align: center;"><i>Article 1</i> Subject matter</p>	<p style="text-align: center;"><i>Article 1</i> Subject matter</p>
<p>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.</p>	<p>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.</p>

<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">Scope</p>	<p style="text-align: center;"><i>Article 2</i></p> <p style="text-align: center;">Scope</p>
<p>1. This Directive applies to third-country nationals staying illegally in the territory of a Member State, i.e.</p>	<p>1. This Directive applies to third-country nationals staying illegally in the territory of a Member State.</p>
<p>(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</p>	<p>(a) deleted (moved to Article 3b)</p>
<p>(b) who are otherwise illegally staying in the territory of a Member State.</p>	<p>(b) deleted (moved to Article 3b)</p>
<p>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.</p>	<p>2. Member States may decide not to apply this Directive to third-country nationals who:</p> <p>(a) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law</p> <p>(b) are subject to extradition procedures,</p>

	(c) are subject to a refusal of entry, in accordance with Article 13 of the Schengen Borders Code, 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 ³⁰ the territory of the Member States. ³¹
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

³⁰ CY and AT (which entered a reservation on the provision) suggested replacing *72 hours* with *7 days*.

³¹ DE and FI maintained reservations and PL maintained scrutiny reservations on the wording of the point CY expressed its concerns about the notion of the *external border* in relation to its situation.

Cion underlined that Article 13a is sufficient to cover the concerns of the above delegations and suggested that the time-frame should be limited to 12 hours.

<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Definitions</p>	<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Definitions</p>
<p>For the purpose of this Directive the following definitions shall apply:</p>	<p>For the purpose of this Directive the following definitions shall apply:</p>
<p>(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;</p>	<p>(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.</p>
<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;</p>	<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 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>
<p>(c) ‘return’ means the process of going back to one’s country of origin, transit or another third country, whether voluntary or enforced;</p>	<p>(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;</p>

<p>(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;</p>	<p>(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;</p>
<p>(e) ‘removal’ means the execution of the obligation to return, namely the physical transportation out of the country;</p>	<p>(e) ‘removal’ means the enforcement of the obligation to return, namely the physical transportation out of the country;</p>
<p>(f) ‘removal order’ means an administrative or judicial decision or act ordering the removal;</p>	<p>(f) deleted [addressed in Article 7(3)]</p>
<p>(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.</p>	<p>(g) “entry ban” means an administrative or judicial decision or act prohibiting entry into and stay in the territory of the Member States for a specified period, accompanying a return decision.</p>

	<p>(h) "risk of absconding" means the existence of particular reasons to believe that a third-country national who is 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 in the vicinity of the external border while trying to enter illegally the territory of a Member State; - if during the period of voluntary departure 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 taken to ensure that he/she will not abscond; - if the person has in the past evaded removal or frustrated removal efforts;
	<p>(i) "voluntary departure" means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision.</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.
<i>Article 4</i> More favourable provisions	<i>Article 4</i> 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 ³² ,	(a) deleted
(b) Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents ³³ ,	(b) deleted
(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 ³⁴ ,	(c) deleted
(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. ³⁵	
(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 ³⁶ ,	(e) deleted
(f) Council Directive 2005/XX/EC on a specific procedure for admitting third-country nationals for purposes of scientific research ³⁷ .	(f) deleted

³² OJ L 251, 3.10.2003, p. 12.

³³ OJ L 16, 23.1.2004, p. 44.

³⁴ OJ L 261, 6.8.2004, p. 19.

³⁵ OJ L 304, 30.9.2004, p. 12.

³⁶ OJ L 375, 23.12.2004, p. 12.

³⁷ OJ L XX

<p>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.</p>	<p>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.</p>
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Family relationships and best interest of the child</p>	<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Non-refoulement, family relationships and best interest of the child</p>
<p>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.</p>	<p>moved to recital 18</p>

<p style="text-align: center;">Chapter II TERMINATION OF ILLEGAL STAY</p>	<p style="text-align: center;">Chapter II TERMINATION OF ILLEGAL STAY</p>
<p style="text-align: center;"><i>Article 6</i> Return decision</p>	<p style="text-align: center;"><i>Article 6</i> Return decision</p>
<p>1. Member States shall issue a return decision to any third-country national staying illegally on their territory.</p>	<p>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.</p>
<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 required³⁸ 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 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, paragraph 1 shall apply.</p>
<p>3. The return decision shall be issued as a separate act or decision or together with a removal order.</p>	<p>Deleted</p>

³⁸ LT suggested that the Member State in which the third-country national was staying illegally should issue a return decision in order to send him/her to the other Member State where he/she holds an authorisation to stay. It suggested the following wording to this effect: *If the third-country national is 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, a return decision shall be issued to such person obliging him/her to go to the territory of that Member State.*

<p>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.</p>	<p>Deleted</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>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..</p>	<p>Deleted [replaced by Art. 6(2)]</p>

<p>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.</p>	<p>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 may³⁹ refrain from issuing a return decision, until the pending procedure is finished.</p>
<p>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.</p>	<p>Deleted</p>
	<p>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.</p>

³⁹ **BE** suggested replacing *may* with *shall*.

	<p><i>Article 6a</i></p> <p>Voluntary departure⁴⁰</p>
	<p>1. The return decision shall⁴¹ provide for an appropriate period for voluntary departure of up to 30 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.</p> <p>2. Member States may extend the period for voluntary departure for an appropriate period, taking into account the specific circumstances of the individual case.</p> <p>3. 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>

⁴⁰ **MT** maintained its scrutiny reservation on the Article as a whole. **ES** maintained a scrutiny reservation related to Article 2(2).

⁴¹ **IS** and **SE** suggested replacing *shall* with *may*.

	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. ⁴²
<i>Article 7</i> Removal order	<i>Article 7</i> 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 this period.

⁴² SE proposed alternatively the following wording for a new paragraph 5: *A Member State may decide not to grant a period for voluntary departure if an application for a residence permit has been found to be manifestly unfounded, or if it must be presumed that the person concerned will not return voluntarily.*

LT suggested to add a new paragraph 5, which would read as follows: *An unaccompanied third-country national, who is a minor, shall be returned only provided that he/she will be duly taken care of in the third country to which the minor is to be returned, having regard to his/her needs, age and level of independence.*

<p>2. The removal order shall specify the delay within which the removal will be enforced and the country of return.</p>	<p>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.</p>
<p>3. The removal order shall be issued as a separate act or decision or together with the return decision.</p>	<p>3. Member States may adopt a separate administrative or judicial decision or act ordering the removal.</p>
	<p>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.</p>
	<p>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/EC⁴³.</p>

⁴³ PL maintained its suggestion to delete the paragraph.

<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Postponement</p>	<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Postponement of removal</p>
<p>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.</p>	<p>1. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case.</p> <p>These circumstances may include in particular:</p> <ul style="list-style-type: none"> - the person's physical state or mental capacity; - 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; - technical reasons, such as lack of transport capacity, failure of the removal due to the refusal of acceptance by a third-country or lack of identification.
<p>2. Member States shall postpone the execution of a removal order in the following circumstances, for as long as those circumstances prevail:</p>	<p>2. Member States shall postpone removal when this would violate the principle of non-refoulement.</p>

<p>(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;</p>	
<p>(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;</p>	
<p>(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.</p>	
<p>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.</p>	<p>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.</p>

<i>Article 9</i> Re-entry ban	<i>Article 9</i> 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. ⁴⁴
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. ⁴⁵ It may exceed five years if the third-country national represents a <u>serious</u> ⁴⁶ 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;	

⁴⁴ **BE** supported by **NO** maintained their reservation on the automatic, compulsory character of the entry ban, on the grounds of proportionality and compatibility with the Schengen Border Code.

In order to accommodate concerns of **NL** in regard to the registration of an entry ban into SIS II and the ensuing link of this draft Directive with SIS II, **Cion** suggested issuing a unilateral declaration whereby it would be stated that the review of the SIS II (envisaged under the review clause of Article 24 para 5 of the relevant Regulation), will be an opportunity to propose an obligation to register in the SIS entry bans issued under this draft Directive.

⁴⁵ **DE**, supported by **IS**, maintained a reservation on the maximum limit of five years suggesting a lifelong ban as a principle, which could be shortened.

⁴⁶ **FI** asked for the reinsertion of the word *serious*.

(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.	Deleted
3. The re-entry ban may be withdrawn, in particular in cases in which the third-country national concerned :	Deleted
(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
(c) has reimbursed all costs of his previous return procedure.	Deleted
4. The re-entry ban may be suspended on an exceptional and temporary basis in appropriate individual cases.	3. Member States may refrain from imposing the entry ban, withdraw it or suspend it, in individual cases for humanitarian or other reasons such as⁴⁷ 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.

⁴⁷ FR maintained its reservation on the wording *other reasons such as* asking its deletion.

	<p>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.</p>
<p>5. Paragraphs 1 to 4 apply without prejudice to the right to seek asylum in one of the Member States.</p>	<p>5 Paragraphs 1 to 3 apply without prejudice to the right to international protection in one of the Member States.</p>
<p><i>Article 10</i></p> <p>Removal</p>	<p><i>Article 10</i></p> <p>Removal - moved to article 7</p>
<p>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.</p>	<p>Deleted [moved to Article 7(4)]</p>
<p>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.</p>	<p>Deleted[moved to Article 7(5)]</p>

<p style="text-align: center;">Chapter III PROCEDURAL SAFEGUARDS</p>	<p style="text-align: center;">Chapter III PROCEDURAL SAFEGUARDS</p>
<p style="text-align: center;"><i>Article 11</i> Form</p>	<p style="text-align: center;"><i>Article 11</i> Form</p>
<p>1. Return decisions and removal orders shall be issued in writing.</p> <p>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.</p>	<p>1. Return decisions, and if applicable entry-ban decisions and decisions on removal, shall be issued in writing ⁴⁸and give reasons in fact and in law as well as information about available legal remedies.</p> <p>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.</p>
<p>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.</p>	<p>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.</p>

⁴⁸ NL, supported by CH, maintained its reservation on the provision against the obligation to provide the return decision in writing, which (as NL stressed) contradicts the definition of the return decision in Article 3c). Cion clarified that a return decision could be taken orally but a written version thereof would be necessary for the exercise of possible remedies. Pres recalled that the provision is in compliance with Guideline 4 of the CoE.

<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">Judicial remedies</p>	<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">Remedies⁴⁹</p>
<p>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.</p>	<p>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.⁵⁰</p>
<p>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.</p>	<p>2. The above mentioned authority or body shall have the power to review⁵¹ decisions related to return, referred to in Article 11(1) including the possibility of temporarily suspending their enforcement.⁵²</p>

⁴⁹ DE and SE maintained their scrutiny reservations on the text as a whole.

⁵⁰ AT, supported by NO, maintained a scrutiny reservation on paragraph 1, suggesting making clear that the reference to *safeguards of independence* applies only to the *competent bodies*.

⁵¹ BE entered a scrutiny reservation on the term *review*.

⁵² AT maintained its reservation on this paragraph preferring that the issues therein should be dealt with in accordance with national legislation, expressing concerns in particular about cases of threat to public order, security and national security where the appeal should have no immediate suspensive effect no suspensive effect at all.

<p>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.</p>	<p>3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.</p>
	<p>4. Legal aid shall be made available in accordance with national legislation.</p>
<p style="text-align: center;"><i>Article 13</i> Safeguards pending return</p>	<p style="text-align: center;"><i>Article 13</i> Safeguards pending return⁵³</p>
<p>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.</p>	<p>1. Member States shall ensure that the following principles are taken into account as far as possible⁵⁴ 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:</p> <ul style="list-style-type: none"> - ... Family unity with family members present in their territory is maintained as far as possible;

⁵³ **CY, FR, NL** and **SE** suggested deleting the Article as redundant or moving its contents, (or a large part thereof, or a generally-worded relevant principle) to the Preamble. **SE** maintained its proposal to add in the text of this Article *unless the postponement of the removal is due to lack of co-operation by the third-country national subject to removal*. **Pres** and **Cion** argued for maintaining the Article in the operative part of the Directive. **Cion** also pointed out that if the returnees are not given these basic standards, they will be encouraged to apply for asylum in order to possibly benefit from the rights under Directive 2003/9/EC.

FR stressed that it should be clarified that these safeguards are not applicable per se in the Article 15 *Detention conditions*.

⁵⁴ **FI** suggested deleting the wording *as far as possible* here, while maintaining in the first indent further down at the same paragraph.

	<ul style="list-style-type: none"> - ... Basic standards of living capable of ensuring their basic subsistence are provided; (moved to recital 8)⁵⁵ - ...Necessary health care, including at least emergency 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.
<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.</p>	<p>2. Member States shall provide the persons referred to in paragraph 1 with a written⁵⁶ 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.</p>
	<p style="text-align: center;">Article 13a <i>Accelerated procedure following illegal entry</i>⁵⁷</p> <p>1. Member States may provide for an accelerated procedure. This procedure shall be applicable to persons who are intercepted at, or in the vicinity of , the external border while trying to enter illegally</p>

⁵⁵ **FI** suggested reinserting the indent in the operative text of the draft Directive.

⁵⁶ **NL, NO** and **SE** suggested deleting the word *written*.

⁵⁷ **ES, MT** and **RO** maintained scrutiny reservations on the Article as a whole.

	<p>the territory of the Member States or who are apprehended within fourteen days⁵⁸ after their illegal entry to the territory of the Member States.</p> <p>2 Return decisions and entry bans issued with regard to this category of persons shall be given by means of a standard form as set out in Annex I.</p>
	<p>3. To decisions taken in accordance 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.⁵⁹</p> <p>4. To decisions taken in accordance with paragraphs 1 and 2, Article 12 does not apply. The legal remedies shall be determined in accordance with national legislation.⁶⁰</p>

⁵⁸ **CY** (which suggested 30 days) and **DE** , maintained reservations pointing out that fourteen days is too brief a period for the purpose of this procedure.

⁵⁹ **NO** entered a scrutiny reservation on paragraph 3.

⁶⁰ **BE** and **FI** suggested deleting this paragraph

<p style="text-align: center;">Chapter IV TEMPORARY CUSTODY FOR THE PURPOSE OF REMOVAL</p>	<p style="text-align: center;">Chapter IV DETENTION FOR THE PURPOSE OF REMOVAL</p>
<p style="text-align: center;"><i>Article 14</i> Temporary custody</p>	<p style="text-align: center;"><i>Article 14</i> Detention⁶¹</p>
<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. Member States shall⁶² keep in detention a third-country national, who is subject of return procedures, where this is necessary⁶³ to prepare return and/or carry out the removal process unless other sufficient but less coercive measures can be applied in the concrete case.⁶⁴</p>

⁶¹ **MT** maintained its reservation on the Article as a whole, suggesting putting the contents of the Article *in accordance with national legislation*. **DE** maintained its general scrutiny reservation to the Article as a whole.

⁶² **BE** and **SE** suggested replacing *shall* with *may*.

⁶³ **CY** and **FR** suggested replacing *where this is necessary* with the wording *in order to* or alternatively with *for the duration necessary*.

⁶⁴ **IT** entered a scrutiny reservation on paragraph 1 suggesting bringing back the concept of *risk of absconding*. **FI** expressed its preference for the wording contained in doc 13658/07:

(a) *there are **reasonable** grounds to believe that there is a risk of absconding **or otherwise avoiding or hampering the preparation of return or the removal process** and*

(b) *where it would not be sufficient, **in a concrete case**, to apply less coercive measures, for example 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*

asking to reverse the order between detention and less coercive measures in order to show that detention should be the last resort.

<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 authorities within 72 hours from the beginning of the temporary custody.</p>	<p>2. Detention shall be ordered by 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, in accordance with national law.⁶⁵</p>
<p>3. Temporary custody orders shall be subject to review by judicial authorities at least once a month.</p>	<p>3. In every case, detention shall be reviewed at reasonable intervals of time.⁶⁶</p>
<p>4. Temporary custody may be extended by judicial authorities to a maximum of six months.</p>	<p>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 six months.⁶⁷ In the case of prolonged detention periods⁶⁸, reviews undertaken in accordance with paragraph 3 should be subject to the supervision of a judicial authority.</p>

⁶⁵ **BE, MT and AT** entered scrutiny reservations on the new wording in this paragraph.

⁶⁶ **AT and SE** entered scrutiny reservations on the paragraph. **SE** supported by **DE**, suggested the following wording to replace the current paragraph 3: *In every case detention shall be reviewed at reasonable intervals of time. In the case of prolonged detention periods a third-country national shall be entitled to take proceedings by which the lawfulness of his/her detention shall be subject to the supervision of a judicial authority.*

FI suggested providing for a regular review of the detention once a month. **PL** suggested that the judicial review should be initiated on the demand of the detainee. **IT** suggested merging paragraphs 3 and 4 and putting an upper limit in detention period along the lines adopted by the LIBE Committee (18 months).

⁶⁷ **CY and LT** suggested replacing *six* with *twelve* months.

⁶⁸ **CZ** suggested amending the first part of this sentence along the following lines: *In the case of prolonged detention periods, exceeding the maximum of six months, reviews undertaken ...*

	<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>
<p><i>Article 15</i></p> <p>Conditions of temporary custody</p>	<p><i>Article 15</i></p> <p>Conditions of detention⁶⁹</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. 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>moved to recital 11a</p>

⁶⁹ DE pointed out that there is no Community competence to regulate on the issues covered by the Article and asked for its deletion, indicating that these issues should be covered by national law, as the SCIFA Guidelines suggested.

<p>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.</p>	<p>1. Detention shall be carried out as a rule in special 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.⁷⁰</p>
	<p>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 and bodies, such as the United Nations High Commissioner on Refugees (UNHCR), the International Red Cross (IRC) and the International Organisation on Migration (IOM).⁷¹</p>

⁷⁰ SE, supported by BE suggested the following wording for paragraph 1: *A third-country national being held in detention may also be placed in prison accommodation if the third-country national cannot for security reasons be kept in specialized detention facilities or there are some other exceptional circumstances.*

⁷¹ ES and FR suggested differentiating between an obligation to accept contact with legal representatives, family members and competent consular authorities on the one hand and contact with international organisations and specified NGOs for which contact would be at the discretion of the competent authorities.

FR wondered if an indicative list of international organisations would have any added value.

<p>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.</p>	<p>3. Particular attention shall be paid to the situation of vulnerable persons. If unaccompanied minors are kept in 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 special detention facilities.</p>
<p>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.</p>	<p>4. Relevant international and non-governmental organisations and bodies, such as UNCHR, IRC and IOM shall⁷² have the possibility to visit detention facilities in order to assess the adequacy of the detention conditions. Such visits may be subject to authorisation.</p>
<p>Chapter V APPREHENSION IN OTHER MEMBER STATES</p>	<p>Chapter V APPREHENSION IN OTHER MEMBER STATES</p>
<p><i>Article 16</i> Apprehension in other Member States</p>	<p><i>Article 16</i> Apprehension in other Member States</p>
<p>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:</p>	<p>Deleted</p>

⁷² ES and FR suggested replacing *shall* with *may*.

<p>(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 be caused, applying Council Decision 2004/191/EC <i>mutatis mutandis</i>;</p>	<p>Deleted</p>
<p>(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;</p>	<p>Deleted</p>
<p>(c) launch the return procedure under its national legislation;</p>	<p>Deleted</p>
<p>(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.</p>	<p>Deleted</p>

<p style="text-align: center;">Chapter VI</p> <p style="text-align: center;">FINAL PROVISIONS</p>	<p style="text-align: center;">Chapter VI</p> <p style="text-align: center;">FINAL PROVISIONS</p>
<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;">Reporting</p>	<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;">Reporting</p>
<p>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.</p>	<p>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.</p>
<p>The Commission shall report for the first time four years after the date referred to in Article 18(1) at the latest.</p>	<p>The Commission shall report for the first time four years after the date referred to in Article 18(1) at the latest.</p>
<p style="text-align: center;"><i>Article 18</i></p> <p style="text-align: center;">Transposition</p>	<p style="text-align: center;"><i>Article 18</i></p> <p style="text-align: center;">Transposition</p>
<p>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.</p>	<p>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.</p>

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.
<i>Article 19</i> Relationship with Schengen Convention	<i>Article 19</i> 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.
<i>Article 20</i> Repeal	<i>Article 20</i> Repeal
Directive 2001/40/EC is repealed.	Deleted.

<i>Article 21</i> Entry into force	<i>Article 21</i> 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> .
<i>Article 22</i> Addressees	<i>Article 22</i> 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, [...] <i>For the European Parliament</i> <i>For the Council</i> <i>The President</i> <i>The President</i>	Done at Brussels, [...] <i>For the European Parliament</i> <i>For the Council</i> <i>The President</i> <i>The President</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 enforceable 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