

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

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

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

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

Chapter II: Termination of illegal stay.

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

Chapter III: Procedural safeguards

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

Chapter IV: Temporary custody for the purpose of removal

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

Chapter V: Apprehension in other Member States

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

Chapter VI: Final Provisions

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