

Return Directive

2018/0329(COD) - 12/09/2018 - Legislative proposal

PURPOSE: to improve the efficiency of common procedures applicable in Member States for the return of illegally staying third-country nationals.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure on an equal footing with council.

BACKGROUND: the effective return of third-country nationals who do not have a right to stay in the EU is an essential component of the European Agenda on Migration. At EU level, return policy is regulated by Directive 2008/115/EC of the European Parliament and of the Council (the Return Directive). Since the entry into force of the Return Directive in 2010, migratory pressure on Member States and the Union as a whole has increased.

Two main challenges may be identified:

- national practices implementing the EU framework vary between Member States and are not as effective as they should be. Among other things, inconsistent definitions and interpretations of the risk of absconding and of the use of detention result in the absconding of irregular migrants and in secondary movements. Lack of cooperation on the part of the third-country nationals leads also to obstructing return procedures;
- the efficiency of the EU's return policy depends also on the cooperation of countries of origin. Several legally non-binding arrangements for return and readmission have been put in place. All Member States should make full use of the arrangements to increase returns to the countries concerned.

The Commission adopted [a Recommendation](#) in 2017, setting out a series of measures to be taken up by the Member States to make returns more effective, including by making full use of the flexibility provided by the Return Directive. Despite these efforts, there has been little progress in increasing the effectiveness of returns. On the contrary, a decrease in the return rate throughout the EU was observed from 45.8% in 2016 to merely 36.6% in 2017.

This proposal is part of a package of measures proposed by the Commission as a follow up to the European Council of 28 June 2018 which underlined the necessity to significantly step up the effective return of irregular migrants, and welcomed the intention of the Commission to make legislative proposals for a more effective and coherent European return policy.

CONTENT: the proposal to recast Directive 2008/115/EC aims to address the key shortcomings and obstacles encountered by Member States when carrying out returns, notably to reduce the length of return procedures, secure a better link between asylum and return procedures and ensure a more effective use of measures to prevent absconding. The proposed amendments do not affect the rights of the migrants and ensures full respect of fundamental rights, in particular the principle of non-refoulement.

Specifically, the proposal for recast:

- establishes a new border procedure for the rapid return of applicants for international protections whose application was rejected following an asylum border procedure. The proposal provides for specific, simplified rules applicable to third-country nationals who were subject to asylum border procedures: (i) issuance of a decision through a simplified form, (ii) no period for voluntary return granted as a rule (except if the third-country national holds a valid travel document and cooperates with the national authorities), (iii) shorter time-limit for lodging an appeal, and specific ground for detention. This border procedure for return will follow up the asylum border procedure;
- sets out a common, non-exhaustive, list of objective criteria to determine the existence of a risk of absconding as part of an overall assessment of the specific circumstances of the individual case;
- introduces an explicit obligation for third-country nationals to cooperate with national authorities at all stages of the return procedures, in particular for establishing and verifying their identity in view of obtaining a valid travel document and ensuring the successful enforcement of a return decision;
- clarifies the need to issue a return decision immediately after a decision rejecting or terminating the legal stay is taken;
- adapts the rules for granting a period for voluntary departure, which should not be longer than 30 days. However, the proposal deletes the obligation to grant a minimum of seven days when determining the duration of the period for voluntary departure;
- introduces the possibility for Member States to impose an entry ban without issuing a return decision on an illegally staying third-country national who is detected for the first time while leaving the Union in certain cases and taking into account the principle of proportionality;
- establishes the obligation to have national return management systems providing timely information on the identity and legal situation of the third-country nationals that are relevant for monitoring and following upon individual cases. These are to be linked to a central system established by the European Border and Coast Guard Agency in accordance with the new Regulation that is part of this package;
- sets an obligation for Member States to establish voluntary return programmes that may also include reintegration support;
- provides for a specific time-limit (five days) for lodging appeals against return decisions issued in cases where the return decision is the consequence of a decision rejecting an application for international protection that became final. If the risk of a breach of the principle of non-refoulement has not been already assessed by a judicial authority in asylum procedures, an automatic suspensive effect of the appeal against a return decision must be granted. A decision on temporary suspension shall be made quickly, within 48 hours as a rule;
- sets out clear time-limits for detention: while the maximum period for detention of 6 months and the possibility of extension in specific circumstances are not modified, the proposal requires that national legislation provide for not less than 3 months as an initial minimum

period of detention, in order to more appropriately reflect the period of time needed to successfully carry out return and readmission procedures with third countries. In addition, Member States may now also detain returnees when they pose a threat to public order or national security.